

Criminal Justice System in Nevada



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STUDY OF THE CRIMINAL JUSTICE SYSTEM IN NEVADA

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SUMMARY OF RECOMMENDATIONS

The Legislative Commission's Subcommittee to Study the Criminal Justice System in Nevada recommended the following:

BAIL REFORM

1. **Amend *Nevada Revised Statutes* (NRS) 178.4851 to statutorily establish a conditional release mechanism which is a nonsecurity release imposing restrictions on the activities and associations of the defendant. The defendant would be required to execute a release agreement and bail may be revoked if the agreement is breached. The statutory conditions would include:**
 - a. **Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assuring appearance;**
 - b. **Reasonable regulations concerning the activities, movements, associations, and residences of the defendant, including the option of restriction to residence;**
 - c. **Release during working hours; and**
 - d. **Any other reasonable restriction designed to assure the defendant's appearance. (BDR 14-976)**
2. **Amend Chapter 178 of NRS to authorize the district, justice, and municipal courts to appoint a release assistance officer. The release assistance officer shall, unless impractical, interview each person detained and charged with an offense and verify the release criteria set forth in NRS 178.4853. The release officer may submit a written report to the presiding judge including an evaluation of the defendant or, if delegated release authority, make the release decision. (BDR 14-976)**
3. **Amend Chapter 178 of NRS to provide a security release mechanism for defendants admitted to bail but unable to provide**

adequate security for a private bond. Include the following elements:

- a. The defendant must execute a release agreement. The burden of establishing that the defendant cannot obtain a private bond is upon the defendant;**
- b. The defendant must deposit with the court a sum of money equal to 10 percent of the security amount, but not less than \$25;**
- c. When the defendant has completed obligations under the release agreement, the court must return 50 percent of the 10 percent to the defendant. The court retains the remaining 50 percent, and the interest on the entire deposit, as security release costs;**
- d. Once the matter is final, the money retained by the court must be deposited in the county fund, and may only be used for pretrial services or drug and alcohol treatment programs;**
- e. Provide that failure to appear is punishable as contempt of court;**
- f. Failure to comply with the release agreement results in forfeiture of the entire security amount; and**
- g. Provide a summary procedure for default judgment, with the security amount to be satisfied as a civil judgment. Failure to appear at a scheduled court appearance deems the person to have been served notice that the security agreement has been violated. (BDR 14-976) (Note: Because of potential constitutional problems, the bill as drafted provides an administrative fee applicable to all defendants that funds the pre-trial release program, and defendants who are unable to obtain a private bond may deposit 10 percent, and are treated by the court in the same fashion as all other persons on bail. The county does not retain any portion of that money, unless the defendant violates bail and forfeits security.)**

4. **Transmit a letter to the Chief Justice of Nevada's Supreme Court advising that the subcommittee supports the development of a uniform bail schedule and requesting the Court to form a committee representing interested and affected parties to judicially formulate a uniform bail schedule.**
5. **Enact legislation that establishes a uniform bail schedule that would be applicable in all counties. The legislation would be based on Clark County's (Nevada) bail schedule. (BDR 14-981)**

CULTURAL AWARENESS TRAINING

6. **Amend NRS 481.054, or add a new section to Chapter 481 of NRS that requires a minimum of 20 hours of cultural awareness training for all new cadets in training under the Peace Officers Standards and Training (P.O.S.T.) Committee. Mandate a minimum of 4 hours of cultural awareness training for continuing education. (BDR 43-980)**
7. **Include in the final report a statement of commendation for the P.O.S.T. Committee and the Las Vegas Metropolitan and Reno Police Departments for their efforts in training officers in the area of cultural awareness and utilizing community policing methods.**
8. **Include a statement in the final report urging local law enforcement agencies to:**
 - a. **Adopt a policy that adheres to the Civil Rights Acts of 1964 and 1991;**
 - b. **Adopt a platform or policy encouraging and utilizing community-oriented policing;**
 - c. **Establish a representative citizen council and/or ad hoc law enforcement group that would consist of educators, parents, and other community members. The group should meet regularly and inform the community about goals, programs, responsibilities, and roles of the law enforcement agencies and community members; and**

- d. Establish guidelines to implement hiring practices that take into account a person's bias, respect, and impartial treatment of others.

SENTENCING OF HABITUAL OFFENDERS

- 9. Amend NRS 207.010 to create a "super" habitual offender category as follows:
 - a. The "super" habitual statute would be triggered by the third violent or sex-related felony. (The current statute requires any three felonies for 10 to 20 years or any four felonies for life with or without parole);
 - b. The prosecuting agency must charge the defendant as a habitual criminal if the defendant's current charge is a violent or sex-related felony and he has two prior convictions for violent or sex-related felonies in this state, or similar convictions in other states that would be violent or sex-related crimes if committed in this state;
 - c. If the defendant is convicted of the current charge of a third violent or sex-related felony, the judge must sentence to life with or without parole;
 - d. A violent or sex-related felony is defined as any felony crime with a sentence exceeding 10 years, except drug possession, sale, or trafficking; gaming crimes; or racketeering. (See Appendix H for a list of included crimes);
 - e. Each conviction must be based on a separate occurrence or incident to qualify for the "super" habitual statute. More than one conviction arising out of the same criminal conduct would only count as one conviction; and
 - f. The existing statute remains discretionary regarding the charging and sentencing of habitual criminals who do not fit within the "super" habitual category. (BDR 15-977)

MANDATORY MINIMUM SENTENCING AND TRUTH IN SENTENCING

- 10. Adopt a resolution calling for a 1995 interim study to reform the criminal justice code. Include in the resolution the need to logically examine the code for antiquated crimes, duplicative crimes, severity of sentences compared with crimes, and sentence structure. Include an examination of truth in sentencing and the possibility of a classification scheme for crimes. The study should examine the elimination of the classification of gross misdemeanor. (BDR R-975)**

POSSESSION OF FIREARMS BY MINORS

- 11. Amend NRS 202.300 by increasing the age limit that prohibits possession of a firearm by a minor from under the age of 14 years to under the age of 18 years. Create an exception for minors engaged in lawful hunting or marksmanship activities.**
- 12. Amend NRS 202.300 by increasing the penalty for possession of a firearm by a minor or aiding or permitting a minor to violate the law from a misdemeanor to a gross misdemeanor. Authorize the court to order a parent or person responsible for such a minor offender to participate in parenting education classes.**
- 13. Amend NRS 202.300 by adding the following additional penalties against minors for illegal possession of firearms:**
 - a. First Offense - Up to 100 hours of community service and revocation or delay of issuance of driver's license for up to 1 year. (All delays run from the date the offender would be eligible for a license); and**
 - b. Second Offense - Between 100 and 250 hours of community service and revocation or delay of driver's license issuance for up to 2 years.**
- 14. Amend NRS 202.310 by increasing the penalty for sale of a concealable firearm to a person under the age of 18 years from a misdemeanor to a felony.**

15. Amend NRS 62.080 to require automatic certification as an adult for juveniles 14 years of age and older who are alleged to have committed a third felony crime (two prior adjudications or adjudications withheld), where at least one crime involved the use of a firearm. (BDR 15-979)

DISPOSITION OF CONFISCATED WEAPONS

16. Amend NRS 202.340 to prohibit the resale or transfer of confiscated weapons by law enforcement agencies except to other law enforcement agencies.
17. Amend NRS 202.340 to clarify the duties of weapons' officers with respect to the sale, destruction, or retention of confiscated weapons. (Not only "dangerous" weapons, but any weapon.) (BDR 15-978)

DRUG- AND ALCOHOL-RELATED CRIMES

18. Amend NRS 209.425 to require Nevada's Department of Prisons to expand the alcohol treatment program ("305" Program) to any person convicted of possession or sale of drugs who is an abuser of drugs. The program must include a minimum of 90 days of treatment while in prison.
19. Transmit a letter to Nevada's Department of Prisons directing the department to include in its budget the necessary funding to expand the "305" Program to drug abusers.
20. Provide that if an offender is assessed to have a drug or alcohol abuse problem upon admittance to prison, he must enroll in and complete a treatment program, if available. If an offender refuses to participate in the program, that offender is prohibited from earning any sentence-reducing credits.
21. Require Nevada's Department of Prisons and Division of Parole and Probation, Nevada's Department of Motor Vehicles and Public Safety, to establish and implement a system of tracking offenders who have participated in treatment programs. The

system should include a cost-benefit analysis of treatment compared with incarceration. Require the results of the tracking system and analysis to be reported to the Chairman of the Assembly Committee on Judiciary and the Chairmen of the Senate Committees on Judiciary and Transportation on or before January 1 of every odd-numbered year.

22. Amend NRS 453.580 to include the use of deferred prosecution for certain offenders who are abusers of drugs and alcohol. The deferred prosecution would authorize the court to require the defendant to waive preliminary proceedings (grand jury, or information) and stipulate to a set of facts that are the basis for the charge. Such stipulation may be used in a subsequent prosecution if the person fails to satisfactorily complete the program. Provide that the court must require the defendant to appear before the court at least every 30 days for 12 months. The court may extend the program to a total of 18 months, if necessary. The defendant shall submit to drug testing and any other form of monitoring or treatment the court orders.
23. Amend Chapter 484 of NRS by requiring persons under the age of 18 years who are convicted of driving under the influence of alcohol or a controlled substance to have their license revoked, or delayed if under the age of 16 years, for 6 months.
24. Amend NRS 202.020 to provide that a person under the age of 18 years who is convicted of unlawful purchase or possession of alcohol be subject to a mandatory 90-day driver's license suspension. (BDR 16-974)

ABUSE AND FRAUD RELATED TO PRESCRIPTION DRUGS

25. Adopt a resolution encouraging the formation of a multidiscipline task force to examine the potential benefits and detriments of establishing a computerized, automated system for monitoring prescription drug data. The system would require pharmacies with the computer capabilities (estimated by the State Board of Pharmacy to be 97 percent) to submit certain dispensing data to a central repository. The task force would be comprised of officials from Nevada's Investigation Division of the Department

of Motor Vehicles and Public Safety and the State Board of Pharmacy. The task force would create a process for the collection, analysis, and use of essential information on the prescribers, dispensers, and recipients of prescription drugs. The system would be used to identify and resolve any fraudulent or unlawful activities related to the dispensing of pharmaceuticals. The task force would be urged to implement the system and report to the Legislature any changes or additions to the law deemed necessary. (BDR R-972)

26. Enact legislation requiring Nevada's Investigation Division (NID) and the State Board of Pharmacy to implement an electronic system to track prescription drugs. Authorize the board to charge a fee on prescriptions for category I through V controlled substances. The fee may only be used to fund the monitoring program. Require the State Board of Pharmacy to report suspected violations to local law enforcement agencies and NID for investigation. The fee may be charged beginning July 1, 1995. The program would be implemented effective January 1, 1996. (BDR 40-973)

**REPORT TO THE 68TH SESSION OF THE NEVADA LEGISLATURE BY
THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO STUDY
THE CRIMINAL JUSTICE SYSTEM IN NEVADA**

I. INTRODUCTION AND BACKGROUND

The 1993 Nevada Legislature adopted Assembly Concurrent Resolution No. 76 (File No. 179, *Statutes of Nevada 1993*, page 3123) which directed the Legislative Commission to conduct an interim study of the criminal justice system in Nevada.

The Legislative Commission appointed a subcommittee consisting of the following eight legislators to conduct the study:

Senator Ernest E. Adler, Chairman
Assemblyman Wendell P. Williams, Vice Chairman
Senator Lawrence E. Jacobsen
Senator Mark A. James
Assemblyman Morse Arberry, Jr.
Assemblyman Richard D. Perkins
Assemblyman Scott Scherer
Assemblywoman Stephanie S. Smith

Legislative Counsel Bureau staff services for the study were provided by: Dennis Neilander, Senior Research Analyst; Scott G. Wasserman, Principal Deputy Legislative Counsel; Risa L. Berger, Deputy Legislative Counsel; and Debby Richards, Senior Research Secretary.

The subcommittee held four meetings in Las Vegas, Nevada, and one in Carson City, Nevada, although all meetings were video conferenced between Carson City and Las Vegas. Testimony from citizens, law enforcement entities, members of the judiciary, prosecuting attorneys, public defenders, and various representatives of interested groups focused on recommendations to reform the criminal justice system. The subcommittee wishes to recognize and thank the many individuals who attended and participated in the meetings for their cooperation and assistance in providing valuable information concerning the criminal justice system in Nevada.

The subcommittee adopted a total of 26 recommendations addressing issues in the following areas:

1. Bail reforms designed to streamline and equalize the system;
2. Cultural awareness training for peace officers;
3. Sentencing of habitual offenders;
4. Truth in sentencing;
5. Possession of firearms by juveniles;
6. Disposition of confiscated weapons;
7. Drug- and alcohol-related crimes; and
8. Abuse and fraud concerning prescription drugs.

What follows is a description of the activities of the subcommittee for each of the five meetings. The information and issues considered by the subcommittee are summarized. The recommendations adopted by the subcommittee are discussed in detail in Section II of this report entitled, "Discussion Of Recommendations." Supporting documentation not included as an appendix and minutes of all meetings are available from the Legislative Counsel Bureau's Research Library.

First Meeting

The first meeting of the subcommittee occurred on November 12, 1993, at Cashman Field Center in Las Vegas. The subcommittee Chairman, Senator Ernest E. Adler, began the meeting by informing the members that the task of the subcommittee was comprised of two main topics:

1. Bias in Nevada's criminal justice system; and
2. The reduction of crime and violence in the State.

The first meeting focused on whether proper discretion was being exercised by prosecutors when making decisions regarding whether to file criminal charges,

and the criteria and amounts utilized in determinations of whether to admit a defendant to bail.

With respect to prosecutorial discretion, certain citizens and members of interested groups presented testimony indicating that, in some cases, prosecuting attorneys in Nevada were improperly charging defendants or "overcharging" defendants, particularly African-American defendants. Representatives of the Clark and Washoe County (Nevada) District Attorneys' Offices presented information relative to the standards used for approval of cases submitted for prosecution. Both counties indicated that the general standard is:

1. The probability that a case may be proven beyond a reasonable doubt;
2. The seriousness of an offense;
3. The background of a defendant; and
4. An allocation of resources.

Statistics presented by the district attorneys for both counties were similar. In Clark County, approximately 16,000 felonies and 18,000 misdemeanors are submitted per year for prosecution. In Washoe County, approximately 14,000 total submissions are received for prosecution per year. The overall approval rate for submission in both counties was around 80 percent and approximately 95 percent of the cases are resolved by plea bargain. A representative of the Nevada Judges Association indicated that, to the best of his knowledge, prosecutors were using discretion in decisions regarding charging. Representatives of Nevada's state and local public defenders' offices stressed the need to divert some offenders from the criminal justice system rather than prosecuting and incarcerating them, particularly drug- and alcohol-related offenders.

Regarding the bail system, representatives of the Nevada Judges Association, district attorneys' offices, and public defenders' offices provided testimony outlining the operation of the bail system in Nevada. Subcommittee staff presented an overview of the State of Oregon's pretrial release and bail program. (Appendix C contains a summary of the Oregon provisions and a copy of relevant portions of its law.) Testimony focused on whether the bail system was treating all defendants equally and whether financial ability to post bail should be a factor in bail decisions. The subcommittee determined to pursue a

hybrid version of the Oregon system for some defendants who were financially unable to post security through private bail bondsmen.

Second Meeting

The second meeting of the subcommittee was held on December 6, 1993. This meeting focused on the possession of firearms by juveniles, the disposition of weapons confiscated by law enforcement entities, and the treatment of habitual offenders within the criminal justice system. The members also heard an informational presentation from representatives of Nevada's Department of Prisons (DOP) concerning the treatment of drug and alcohol offenders within the prison system and the impact these offenders have on the criminal justice system. A statistical presentation was also offered that provided a comprehensive view of offenders currently in prison, including demographic characteristics and crimes committed. (Appendix B is the statistical analysis provided by the DOP.)

The members received testimony concerning Nevada's current firearms law and the fact that minors 14 years old and over are permitted to possess firearms provided the firearms are not concealed. Minors 13 years and under may only possess a firearm if supervised by an adult. Legislative Counsel Bureau staff presented a summary of a comprehensive law recently enacted by the State of Florida that addresses the possession of firearms by minors. (Appendix D contains a summary of the Florida provisions and a copy of relevant portions of Florida's law.) Testimony indicated that the use of firearms by minors in the commission of crimes has risen dramatically in Clark and Washoe Counties. The members also heard testimony indicating that the treatment of minors with firearms may need to be altered for the rural counties. The members determined to pursue strengthening of the criminal laws regarding possession of firearms by minors.

With respect to the disposition of weapons, Nevada's Investigation Division (NID), Department of Motor Vehicles and Public Safety, presented information indicating two major problems in this area. First, most confiscated weapons are resold at public auctions or traded by law enforcement agencies for other equipment. Some of these weapons return to the streets and may be used in future criminal activities. Second, the statute governing disposition of these weapons is unclear and ambiguous in some respects. The members determined to reevaluate the public policies concerning disposition of weapons and attempt to clarify the statute.

With regard to the sentencing of habitual offenders, there was general discussion of movements in other states including "three strikes" policies. The habitual criminal statute existing in Nevada was discussed and staff presented a summary of the State of Washington's persistent offender law which requires a life in prison sentence for persons who commit three serious felonies. (Appendix E contains a summary of the Washington provisions and a copy of relevant portions of Washington's law.) The subcommittee determined to pursue strengthening Nevada's habitual offender laws.

Third Meeting

The third meeting was a joint hearing with the Legislative Commission's Subcommittee to Study Drug and Alcohol Abuse Among Criminal Offenders (A.C.R. 71, File No. 177, *Statutes of Nevada 1993*). Senator Adler, Chairman of the Study of the Criminal Justice System in Nevada, and Assemblyman Bernie Anderson, Chairman of the Study of Drug and Alcohol Abuse Among Criminal Offenders, agreed to hold a joint hearing since various issues and recommendations relating to drug and alcohol abuse and the criminal justice system were being presented to both subcommittees during the course of their respective studies. The joint hearing featured expert testimony from the following sources:

1. The Honorable Harl H. Haas, Circuit Court Judge, Multnomah County, Oregon, concerning the establishment of drug courts;
2. Dr. Gary Field, Oregon Department of Prisons, Director of the Cornerstone Alcohol and Drug Program for Criminal Addicts, concerning alcohol and drug treatment within the prison setting; and
3. Dr. William Butynski, Director, National Association of State Alcohol and Drug Abuse Directors, concerning the impact of health care reform on the treatment of substance abusers, and a general discussion of treatment of criminal offenders who are substance abusers.

The joint hearing also featured presentations by Nevada judges concerning truth in sentencing and mandatory minimum sentencing in general, and specifically as they relate to criminal substance abusers.

While members from both subcommittees expressed general support for the concepts of establishing drug courts, and diverting certain nonviolent drug and alcohol offenders from the criminal justice system, the subcommittees did not

make any joint recommendations. Implementation and fiscal issues were not discussed and it was determined joint recommendations would not be feasible. The Subcommittee to Study the Criminal Justice System in Nevada determined to pursue those substance abuse issues that were broad-based when viewing the criminal justice system as a whole.

Fourth Meeting

The fourth meeting of the subcommittee was held on March 10, 1994. The meeting focused on programs to rehabilitate drug- and alcohol-related offenders, the fraudulent and criminal use of prescription drugs, cultural awareness activities for law enforcement officers, and a presentation of relevant literature concerning bias in criminal justice systems.

Representatives of the Bureau of Alcohol and Drug Abuse (BADA), Rehabilitation Division, Nevada's Department of Employment, Training and Rehabilitation, provided a comprehensive analysis of the "305" Program (program established by Assembly Bill 305, Chapter 297, *Statutes of Nevada 1991*, pages 778-784). This program is a comprehensive treatment program for offenders who are alcohol abusers that includes in-prison and out-of-prison treatment. The components of the program and an analysis of the statistical success and failure of the program were offered. The members determined to expand the program and to consider including a similar component for drug abusers in addition to alcohol abusers.

The members received testimony indicating that there is extensive abuse regarding the dispensing of controlled substances. The Executive Secretary for the State Board of Pharmacy attributed this abuse to a lack of regulatory oversight. It was pointed out that the criminal justice system does not deal with violators aggressively and most continue their illegal activities while on probation. The subcommittee determined to consider the option of implementing a computerized system of tracking controlled substance prescriptions to identify abusers in the system.

The subcommittee heard testimony from members of Nevada's Peace Officers Standards and Training (P.O.S.T.) Committee and the Las Vegas Metropolitan and Reno Police Departments concerning cultural awareness training for law enforcement officers, and in-house procedures for promoting cultural awareness. Testimony stressed the need for cultural awareness training due to the diverse cultural populations throughout Nevada. The subcommittee determined to pursue enhancement of cultural awareness training for law enforcement officers.

Staff to the subcommittee presented a literature review concerning bias in the criminal justice system. A list of materials presented is included as Appendix F.

The members then held a discussion of potential recommendations presented to the subcommittee, and agreed on the issues to be considered at the final work session.

Fifth Meeting

The fifth and final meeting was held on June 2, 1994. The subcommittee conducted a work session in which the members voted on recommendations to be presented to the Legislative Commission and for consideration by the 1995 Legislature. The section that follows discusses the recommendations approved by the subcommittee and the rationale for their approval.

II. DISCUSSION OF RECOMMENDATIONS

The recommendations as approved by the subcommittee are denoted by bullets and text in bold print.

A. BAIL REFORM

The subcommittee reviewed Chapter 178 of NRS as it relates to bail. The sole purpose of bail is to ensure that a defendant who is charged with a crime will fulfill his obligation to be present in court when ordered to answer to the charges. The subcommittee heard testimony that the bail system in Nevada may have inherent bias because it is based on financial consequences for failure to appear. Generally, most defendants who are admitted to bail are required to post a surety or bond. If they fail to fulfill the conditions of bail, that bond is forfeited. For that reason, the private bail bondsmen generally require a 10 percent deposit and some kind of collateral that will cover the remaining 90 percent in the event the defendant fails to appear. Testimony indicated that a defendant with sufficient financial resources may be able to make bail while a defendant with insufficient resources could not, even though both persons may be charged with the same crime and have the same conditions of bail. In order to remedy any actual or perceived inequities in the system, the subcommittee analyzed various options. The members relied heavily on the system in place in Oregon. (See Appendix C.) Oregon repealed its private bail bond system in 1973 in favor of a county-operated system. The subcommittee did not support the repeal of the private system, but favored some components of the Oregon

system. The first recommendation adopted in this area concerns a nonsecurity, conditional release.

Judges already have the authority to release a defendant without bail and impose conditions on the defendant's release. However, the authority is very broad and testimony indicated it would be helpful if the statute prescribed the types of conditions that may be imposed on a defendant. Specifically, the judge should be given express authority to place the condition of reasonable restriction to the defendant's residence.

Therefore, the subcommittee recommended the following actions:

- **Amend *Nevada Revised Statutes* (NRS) 178.4851 to statutorily establish a conditional release mechanism which is a nonsecurity release imposing restrictions on the activities and associations of the defendant. The defendant would be required to execute a release agreement and bail may be revoked if the agreement is breached. The statutory conditions would include:**
 - a. **Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assuring appearance;**
 - b. **Reasonable regulations concerning the activities, movements, associations, and residences of the defendant, including the option of restriction to residence;**
 - c. **Release during working hours; and**
 - d. **Any other reasonable restriction designed to assure the defendant's appearance. (BDR 14-976)**

The subcommittee also considered authorizing the use of a release assistance officer. The criteria for release of a defendant are outlined in NRS 178.4853. The subcommittee determined that judges should have the option of appointing a release assistance officer to assist or actually determine whether a defendant should be admitted to bail. This would remove some burdens from the judge in certain cases, expedite the procedure, and ensure that the defendant's eligibility for release has been examined and verified. The subcommittee favored providing the option of utilizing a release assistance officer to the judges.

Therefore, the subcommittee recommended the following actions:

- **Amend Chapter 178 of NRS to authorize the district, justice, and municipal courts to appoint a release assistance officer. The release assistance officer shall, unless impractical, interview each person detained and charged with an offense and verify the release criteria set forth in NRS 178.4853. The release officer may submit a written report to the presiding judge including an evaluation of the defendant or, if delegated release authority, make the release decision. (BDR 14-976)**

In an attempt to resolve the problem of defendants with differing financial resources being affected differently with respect to the ability to make bail, the subcommittee examined an Oregon law that authorizes a defendant to post a 10 percent security deposit with the county in order to be released on bail. (See Appendix C.) In Oregon, there are no private bail bondsmen and all defendants must post security with the county through the court system. The subcommittee did not favor this approach for all defendants, but determined it would be useful for those defendants who are unable to post the 10 percent security, plus sufficient collateral to qualify to a private bond. The system favored by the subcommittee will allow only those defendants that cannot qualify for a private bond, to place a 10 percent deposit with the court and no additional collateral would be required.

The defendant would have the burden of proof of establishing that he was unable to obtain a private bond in order to be eligible for release. In Oregon, the county retains 85 percent of the 10 percent deposit as security release costs. The subcommittee determined that the defendant should be returned 50 percent of the 10 percent deposit and the remaining 50 percent would be retained as security costs. This money could only be used to fund activities associated with the security release. Failure to comply with terms of the release results in a forfeiture of the entire deposit and the county may obtain a judgment against the defendant for the remaining 90 percent bail amount.

Therefore, the subcommittee recommended the following actions:

- **Amend Chapter 178 of NRS to provide a security release mechanism for defendants admitted to bail but unable to provide adequate security for a private bond. Include the following elements:**

- a. **The defendant must execute a release agreement. The burden of establishing that the defendant cannot obtain a private bond is upon the defendant;**
- b. **The defendant must deposit with the court a sum of money equal to 10 percent of the security amount, but not less than \$25;**
- c. **When the defendant has completed obligations under the release agreement, the court must return 50 percent of the 10 percent to the defendant. The court retains the remaining 50 percent, and the interest on the entire deposit, as security release costs;**
- d. **Once the matter is final, the money retained by the court must be deposited in the county fund, and may only be used for pretrial services or drug and alcohol treatment programs;**
- e. **Provide that failure to appear is punishable as contempt of court;**
- f. **Failure to comply with the release agreement results in forfeiture of the entire security amount; and**
- g. **Provide a summary procedure for default judgment, with the security amount to be satisfied as a civil judgment. Failure to appear at a scheduled court appearance deems the person to have been served notice that the security agreement has been violated. (BDR 14-976) (Note: Because of potential constitutional problems, the bill as drafted provides an administrative fee applicable to all defendants that funds the pre-trial release program, and defendants who are unable to obtain a private bond may deposit 10 percent, and are treated by the court in the same fashion as all other persons on bail. The county does not retain any portion of that money, unless the defendant violates bail and forfeits security.)**

Testimony before the subcommittee indicated that the amounts established for bail differ between jurisdictions across the State, particularly in the rural counties. The subcommittee debated the merits of establishing a uniform bail schedule that would apply statewide. These bail amounts would be presumptive, although judges should retain discretion to alter them on a case-by-case basis. The subcommittee expressed a desire to have members of the judicial branch utilize their expertise to formulate the schedule.

Therefore, the subcommittee recommended the following action:

- **Transmit a letter to the Chief Justice of Nevada's Supreme Court advising that the subcommittee supports the development of a uniform bail schedule and requesting the Court to form a committee representing interested and affected parties to judicially formulate a uniform bail schedule.**

In the event that the judicial branch was unable to formulate a uniform bail schedule, the subcommittee recommended the following alternative action:

- **Enact legislation that establishes a uniform bail schedule that would be applicable in all counties. The legislation would be based on Clark County's (Nevada) bail schedule. (BDR 14-981) (Note: A copy of Clark County's Uniform Bail Schedule is available in the Legislative Counsel Bureau's Research Library and as an attachment to the minutes of the A.C.R. 76 Subcommittee's meeting of June 2, 1994.)**

B. CULTURAL AWARENESS TRAINING

The subcommittee heard extensive testimony concerning the advantage of cultural awareness training for law enforcement officers. Representatives of the P.O.S.T. Committee and the Las Vegas Metropolitan and Reno Police Departments outlined the current training programs offered for officers. It was pointed out that with the tremendous population growth of the State in the last decade, new and diverse cultures have appeared throughout the State. Cultural awareness in dealing with people is a necessity in law enforcement because of the many presumptions and assumptions that may unknowingly be false when applied to certain cultures.

Police officers indicated that community-oriented policing is a successful and burgeoning area of law enforcement. Such policing is, to some degree, a forced partnership and requires police officers and the public to personally interact in the communities they serve. Cultural awareness and understanding is an essential element of establishing and maintaining a relationship with the community. Police officers are not representative of some of the communities they serve. Representatives of the Reno Police Department indicated that although the African-American population in Reno is about 2.8 percent, approximately 30 percent of the law enforcement services are directed toward those communities. It is essential that officers in these communities have appropriate cultural awareness. Lack of cultural awareness has led to

misunderstandings that escalate into major problems for the police and the community, and severely impact the criminal justice system.

Therefore, the subcommittee recommended the following action:

- **Amend NRS 481.054, or add a new section to Chapter 481 of NRS that requires a minimum of 20 hours of cultural awareness training for all new cadets in training under the Peace Officers Standards and Training (P.O.S.T.) Committee. Mandate a minimum of 4 hours of cultural awareness training for continuing education. (BDR 43-980)**

The members of the subcommittee were extremely impressed with the efforts of peace officers in Nevada to provide cultural awareness training and conduct internal programs that assist officers in dealing with culturally diverse law enforcement situations. Such actions show significant forethought and contribute to the prevention of the crisis situations which have confronted other states and localities.

Therefore, the subcommittee voted to:

- **Commend the Peace Officers Standards and Training Committee and the Las Vegas Metropolitan and Reno Police Departments for their efforts in training officers in the area of cultural awareness and utilizing community policing methods.**

The subcommittee received testimony concerning activities that local law enforcement agencies may engage in to improve relationships with all communities, including culturally diverse communities. The subcommittee recommended the following actions:

- **Nevada local law enforcement agencies are urged to:**
 - a. **Adopt a policy that adheres to the Civil Rights Acts of 1964 and 1991;**
 - b. **Adopt a platform or policy encouraging and utilizing community-oriented policing;**
 - c. **Establish a representative citizen council and/or ad hoc law enforcement group that would consist of educators, parents, and other community members. The group should meet regularly and**

inform the community about goals, programs, responsibilities, and roles of the law enforcement agencies and community members; and

- d. Establish guidelines to implement hiring practices that take into account a person's bias, respect, and impartial treatment of others.**

C. SENTENCING OF HABITUAL OFFENDERS

The members received substantial testimony concerning the trends related to crime in the United States and Nevada. The U.S. Department of Justice recently reported that the prison population in the country has, for the first time, exceeded 1 million inmates. The department indicated that 919,143 inmates were housed in state prisons while the federal prisons housed 93,708 inmates at the end of June 1994. These figures do not include the 440,000 persons awaiting trial or serving short sentences in local jails. The U.S. Bureau of Justice Statistics indicates that the Nation's prison population has doubled in the last decade. At the current incarceration rate, the increase in the prison population in the first 6 months of 1995 will require 1,500 new beds per week across the country.

The National Conference of State Legislatures survey of state budget actions for 1994 indicates that appropriations for corrections increased by an average of 9.7 percent while total appropriations increased by 4.6 percent. In Nevada, the 1994 corrections budget rose by 10.3 percent; 19th among the states. The percentage of change in the number of prisoners showed a 3.5 percent increase in Nevada for a rank of 32nd among the states for 1992 and 1993. During the 1980s and early 1990s, Nevada consistently led the Nation when analyzing the number of incarcerated persons per 100,000 residents. Nevada is no longer number one, but remains in the top five.

The subcommittee received statistical information which indicates overall crime rates have been flat over the last few years; however, violent crime rates are rising. The Bureau of Justice Statistics reported that violent crimes increased 5.6 percent in 1993. The majority of the violent crimes are assaults, followed by armed robberies.

The DOP presented an overview of the current prison population in Nevada. (See Appendix B.) The department's figures indicate that 46 percent of the current Nevada prison population consists of persons who have one or more prior felony convictions. Forty-nine percent of the persons currently incarcerated

in Nevada prisons committed a violent or sex-related felony. The remaining inmates committed property or drug- and alcohol-related offenses.

In an effort to reduce violent crime and to address the problem of repeat offenders, the subcommittee examined the existing habitual criminal statute in Nevada, and approaches in other states to address the issue. (For an analysis of significant anticrime legislation considered by state legislatures in 1994, see Appendix G.) The members examined so-called "three strikes" provisions in light of Nevada's existing habitual criminal statute. Testimony indicated that the current statute is not used effectively because it encompasses crimes that are nonviolent and is often used as a plea bargaining tool. The primary offense for serious crimes often carries a more severe penalty than the habitual charge. Also, the charging and use of the statute is discretionary.

The subcommittee examined the Washington "three strikes" initiative in detail and generally determined to recommend action that is similar to Washington's approach from a policy perspective. (See Appendix E for a summary of the Washington measure and the language of the Washington initiative.) The sentences for repeat offenders who commit serious felony crimes that are violent or sex-related should be increased. The subcommittee began analyzing the criminal code to determine which serious felonies should trigger a "super" habitual criminal provision that would mandate a life sentence with or without the possibility of parole. Appendix H is a chart used by the subcommittee that compares felony crimes and sentences.

In order to address repeat offenders who commit serious crimes, the subcommittee recommended the following actions.

- **Amend NRS 207.010 to create a "super" habitual offender category as follows:**
 - a. **The "super" habitual statute would be triggered by the third violent or sex-related felony. (The current statute requires any three felonies for 10 to 20 years or any four felonies for life with or without parole);**
 - b. **The prosecuting agency must charge the defendant as a habitual criminal if the defendant's current charge is a violent or sex-related felony and he has two prior convictions for violent or sex-related felonies in this state, or similar convictions in other states that would be violent or sex-related crimes if committed in this state;**

- c. **If the defendant is convicted of the current charge of a third violent or sex-related felony, the judge must sentence to life with or without parole;**
- d. **A violent or sex-related felony is defined as any felony crime with a sentence exceeding 10 years, except drug possession, sale, or trafficking; gaming crimes; or racketeering. (See Appendix H for a list of included crimes);**
- e. **Each conviction must be based on a separate occurrence or incident to qualify for the "super" habitual statute. More than one conviction arising out of the same criminal conduct would only count as one conviction; and**
- f. **The existing statute remains discretionary regarding the charging and sentencing of habitual criminals who do not fit within the "super" habitual category. (BDR 15-977)**

The subcommittee deliberated at length regarding which crimes should trigger the "super" habitual criminal provisions. At the fifth and final meeting, the subcommittee determined that violent and sex-related crimes that carried a minimum penalty of at least 10 years in prison should trigger the statute. The subcommittee did not have the benefit of a fiscal analysis at the time it voted for the provisions detailed above, but requested that the final report contain a general analysis of the fiscal impact. What follows is a limited analysis of the fiscal impact. A more detailed analysis will be contained in the fiscal note that will accompany the bill when it is introduced in the 1995 Legislative Session. The DOP will be asked to project prison populations utilizing a computer model.

Data and Assumptions

The information used in this analysis was obtained from the Classification, Research and Planning Division of the DOP. The analysis utilizes intake information from newly committed inmates for 1 year between the dates of June 1, 1993, and May 31, 1994. Inmates are identified whose minimum prison term is greater than 10 years, and whose crime was violent or sex related, within the parameters outlined by the subcommittee. Multiple offenses with only one arrest date are treated as one felony; however, caution should be used since one arrest date for multiple charges does not necessarily mean that the charges arose from one incident. For the purposes of this study, prior out-of-state

felonies that would be felonies if committed in Nevada are considered as prior felonies.

The following is the list of crimes that were utilized to select inmates. These crimes carry a minimum term that exceeds 10 years and are violent or sex-related, and are the crimes the subcommittee determined should trigger the "super" habitual provisions.

Crime	Maximum Term	NRS Citation
Arson, First Degree	15	205.010
Battery WITC Sexual Assault w/SBH	LWO	200.400
Battery WITC Sexual Assault w/SBH/UDW	LWO	200.400
Atmt Battery WITC Sexual Assault w/SBH	20	200.400
Atmt Battery WITC Sexual Assault w/SBH/UDW	40	200.400
Bomb Threats/Detonation	20	202.830
Child Abuse	20	200.508
Child Pornography	Life	200.710
Violent Habitual Criminal (existing law)	LWO	200.010
Kidnapping, First Degree	Life	200.320
Atmt Kidnapping, First Degree	20	200.320
Kidnapping, First Degree, UDW	Life	200.320
Atmt Kidnapping, First Degree, UDW	40	200.320
Kidnapping, First Degree, Victim Over 65	Life	200.320
Atmt Kidnapping, First Degree, Victim Over 65	40	200.320
Kidnapping, First Degree, SBH	Life	200.320
Atmt Kidnapping, First Degree, SBH	20	200.320
Kidnapping, Second Degree	15	200.320
Murder, First Degree	Death	200.030
Atmt Murder, First Degree	20	200.030

Crime	Maximum Term	NRS Citation
Murder, First Degree, UDW	Death	200.030
Atmt Murder, First Degree, UDW	40	200.030
Murder, First Degree, Victim Over 65	Death	200.030
Atmt Murder, First Degree, Victim Over 65	40	200.030
Murder, Second Degree	Life	200.030
Atmt Murder, Second Degree	20	200.030
Murder, Second Degree, UDW	Life	200.030
Atmt Murder, Second Degree, UDW	40	200.030
Murder, Second Degree, Victim Over 65	Life	200.030
Atmt Murder, Second Degree, Victim Over 65	40	200.030
Robbery	15	200.380
Robbery, UDW	30	200.380
Robbery, Victim Over 65	30	200.380
Sexual Assault	Life	200.366
Sexual Assault, UDW	Life	200.366
Sexual Assault, SBH	LWO	200.366
Sexual Assault, Victim Under 14	Life	200.366
Atmt Sexual Assault	20	200.366
Atmt Sexual Assault, UDW	40	200.366
<u>Abbreviations Key:</u> Atmt - Attempt to Commit WITC - With Intent to Commit SBH - Substantial Bodily Harm UDW - Use of a Deadly Weapon LWO - Life Without Possibility of Parole		

Third Violent or Sex-Related Felony

The analysis of inmates with at least two prior listed felonies and one current felony from the list results in the selection of seven inmates. All seven had robbery as the prior felony crimes. The following table shows their current crimes:

Current Crime	Number of Inmates
Murder I	2
Kidnap I	1
Robbery	4

The following table lists their current sentences:

Current Sentence	Number of Inmates
Death	2
Life x 2	1
24 years	1
16 years	1
15 years	1
12 years	1

The DOP uses a 37-year figure to represent a life sentence when preparing budgets and so forth. It utilizes this figure because the inmate who has served the longest "life" term is currently incarcerated and has served 37 years. A life term with the possibility of parole means the inmate is eligible after serving a minimum of 10 years. A life sentence without the possibility of parole means the inmate is eligible to apply to the State Board of Pardons Commissioners after a minimum of 20 years have been served.

If a "three strikes" provision contemplated by the subcommittee had been in effect at the time of sentencing for these four inmates who did not receive a life sentence under the existing law, they would be required to serve an additional 81 years. Again, this is based on a life sentence of 37 years. Three of the seven inmates would have no additional fiscal impact, since one is serving a life sentence and two are on death row. The difference between the sentences for

the other four inmates and the life sentence they would serve under the "three strikes" proposal is 81 years.

It is very difficult to extrapolate this data and project it in dollars since there are many factors that affect the costs of incarcerating inmates and these factors vary from inmate-to-inmate and facility-to-facility and, obviously, year-to-year. The average cost of incarcerating an inmate in Nevada for Fiscal Year 1993 was \$14,188. Using 37 years as a life term, these four inmates would be required to collectively serve an additional 81 years beyond their current sentences if a "three strikes" proposal had been in effect. Multiplying \$14,188 (the average cost of incarcerating an inmate per year) times the additional 81 years equals \$1,149,228. This impact would begin after 12 years (the inmate with the shortest sentence is 12 years) and be spread over the following 25 years. The full fiscal impact will not be felt until much later--in this case, the year 2033.

This calculation does not take into account inflation or other fluctuations in costs such as: (1) increases in medical costs as an inmate ages; (2) increases caused by court orders related to housing conditions; (3) fluctuations in the rate of future crimes committed (i.e., if violent or sex-related crimes rise or fall); and (4) increases in operation and administrative costs; nor does it discount values for any of these factors. It also does not include construction costs for new facilities.

The analysis also assumes an inmate will serve a full sentence, but most inmates with a definitive sentence do not serve full sentences. In addition, this estimate represents only a 1-year grouping of inmates. Subsequent years will keep adding to the total cost, depending upon the number of future criminals who would qualify each year for permanent incarceration. Since costs will likely increase each year for 37 years, the full fiscal impact of the program will not be felt until the year 2033.

D. MANDATORY MINIMUM SENTENCING AND TRUTH IN SENTENCING

The subcommittee examined the criminal code in Nevada as it relates to truth in sentencing. Testimony from Nevada judges and other interested parties indicated that the use of good time credits and other early release mechanisms has created uncertainty with regard to sentencing. Testimony indicated that members of the public are generally dissatisfied with this uncertainty regarding sentencing and it is difficult for judges to accurately predict the actual amount of time an offender will serve when sentenced.

The subcommittee also reviewed the practice of utilizing mandatory minimum sentences which generally establish a range of sentencing with a minimum and maximum, but allow a judge discretion in selecting the proper sentence within that range for a given offender. The vast majority of criminal statutes in Nevada provide for mandatory minimum sentencing.

During the course of reviewing crimes and sentences in Nevada in an effort to determine the appropriate crimes that should trigger the "super" habitual criminal statute, the subcommittee noted that some crimes with the same elements have different sentences, are duplicative of other crimes and sentences, or are antiquated.

Although the subcommittee considered recommendations to address mandatory minimum sentences, truth in sentencing, and restructuring the criminal code, it determined not to adopt any recommendations in these areas. A substantive review of the criminal code was beyond the limited time and resources allotted the subcommittee in light of the issues the subcommittee was charged with analyzing.

Therefore, the subcommittee recommended the following action:

- **Adopt a resolution calling for a 1995 interim study to reform the criminal justice code. Include in the resolution the need to logically examine the code for antiquated crimes, duplicative crimes, severity of sentences compared with crimes, and sentence structure. Include an examination of truth in sentencing and the possibility of a classification scheme for crimes. The study should examine the elimination of the classification of gross misdemeanor. (BDR R-975)**

E. POSSESSION OF FIREARMS BY MINORS

The subcommittee analyzed current Nevada laws governing the possession of firearms by minors. Under NRS 202.300, it is illegal for a person under 14 years of age to possess a firearm, except in the company of an adult. Persons 14 to 17 years old are not subject to any restrictions regarding the possession of firearms with the exception of concealed firearms. Related provisions prohibit any person from possessing a concealed weapon without a permit and make it a gross misdemeanor for a person to sell a concealable weapon to a person under the age of 18 years.

The members considered trends in juvenile crime and the use of firearms in crimes committed by and against juveniles. The Bureau of Justice Statistics asserts that, based on a crime victimization survey for 1987 to 1992, the highest category of victims of crimes committed with handguns is persons ages 16 to 19 years. Of the total number of victims of crimes committed with handguns, 14 percent of males and 5 percent of female victims were between the ages of 16 and 19 years. One out of every 13 juveniles was a victim of a violent crime in 1992, compared to one out of every 72 adults age 35 or older. In 1992, offenders with handguns committed a record 931,000 violent crimes. Handgun crimes accounted for about 13 percent of all violent crimes.

A study conducted by the National Center for Juvenile Justice found that courts processed an estimated 1,471,000 delinquency cases in 1992, up 7 percent from the year before and up 26 percent since 1988. Crimes against persons committed by juveniles (as opposed to property, drug, and other nonviolent crimes) were up 56 percent since 1988. That included a 55 percent increase in robberies, and an 88 percent increase in aggravated assaults.

The subcommittee also examined the Florida Legislature's package of sweeping juvenile justice reforms, including provisions that address possession of firearms by minors. (See Appendix D for a summary of the Florida provisions and a copy of the language of the Florida law.)

In an effort to address juvenile crime in Nevada, the subcommittee recommended the following actions:

- **Amend NRS 202.300 by increasing the age limit that prohibits possession of a firearm by a minor from under the age of 14 years to under the age of 18 years. Create an exception for minors engaged in lawful hunting or marksmanship activities.**
- **Amend NRS 202.300 by increasing the penalty for possession of a firearm by a minor or aiding or permitting a minor to violate the law from a misdemeanor to a gross misdemeanor. Authorize the court to order a parent or person responsible for such a minor offender to participate in parenting education classes.**

- **Amend NRS 202.300 by adding the following additional penalties against minors for illegal possession of firearms:**
 - a. **First Offense - Up to 100 hours of community service and revocation or delay of issuance of driver's license for up to 1 year. (All delays run from the date the offender would be eligible for a license); and**
 - b. **Second Offense - Between 100 and 250 hours of community service and revocation or delay of driver's license issuance for up to 2 years.**
- **Amend NRS 202.310 by increasing the penalty for sale of a concealable firearm to a person under the age of 18 years from a misdemeanor to a felony.**
- **Amend NRS 62.080 to require automatic certification as an adult for juveniles 14 years of age and older who are alleged to have committed a third felony crime (two prior adjudications or adjudications withheld), where at least one crime involved the use of a firearm. (BDR 15-979)**

F. DISPOSITION OF CONFISCATED WEAPONS

Nevada's Investigation Division testified that the statute governing the disposition of weapons was ambiguous and inherently conflicting with regard to a law enforcement agency's duties and responsibilities. It was indicated that most weapons confiscated from offenders are sold at public auction. Anecdotal evidence revealed that many of these weapons are eventually possessed by persons who utilize them to commit crimes. The subcommittee reviewed the statute governing disposition of confiscated weapons, Las Vegas Metropolitan Police Department's policy in that regard, and the State of New York's statute that governs such disposition and made the following recommendations.

- **Amend NRS 202.340 to prohibit the resale or transfer of confiscated weapons by law enforcement agencies except to other law enforcement agencies.**
- **Amend NRS 202.340 to clarify the duties of weapons' officers with respect to the sale, destruction, or retention of confiscated weapons. (Not only "dangerous" weapons, but any weapon.) (BDR 15-978)**

G. DRUG- AND ALCOHOL-RELATED CRIMES

Throughout the course of the study, witnesses emphasized the relationship between drug and alcohol abuse and crime. It was asserted that much of the escalating crime problem can be attributed to drug and alcohol abuse in some form. Drug addicts commit crimes in order to obtain drugs or commit crimes because of the effects of drugs. Because of the concern expressed over this component of the criminal justice system, the subcommittee conducted a joint hearing with the Legislative Commission's Subcommittee to Study Drug and Alcohol Abuse Among Criminal Offenders. Although the two committees were unable to consider joint recommendations in this area, primarily because of resource and logistics concerns, the Legislative Commission's Subcommittee to Study the Criminal Justice System in Nevada determined to make recommendations in areas related to drug and alcohol abuse that have a broad impact on the criminal justice system.

The BADA provided a presentation explaining the "305" Program which is a treatment program for persons who are abusers of alcohol and have been sentenced for alcohol-related crimes (driving under the influence). This program consists of two different phases, the first is completed in prison and the second is generally completed outside of prison while the offender is on parole. Statistics indicated that as of March 1994, 740 people had successfully completed Phase I of the program. Three hundred and ten were enrolled in Phase II, 12 were pending enrollment, and 418 were denied enrollment. Those denied enrollment were primarily denied because they refused to participate, did not meet the criteria of remaining in-state, attaining suitable employment to participate, and having a suitable residence that would allow supervision. Forty-two of the 310 people enrolled in Phase II have been returned to prison for violating provisions of the program. Of the 204 people who successfully completed Phase II of the program, only one has been reincarcerated in the Nevada prison system. These figures indicate that the recidivism rate for offenders completing Phase II is less than 1 percent.

The subcommittee also heard testimony from the DOP concerning the number of Nevada offenders who indicated they were abusers of alcohol or drugs and the number who were convicted of drug or alcohol related crimes. (See Appendix B for a complete analysis.) Statistics indicate that over one-fourth of the current prison population is incarcerated for offenses directly related to drugs and alcohol. The percentage of drug and alcohol abusers who commit crimes was asserted to be in excess of the one-fourth that committed direct drug- or

alcohol-related offenses; however, the only statistics available are based on self-reporting by inmates.

Throughout the course of the study, witnesses expressed support for diverting certain nonviolent drug and alcohol offenders from the traditional criminal justice system and providing treatment and other sanctions rather than incarceration. Various expert witnesses testified at length concerning the success of drug courts in other states and in Las Vegas. Also, Mothers Against Drunk Driving submitted evidence indicating a need to enhance the penalties for juveniles who are convicted of driving under the influence of alcohol or a controlled substance, or illegally purchasing alcohol.

While undisputable statistics and analysis are not available concerning the success of treatment and diversion, based on the testimony and information presented during the course of the study, members of the subcommittee expressed support for fortifying sanctions against violent offenders but encouraging diversion and treatment for certain nonviolent offenders.

Therefore, the subcommittee recommended the following actions:

- **Amend NRS 209.425 to require Nevada's Department of Prisons to expand the alcohol treatment program ("305" Program) to any person convicted of possession or sale of drugs who is an abuser of drugs. The program must include a minimum of 90 days of treatment while in prison.**
- **Transmit a letter to Nevada's Department of Prisons directing the department to include in its budget the necessary funding to expand the "305" Program to drug abusers.**
- **Provide that if an offender is assessed to have a drug or alcohol abuse problem upon admittance to prison, he must enroll in and complete a treatment program, if available. If an offender refuses to participate in the program, that offender is prohibited from earning any sentence-reducing credits.**
- **Require Nevada's Department of Prisons and Division of Parole and Probation, Nevada's Department of Motor Vehicles and Public Safety, to establish and implement a system of tracking offenders who have participated in treatment programs. The system should include a cost-benefit analysis of treatment compared with incarceration. Require**

the results of the tracking system and analysis to be reported to the Chairman of the Assembly Committee on Judiciary and the Chairmen of the Senate Committees on Judiciary and Transportation on or before January 1 of every odd-numbered year.

- Amend NRS 453.580 to include the use of deferred prosecution for certain offenders who are abusers of drugs and alcohol. The deferred prosecution would authorize the court to require the defendant to waive preliminary proceedings (grand jury, or information) and stipulate to a set of facts that are the basis for the charge. Such stipulation may be used in a subsequent prosecution if the person fails to satisfactorily complete the program. Provide that the court must require the defendant to appear before the court at least every 30 days for 12 months. The court may extend the program to a total of 18 months, if necessary. The defendant shall submit to drug testing and any other form of monitoring or treatment the court orders.
- Amend Chapter 484 of NRS by requiring persons under the age of 18 years who are convicted of driving under the influence of alcohol or a controlled substance to have their license revoked, or delayed if under the age of 16 years, for 6 months.
- Amend NRS 202.020 to provide that a person under the age of 18 years who is convicted of unlawful purchase or possession of alcohol be subject to a mandatory 90-day driver's license suspension. (BDR 16-974)

H. ABUSE AND FRAUD RELATED TO PRESCRIPTION DRUGS

The State Board of Pharmacy submitted an informational presentation concerning abuse and fraud related to the dispensing of prescription drugs. Testimony indicated that it is relatively simple to illegally obtain prescription drugs in Nevada. Persons who obtain drugs in this manner receive a standard of quality not available on the street and do not encounter dangerous drug dealers. Testimony indicated that abusers of prescription drugs obtain dosages primarily by the following methods: (1) forging prescriptions; (2) ordering fraudulent prescriptions by telephone; (3) using aliases; and (4) visiting multiple doctors. The board indicated that approximately 600 persons in Clark County and 150 in Washoe County fraudulently obtain prescription drugs each year, and most are repeat offenders. The National Center for Narcotic Control suggests that 6 percent of the population in the United States is abusing psychoactive

prescription drugs. This figure, when applied to Nevada, represents 6,000 to 7,000 people.

Testimony indicated that persons who commit abuse and fraud in this manner are not treated aggressively by the criminal justice system. They are generally placed on probation and continue to violate the law. The representatives of the board indicated that the reason the problem persists in Nevada is a lack of regulatory oversight.

The subcommittee analyzed approaches in Massachusetts and Oklahoma that utilize computer tracking systems to assist in identifying abusers of the system. The board suggested that such a computer system could be implemented in Nevada with relatively little cost to the State, and little burden on pharmacies. Ninety-seven percent of the pharmacies in the State have the computer ability to report transactions that could be used in the tracking system. The board indicated that federal funds are available to assist in the establishment of such a system, and a fee of 11 cents per prescription on certain controlled substances would adequately fund the program. The board estimated that start-up costs would be approximately \$200,000 with a \$100,000 operating budget per year. The board expressed support for a policy of identifying abusers and diverting them from the criminal justice system into treatment or other programs of rehabilitation.

Therefore, the subcommittee recommended the following actions:

- **Adopt a resolution encouraging the formation of a multidiscipline task force to examine the potential benefits and detriments of establishing a computerized, automated system for monitoring prescription drug data. The system would require pharmacies with the computer capabilities (estimated by the State Board of Pharmacy to be 97 percent) to submit certain dispensing data to a central repository. The task force would be comprised of officials from Nevada's Investigation Division of the Department of Motor Vehicles and Public Safety and the State Board of Pharmacy. The task force would create a process for the collection, analysis, and use of essential information on the prescribers, dispensers, and recipients of prescription drugs. The system would be used to identify and resolve any fraudulent or unlawful activities related to the dispensing of pharmaceuticals. The task force would be urged to implement the system and report to the Legislature any changes or additions to the law deemed necessary. (BDR R-972)**

- **Enact legislation requiring Nevada's Investigation Division (NID) and the State Board of Pharmacy to implement an electronic system to track prescription drugs. Authorize the board to charge a fee on prescriptions for category I through V controlled substances. The fee may only be used to fund the monitoring program. Require the State Board of Pharmacy to report suspected violations to local law enforcement agencies and NID for investigation. The fee may be charged beginning July 1, 1995. The program would be implemented effective January 1, 1996. (BDR 40-973)**

III. CONCLUSION

Crime is considered by many to be the paramount public policy concern in the United States and Nevada. The Legislature is faced with the difficult task of enacting laws that punish criminals, deter future crime, rehabilitate offenders in some cases, and balance the public's desire to be safe with the costs of addressing these difficult issues. The subcommittee made recommendations which attempt to strike this delicate balance. Penalties and sanctions for violent offenders were bolstered, while recommendations concerning less serious criminal offenders center on diverting these offenders from the expensive and burdensome criminal justice system where appropriate. These actions should be cost-effective, while achieving the goal of enhancing public safety.

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APPENDIX A

Assembly Concurrent Resolution No. 76
(File No. 179, *Statutes of Nevada 1993*, pages 3123-3124)

Assembly Concurrent Resolution No. 76—Assemblymen Wendell Williams, Petrak, Hettrick, Bonaventura, Perkins, Carpenter, Bennett, Augustine, Collins, Arberry, Porter, Gibbons, Freeman, Smith, Bache, Toomin, Chowning, Schneider, Spitler, de Braga, Price, Haller, Anderson, Ernaut and Kenny

FILE NUMBER 179

ASSEMBLY CONCURRENT RESOLUTION—Directing the Legislative Commission to conduct an interim study of the criminal justice system in Nevada.

WHEREAS. During the past decade, there has been an overwhelming growth in the rate of incarceration in Nevada's jails and prisons; and

WHEREAS. Because of this growth which has caused serious crowding of our prisons and jails, there has been a negative impact on available money for other services including the maintenance of a sound infrastructure, business growth, education and the general welfare of Nevada's future economy;

WHEREAS. Nevada's outlook for prosperity in the future will be directly affected if the rate of incarceration continues to increase; and

WHEREAS. The criminal justice system of Nevada has become inundated with criminal cases which poses a problem to the entire judicial system; now, therefore, be it

RESOLVED BY THE ASSEMBLY OF THE STATE OF NEVADA, THE SENATE CONCURRING. That the Legislative Commission is hereby directed to conduct an interim study of the criminal justice system in Nevada; and be it further

RESOLVED. That the study include:

1. Whether discretion is being exercised by law enforcement officers when making decisions as to whether to file criminal charges;
 2. The criteria used to determine whether to admit a defendant to bail and if so in what amounts;
 3. The factors relating to the assignment of counsel and access to counsel once counsel is appointed;
 4. An analysis of decisions which have been made by juries and judges in criminal cases to determine if they have been made without bias;
 5. Access by indigent persons to post-conviction remedies and other matters as they relate to parole;
 6. The methods used in the selection of jurors;
 7. A comparison of sentencing decisions relating to probation, incarceration and fines;
 8. Review of the processes used in plea negotiation and bind-over decisions; and
 9. Inquiry into the matter of economic and racial injustice in the administration of the criminal system;
- and be it further

RESOLVED. That the results of the study and any recommended legislation be reported to the 68th session of the Nevada Legislature.

APPENDIX B

Briefing statement entitled, "Prisoners and Their Sentences,"
dated December 5, 1993, and prepared by
Nevada's Department of Prisons



BOARD OF PRISON COMMISSIONERS

BOB MILLER
GOVERNOR
FRANKIE SUE DEL PAPA
ATTORNEY GENERAL
CHERYL LAU
SECRETARY OF STATE

STATE OF NEVADA
DEPARTMENT OF PRISONS
ADMINISTRATIVE OFFICES

BRIEFING STATEMENT
ACR 76 COMMITTEE
December 5, 1993

"Prisoners and Their Sentences"

Part I - Prisoners

Part II - Their Offenses and Sentences

Part III - Drug and Alcohol Offenses Highlighted

RON ANGELONE
DIRECTOR

KARL L. SANNICKS
ASSISTANT DIRECTOR, OPERATIONS
GEORGE M. WEEKS III
ASSISTANT DIRECTOR, SUPPORT SERVICES
HOWARD L. SKOLNIK
ASSISTANT DIRECTOR, PRISON INDUSTRIES

CENTRAL OFFICE
P.O. BOX 7011
CARSON CITY, NEVADA 89702
PHONE (702) 887-3285
FAX (702) 687-6715

SOUTHERN OFFICE
2770 S. MARYLAND PARKWAY, NO. 312
LAS VEGAS, NEVADA 89158
PHONE (702) 486-6580
FAX (702) 486-6431

Part I - Prisoners

Gender Distribution

	<u>Male</u>	<u>Female</u>
	92.3%	7.7%

Age Distribution

	<u>Male</u>	<u>Female</u>
Less Than 19	2.2%	.4%
20 - 24	14.1%	10.9%
25 - 29	19.9%	22.2%
30 - 34	21.8%	27.3%
35 - 39	15.9%	19.9%
40 - 44	11.1%	9.0%
45 - 60	13.1%	8.4%
61 & Over	1.8%	1.9%
No Data	.1%	

Ethnic Distribution

	<u>Male</u>	<u>Female</u>
Caucasian	56.5%	57.3%
Black	30.9%	34.9%
Hispanic	8.6%	4.0%
Asian	.9%	2.1%
Indian	1.3%	1.3%
Cuban	1.1%	.0%
Other	.4%	.0%
Unknown	.3%	.4%

County Of Commitment

	Male	Female
Clark	67.0%	64.8%
Washoe	19.7%	22.6%
Carson	2.7%	2.9%
Douglas	2.3%	1.5%
Lyon	1.4%	1.7%
Elko	1.5%	1.7%
Churchill	1.2%	1.5%
Humboldt	.7%	1.3%
White Pine	.4%	1.0%
Mineral	.5%	.2%
Nye	.8%	.2%
Pershing	.5%	.4%
Lander	.3%	.0%
Lincoln	.2%	.0%
Eureka	.2%	.2%
Esmeralda	.2%	.0%
Storey	.0%	.0%
Pending Data	.1%	.0%

Offense Distribution

	Male	Female
Property	23.8%	31.7%
Drug	17.6%	36.2%
Violence	35.1%	21.8%
Other	3.3%	3.4%
DUI	6.2%	6.1%
Sex	14.0%	.8%

RECIDIVISTS IN THE PRISON POPULATION TODAY

PERSONS WHO HAVE
ONE OR MORE PRIOR
FELONY CONVICTIONS

MALE
(46%)

FEMALE
(31%)

PERSONS WHO HAVE
ONE OR MORE PRIOR
PRISON COMMITMENTS

MALE
(36%)

FEMALE
(20%)

Part II - Their Offenses and Sentences

Question: How many persons are serving a term of imprisonment in Nevada prison custody today. 12/6/93 ?

Answer: 6164

Question: Under what circumstances are these 6164 inmates committed to the Department of Prisons.

Answer:

New Commitment:	4802	78.0%
Parole Violator-No New Felony:	315	5.0%
Parole Violator-New Felony:	387	6.3%
Probation Violator-No New Felony:	417	6.8%
Probation Violator-New Felony:	243	3.9%
	6164	100%

Question: How many of the 6,164 inmates have only one sentence? How many have one or more consecutive sentences?

Answer: 6,164 inmates are serving a total of 10,702 separate sentences. 3,632 of these inmates have only one sentence. The other 2,532 inmates are serving a total of 7,070 consecutive sentences. Note that these numbers do not reflect any concurrent sentences that an inmate may be serving. The addition of concurrent sentences would boost these totals significantly higher, but were not included because they are, in terms of fiscal impact, inconsequential to the prison system.

Number of Sentences	Inmates With This Many Sentences	Number of Sentences	Inmates With This Many Sentences
1	3632	13	4
2	1659	14	0
3	453	15	2
4	188	16	1
5	91	17	1
6	50	18	0
7	29	19	2
8	18	20	0
9	10	21	1
10	8	22	0
11	8	23	1
12	5	24	1

Question: How many different kinds of offenses have these inmates been sentenced for?

Answer:

<u>Offense</u>	<u># of sentences for this offense</u>
<u>Robberies</u>	
Armed Robbery	- 704
Armed Robbery/UDW	- 141
Armed Robbery/Victim Over Age 65	- 1
Att. Armed Robbery	- 35
Att. Armed Robbery/UDW	- 7
Robbery	- 316
Robbery/Victim Over Age 65	- 1
Att. Robbery	- 108
<u>Arsons & Explosives</u>	
Arson 1	- 16
Att. Arson 1	- 1
Arson 2	- 3
Bomb Threats/Detonation	- 2
Att. Bomb Threats	- 2
Arson 3	- 7
Att. Arson 3	- 2
Transport/Use/Possession of Explosives	- 2
Att. Transport/Use/Possession of Explosives	- 1
<u>Assaults, Batteries & Weapons</u>	
Assault & Battery with Injury or UDW	- 280
Att. Assault & Battery w/Injury or UDW	- 4
Battery on a Police Officer	- 7
Battery on a Police Officer w/Bod. Harm	- 1
Assault & Battery	- 97
Assault & Battery/UDW	- 4
Att. Assault & Battery	- 1
Discharge of Firearm	- 26
Att. Discharge of Firearm	- 2
Poss. of Miscellaneous Weapons	- 9
Att. Poss. of Misc. Weapons	- 1
Resisting Public Officer	- 10
Mayhem	- 4
Concealed Weapon	- 4
Att. Concealed Weapon	- 1
Ex-Felon with Firearm	- 76
Att. Ex-Felon with Firearm	- 10

Sex Offenses

Battery/Sexual Assault	-	26
Battery/Sexual Assault w/Bodily Harm	-	1
Incest	-	23
Att. Incest	-	1
Infamous Crime Against Nature	-	20
ICAN/Victim Under Age 14	-	1
Lewdness with a Minor	-	319
Lewdness with a Minor/Victim Under Age 14	-	25
Att. Lewdness with a Minor	-	7
Att. Lewdness with Minor/Victim Under 14	-	1
Rape	-	7
Rape/UDW	-	1
Sexual Assault	-	592
Sexual Assault/UDW	-	18
Sexual Assault/Victim Over Age 65	-	1
Sexual Assault/Bodily Harm	-	11
Sexual Assault/Victim Under Age 14	-	186
Att. Sexual Assault	-	87
Att. Sexual Assault/UDW	-	1
Att. Sexual Assault/Victim Under Age 14	-	11
Open or Gross Lewdness	-	1
Indecent Exposure	-	11
Att. Indecent Exposure	-	1
Using Minor in Production of Pornography	-	10
Statutory Sexual Seduction	-	47
Att. Statutory Sexual Seduction	-	1

Prisoner Crimes

Escape/Closed Institution	-	34
Att. Escape/Closed Institution	-	15
Escape/Open Institution	-	97
Att. Escape/Open Institution	-	6
FTA After Admit to Bail	-	5
Incarcerated Person with Weapon	-	26
Att. Incarcerated Person with Weapon	-	3

Kidnapping

Kidnap 1	-	124
Kidnap 1/UDW	-	8
Kidnap 1/Bodily Harm	-	1
Att. Kidnap 1	-	4
Kidnap 2/False Imprisonment	-	39
Kidnap 2/False Imprisonment/UDW	-	1
Att. Kidnap 2/False Imprisonment	-	2

<u>Murder</u>	
Murder 1	- 465
Murder 1/UDW	- 39
Att. Murder 1	- 16
Att. Murder 1/UDW	- 2
Murder 2	- 174
Murder 2/UDW	- 6
Att. Murder 2	- 174
Att. Murder 2/UDW	- 6
Voluntary Manslaughter	- 45
Voluntary Manslaughter/UDW	- 3
Involuntary Manslaughter	- 20
 <u>DUI</u>	
DUI Causing Death	- 65
DUI	- 254
Leaving Scene of Accident	- 6
Att. Leaving Scene of Accident	- 1
Reckless Driving	- 7
DUI/Subst. Bodily Harm	- 47
 <u>Child Abuse</u>	
Child Abuse	- 33
Child Abuse/Bodily Harm	- 7
Att. Child Abuse	- 12
 <u>Burglaries & Larcenies</u>	
Burglary	- 820
Burglary/UDW	- 3
Att. Burglary	- 238
Larceny from the Person	- 85
Larceny from the Person/Victim Over Age 65	- 1
Att. Larceny from the Person	- 38
Grand Larceny	- 225
Att. Grand Larceny	- 154
Property Crimes \$1000-\$5000	- 2
Property Crimes Under \$1000	- 3
Att. Property Crimes Under \$1000	- 1
Coercion	- 23
Att. Coercion	- 8
Extortion	- 4
Att. Extortion	- 1
Possession of Stolen Vehicle	- 81
Att. Possession of Stolen Vehicle	- 81
Possession of Stolen Property	- 127
Att. Possession of Stolen Property	- 43
 <u>Enhancements</u>	
Use of a Deadly Weapon	-1221
UDW/Bodily Harm	- 3
Att. UDW	- 2
Victim Over Age 65	- 69
Gang Enhancement	- 12

Drugs

Att. Possession of Controlled Substance	- 102
Att. Poss. Controlled Subst. for Sale	- 8
Manufacturing a Controlled Substance	- 4
Trafficking in Controlled Substance	- 502
Att. Trafficking in Controlled Substance	- 2
Possession of a Controlled Substance	- 477
Furnishing a Controlled Substance	- 3
Att. Sale of a Controlled Substance	- 14
Sale of a Controlled Substance	- 164
Poss. of a Controlled Subst. for Sale	- 206
Obtain Controlled Subst./False Prescription	- 6

Money Offenses

Embezzlement	- 43
Att. Embezzlement	- 15
Forgery	- 88
Att. Forgery	- 37
Bad Checks	- 20
Att. Bad Checks	- 2
Obtaining Money Under False Pretenses	- 50
Att. Obtaining Money Under False Pretenses	- 10
Unauthorized Signing of Credit Transaction	- 16
Uttering Forged Instrument	- 49
Att. Uttering Forged Instrument	- 1
Poss./Obtaining Credit Cards	- 67
Att. Poss./Obtaining Credit Cards	- 7
False Documents	- 1
Racketeering	- 3
Cheating at Gambling	- 58
Att. Cheating at Gambling	- 1
Bribery	- 8

Prostitution & Pandering

Felony Solicitation	- 7
Att. Felony Solicitation	- 4
Pandering	- 4
Att. Pandering	- 1

Miscellaneous

Habitual Criminal/Violent	- 69
Habitual Criminal/Non-Violent	- 97
Accessory to Felony	- 13
Conspiracy/Violent Crime	- 31
Conspiracy	- 83
Att. Conspiracy	- 2
Perjury	- 7
Dissuading a Witness	- 3
Bigamy	- 1

Question: How many persons are undergoing pre-sentence evaluations pursuant to the so called 120 day program (NRS 176.150) and the 190 day boot camp (NRS 176.2248)?

Answer: There are currently 51 persons in the 120 day evaluation program, and 63 persons in the boot camp, for a total of 114.

Question: How many inmates have a sentence structure which includes at least one sentence of life with the possibility of parole? How many have only one such sentence? How many have two or more such sentences which are consecutive to each other?

Answer: There are 848 inmates serving a total of 1,379 sentences of life with the possibility of parole. 529 have only one such sentence. 319 have two or more such sentences which are consecutive to each other:

<u>Number of Sentences</u>	<u>Inmates Who have Them</u>
1	529
2	239
3	26
4	28
5	8
6	8
7	3
8	3
9	0
10	1
11	0
12	1
13	1
14	1
	<u>1</u>
	Total 848

Question: What are the crimes for which these 1,379 life with parole sentences were imposed?

Answer:

Sexual Assault	- 455
Use of a Deadly Weapon	- 225
Sexual Assault/Victim Under Age 14	- 179
Murder 1st Degree	- 171
Murder 2nd Degree	- 108
Kidnapping 1st Degree	- 76
Habitual Criminal/Violent	- 44
Habitual Criminal/Non-Violent	- 25
Sexual Assault/UDW	- 14
Infamous Crime Against Nature	- 14
Trafficking	- 14
Murder 1st Degree/UDW	- 10
Rape	- 6
Sexual Assault/Subst. Bodily Harm	- 6
Using Minor in Production of Pornography	- 5
Victim Over 65	- 5
Kidnapping 1st Degree/UDW	- 5
Murder 2nd Degree/UDW	- 4
Sale of a Controlled Substance	- 2
Battery/UDW	- 1
Battery/Sexual Assault	- 1
Bomb Threats/Detonation	- 1
Att. Escape/Closed Institution	- 1
Kidnapping 1st Degree/Subst. Bodily Harm	- 1
Lewdness with a Minor	- 1
Rape/UDW	- 1
Sexual Assault/Victim Over 65	- 1
Attempt Murder	- 1
Embezzlement	- 1
Statutory Sexual Seduction	- 1

Question: How many inmates have a sentence structure which includes at least one sentence of life without the possibility of parole? How many have only one such sentence? How many have two or more such sentences which are consecutive to each other?

Answer: There are 253 inmates serving a total of 431 sentences of life without parole. 128 have only one such sentence. 125 have two or more such sentences which are consecutive to each other.

<u>Number of Sentences</u>	<u>Inmates Who Have Them</u>
1	128
2	107
3	3
4	12
6	1
8	1
18	1

Question: What are the crimes for which these 431 life without parole sentences were imposed?

Answer:	Murder 1st Degree	- 246
	Use of a Deadly Weapon	- 121
	Habitual Criminal/Violent	- 19
	Sexual Assault	- 16
	Murder 1st Degree/UDW	- 9
	Kidnapping 1st Degree	- 8
	Habitual Criminal/Non-Violent	- 4
	Sexual Assault With Subst. Bodily Harm	- 4
	Accessory to a Felony	- 1
	Escape/Closed Institution	- 1
	Lewdness with a Minor	- 1
	Rape	- 1
		<u>431</u>

Part III - Drug and Alcohol Offenses Highlighted

Gender Distribution

Male		Female	
#	%	#	%
1314	88.2	175	11.8

Age Distribution - Male and Female

	Male				Female			
	Drugs	%	DUI	%	Drugs	%	DUI	%
Less Than 19	9	.1	2	.7	0	.0	1	3.8
20 - 24	168	16.6	24	7.9	14	9.3	1	3.8
25 - 29	217	21.5	48	15.8	45	30.2	4	15.4
30 - 34	230	22.8	74	24.4	44	29.6	10	38.5
35 - 39	152	15.8	56	18.4	27	18.1	6	23.1
40 - 44	110	10.9	35	11.5	11	7.4	4	15.4
45 - 60	113	11.2	58	19.0	8	5.4		
61 & Over	9	.9	7	2.3				
No Data	2	.2						
TOTALS	1010	100.0	304	100.0	149	100.0	26	100.0

Custody Distribution - Male and Female

	Male	%	Female	%	Total	%
Unassigned	129	9.8	23	13.1	152	10.2
Community Trustee	123	9.4	36	20.6	159	10.3
Minimum	442	33.7	70	40.0	512	34.4
Medium	550	41.8	40	22.9	590	40.0
Close	61	4.6	6	3.4	67	4.5
Maximum	9	.7	0	.0	9	.7
TOTALS	1314	100.0	175	100.0	1489	100.0

Length of Stay in Months for Male and Female Drug and DUI Offenders
(Does not include 11/93 intake; sentence development incomplete)

	Male	Months	Female	Months
Drugs	968	16.59	144	12.15
DUI	281	12.01	24	18.49
SUB TOTAL	1249	15.56	168	15.56
TOTAL	1417	15.27		

Drug & DUI Offenders Who Have One Or More Prior Felony Convictions
(Any Prior, not just for Drugs & DUI)

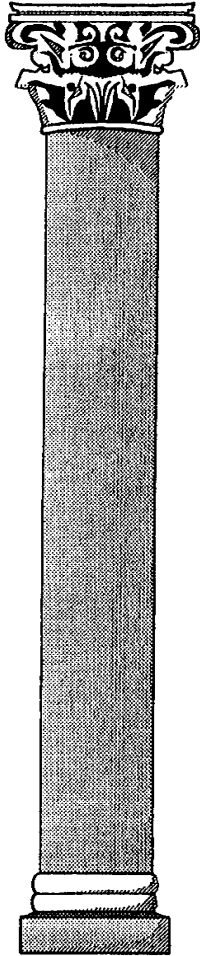
Number of priors	Male	%	Female	%	Total	%
0	900	68.6	137	78.3	1037	69.6
1	195	14.8	25	14.3	220	14.8
2	98	7.5	6	3.4	104	7.0
3	62	4.7	6	3.4	68	4.6
4	24	1.8	0	.0	24	1.7
5	15	1.1	1	.6	16	1.3
6 or more	20	1.5	0	.0	20	1.5
TOTAL	1314	100.0	175	100.0	1489	100.0

Substance Abuse Offense Distribution
Male and Female

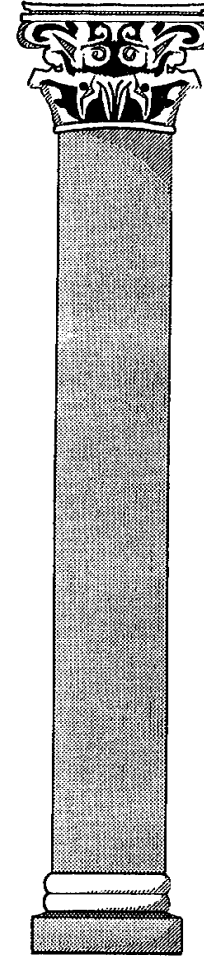
	Male	%	Female	%	Total	%
DUI Causing Death	41	3.1	5	2.9	46	3.1
DUI	218	16.5	16	9.1	234	15.9
Leaving Scene of Accident	5	.4	0	.0	5	.4
Reckless Driving	5	.4	0	.0	5	.4
DUI Causing Sub Bodily Harm	35	2.7	5	2.9	40	2.7
Obtaining Cont Sub/FIs Pre	1	.1	2	1.1	3	.2
Poss Cont Sub/Sale	130	9.9	19	10.9	149	10.0
Sale Cont Sub	127	9.7	12	6.9	139	9.3
Conspiracy	7	.5	0	.0	7	.5
Furnishing Controlled Substance	3	.2	0	.0	3	.2
Possession Controlled Substance	312	23.7	72	41.1	384	25.4
Trafficking	428	32.6	44	25.1	472	31.7
Manufacturing Cont Sub	2	.2	0	.0	2	.2
TOTALS	1314	100.0	175	100.0	1489	100.0

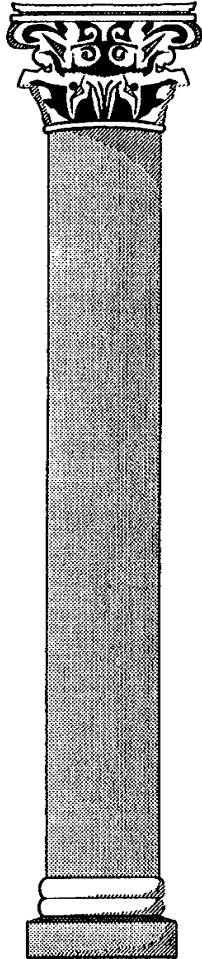
APPENDIX C

Paper entitled, "Oregon's Pre-Trial Release Program," prepared by
Dennis Neilander, Senior Research Analyst, Research Division,
Legislative Counsel Bureau



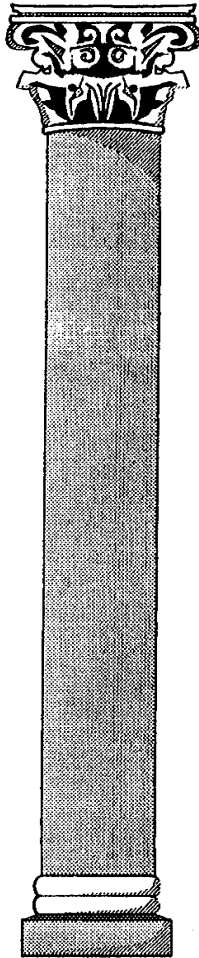
Oregon's Pre-Trial Release Program





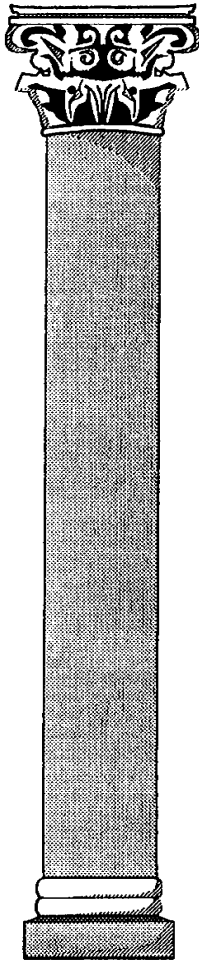
History of the Program

- Enacted in 1973.
- State bail system implemented at the county level.
- Response to abuses in system, and facility overcrowding.
- Various amendment in the 1980's and most recently 1991.
- Attempts in 1989 and 1991 to reinstate private bail bond system failed.



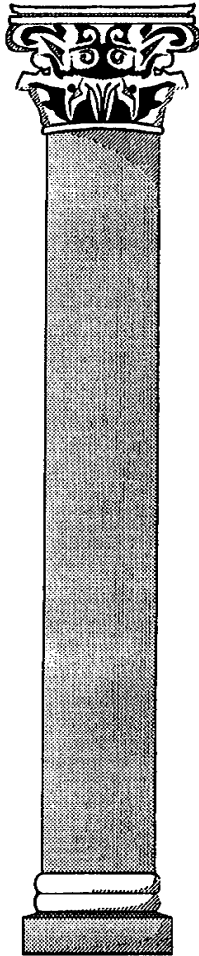
Release Mechanisms

- **Conditional Release** - A nonsecurity release which imposes regulations on the activities and associations of the defendant.
- **Personal Recognizance** - Release based upon defendants promise to appear at all court procedures.
- **Security Release** - A release conditioned on a promise to appear which is secured by cash, stocks, bonds, or real property.



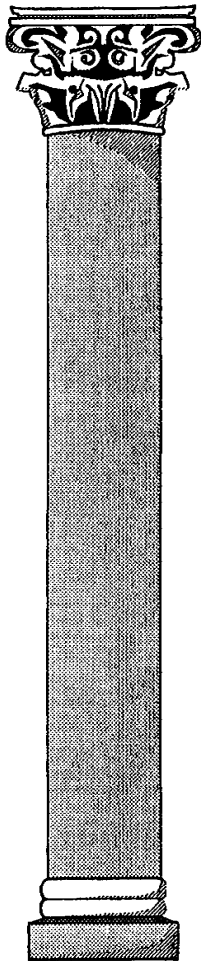
Release Criteria

- The defendant's employment status and history and financial condition.
- The nature and extent of the family relationships.
- The past and present residences of the defendant.
- Names of persons who agree to assist the defendant in attending court.
- The nature of the charge.
- The defendants prior criminal record and history of appearance.



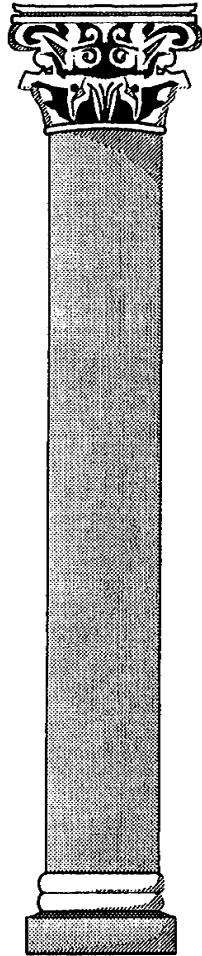
Release Criteria (Continued)

- Possibility of future violations of the law.
- Ties to the community.
- Any other facts indicating the defendant is likely to appear.



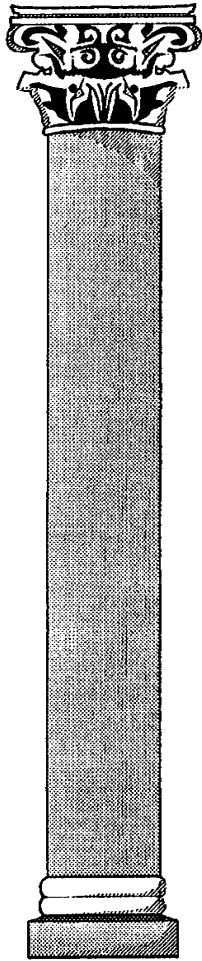
Releasable Offenses and Release Procedures

- All offenses except murder and treason are releasable offenses.
- The presiding judge may appoint a release officer.
- That officer must interview every person detained to verify release criteria.
- The officer must then submit a written report to the magistrate containing an evaluation of the release criteria and a recommendation for release, or
- If delegated authority from the presiding judge, make the release decision.



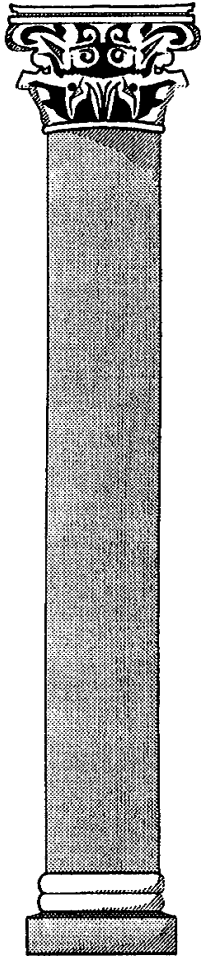
Legislative Policy Concerning Release

- Defendant has immediate right to security release.
- Magistrate must impose the least onerous condition likely to assure appearance.
- District Attorney has right of hearing concerning release decision.
- Liberal construction of statute to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant.



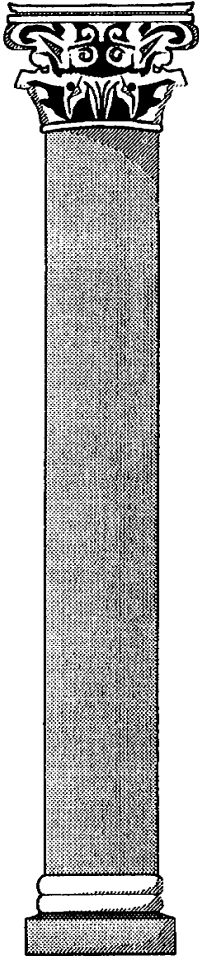
Conditional Release

- Release into the care of a qualified person or organization responsible for supervising the defendant and assuring appearance.
- Reasonable regulations concerning the activities, movements, associations and residences of the defendant. Defendant may be restricted to residence.
- Release during working hours
- Any other reasonable restriction designed to assure the defendant's appearance.



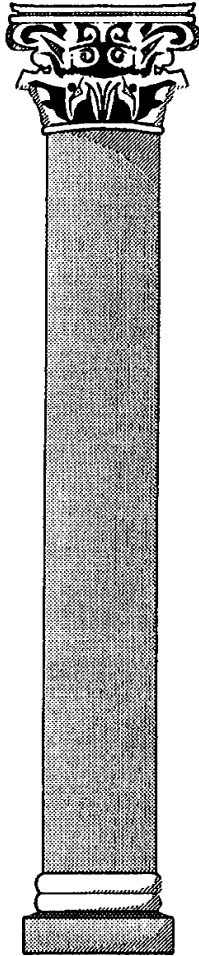
Security Release

- If the defendant is not released conditionally or on personal recognizance, the defendant must be offered security release.
- Security amounts are established pursuant to bail schedules (Each judicial district has a different bail schedule; however, the Oregon Supreme Court is currently attempting to establish a single bail schedule)



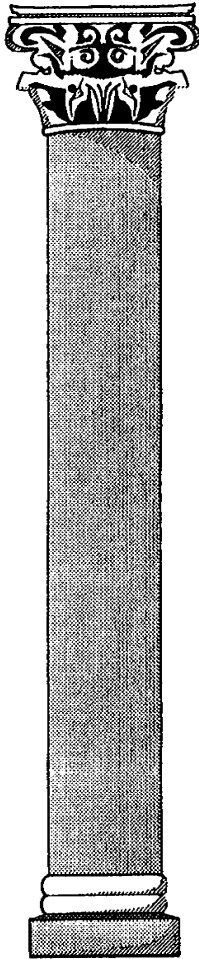
Security Release (Continued)

- The defendant is required to execute a release agreement and deposit 10 percent of the security amount with the Clerk of the Court. The defendant is not required to secure the other 90 percent.
- When the defendant has completed obligations under the release agreement, the county must return 85 percent of the 10 percent to the defendant. The county retains 15 percent as security release costs.



Security Release (Continued)

- The 15 percent must not be less than \$5 or more than \$200.
- The amount retained by a district court is deposited in the general fund.
- The amount retained by a justice of the peace or municipal judge is deposited in the local treasury.
- Interest is retained for costs of the security release program.



Breach of Security Release Agreement

- The Defendants failure to appear is punishable as contempt of court.
- Failure to comply with the release agreement results in forfeiture of the entire security amount.
- Notice must be given by personal service and the court then conducts a procedure similar to a default judgment.
- The security amount is satisfied by execution upon the judgment as a civil matter.

OREGON REVISED STATUTES

ARRAIGNMENT AND PRETRIAL PROVISIONS

135.240

commanded, in a jail located in the county of the sheriff or, if there is no sufficient jail in the county, by such means as may be necessary and proper therefor or by confining the defendant in the jail of an adjoining county within or without the state. [Formerly 133.850; 1987 c.550 §2]

135.225 Forwarding of papers by magistrate. When the magistrate has held the defendant to answer, the magistrate shall at once forward to the court in which the defendant would be triable the warrant, if any; the information; the statement of the defendant, if the defendant made one; the memoranda mentioned in ORS 135.115 and 135.145; the release agreement or security release of the defendant; and, if applicable, any security taken for the appearance of witnesses. [Formerly 133.860]

RELEASE OF DEFENDANT

135.230 Release of defendants; definitions. As used in ORS 135.230 to 135.290, unless the context requires otherwise:

(1) "Conditional release" means a nonsecurity release which imposes regulations on the activities and associations of the defendant.

(2) "Magistrate" has the meaning provided for this term in ORS 133.030.

(3) "Personal recognizance" means the release of a defendant upon the promise of the defendant to appear in court at all appropriate times.

(4) "Release" means temporary or partial freedom of a defendant from lawful custody before judgment of conviction or after judgment of conviction if defendant has appealed.

(5) "Release agreement" means a sworn writing by the defendant stating the terms of the release and, if applicable, the amount of security.

(6) "Release criteria" includes the following:

(a) The defendant's employment status and history and financial condition;

(b) The nature and extent of the family relationships of the defendant;

(c) The past and present residences of the defendant;

(d) Names of persons who agree to assist the defendant in attending court at the proper time;

(e) The nature of the current charge;

(f) The defendant's prior criminal record, if any, and, if the defendant previously has been released pending trial, whether the defendant appeared as required;

(g) Any facts indicating the possibility of violations of law if the defendant is released without regulations;

(h) Any facts tending to indicate that the defendant has strong ties to the community; and

(i) Any other facts tending to indicate the defendant is likely to appear.

(7) "Release decision" means a determination by a magistrate, using release criteria, which establishes the form of the release most likely to assure defendant's court appearance.

(8) "Security release" means a release conditioned on a promise to appear in court at all appropriate times which is secured by cash, stocks, bonds or real property.

(9) "Surety" is one who executes a security release and binds oneself to pay the security amount if the defendant fails to comply with the release agreement. [1973 c.836 §146]

135.235 Release assistance officer. (1) If directed by the presiding judge of the circuit court in a judicial district, a release assistance officer, and release assistance deputies who shall be responsible to the release assistance officer, shall be appointed under a personnel plan established by the Chief Justice of the Supreme Court.

(2) The release assistance officer shall, except when impracticable, interview every person detained pursuant to law and charged with an offense.

(3) The release assistance officer shall verify release criteria information and may either:

(a) Timely submit a written report to the magistrate containing, but not limited to, an evaluation of the release criteria and a recommendation for the form of release; or

(b) If delegated release authority by the presiding judge of the circuit court in the judicial district, make the release decision. [1973 c.836 §147; 1981 a.s. c.3 §37]

135.240 Releasable offenses. (1) Except as provided in subsection (2) of this section, a defendant shall be released in accordance with ORS 135.230 to 135.290.

(2) When the defendant is charged with murder or treason, release shall be denied when the proof is evident or the presumption strong that the person is guilty.

(3) The magistrate may conduct such hearing as the magistrate considers necessary to determine whether, under subsection (2) of this section, the proof is evident or the presumption strong that the person is guilty. [1973 c.836 §148]

135.245 Release decision. (1) Except as provided in ORS 135.240 (2), a person in custody shall have the immediate right to security release or shall be taken before a magistrate without undue delay. If the person is not released under ORS 135.270, or otherwise released before arraignment, the magistrate shall advise the person of the right of the person to a security release as provided in ORS 135.265.

(2) If a person in custody does not request a security release at the time of arraignment, the magistrate shall make a release decision regarding the person within 48 hours after the arraignment.

(3) The magistrate shall impose the least onerous condition reasonably likely to assure the person's later appearance. A person in custody, otherwise having a right to release, shall be released upon the personal recognizance unless release criteria show to the satisfaction of the magistrate that such a release is unwarranted.

(4) Upon a finding that release of the person on personal recognizance is unwarranted, the magistrate shall impose either conditional release or security release.

(5) Before the release decision is made, the district attorney shall have a right to be heard in relation thereto.

(6) This section shall be liberally construed to carry out the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the defendant. [1973 c836 §149]

135.250 General conditions of release agreement. (1) If a defendant is released before judgment, the conditions of the release agreement shall be that the defendant will:

(a) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until the defendant is discharged or the judgment is entered;

(b) Submit to the orders and process of the court;

(c) Not depart this state without leave of the court; and

(d) Comply with such other conditions as the court may impose.

(2) If the defendant is released after judgment of conviction, the conditions of the release agreement shall be that the defendant will:

(a) Duly prosecute the appeal of the defendant as required by ORS 138.005 to 138.500;

(b) Appear at such time and place as the court may direct;

(c) Not depart this state without leave of the court;

(d) Comply with such other conditions as the court may impose; and

(e) If the judgment is affirmed or the judgment is reversed and the cause remanded for a new trial, immediately appear as required by the trial court. [1973 c836 §150; 1991 c111 §10]

135.255 Release agreement. (1) The defendant shall not be released from custody unless the defendant files with the clerk of the court in which the magistrate is presiding a release agreement duly executed by the defendant containing the conditions ordered by the releasing magistrate or deposits security in the amount specified by the magistrate in accordance with ORS 135.230 to 135.290.

(2) A failure to appear as required by the release agreement shall be punishable as provided in ORS 162.195 or 162.205.

(3) "Custody" for purposes of a release agreement does not include temporary custody under the citation procedures of ORS 133.045 to 133.080. [1973 c836 §151]

135.260 Conditional release. Conditional release may include one or more of the following conditions:

(1) Release of the defendant into the care of a qualified person or organization responsible for supervising the defendant and assisting the defendant in appearing in court. The supervisor shall not be required to be financially responsible for the defendant, nor to forfeit money in the event the defendant fails to appear in court. The supervisor, however, shall notify the court immediately in the event that the defendant breaches the conditional release.

(2) Reasonable regulations on the activities, movements, associations and residences of the defendant, including, if the court finds it appropriate, restriction of the defendant to the defendant's own residence or to the premises thereof.

(3) Release of the defendant from custody during working hours.

(4) Any other reasonable restriction designed to assure the defendant's appearance. [1973 c836 §152; 1985 c518 §1]

135.265 Security release. (1) If the defendant is not released on personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk. The amount retained by the clerk of a circuit or district court shall be paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary. [1973 c.836 §153; 1979 c.878 §1; 1981 c.837 §1; 1981 s.s. c.3 §112; 1983 c.763 §44; 1987 c.905 §14]

Note: The amendments to 135.265 by section 14, chapter 905, Oregon Laws 1987, take effect July 1, 1992. See section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991.

The text (1989 Edition) is set forth for the user's convenience.

135.265. (1) If the defendant is not released on personal recognizance under ORS 135.255, or granted conditional release under ORS 135.260, or fails to agree to the provisions of the conditional release, the magistrate shall set a security amount that will reasonably assure the defendant's appearance. The defendant shall execute the security release in the amount set by the magistrate.

(2) The defendant shall execute a release agreement and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10 percent of the security amount, but in no event shall such deposit be less than \$25. The clerk shall issue a receipt for the sum deposited. Upon depositing this sum the defendant shall be released from custody subject to the condition that the defendant appear to answer the charge in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged or final order of the court. Once security has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original security in that court subject to ORS 135.280 and 135.285. When conditions of the release agreement have been performed and the defendant has been discharged from all obligations in the cause, the clerk of the court shall return to the person shown by the receipt to have made the deposit, unless the court orders otherwise, 85 percent of the sum which has been deposited and shall retain as security release costs 15 percent, but not less than \$5 nor more than \$200, of the amount deposited. The interest that has accrued on the full amount deposited shall also be retained by the clerk and be applied toward the costs of the security release program. The amount retained by the clerk of a circuit or district court shall be deposited in the General Fund. The amount retained by a justice of the peace shall be deposited in the county treasury. The amount retained by the clerk of a municipal court shall be deposited in the municipal corporation treasury. At the request of the defendant the court may order whatever amount is repayable to defendant from such security amount to be paid to defendant's attorney of record.

(3) Instead of the security deposit provided for in subsection (2) of this section the defendant may deposit with the clerk of the court an amount equal to the security amount in cash, stocks, bonds, or real or personal property situated in this state with equity not exempt owned by the defendant or sureties worth double the amount of security set by the magistrate. The stocks, bonds, real or personal property shall in all cases be justified by affidavit. The magistrate may further examine the sufficiency of the security as the magistrate considers necessary.

135.270 Taking of security. When a security amount has been set by a magistrate for a particular offense or for a defendant's release, any person designated by the magistrate may take the security and release the defendant to appear in accordance with the conditions of the release agreement. The person designated by the magistrate shall give a receipt to the defendant for the security so taken and within a reasonable time deposit the security with the clerk of the court having jurisdiction of the offense. [1973 c.836 §154]

135.280 Forfeiture and apprehension. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action

provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in ORS 133.030 (6) may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties, the order of forfeiture. If, within 30 days after the court declares the forfeiture, the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter judgment for the state, or appropriate political subdivision thereof, against the defendant and, if applicable, the sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or the sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the judgment may be enforced as a judgment in a civil action. If entered in circuit court, the judgment shall be docketed, and if entered in district court may be docketed, as a civil judgment under ORS chapter 18. The district attorney, county counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The proceeds of any execution shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or paid over as directed by the State Court Administrator for deposit in the Criminal Fine and Assessment Account created under ORS 137.300, if the offense was defined by a statute of this state

and the judgment was entered by a circuit or district court. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 153.540 for a traffic offense.

(b) Money deposited pursuant to ORS 153.355 for a boating offense.

(c) Money deposited pursuant to ORS 153.745 for a wildlife or commercial fishing offense.

(5) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to and may be kept by the state or its appropriate political subdivision. The clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue account of the state or political subdivision thereof entitled to receive the proceeds of execution under this section.

(6) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by a circuit or district court. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions. [1973 c.836 §155; 1981 s.s. c.3 §113; 1983 c.763 §45; 1987 c.710 §1; 1987 c.905 §15]

Note: The amendments to 135.280 by section 15, chapter 905, Oregon Laws 1987, take effect July 1, 1992. See section 39, chapter 905, Oregon Laws 1987, as amended by section 1, chapter 460, Oregon Laws 1991. The text (1989 Edition) is set forth for the user's convenience.

135.280. (1) Upon failure of a person to comply with any condition of a release agreement or personal recognizance, the court having jurisdiction may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty upon a personal recognizance, conditional or security release.

(2) A warrant issued under subsection (1) of this section by a municipal officer as defined in ORS 133.030 (6) may be executed by any peace officer authorized to execute arrest warrants.

(3) If the defendant does not comply with the conditions of the release agreement, the court having jurisdiction shall enter an order declaring the entire security amount to be forfeited. Notice of the order of forfeiture shall be given forthwith by personal service, by mail or by such other means as are reasonably calculated to bring to the attention of the defendant and, if applicable, of the sureties, the order of forfeiture. If, within 30 days after the court declares the forfeiture, the defendant does not appear or satisfy the court having jurisdiction that appearance and surrender by the defendant was, or still is, impossible and without fault of the defendant, the court shall enter judgment for the state, or appropriate political subdivision thereof, against the defendant and, if applicable, the sureties, for the amount of security and costs of the proceedings. At any time before or after judgment for the amount of security declared forfeited, the defendant or the sureties may apply to the court for a remission of the forfeiture. The court, upon good cause shown, may remit the forfeiture or any part thereof, as the court considers reasonable under the circumstances of the case.

(4) When judgment is entered in favor of the state, or any political subdivision of the state, on any security given for a release, the judgment may be enforced as a judgment in a civil action. If entered in circuit court, the judgment shall be docketed, and if entered in district court may be docketed, as a civil judgment under ORS chapter 18. The district attorney, county counsel or city attorney may have execution issued on the judgment and deliver same to the sheriff to be executed by levy on the deposit or security amount made in accordance with ORS 135.265. The proceeds of any execution shall be used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by a circuit or district court. The provisions of this section shall not apply to:

(a) Money deposited pursuant to ORS 153.540 for a traffic offense.

(b) Money deposited pursuant to ORS 153.355 for a boating offense.

(c) Money deposited pursuant to ORS 153.745 for a wildlife or commercial fishing offense.

(5) When the judgment of forfeiture is entered, the security deposit or deposit with the clerk is, by virtue of the judgment alone and without requiring further execution, forfeited to and may be kept by the state or its appropriate political subdivision. The clerk shall reduce, by the value of the deposit so forfeited, the debt remaining on the judgment and shall cause the amount on deposit to be transferred to the revenue account of the state or political subdivision thereof entitled to receive the proceeds of execution under this section.

(6) The stocks, bonds, personal property and real property shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the security was taken if the offense was defined by an ordinance of a political subdivision of this state, or paid into the treasury of the county wherein the security was taken if the offense was defined by a statute of this state and the judgment was entered by a justice's court, or deposited in the General Fund available for general governmental expenses if the offense was defined by a statute of this state and the judgment was entered by

a circuit or district court. The balance shall be returned to the owner. The real property sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

135.285 Release decision review and release upon appeal. (1) If circumstances concerning the defendant's release change, the court, on its own motion or upon request by the district attorney or defendant, may modify the release agreement or the security release.

(2) After judgment of conviction in municipal, justice or district court, the court shall order the original release agreement, and if applicable, the security, to stand pending appeal, or deny, increase or reduce the release agreement and the security. If a defendant appeals after judgment of conviction in circuit court for any crime other than murder or treason, release shall be discretionary. [1973 c.836 §156]

135.290 Punishment by contempt of court. (1) A supervisor of a defendant on conditional release who knowingly aids the defendant in breach of the conditional release or who knowingly fails to report the defendant's breach is punishable by contempt.

(2) A defendant who knowingly breaches any of the regulations in the release agreement imposed pursuant to ORS 135.260 is punishable by contempt. [1973 c.836 §157]

135.295 Application of ORS 135.230 to 135.290 to certain traffic offenses. Provision for release contained in ORS 135.230 to 135.290 shall not apply to any traffic offenses as defined for the Oregon Vehicle Code except the following:

(1) Reckless driving under ORS 811.140.

(2) Driving while under the influence of intoxicants under ORS 813.010.

(3) Failure to perform the duties of a driver under ORS 811.700 or 811.705.

(4) Criminal driving while suspended or revoked under ORS 811.182.

(5) Fleeing or attempting to elude a police officer under ORS 811.540. [1974 s.s. c.35 §1; 1981 c.818 §3; 1983 c.338 §888; 1987 c.730 §5; 1991 c.208 §3]

PLEADINGS

(Defendant's Answer Generally)

135.305 Types of answer. If the defendant does not require time, as provided in ORS 135.380, or if the defendant does, then on the next day or at such further day as the court may have allowed the defendant, the defendant may, in answer to the arraignment, move against the accusatory instrument or demur or plead thereto. [Formerly 135.420]

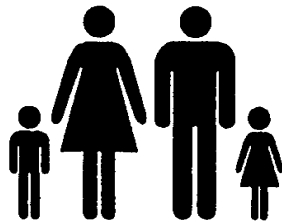
135.310 (Renumbered 135.040)

APPENDIX D

Paper entitled, "Possession of Firearms by Minors in Florida,"
dated December 6, 1993, and prepared by Dennis Neilander,
Senior Research Analyst, Research Division,
Legislative Counsel Bureau

Possession of Firearms by Minors in Florida

December 6, 1993



Sale or Transfer to Minor

- Knowing sale or transfer of firearm to person under 18 is 3rd degree felony (previously misdemeanor, exception for permission of parent)
- Commercial sellers and retail transferors must supply warning concerning legal consequences of sale to minor
- Additional warning must be conspicuously posted at retail shops
- Failure to warn is misdemeanor

Possession by Minor Prohibited

- Possession of firearm by minor under 18 prohibited, exceptions
 - Unloaded at minors home
 - Minor lawfully engaged in shooting competition over 16
 - If under 16, supervised by adult
 - Minor lawfully engaged in hunting if over 16
 - If under 16 and hunting, supervised by adult
 - Transportation to and from such activities, if unloaded

Penalties Against Parent for Unlawful Possession by Minor

- Third degree felony for parent or guardian to knowingly permit minor to unlawfully possess firearm
- Court may order parent to participate in parenting education classes

Penalties Against Minor For Unlawful Possession

- **First Offense - Misdemeanor of 1st degree**
 - Up to 100 hours of community service (may include graffiti removal on private property)
 - Revoke or delay issuance of driver's license for up to 1 year
- **Second Offense**
 - Between 100 and 250 hours of community service
 - revoke or delay issuance of driver's license for up to 2 years

Penalties for Crimes Other than Mere Possession

- Secure detention, unless the Attorney General authorizes release
- Hearing with 24 hours
- After April 1994, Court may order minor to remain securely detained if presents a danger to himself or community

Penalties Continued

■ First Offense

- Mandatory secure detention for 5 days
- Up to 100 hours of community service
- Revocation of drivers license for up to 1 year

■ Second Offense

- Mandatory secure detention for 5 days
- Between 100 and 250 hours of community service
- Revocation of drivers license for up to 2 years

Habitual Juvenile Offenders

98

- Persons 14 years and older who are alleged to have committed a fourth felony crime (3 prior adjudications or adjudications withheld) and
 - At least one such crime involved the use or possession of a firearm
- State Attorney must request certification as adult or provide written reasons if not
- Judge must certify as adult or provide written reasons for no certification

Other Florida Provisions

- Prohibits possession or use of BB guns and electric firearms unless in presence of an adult
- Adult responsible for such minor guilty of 2nd degree misdemeanor for unlawful use
- Law Enforcement must confiscate firearm illegally possessed by minor and dispose of firearm

By the Committee on Criminal Justice and Representatives
Martinez, Logan, Ritchie, Feren

1 A bill to be entitled
2 An act relating to weapons and firearms;
3 amending s. 790.17, F.S.; prohibiting certain
4 sale or transfer to a minor or a person of
5 unsound mind of a weapon, electric weapon or
6 device, or firearm and providing that a
7 violation constitutes a third-degree felony;
8 repealing s. 790.174(3), F.S., relating to the
9 definition of the term "minor" for purposes of
10 the law that requires the safe storage of a
11 firearm; amending s. 790.175, F.S.; redefining
12 the term "minor"; requiring that the purchaser
13 of a firearm or dangerous weapon be informed
14 that it is unlawful to store or leave a firearm
15 or dangerous weapon within access of a minor or
16 to knowingly sell or transfer a firearm or
17 other dangerous weapon to a minor or a person
18 of unsound mind; amending s. 790.18, F.S.;
19 prohibiting an arms dealer from selling or
20 transferring a firearm or certain other weapons
21 to a minor; increasing the penalty for a
22 violation from a misdemeanor to a felony;
23 amending s. 790.22, F.S.; requiring parental
24 consent for minors to use certain guns or
25 electric weapons or devices; increasing
26 penalties for a violation by an adult;
27 providing penalties for a violation by a minor;
28 prohibiting a minor from possessing a firearm;
29 providing certain exceptions; prohibiting
30 adults responsible for a minor from knowingly
31 permitting the minor to unlawfully possess a

CODING: Deletions are stricken; additions are underlined.

1 firearm; providing penalties for a violation by
2 an adult; providing penalties for a violation
3 by a minor; providing for the seizure and
4 disposal of a firearm or certain guns or
5 electric weapons or devices that are used or
6 possessed unlawfully by a minor; providing that
7 such provisions are supplemental to certain
8 other criminal sanctions; providing for the
9 secure detention of a minor charged with a
10 violation of certain provisions of ch. 790,
11 F.S., pending a court hearing; amending s.
12 790.23, F.S.; prohibiting felons, and juveniles
13 found to have committed a delinquent act that
14 would be a felony if committed by an adult,
15 from using or possessing a weapon or firearm
16 under certain conditions; providing exceptions;
17 providing penalties; amending s. 790.25, F.S.;
18 limiting authorization for possession in
19 private conveyance to persons over 18;
20 providing an effective date and a contingent
21 future repealer.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 790.17, Florida Statutes, is
26 amended to read:

27 790.17 Furnishing weapons and firearms to minors under
28 18 years of age or persons of unsound mind prohibited;--A
29 person who Whoever sells, hires, barter, lends, transfers, or
30 gives any minor under 18 years of age or a person of unsound
31 mind any firearm, pistol; dirk, electric weapon or device, or

CODING: Deletions are stricken; additions are underlined.

1 other arm or weapon, other than an ordinary pocketknife,
2 ~~except to transfer pursuant to s. 790.22, commits a felony of~~
3 ~~the third degree, punishable as provided in s. 775.082, s.~~
4 ~~775.083, or s. 775.084 without permission of the parent of~~
5 ~~such minor, or the person having charge of such minor, or~~
6 ~~sells, hires, barter, lends, or gives to any person of~~
7 ~~unsound mind an electric weapon or device or any dangerous~~
8 ~~weapon, other than an ordinary pocketknife, is guilty of a~~
9 ~~misdemeanor of the first degree, punishable as provided in s.~~
10 ~~775.082 or s. 775.083.~~
11 Section 2. Subsection (3) of section 790.174, Florida
12 Statutes, is hereby repealed.
13 Section 3. Section 790.175, Florida Statutes, is
14 amended to read:
15 790.175 Transfer or sale of firearms; required
16 warnings; penalties.--
17 (1) Upon the retail commercial sale or retail transfer
18 of any firearm or dangerous weapon, the seller or transferor
19 shall deliver a written warning to the purchaser or
20 transferee, which warning states, in block letters not less
21 than 1/4 inch in height:
22
23 "IT IS UNLAWFUL, AND PUNISHABLE BY IMPRISONMENT
24 AND FINE, FOR ANY ADULT TO STORE OR LEAVE A
25 FIREARM OR DANGEROUS WEAPON IN ANY PLACE WITHIN
26 THE REACH OR EASY ACCESS OF A MINOR UNDER 18
27 YEARS OF AGE OR TO KNOWINGLY SELL OR OTHERWISE
28 TRANSFER OWNERSHIP OR POSSESSION OF A FIREARM
29 OR OTHER DANGEROUS WEAPON TO A MINOR OR A
30 PERSON OF UNSOUND MIND."
31

CODING: Deletions are stricken; additions are underlined.

1
2 (2) Any retail or wholesale store, shop, or sales
3 outlet which sells firearms or dangerous weapons must
4 conspicuously post at each purchase counter the following
5 warning in block letters not less than 1 inch in height:
6
7 "IT IS UNLAWFUL TO STORE OR LEAVE A FIREARM OR
8 DANGEROUS WEAPON IN ANY PLACE WITHIN THE REACH
9 OR EASY ACCESS OF A MINOR UNDER 18 YEARS OF AGE
10 OR TO KNOWINGLY SELL OR OTHERWISE TRANSFER
11 OWNERSHIP OR POSSESSION OF A FIREARM OR OTHER
12 DANGEROUS WEAPON TO A MINOR OR A PERSON OF
13 UN SOUND MIND."
14
15 (3) Any person or business knowingly violating a
16 requirement to provide warning under this section commits a
17 misdemeanor of the second degree, punishable as provided in s.
18 775.082 or s. 775.083.
19 ~~(4)--As-used-in-this-act;-the-term-"minor"-means-any~~
20 ~~person-under-the-age-of-16;~~
21 Section 4. Section 790.18, Florida Statutes, is
22 amended to read:
23 790.18 Sale or transfer of Selling arms to minors by
24 dealers.--It is unlawful for any dealer in arms to sell or
25 transfer to a minor minors any firearm, pistol, Springfield
26 rifle or other repeating rifle, bowie knife or dirk knife,
27 brass knuckles, slungshot, or electric weapon or device. A;
28 and every person who violates violating this section commits
29 shall-be-guilty-of a felony misdemeanor of the second first
30 degree, punishable as provided in s. 775.082, or s. 775.083,
31 or 775.084.

CODING: Deletions are stricken; additions are underlined.

1 Section 5. Section 790.22, Florida Statutes, is
2 amended to read:
3 790.22 Use of BB guns, air or gas-operated guns, or
4 electric weapons or devices; or firearms by minor child under
5 16; limitation; possession of firearms by minor under 18
6 prohibited; penalties.--
7 (1) The use for any purpose whatsoever of BB guns, air
8 or gas-operated guns, or electric weapons or devices, or
9 firearms as defined in s. 790.001 by any minor child under the
10 age of 16 years is prohibited unless such use is under the
11 supervision and in the presence of an adult who is acting with
12 the consent of the minor's parent.
13 (2) Any adult responsible for the welfare of any child
14 under the age of 16 years who knowingly permits such child to
15 use or have in his possession any BB gun, air or gas-operated
16 gun, electric weapon or device, or firearm in violation of the
17 provisions of subsection (1) of this section commits is guilty
18 of a misdemeanor of the first second degree, punishable as
19 provided in s. 775.082 or s. 775.083.
20 (3) A minor who possesses any BB gun, air or gas-
21 operated gun, or electric weapon or device in violation of
22 subsection (1) commits a misdemeanor of the second degree,
23 which may be punished by requiring the performance of up to 50
24 hours of community service under the supervision of a case
25 manager as provided in chapter 39, and for minors possessing a
26 driver's license, the suspension of the license for up to 6
27 months.
28 (4) A minor under 18 years of age may not possess a
29 firearm unless:
30 (a) The minor is engaged in a lawful hunting activity
31 and is:

CODING: Deletions are stricken; additions are underlined.

- 1 1. At least 16 years of age and is hunting on property
2 owned by the parent of the minor;
3 2. At least 16 years of age and is hunting with the
4 permission of the property owner and the permission of the
5 minor's parent or guardian; or
6 3. Accompanied by the minor's parent, grandparent, or
7 guardian, or an adult who is acting with the consent of the
8 minor's parent or guardian.
9 (b) The minor is engaged in a lawful marksmanship
10 competition or practice and is:
11 1. At least 16 years of age and is engaged in
12 marksmanship competition or practice on property owned by the
13 parent of the minor;
14 2. At least 16 years of age and is engaged in
15 marksmanship competition or practice with the permission of
16 the property owner and the permission of the minor's parent or
17 guardian; or
18 3. Supervised and in the presence of an adult who is
19 acting with the consent of the minor's parent or guardian.
20 (c) The firearm is unloaded and is being transported
21 by the minor directly to or from an event authorized in
22 paragraph (a) or paragraph (b), and with the consent of the
23 minor's parent or guardian for a purpose authorized in this
24 subsection.
25 (5) Any parent or guardian of a minor, or other adult
26 responsible for the welfare of a minor, who knowingly permits
27 the minor to possess a firearm in violation of subsection (4)
28 commits a felony of the third degree, punishable as provided
29 in s. 775.082, s. 775.083, or s. 775.084.
30
31

CODING: Deletions are strikethrough; additions are underlined.

1 (6) A minor who violates subsection (4) commits a
2 misdemeanor of the first degree, and may, in addition to any
3 other penalty provided by law:
4 (a) Be required to perform up to 100 hours of
5 community service, and:
6 1. If the minor is eligible by reason of age for a
7 driver's license or driving privilege, the court shall direct
8 the Department of Highway Safety and Motor Vehicles to revoke
9 or to withhold issuance of the minor's driver's license or
10 driving privilege for up to 1 year.
11 2. If the minor's driver's license or driving
12 privilege is under suspension or revocation for any reason,
13 the court shall direct the Department of Highway Safety and
14 Motor Vehicles to extend the period of suspension or
15 revocation by an additional period of up to 1 year.
16 3. If the minor is ineligible by reason of age for a
17 driver's license or driving privilege, the court shall direct
18 the Department of Highway Safety and Motor Vehicles to
19 withhold issuance of the minor's driver's license or driving
20 privilege for up to 1 year after the date on which the minor
21 would otherwise have become eligible.
22 (b) For a second or subsequent offense, the minor may
23 be required to perform up to 250 hours of community service,
24 and:
25 1. If the minor is eligible by reason of age for a
26 driver's license or driving privilege, the court shall direct
27 the Department of Highway Safety and Motor Vehicles to revoke
28 or to withhold issuance of the minor's driver's license or
29 driving privilege for up to 2 years.
30 2. If the minor's driver's license or driving
31 privilege is under suspension or revocation for any reason,

CODING: Deletions are stricken; additions are underlined.

1 the court shall direct the Department of Highway Safety and
2 Motor Vehicles to extend the period of suspension or
3 revocation by an additional period of up to 2 years.
4 3. If the minor is ineligible by reason of age for a
5 driver's license or driving privilege, the court shall direct
6 the Department of Highway Safety and Motor Vehicles to
7 withhold issuance of the minor's driver's license or driving
8 privilege for up to 2 years after the date on which the minor
9 would otherwise have become eligible.
10 (7) Any BB gun, air or gas-operated gun, or electric
11 weapon or device or firearm that is possessed or used by a
12 minor in violation of this section shall be promptly seized by
13 a law enforcement officer and disposed of in accordance with
14 s. 790.08(1)-(6).
15 (8) A minor who is taken into custody for an offense
16 involving the use or possession of a firearm except a
17 violation of s. 790.22 or is charged for any offense during
18 the commission of which the minor possessed a firearm may be
19 securely detained in a juvenile detention facility pending a
20 detention hearing held in accordance with the provisions of
21 chapter 39, notwithstanding any provision of chapter 39 to the
22 contrary.
23 (9) The provisions of this section are supplemental to
24 all other provisions of law relating to the possession, use,
25 or exhibition of a firearm.
26 Section 6. Section 790.23, Florida Statutes, is
27 amended to read:
28 (Substantial rewording of section. See
29 s. 790.23, F.S., for present text.)
30 790.23 Felons and delinquents; possession of firearms
31 or electric weapons or devices unlawful.--It is unlawful for

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1 any person to own or to have in his or her care, custody,
2 possession, or control any firearm or electric weapon or
3 device, or to carry a concealed weapon, including a tear gas
4 gun or chemical weapon or device, if that person has been:
5 (1) Convicted of a felony or found to have committed a
6 delinquent act that would be a felony if committed by an adult
7 in the courts of this state;
8 (2) Convicted of or found to have committed a crime
9 against the United States which is designated as a felony;
10 (3) Found to have committed a delinquent act in
11 another state, territory, or country that would be a felony if
12 committed by an adult and which was punishable by imprisonment
13 for a term exceeding 1 year; or
14 (4) Found guilty of an offense that is a felony in
15 another state, territory, or country and which was punishable
16 by imprisonment for a term exceeding 1 year.
17 (5) This section shall not apply to a person convicted
18 of a felony whose civil rights have been restored, or to a
19 person found to have committed a delinquent act that would be
20 a felony if committed by an adult with respect to which the
21 jurisdiction of the court pursuant to chapter 39 has expired.
22 (6) Any person who violates this section commits a
23 felony of the second degree, punishable as provided in s.
24 775.082, s. 775.083, or s. 775.084.
25 Section 7. Subsection (5) of section 790.25, Florida
26 Statutes, is amended to read:
27 790.25 Lawful ownership, possession, and use of
28 firearms and other weapons.--
29 (5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding
30 subsection (2), it is lawful and is not a violation of s.
31 790.01 for a person 18 years of age or older to possess a

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1 concealed firearm or other weapon for self-defense or other
2 lawful purpose within the interior of a private conveyance,
3 without a license, if the firearm or other weapon is securely
4 encased or is otherwise not readily accessible for immediate
5 use. Nothing herein contained prohibits the carrying of a
6 legal firearm other than a handgun anywhere in a private
7 conveyance when such firearm is being carried for a lawful
8 use. Nothing herein contained shall be construed to authorize
9 the carrying of a concealed firearm or other weapon on the
10 person. This subsection shall be liberally construed in favor
11 of the lawful use, ownership, and possession of firearms and
12 other weapons, including lawful self-defense as provided in s.
13 776.012.

14 Section 8. This act shall take effect January 1, 1994,
15 and shall stand repealed on January 1, 1995, unless the
16 Legislature provides adequate funding to provide secure
17 detention for juveniles who commit crimes with a weapon.

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21 This publication was produced at an average cost of 1.12 cents
22 per single page in compliance with the Rules and for
23 the information of members of the Legislature and the public.

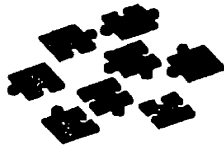
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APPENDIX E

Paper entitled, "Three Strikes and You're Out--Washington's Persistent Offender Accountability Act," prepared by Dennis Neilander, Senior Research Analyst, Research Division, Legislative Counsel Bureau

Three Strikes and You're Out



Washington's Persistent Offender Accountability Act

Treatment of Habitual Offenders Prior to 1984

- **Crime involving fraud or intent to defraud as an element, or larceny or any felony, plus**
- **Two prior felony convictions, or four prior convictions of any crime involving fraud or intent to defraud =**
- **Life imprisonment with eligibility for parole**

Treatment of Habitual Offenders After the 1984 Sentencing Reform Act

- **Act established a sentencing grid which counts prior felony convictions as part of the offender's criminal history score**
- **Offenders with previous convictions receive higher scores under the grid and are given longer sentences**
- **Judge may deviate from the presumptive sentence if aggravating or mitigating circumstances are present**
- **Certain serious offenses (first degree murder, first degree rape, and first degree assault) have mandatory minimum sentences.**

Initiative 593

- **A person who meets the definition of "persistent offender" must be sentenced to a term of life without the possibility of parole**
- **A "persistent offender" is defined as an offender who has been convicted of a felony considered a "most serious offense" and who has two prior separate occasion convictions of felonies that would be considered as most serious offenses.**

Most Serious Offenses

- Any Class A felony (See Attachment)
- Serious assaults
- Child molestation
- Controlled substance homicide
- Extortion 1st degree
- Incest with child
- Indecent Liberties
- Kidnapping
- Leading organized crime
- Manslaughter
- Promoting prostitution
- Rape
- Robbery 2nd degree
- Sexual exploitation
- Vehicular assault or homicide with DUI
- Any Class B felony with sexual motivation
- Any felony with a deadly weapon finding

Other Provisions of Initiative 593

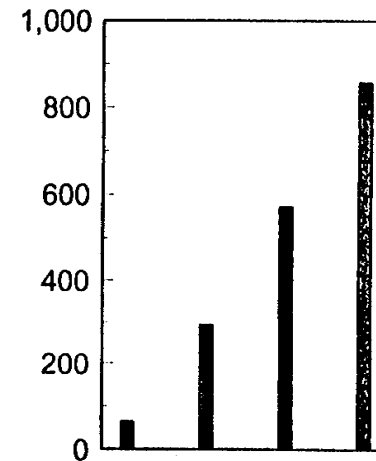
- **Persons convicted of first degree murder, first degree rape, and first degree assault are not eligible for community custody, earned early release time, furlough, home detention, work release, or any other form of early release or authorized leave of absence**
- **Sentencing judges, law enforcement entities, and correctional facilities are authorized, but not required, to give convicted offenders of serious offenses notice of sanctions imposed on persistent offenders**

Other Provisions (Continued)

- **The Governor is urged to refrain from pardoning anyone sentenced as a persistent offender until the offender has reached the age of 60 and is judged to no longer be a threat to society.**
- **The Governor must provide reports at least twice a year on the status of persistent offender who are released during the Governors tenure.**
- **The reports must continue for at least 10 years after such release or until the death of the offender.**

Fiscal Impact

- Difficult to predict because applies to small group of offenders with an extensive history of recidivism
- Data does not exist which documents the rate, nature, and timing of recidivism.
- Legislative estimates are increase in prison population of 40 beds



	1998	2003	2008	2013
Increase in Beds	63			
Increase in Beds		292		
Increase in Beds			571	
Increase in Beds				855

Based on Worst Case Scenario

Nevada's Sentencing of Habitual Offenders

- **Conviction of a crime involving fraud or intent to defraud as an element, or larceny, or any felony, plus**
- **two prior convictions of felony crimes, or three prior convictions of crimes involving fraud or intent to defraud =**
- **Not less than 10 nor more than 20 years imprisonment**

NV Sentencing Continued

- **Crime involving fraud or intent to defraud, or larceny, or any other felony, plus**
- **Three prior felonies or five convictions of crimes involving fraud or intent to defraud =**
- **Life with or without the possibility of parole.**
- **Eligibility for parole may only begin after a minimum of 10 years have been served**
- **Parole Board must adopt more stringent standards for habitual criminals than non-habitual criminals**
- **Judge may not suspend sentence or grant probation to habitual criminal**

FILED
JAN 11 1993
CLERK OF THE
STATE OF WASHINGTON

INITIATIVE MEASURE NO. 593

1 AN ACT Relating to persistent offenders; reenacting and amending
2 RCW 9.94A.120 and 9.94A.030; creating new sections; and prescribing
3 penalties.

4 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

5 NEW SECTION. Sec. 1. FINDINGS AND INTENT. (1) The people of the
6 state of Washington find and declare that:
7 (a) Community protection from persistent offenders is a priority
8 for any civilized society.
9 (b) Nearly fifty percent of the criminals convicted in Washington
10 state have active prior criminal histories.
11 (c) Punishments for criminal offenses should be proportionate to
12 both the seriousness of the crime and the prior criminal history.
13 (d) The public has the right and the responsibility to determine
14 when to impose a life sentence.
15 (2) By sentencing three-time, most serious offenders to prison for
16 life without the possibility of parole, the people intend to:
17 (a) Improve public safety by placing the most dangerous criminals
18 in prison.

- 1 b. Reduce the number of serious, repeat offenders by tougher
2 sentencing.
- 3 (c) Set proper and simplified sentencing practices that both the
4 victims and persistent offenders can understand.
- 5 (d) Restore public trust in our criminal justice system by directly
6 involving the people in the process.

7 Sec. 2. RCW 9A.120 and 1992 c 145 s 7, 1992 c 75 s 2, and 1992
8 c 45 s 5 are each reenacted and amended to read as follows:

9 ENFORCEMENT OF MANDATORY MINIMUM SENTENCES. When a person is
10 convicted of a felony, the court shall impose punishment as provided in
11 this section.

12 (1) Except as authorized in subsections (2), (4), (5), and (7) of
13 this section, the court shall impose a sentence within the sentence
14 range for the offense.

15 (2) The court may impose a sentence outside the standard sentence
16 range for that offense if it finds, considering the purpose of this
17 chapter, that there are substantial and compelling reasons justifying
18 an exceptional sentence.

19 (3) Whenever a sentence outside the standard range is imposed, the
20 court shall set forth the reasons for its decision in written findings
21 of fact and conclusions of law. A sentence outside the standard range
22 shall be a determinate sentence.

23 (4) A persistent offender shall be sentenced to a term of total
24 confinement for life without the possibility of parole or, when
25 authorized by RCW 10.95.030 for the crime of aggravated murder in the
26 first degree, sentenced to death, notwithstanding the maximum sentence
27 under any other law. An offender convicted of the crime of murder in
28 the first degree shall be sentenced to a term of total confinement not
29 less than twenty years. An offender convicted of the crime of assault
30 in the first degree or assault of a child in the first degree where the
31 offender used force or means likely to result in death or intended to
32 kill the victim shall be sentenced to a term of total confinement not
33 less than five years. An offender convicted of the crime of rape in
34 the first degree shall be sentenced to a term of total confinement not
35 less than five years ~~((, and shall not be eligible for furlough, work~~
36 ~~release or other authorized leave of absence from the correctional~~
37 ~~facility during such minimum five year term except for the purpose of~~
38 ~~commitment to an inpatient treatment facility)).~~ The foregoing minimum

1 terms of total confinement are mandatory and shall not be varied or
2 modified as provided in subsection (2) of this section. In addition,
3 all offenders subject to the provisions of this subsection shall not be
4 eligible for community custody, earned early release time, furlough,
5 home detention, partial confinement, work crew, work release, or any
6 other form of early release as defined under RCW 9.94A.150 (1), (2),
7 (3), (5), (7), or (8), or any other form of authorized leave of absence
8 from the correctional facility while not in the direct custody of a
9 corrections officer or officers during such minimum terms of total
10 confinement except in the case of an offender in need of emergency
11 medical treatment or for the purpose of commitment to an inpatient
12 treatment facility in the case of an offender convicted of the crime of
13 rape in the first degree.

14 (5) In sentencing a first-time offender the court may waive the
15 imposition of a sentence within the sentence range and impose a
16 sentence which may include up to ninety days of confinement in a
17 facility operated or utilized under contract by the county and a
18 requirement that the offender refrain from committing new offenses.
19 The sentence may also include up to two years of community supervision,
20 which, in addition to crime-related prohibitions, may include
21 requirements that the offender perform any one or more of the
22 following:

- 23 (a) Devote time to a specific employment or occupation;
24 (b) Undergo available outpatient treatment for up to two years, or
25 inpatient treatment not to exceed the standard range of confinement for
26 that offense;
27 (c) Pursue a prescribed, secular course of study or vocational
28 training;
29 (d) Remain within prescribed geographical boundaries and notify the
30 court or the community corrections officer prior to any change in the
31 offender's address or employment;
32 (e) Report as directed to the court and a community corrections
33 officer; or
34 (f) Pay all court-ordered legal financial obligations as provided
35 in RCW 9.94A.030 and/or perform community service work.
36 (6) If a sentence range has not been established for the
37 defendant's crime, the court shall impose a determinate sentence which
38 may include not more than one year of confinement, community service
39 work, a term of community supervision not to exceed one year, and/or

1 other legal financial obligations. The court may impose a sentence
2 which provides more than one year of confinement if the court finds,
3 considering the purpose of this chapter, that there are substantial and
4 compelling reasons justifying an exceptional sentence.

5 (7) (a) (i) When an offender is convicted of a sex offense other than
6 a violation of RCW 9A.44.050 or a sex offense that is also a serious
7 violent offense and has no prior convictions for a sex offense or any
8 other felony sex offenses in this or any other state, the sentencing
9 court, on its own motion or the motion of the state or the defendant,
10 may order an examination to determine whether the defendant is amenable
11 to treatment.

12 The report of the examination shall include at a minimum the
13 following: The defendant's version of the facts and the official
14 version of the facts, the defendant's offense history, an assessment of
15 problems in addition to alleged deviant behaviors, the offender's
16 social and employment situation, and other evaluation measures used.
17 The report shall set forth the sources of the evaluator's information.

18 The examiner shall assess and report regarding the defendant's
19 amenability to treatment and relative risk to the community. A
20 proposed treatment plan shall be provided and shall include, at a
21 minimum:

22 (A) Frequency and type of contact between offender and therapist;

23 (B) Specific issues to be addressed in the treatment and
24 description of planned treatment modalities;

25 (C) Monitoring plans, including any requirements regarding living
26 conditions, lifestyle requirements, and monitoring by family members
27 and others;

28 (D) Anticipated length of treatment; and

29 (E) Recommended crime-related prohibitions.

30 The court on its own motion may order, or on a motion by the state
1 shall order, a second examination regarding the offender's amenability
2 to treatment. The evaluator shall be selected by the party making the
3 motion. The defendant shall pay the cost of any second examination
4 ordered unless the court finds the defendant to be indigent in which
5 case the state shall pay the cost.

6 (ii) After receipt of the reports, the court shall consider whether
7 the offender and the community will benefit from use of this special
8 sexual offender sentencing alternative and consider the victim's
9 opinion whether the offender should receive a treatment disposition

1 under this subsection. If the court determines that this special sex
2 offender sentencing alternative is appropriate, the court shall then
3 impose a sentence within the sentence range. If this sentence is less
4 than eight years of confinement, the court may suspend the execution of
5 the sentence and impose the following conditions of suspension:

6 (A) The court shall place the defendant on community supervision
7 for the length of the suspended sentence or three years, whichever is
8 greater; and

9 (B) The court shall order treatment for any period up to three
10 years in duration. The court in its discretion shall order outpatient
11 sex offender treatment or inpatient sex offender treatment, if
12 available. A community mental health center may not be used for such
13 treatment unless it has an appropriate program designed for sex
14 offender treatment. The offender shall not change sex offender
15 treatment providers or treatment conditions without first notifying the
16 prosecutor, the community corrections officer, and the court, and shall
17 not change providers without court approval after a hearing if the
18 prosecutor or community corrections officer object to the change. In
19 addition, as conditions of the suspended sentence, the court may impose
20 other sentence conditions including up to six months of confinement,
21 not to exceed the sentence range of confinement for that offense,
22 crime-related prohibitions, and requirements that the offender perform
23 any one or more of the following:

24 (I) Devote time to a specific employment or occupation;

25 (II) Remain within prescribed geographical boundaries and notify
26 the court or the community corrections officer prior to any change in
27 the offender's address or employment;

28 (III) Report as directed to the court and a community corrections
29 officer;

30 (IV) Pay all court-ordered legal financial obligations as provided
31 in RCW 9.94A.030, perform community service work, or any combination
32 thereof; or

33 (V) Make recoupment to the victim for the cost of any counseling
34 required as a result of the offender's crime.

35 (iii) The sex offender therapist shall submit quarterly reports on
36 the defendant's progress in treatment to the court and the parties.
37 The report shall reference the treatment plan and include at a minimum
38 the following: Dates of attendance, defendant's compliance with
39 requirements, treatment activities, the defendant's relative progress

1 in treatment, and any other material as specified by the court at
2 sentencing.

3 (iv) At the time of sentencing, the court shall set a treatment
4 termination hearing for three months prior to the anticipated date for
5 completion of treatment. Prior to the treatment termination hearing,
6 the treatment professional and community corrections officer shall
7 submit written reports to the court and parties regarding the
8 defendant's compliance with treatment and monitoring requirements, and
9 recommendations regarding termination from treatment, including
10 proposed community supervision conditions. Either party may request
11 and the court may order another evaluation regarding the advisability
12 of termination from treatment. The defendant shall pay the cost of any
13 additional evaluation ordered unless the court finds the defendant to
14 be indigent in which case the state shall pay the cost. At the
15 treatment termination hearing the court may: (A) Modify conditions of
16 community supervision, and either (B) terminate treatment, or (C)
17 extend treatment for up to the remaining period of community
18 supervision.

19 (v) The court may revoke the suspended sentence at any time during
20 the period of community supervision and order execution of the sentence
21 if: (A) The defendant violates the conditions of the suspended
22 sentence, or (B) the court finds that the defendant is failing to make
23 satisfactory progress in treatment. All confinement time served during
24 the period of community supervision shall be credited to the offender
25 if the suspended sentence is revoked.

26 (vi) Except as provided in (a)(vii) of this subsection, after July
27 1, 1991, examinations and treatment ordered pursuant to this subsection
28 shall only be conducted by sex offender treatment providers certified
29 by the department of health pursuant to chapter 18.155 RCW.

30 (vii) A sex offender therapist who examines or treats a sex
31 offender pursuant to this subsection (7) does not have to be certified
32 by the department of health pursuant to chapter 18.155 RCW if the court
33 finds that: (A) The offender has already moved to another state or
34 plans to move to another state for reasons other than circumventing the
35 certification requirements; (B) no certified providers are available
36 for treatment within a reasonable geographical distance of the
37 offender's home; and (C) the evaluation and treatment plan comply with
38 this subsection (7) and the rules adopted by the department of health.

1 For purposes of this subsection, "victim" means any person who has
2 sustained emotional, psychological, physical, or financial injury to
3 person or property as a result of the crime charged. "Victim" also
4 means a parent or guardian of a victim who is a minor child unless the
5 parent or guardian is the perpetrator of the offense.

6 (b) When an offender is convicted of any felony sex offense
7 committed before July 1, 1987, and is sentenced to a term of
8 confinement of more than one year but less than six years, the
9 sentencing court may, on its own motion or on the motion of the
10 offender or the state, order the offender committed for up to thirty
11 days to the custody of the secretary of social and health services for
12 evaluation and report to the court on the offender's amenability to
13 treatment at these facilities. If the secretary of social and health
14 services cannot begin the evaluation within thirty days of the court's
15 order of commitment, the offender shall be transferred to the state for
16 confinement pending an opportunity to be evaluated at the appropriate
17 facility. The court shall review the reports and may order that the
18 term of confinement imposed be served in the sexual offender treatment
19 program at the location determined by the secretary of social and
20 health services or the secretary's designee, only if the report
21 indicates that the offender is amenable to the treatment program
22 provided at these facilities. The offender shall be transferred to the
23 state pending placement in the treatment program. Any offender who has
24 escaped from the treatment program shall be referred back to the
25 sentencing court.

26 If the offender does not comply with the conditions of the
27 treatment program, the secretary of social and health services may
28 refer the matter to the sentencing court. The sentencing court shall
29 commit the offender to the department of corrections to serve the
30 balance of the term of confinement.

31 If the offender successfully completes the treatment program before
32 the expiration of the term of confinement, the court may convert the
33 balance of confinement to community supervision and may place
34 conditions on the offender including crime-related prohibitions and
35 requirements that the offender perform any one or more of the
36 following:

37 (i) Devote time to a specific employment or occupation;

1 (ii) Remain within prescribed geographical boundaries and notify
2 the court or the community corrections officer prior to any change in
3 the offender's address or employment;
4 (iii) Report as directed to the court and a community corrections
5 officer;
6 (iv) Undergo available outpatient treatment.
7 If the offender violates any of the terms of community supervision,
8 the court may order the offender to serve out the balance of the
9 community supervision term in confinement in the custody of the
10 department of corrections.
11 After June 30, 1993, this subsection (b) shall cease to have
12 effect.
13 (c) When an offender commits any felony sex offense on or after
14 July 1, 1987, and is sentenced to a term of confinement of more than
15 one year but less than six years, the sentencing court may, on its own
16 motion or on the motion of the offender or the state, request the
17 department of corrections to evaluate whether the offender is amenable
18 to treatment and the department may place the offender in a treatment
19 program within a correctional facility operated by the department.
20 Except for an offender who has been convicted of a violation of RCW
21 9A.44.040 or 9A.44.050, if the offender completes the treatment program
22 before the expiration of his or her term of confinement, the department
23 of corrections may request the court to convert the balance of
24 confinement to community supervision and to place conditions on the
25 offender including crime-related prohibitions and requirements that the
26 offender perform any one or more of the following:
27 (i) Devote time to a specific employment or occupation;
28 (ii) Remain within prescribed geographical boundaries and notify
29 the court or the community corrections officer prior to any change in
30 the offender's address or employment;
31 (iii) Report as directed to the court and a community corrections
32 officer;
33 (iv) Undergo available outpatient treatment.
34 If the offender violates any of the terms of his or her community
35 supervision, the court may order the offender to serve out the balance
36 of his or her community supervision term in confinement in the custody
37 of the department of corrections.
38 Nothing in (c) of this subsection shall confer eligibility for such
39 programs for offenders convicted and sentenced for a sex offense

1 committed prior to July 1, 1987. This subsection (c) does not apply to
2 any crime committed after July 1, 1990.

3 (d) Offenders convicted and sentenced for a sex offense committed
4 prior to July 1, 1987, may, subject to available funds, request an
5 evaluation by the department of corrections to determine whether they
6 are amenable to treatment. If the offender is determined to be
7 amenable to treatment, the offender may request placement in a
8 treatment program within a correctional facility operated by the
9 department. Placement in such treatment program is subject to
10 available funds.

11 (8)(a) When a court sentences a person to a term of total
12 confinement to the custody of the department of corrections for an
13 offense categorized as a sex offense or a serious violent offense
14 committed after July 1, 1988, but before July 1, 1990, assault in the
15 second degree, assault of a child in the second degree, any crime
16 against a person where it is determined in accordance with RCW
17 9.94A.125 that the defendant or an accomplice was armed with a deadly
18 weapon at the time of commission, or any felony offense under chapter
19 69.50 or 69.52 RCW, committed on or after July 1, 1988, the court shall
20 in addition to the other terms of the sentence, sentence the offender
21 to a one-year term of community placement beginning either upon
22 completion of the term of confinement or at such time as the offender
23 is transferred to community custody in lieu of earned early release in
24 accordance with RCW 9.94A.150 (1) and (2). When the court sentences an
25 offender under this subsection to the statutory maximum period of
26 confinement then the community placement portion of the sentence shall
27 consist entirely of such community custody to which the offender may
28 become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any
29 period of community custody actually served shall be credited against
30 the community placement portion of the sentence.

31 (b) When a court sentences a person to a term of total confinement
32 to the custody of the department of corrections for an offense
33 categorized as a sex offense or serious violent offense committed on or
34 after July 1, 1990, the court shall in addition to other terms of the
35 sentence, sentence the offender to community placement for two years or
36 up to the period of earned early release awarded pursuant to RCW
37 9.94A.150 (1) and (2), whichever is longer. The community placement
38 shall begin either upon completion of the term of confinement or at
39 such time as the offender is transferred to community custody in lieu

1 of earned early release in accordance with RCW 9.94A.150 (1) and (2).
2 When the court sentences an offender under this subsection to the
3 statutory maximum period of confinement then the community placement
4 portion of the sentence shall consist entirely of the community custody
5 to which the offender may become eligible, in accordance with RCW
6 9.94A.150 (1) and (2). Any period of community custody actually served
7 shall be credited against the community placement portion of the
8 sentence. Unless a condition is waived by the court, the terms of
9 community placement for offenders sentenced pursuant to this section
10 shall include the following conditions:
11 (i) The offender shall report to and be available for contact with
12 the assigned community corrections officer as directed;
13 (ii) The offender shall work at department of corrections-approved
14 education, employment, and/or community service;
15 (iii) The offender shall not consume controlled substances except
16 pursuant to lawfully issued prescriptions;
17 (iv) An offender in community custody shall not unlawfully possess
18 controlled substances;
19 (v) The offender shall pay supervision fees as determined by the
20 department of corrections; and
21 (vi) The residence location and living arrangements are subject to
22 the prior approval of the department of corrections during the period
23 of community placement.
24 (c) The court may also order any of the following special
25 conditions:
26 (i) The offender shall remain within, or outside of, a specified
27 geographical boundary;
28 (ii) The offender shall not have direct or indirect contact with
29 the victim of the crime or a specified class of individuals;
30 (iii) The offender shall participate in crime-related treatment or
31 counseling services;
32 (iv) The offender shall not consume alcohol; or
33 (v) The offender shall comply with any crime-related prohibitions.
34 (d) Prior to transfer to, or during, community placement, any
35 conditions of community placement may be removed or modified so as not
36 to be more restrictive by the sentencing court, upon recommendation of
37 the department of corrections.
38 (9) If the court imposes a sentence requiring confinement of thirty
39 days or less, the court may, in its discretion, specify that the

1 sentence be served on consecutive or intermittent days. A sentence
2 requiring more than thirty days of confinement shall be served on
3 consecutive days. Local jail administrators may schedule court-ordered
4 intermittent sentences as space permits.

5 (10) If a sentence imposed includes payment of a legal financial
6 obligation, the sentence shall specify the total amount of the legal
7 financial obligation owed, and shall require the offender to pay a
8 specified monthly sum toward that legal financial obligation.
9 Restitution to victims shall be paid prior to any other payments of
10 monetary obligations. Any legal financial obligation that is imposed
11 by the court may be collected by the department, which shall deliver
12 the amount paid to the county clerk for credit. The offender's
13 compliance with payment of legal financial obligations shall be
14 supervised by the department. All monetary payments ordered shall be
15 paid no later than ten years after the last date of release from
16 confinement pursuant to a felony conviction or the date the sentence
17 was entered. Independent of the department, the party or entity to
18 whom the legal financial obligation is owed shall have the authority to
19 utilize any other remedies available to the party or entity to collect
20 the legal financial obligation. Nothing in this section makes the
21 department, the state, or any of its employees, agents, or other
22 persons acting on their behalf liable under any circumstances for the
23 payment of these legal financial obligations. If an order includes
24 restitution as one of the monetary assessments, the county clerk shall
25 make disbursements to victims named in the order.

26 (11) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a
27 court may not impose a sentence providing for a term of confinement or
28 community supervision or community placement which exceeds the
29 statutory maximum for the crime as provided in chapter 9A.20 RCW.

30 (12) All offenders sentenced to terms involving community
31 supervision, community service, community placement, or legal financial
32 obligation shall be under the supervision of the secretary of the
33 department of corrections or such person as the secretary may designate
34 and shall follow explicitly the instructions of the secretary including
35 reporting as directed to a community corrections officer, remaining
36 within prescribed geographical boundaries, notifying the community
37 corrections officer of any change in the offender's address or
38 employment, and paying the supervision fee assessment.

1 (13) All offenders sentenced to terms involving community
2 supervision, community service, or community placement under the
3 supervision of the department of corrections shall not own, use, or
4 possess firearms or ammunition. Offenders who own, use, or are found
5 to be in actual or constructive possession of firearms or ammunition
6 shall be subject to the appropriate violation process and sanctions.
7 "Constructive possession" as used in this subsection means the power
8 and intent to control the firearm or ammunition. "Firearm" as used in
9 this subsection means a weapon or device from which a projectile may be
10 fired by an explosive such as gunpowder.

11 (14) The sentencing court shall give the offender credit for all
12 confinement time served before the sentencing if that confinement was
13 solely in regard to the offense for which the offender is being
14 sentenced.

15 (15) A departure from the standards in RCW 9.94A.400 (1) and (2)
16 governing whether sentences are to be served consecutively or
17 concurrently is an exceptional sentence subject to the limitations in
18 subsections (2) and (3) of this section, and may be appealed by the
19 defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

20 (16) The court shall order restitution whenever the offender is
21 convicted of a felony that results in injury to any person or damage to
22 or loss of property, whether the offender is sentenced to confinement
23 or placed under community supervision, unless extraordinary
24 circumstances exist that make restitution inappropriate in the court's
25 judgment. The court shall set forth the extraordinary circumstances in
26 the record if it does not order restitution.

27 (17) As a part of any sentence, the court may impose and enforce an
28 order that relates directly to the circumstances of the crime for which
29 the offender has been convicted, prohibiting the offender from having
30 any contact with other specified individuals or a specific class of
31 individuals for a period not to exceed the maximum allowable sentence
32 for the crime, regardless of the expiration of the offender's term of
33 community supervision or community placement.

34 (18) In any sentence of partial confinement, the court may require
35 the defendant to serve the partial confinement in work release, in a
36 program of home detention, on work crew, or in a combined program of
37 work crew and home detention.

38 (19) All court-ordered legal financial obligations collected by the
39 department and remitted to the county clerk shall be credited and paid

1 where restitution is ordered. Restitution shall be paid prior to any
2 other payments of monetary obligations.

3 Sec. 3. RCW 9.94A.030 and 1992 c 145 s 6 and 1992 c 75 s 1 are
4 each reenacted and amended to read as follows:

5 DEFINITIONS. Unless the context clearly requires otherwise, the
6 definitions in this section apply throughout this chapter. .

7 (1) "Collect," or any derivative thereof, "collect and remit," or
8 "collect and deliver," when used with reference to the department of
9 corrections, means that the department is responsible for monitoring
10 and enforcing the offender's sentence with regard to the legal
11 financial obligation, receiving payment thereof from the offender, and,
12 consistent with current law, delivering daily the entire payment to the
13 superior court clerk without depositing it in a departmental account.

14 (2) "Commission" means the sentencing guidelines commission.

15 (3) "Community corrections officer" means an employee of the
16 department who is responsible for carrying out specific duties in
17 supervision of sentenced offenders and monitoring of sentence
18 conditions.

19 (4) "Community custody" means that portion of an inmate's sentence
20 of confinement in lieu of earned early release time served in the
21 community subject to controls placed on the inmate's movement and
22 activities by the department of corrections.

23 (5) "Community placement" means that period during which the
24 offender is subject to the conditions of community custody and/or
25 postrelease supervision, which begins either upon completion of the
26 term of confinement (postrelease supervision) or at such time as the
27 offender is transferred to community custody in lieu of earned early
28 release. Community placement may consist of entirely community
29 custody, entirely postrelease supervision, or a combination of the two.

30 (6) "Community service" means compulsory service, without
31 compensation, performed for the benefit of the community by the
32 offender.

33 (7) "Community supervision" means a period of time during which a
34 convicted offender is subject to crime-related prohibitions and other
35 sentence conditions imposed by a court pursuant to this chapter or RCW
36 46.61.524. For first-time offenders, the supervision may include
37 crime-related prohibitions and other conditions imposed pursuant to RCW
38 9.94A.120(5). For purposes of the interstate compact for out-of-state

1 supervision of parolees and probationers, RCW 9.95.270, community
2 supervision is the functional equivalent of probation and should be
3 considered the same as probation by other states.

4 (8) "Confinement" means total or partial confinement as defined in
5 this section.

6 (9) "Conviction" means an adjudication of guilt pursuant to Titles
7 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and
8 acceptance of a plea of guilty.

9 (10) "Court-ordered legal financial obligation" means a sum of
10 money that is ordered by a superior court of the state of Washington
11 for legal financial obligations which may include restitution to the
12 victim, statutorily imposed crime victims' compensation fees as
13 assessed pursuant to RCW 7.68.035, court costs, county or interlocal
14 drug funds, court-appointed attorneys' fees, and costs of defense,
15 fines, and any other financial obligation that is assessed to the
16 offender as a result of a felony conviction.

17 (11) "Crime-related prohibition" means an order of a court
18 prohibiting conduct that directly relates to the circumstances of the
19 crime for which the offender has been convicted, and shall not be
20 construed to mean orders directing an offender affirmatively to
21 participate in rehabilitative programs or to otherwise perform
22 affirmative conduct.

23 (12) (a) "Criminal history" means the list of a defendant's prior
24 convictions, whether in this state, in federal court, or elsewhere.
25 The history shall include, where known, for each conviction (i) whether
26 the defendant has been placed on probation and the length and terms
27 thereof; and (ii) whether the defendant has been incarcerated and the
28 length of incarceration.

29 (b) "Criminal history" shall always include juvenile convictions
30 for sex offenses and shall also include a defendant's other prior
31 convictions in juvenile court if: (i) The conviction was for an
32 offense which is a felony or a serious traffic offense and is criminal
33 history as defined in RCW 13.40.020(6)(a); (ii) the defendant was
34 fifteen years of age or older at the time the offense was committed;
35 and (iii) with respect to prior juvenile class B and C felonies or
36 serious traffic offenses, the defendant was less than twenty-three
37 years of age at the time the offense for which he or she is being
38 sentenced was committed.

39 (13) "Department" means the department of corrections.

1 (14) "Determinate sentence" means a sentence that states with
2 exactitude the number of actual years, months, or days of total
3 confinement, of partial confinement, of community supervision, the
4 number of actual hours or days of community service work, or dollars or
5 terms of a legal financial obligation. The fact that an offender
6 through "earned early release" can reduce the actual period of
7 confinement shall not affect the classification of the sentence as a
8 determinate sentence.

9 (15) "Disposable earnings" means that part of the earnings of an
10 individual remaining after the deduction from those earnings of any
11 amount required by law to be withheld. For the purposes of this
12 definition, "earnings" means compensation paid or payable for personal
13 services, whether denominated as wages, salary, commission, bonuses, or
14 otherwise, and, notwithstanding any other provision of law making the
15 payments exempt from garnishment, attachment, or other process to
16 satisfy a court-ordered legal financial obligation, specifically
17 includes periodic payments pursuant to pension or retirement programs,
18 or insurance policies of any type, but does not include payments made
19 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,
20 or Title 74 RCW.

21 (16) "Drug offense" means:

22 (a) Any felony violation of chapter 69.50 RCW except possession of
23 a controlled substance (RCW 69.50.401(d)) or forged prescription for a
24 controlled substance (RCW 69.50.403);

25 (b) Any offense defined as a felony under federal law that relates
26 to the possession, manufacture, distribution, or transportation of a
27 controlled substance; or

28 (c) Any out-of-state conviction for an offense that under the laws
29 of this state would be a felony classified as a drug offense under (a)
30 of this subsection.

31 (17) "Escape" means:

32 (a) Escape in the first degree (RCW 9A.76.110), escape in the
33 second degree (RCW 9A.76.120), willful failure to return from furlough
34 (RCW 72.66.060), willful failure to return from work release (RCW
35 72.65.070), or willful failure to be available for supervision by the
36 department while in community custody (RCW 72.09.310); or

37 (b) Any federal or out-of-state conviction for an offense that
38 under the laws of this state would be a felony classified as an escape
39 under (a) of this subsection.

1 (18) "Felony traffic offense" means:
2 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW
3 46.61.522), eluding a police officer (RCW 46.61.024), or felony hit-
4 and-run injury-accident (RCW 46.52.020(4)); or
5 (b) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as a felony
7 traffic offense under (a) of this subsection.

8 (19) "Fines" means the requirement that the offender pay a specific
9 sum of money over a specific period of time to the court.

10 (20) (a) "First-time offender" means any person who is convicted of
11 a felony (i) not classified as a violent offense or a sex offense under
12 this chapter, or (ii) that is not the manufacture, delivery, or
13 possession with intent to manufacture or deliver a controlled substance
14 classified in schedule I or II that is a narcotic drug or the selling
15 for profit (~~((for))~~) of any controlled substance or counterfeit
16 substance classified in schedule I, RCW 69.50.204, except leaves and
17 flowering tops of marihuana, and except as provided in (b) of this
18 subsection, who previously has never been convicted of a felony in this
19 state, federal court, or another state, and who has never participated
20 in a program of deferred prosecution for a felony offense.

21 (b) For purposes of (a) of this subsection, a juvenile adjudication
22 for an offense committed before the age of fifteen years is not a
23 previous felony conviction except for adjudications of sex offenses.

24 (21) "Most serious offense" means any of the following felonies or
25 a felony attempt to commit any of the following felonies, as now
26 existing or hereafter amended:

27 (a) Any felony defined under any law as a class A felony or
28 criminal solicitation of or criminal conspiracy to commit a class A
29 felony;

30 (b) Assault in the second degree;

31 (c) Assault of a child in the second degree;

32 (d) Child molestation in the second degree;

33 (e) Controlled substance homicide;

34 (f) Extortion in the first degree;

35 (g) Incest when committed against a child under age fourteen;

36 (h) Indecent liberties;

37 (i) Kidnapping in the second degree;

38 (j) Leading organized crime;

39 (k) Manslaughter in the first degree;

1 1. Manslaughter in the second degree:
 2 2. Promoting prostitution in the first degree:
 3 (a) Rape in the third degree:
 4 (a) Robbery in the second degree:
 5 (b) Sexual exploitation:
 6 (c) Vehicular assault:
 7 (d) Vehicular homicide, when proximately caused by the driving of
 8 any vehicle by any person while under the influence of intoxicating
 9 liquor or any drug as defined by RCW 46.61.502, or by the operation of
 10 any vehicle in a reckless manner:
 11 (e) Any other class B felony offense with a finding of sexual
 12 motivation, as "sexual motivation" is defined under this section:
 13 (f) Any other felony with a deadly weapon verdict under RCW
 14 9.94A.125:
 15 (u) Any felony offense in effect at any time prior to the effective
 16 date of this section, that is comparable to a most serious offense
 17 under this subsection, or any federal or out-of-state conviction for an
 18 offense that under the laws of this state would be a felony classified
 19 as a most serious offense under this subsection.
 20 (22) "Nonviolent offense" means an offense which is not a violent
 21 offense.
 22 ((+22+)) (23) "Offender" means a person who has committed a felony
 23 established by state law and is eighteen years of age or older or is
 24 less than eighteen years of age but whose case has been transferred by
 25 the appropriate juvenile court to a criminal court pursuant to RCW
 26 13.40.110. Throughout this chapter, the terms "offender" and
 27 "defendant" are used interchangeably.
 28 ((+23+)) (24) "Partial confinement" means confinement for no more
 29 than one year in a facility or institution operated or utilized under
 30 contract by the state or any other unit of government, or, if home
 31 detention or work crew has been ordered by the court, in an approved
 32 residence, for a substantial portion of each day with the balance of
 33 the day spent in the community. Partial confinement includes work
 34 release, home detention, work crew, and a combination of work crew and
 35 home detention as defined in this section.
 36 ((+24+)) (25) "Persistent offender" is an offender who:
 37 (a) Has been convicted in this state of any felony considered a
 38 most serious offense: and

1 Has, before the commission of the offense under (a) of this
2 subsection, been convicted as an offender on at least two separate
3 occasions, whether in this state or elsewhere, of felonies that under
4 the laws of this state would be considered most serious offenses and
5 would be included in the offender score under RCW 9.94A.350; provided
6 that of the two or more previous convictions, at least one conviction
7 must have occurred before the commission of any of the other most
8 serious offenses for which the offender was previously convicted.

9 (26) "Postrelease supervision" is that portion of an offender's
10 community placement that is not community custody.

11 ~~((+25+))~~ (27) "Restitution" means the requirement that the offender
12 pay a specific sum of money over a specific period of time to the court
13 as payment of damages. The sum may include both public and private
14 costs. The imposition of a restitution order does not preclude civil
15 redress.

16 ~~((+26+))~~ (28) "Serious traffic offense" means:

17 (a) Driving while under the influence of intoxicating liquor or any
18 drug (RCW 46.61.502), actual physical control while under the influence
19 of intoxicating liquor or any drug (RCW 46.61.504), reckless driving
20 (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5));
21 or

22 (b) Any federal, out-of-state, county, or municipal conviction for
23 an offense that under the laws of this state would be classified as a
24 serious traffic offense under (a) of this subsection.

25 ~~((+27+))~~ (29) "Serious violent offense" is a subcategory of violent
26 offense and means:

27 (a) Murder in the first degree, homicide by abuse, murder in the
28 second degree, assault in the first degree, kidnapping in the first
29 degree, or rape in the first degree, assault of a child in the first
30 degree, or an attempt, criminal solicitation, or criminal conspiracy to
31 commit one of these felonies; or

32 (b) Any federal or out-of-state conviction for an offense that
33 under the laws of this state would be a felony classified as a serious
34 violent offense under (a) of this subsection.

35 ~~((+28+))~~ (30) "Sentence range" means the sentencing court's
36 discretionary range in imposing a nonappealable sentence.

37 ~~((+29+))~~ (31) "Sex offense" means:

38 (a) A felony that is a violation of chapter 9A.44 RCW or RCW
39 9A.64.020 or 9.68A.090 or that is, under chapter 9A.28 RCW, a criminal

1 attempt, criminal solicitation, or criminal conspiracy to commit such
2 crimes;

3 (b) A felony with a finding of sexual motivation under RCW
4 9A.127; or

5 (c) Any federal or out-of-state conviction for an offense that
6 under the laws of this state would be a felony classified as a sex
7 offense under (a) of this subsection.

8 ~~((432))~~ (32) "Sexual motivation" means that one of the purposes
9 for which the defendant committed the crime was for the purpose of his
10 or her sexual gratification.

11 ~~((433))~~ (33) "Total confinement" means confinement inside the
12 physical boundaries of a facility or institution operated or utilized
13 under contract by the state or any other unit of government for twenty-
14 four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

15 ~~((434))~~ (34) "Victim" means any person who has sustained
16 emotional, psychological, physical, or financial injury to person or
17 property as a direct result of the crime charged.

18 ~~((435))~~ (35) "Violent offense" means:

19 (a) Any of the following felonies, as now existing or hereafter
20 amended: Any felony defined under any law as a class A felony or an
21 attempt to commit a class A felony, criminal solicitation of or
22 criminal conspiracy to commit a class A felony, manslaughter in the
23 first degree, manslaughter in the second degree, indecent liberties if
24 committed by forcible compulsion, kidnapping in the second degree,
25 arson in the second degree, assault in the second degree, assault of a
26 child in the second degree, extortion in the first degree, robbery in
27 the second degree, vehicular assault, and vehicular homicide, when
28 proximately caused by the driving of any vehicle by any person while
29 under the influence of intoxicating liquor or any drug as defined by
30 RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

31 (b) Any conviction for a felony offense in effect at any time prior
32 to July 1, 1976, that is comparable to a felony classified as a violent
33 offense in (a) of this subsection; and

34 (c) Any federal or out-of-state conviction for an offense that
35 under the laws of this state would be a felony classified as a violent
36 offense under (a) or (b) of this subsection.

37 ~~((436))~~ (36) "Work crew" means a program of partial confinement
38 consisting of civic improvement tasks for the benefit of the community
39 of not less than thirty-five hours per week that complies with RCW

1 9A.4A.135. The civic improvement tasks shall be performed on public
2 property or on private property owned or operated by nonprofit
3 entities, except that, for emergency purposes only, work crews may
4 perform snow removal on any private property. The civic improvement
5 tasks shall have minimal negative impact on existing private industries
6 or the labor force in the county where the service or labor is
7 performed. The civic improvement tasks shall not affect employment
8 opportunities for people with developmental disabilities contracted
9 through sheltered workshops as defined in RCW 82.04.385. Only those
0 offenders sentenced to a facility operated or utilized under contract
1 by a county are eligible to participate on a work crew. Offenders
2 sentenced for a sex offense as defined in subsection ~~((429))~~ (31) of
3 this section are not eligible for the work crew program.

4 ~~((435))~~ (37) "Work release" means a program of partial confinement
5 available to offenders who are employed or engaged as a student in a
6 regular course of study at school. Participation in work release shall
7 be conditioned upon the offender attending work or school at regularly
8 defined hours and abiding by the rules of the work release facility.

9 ~~((436))~~ (38) "Home detention" means a program of partial
0 confinement available to offenders wherein the offender is confined in
1 a private residence subject to electronic surveillance. Home detention
2 may not be imposed for offenders convicted of a violent offense, any
3 sex offense, any drug offense, reckless burning in the first or second
4 degree as defined in RCW 9A.48.040 or 9A.48.050, assault in the third
5 degree as defined in RCW 9A.36.031, assault of a child in the third
6 degree, unlawful imprisonment as defined in RCW 9A.40.040, or
7 harassment as defined in RCW 9A.46.020. Home detention may be imposed
8 for offenders convicted of possession of a controlled substance (RCW
9 69.50.401(d)) or forged prescription for a controlled substance (RCW
0 69.50.403) if the offender fulfills the participation conditions set
1 forth in this subsection and is monitored for drug use by treatment
2 alternatives to street crime (TASC) or a comparable court or agency-
3 referred program.

4 (a) Home detention may be imposed for offenders convicted of
5 burglary in the second degree as defined in RCW 9A.52.030 or
6 residential burglary conditioned upon the offender: (i) Successfully
7 completing twenty-one days in a work release program, (ii) having no
8 convictions for burglary in the second degree or residential burglary
9 during the preceding two years and not more than two prior convictions

1 for burglary or residential burglary, (iii) having no convictions for
2 a violent felony offense during the preceding two years and not more
3 than two prior convictions for a violent felony offense, (iv) having no
4 prior charges of escape, and (v) fulfilling the other conditions of the
5 home detention program.

6 (b) Participation in a home detention program shall be conditioned
7 upon: (i) The offender obtaining or maintaining current employment or
8 attending a regular course of school study at regularly defined hours,
9 or the offender performing parental duties to offspring or minors
10 normally in the custody of the offender, (ii) abiding by the rules of
11 the home detention program, and (iii) compliance with court-ordered
12 legal financial obligations. The home detention program may also be
13 made available to offenders whose charges and convictions do not
14 otherwise disqualify them if medical or health-related conditions,
15 concerns or treatment would be better addressed under the home
16 detention program, or where the health and welfare of the offender,
17 other inmates, or staff would be jeopardized by the offender's
18 incarceration. Participation in the home detention program for medical
19 or health-related reasons is conditioned on the offender abiding by the
20 rules of the home detention program and complying with court-ordered
21 restitution.

22 NEW SECTION. Sec. 4. OFFENDER NOTIFICATION AND WARNING. A
23 sentencing judge, law enforcement agency, or state or local
24 correctional facility may, but is not required to, give offenders who
25 have been convicted of an offense that is a most serious offense as
26 defined in RCW 9.94A.030 either written or oral notice, or both, of the
27 sanctions imposed upon persistent offenders. General notice of these
28 sanctions and the conditions under which they may be imposed may, but
29 need not, be given in correctional facilities maintained by state or
30 local agencies. This section is enacted to provide authority, but not
31 requirement, for the giving of such notice in every conceivable way
32 without incurring liability to offenders or third parties.

33 NEW SECTION. Sec. 5. GOVERNOR'S POWERS. (1) Nothing in this act
34 shall ever be interpreted or construed as to reduce or eliminate the
35 power of the governor to grant a pardon or clemency to any offender on
36 an individual case-by-case basis. However, the people recommend that
37 any offender subject to total confinement for life without the

1 possibility of parole not be considered for release until the offender
2 has reached the age of at least sixty years old and has been judged to
3 be no longer a threat to society. The people further recommend that
4 sex offenders be held to the utmost scrutiny under this subsection
5 regardless of age.

6 (2) Nothing in this section shall ever be interpreted or construed
7 to grant any release for the purpose of reducing prison overcrowding.
8 Furthermore, the governor shall provide twice yearly reports on the
9 activities and progress of offenders subject to total confinement for
10 life without the possibility of parole who are released through
11 executive action during his or her tenure. These reports shall
12 continue for not less than ten years after the release of the offender
13 or upon the death of the released offender.

14 NEW SECTION. Sec. 6. SEVERABILITY. If any provision of this act
15 or its application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. Sec. 7. SHORT TITLE. This act shall be known and
19 may be cited as the persistent offender accountability act.

20 NEW SECTION. Sec. 8. CAPTIONS. Captions as used in this act do
21 not constitute any part of the law.

--- END ---

ATTACHMENT "A"

CLASS A FELONIES

<u>Statute</u>	<u>Offense</u>	<u>Seriousness Level</u>
10.95.020	Aggravated Murder 1	XV
9A.48.020	Arson 1	VIII
9A.36.120	Assault of a Child 1	XII
9A.36.011	Assault 1	XII
9A.76.170	Bail Jump with Murder 1 Offense	VI
9A.52.020	Burglary 1	VII
9A.44.083	Child Molestation 1	X
69.50.415	Controlled Substance Homicide (Subsequent Drug Conviction)	IX
69.50.401(b)(1)(i)	Create, Deliver, or Possess a Counterfeit Controlled Substance - Schedule I or II Narcotic (First Drug Conviction)	II
9A.28.040	Criminal Conspiracy - Murder 1	Attempt**
9A.28.020(3)(a)	Criminal Attempt - Arson 1 or Murder 1	Attempt**
9A.28.030(2)	Criminal Solicitation - Arson 1 or Murder 1	Attempt**
70.74.280(1)	Damaging Building, Etc., by Explosion with Threat to Human Being	X
70.24.270(1)	Endangering Life and Property by Explosives with Threat to Human Being	IX
70.74.180	Explosive Device, (Possession with Intent to Use)	IX
9A.32.055	Homicide by Abuse	XIV

9A.40.020	Kidnapping 1	X
9A.82.060(1)(a)	Leading Organized Crime	X
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Heroin or Cocaine (Subsequent Drug Conviction or in a Protected Zone)	VIII
69.50.401(a)(1)(i)	Manufacture, Deliver, or Possess with Intent to Manufacture or Deliver Narcotics from Schedule I or II (Except Heroin or Cocaine) (Subsequent Drug Conviction or in a Protected Zone)	VI
9A.32.030	Murder 1	XIV
9A.32.050	Murder 2	XIII
69.50.406	Over 18 and Deliver Narcotic from Schedule I or II to Someone Under 18	X
9.40.120	Possession of Incendiary Device	Unranked
9A.44.050	Rape 2	X
9A.44.040	Rape 1	XI
9A.44.076	Rape of a Child 2	X
9A.44.073	Rape of a Child 1	XI
9A.56.200	Robbery 1	IX
9.41.180	Setting Spring Gun	Unranked
9.82.010	Treason	Unranked
9.41.225	Use of Machine Gun in Commission of Felony	Unranked

APPENDIX F

List of Literature Concerning Bias in the Criminal Justice System

LITERATURE CONCERNING BIAS IN THE CRIMINAL JUSTICE SYSTEM

1. An article, titled "Reforming a Discriminatory Criminal Justice System," by Scott Wallace, from the July 1991 edition of *The Champion*;
2. An article, titled "Racial Bias in the Criminal Justice System: Shifting the Focus from Outcome to Underlying Causes," by Donna B. Towberman, M.Ed, Ed.D., from a 1994 edition of *Juvenile and Family Court Journal*;
3. An article, titled "Does Race Matter In Criminal Prosecutions?," by Charles J. Ogletree, from the July 1991 edition of *The Champion*;
4. An article, titled "Combating a Culture of Violence," by Donna Hunzeker, from the March 1994 edition of *State Legislatures*;
5. A news release, titled "New Study Shows Disparities In Arrest And Incarceration Of Minority Groups In The California Juvenile Justice System," by the National Council on Crime and Delinquency, dated Friday, June 26, 1992;
6. An article, titled "Comments on Criminal Justice Reform," by Texas State Senator John Whitmire, from the September 1993 edition of *Fiscal Notes*;
7. An article, titled "Racial And Ethnic Bias," from *Pretrial Reporter*, dated October 1991;
8. An excerpt, titled "Panel Says New York Courts Are 'Infested With Racism,'" from *Criminal Justice Newsletter*, dated June 17, 1991;
9. A paper, titled "Disparities In The Criminal Sentencing Of Native Americans";
10. An article, titled "Law Enforcement: Implications of the Rodney King Beating," by Geoffrey P. Alpert, William C. Smith and Daniel Watters, from *Criminal Law Bulletin*, Volume 28, Number 5; and
11. Three excerpts from the June 1993 edition of *Tulane Law Review*:
 - a. An article, titled "Introduction," by John R. Kramer;
 - b. An essay, titled "Structural Influences On The Problem Of Race, Crime, And Criminal Justice Discrimination," by Joseph F. Sheley; and

- c. A commentary, titled "Why Have You Singled Me Out? The Use Of Prosecutorial Discretion For Selective Prosecution," by P. S. Kane.

APPENDIX G

Article entitled, "Significant State Anti-Crime Legislation," by
Donna Hunzeker, Program Manager, National Conference
of State Legislatures, from the May 1994 edition
of *State Legislative Report*



STATE LEGISLATIVE REPORT

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Significant State Anti-Crime Legislation

By
Donna Hunzeker
Program Manager

Crime control has been a dominant issue in state legislatures this year, just as crime and violence have been media themes and a public preoccupation. Lawmakers have concentrated heavily on sentencing and release of repeat, violent criminals; in 1994 they have also crafted responses to serious and violent juvenile crime. These efforts have had the characteristic toughness, and scrutiny, of election-year crime policy. But state legislatures also are seen to be moving in the direction of tempering punishment with prevention. "Lock 'em up" will be part of—but not the only—solution to the nation's crime dilemma, which is ultimately a state and local responsibility.

This report summarizes selected, significant crime enactments in state legislatures so far in 1994. Reference to some late 1993 enactments from special sessions or from states with year-round legislatures also are included, as is selected pending legislation from states in session.

"Three Strikes You're Out"

The most popular piece of crime legislation in 1994 it is to provide tougher sentences for repeat offenders of serious and violent crime. "Three strikes you're out" was coined and successfully carried out in the 1993 fall elections in Washington state, where voters approved a Persistent Offender Act requiring life without possibility of parole for third-time serious felony offenders. Even though many states already had mandatory minimum provisions applying to repeat offenders of violent crime, and nearly all states have some type of habitual offender law for repeat felons, the three-time loser notion caught on in Washington and beyond. By early 1994, about half the states had "three strikes" or similar related bills introduced, some with half a dozen or more such bills offered. By May 1, 10 state legislatures had passed similar new sentencing provisions applying to repeat felons. Those are: California, Connecticut, Georgia, Indiana, Kansas, Maryland, New Mexico, North Carolina, Virginia and Wisconsin. At least 12 other states had repeat offender bills pending at that time: Alaska, Colorado, Delaware, Illinois, Michigan, New

Jersey, New York, Ohio, South Carolina, Vermont, Rhode Island and Pennsylvania. In addition, Minnesota's pending crime bill prohibits a judge from departing from the sentencing guidelines when an offender has been convicted of a third violent crime.

What distinguished the Washington "three strikes" act from what existed in most state law was that it provides for mandatory life without parole and applies that sentence to repeated convictions for a fairly broad list of serious felonies. States that have passed similar laws this year have adopted, and adapted, those components. (See Chart A.)

Most of the new "three strikes" laws are mandatory, requiring the court to impose the statutory sentence for habitual or persistent offenders, as defined. Connecticut, Kansas and Maryland retained some judicial discretion in their new laws.

Prison terms required under the laws also differ. The Washington initiative and laws in Georgia, Indiana, Maryland and Wisconsin, provide for life without possibility of parole. California imposes a sentence of life imprisonment, under which offenders will spend a minimum of 25 years behind bars. Similarly, New Mexico provides for parole eligibility after an inmate serves 30 years of the life term. North Carolina's "three strikes" law, passed during an Extra Session on crime and corrections early this year, provides for life without parole, while a separate measure also approved in special session entitles those sentenced to life without parole to a sentence review after 25 years are served. Maryland and Virginia provide a release mechanism to those 65 years and older who have served a set number of years. Kansas applied the "three strikes" concept to its sentencing guidelines, allowing the court to double the grid sentence for repeat "person felonies."

Number and types of crimes to which "three strikes"-type habitual offender laws apply also are important points of distinction. Washington's new law applies to more than 20

An Information Service of the National Conference of State Legislatures
1560 Broadway, Suite 700, Denver, Colorado 80202. William T. Pound, Executive Director

serious felonies. California's "three strikes" is similarly broad in application, including a number of violent felonies plus some 25 "serious felonies." Indiana, Maryland and North Carolina also apply their new laws to many violent and serious crimes.

New Mexico's law applies to a comparatively narrower list of violent crimes; and Georgia's law, which actually is a "two strikes" mandatory life without parole, also applies to just a few violent felonies. Virginia's "acts of violence" are similar in scope.

States' enthusiasm to crack down on repeat, violent criminals does not come without concern for the cost of "three strikes" and similar measures. The number and types of crimes the persistent offender provisions apply to, and whether "life means life," have been contentious points in some enacted and pending legislation, largely because of fiscal implications. Preliminary projections place the most significant costs of "three strikes"-type laws well into the future. Short-term prison bed needs are thought to be minor compared to longer-term capacity needs and health costs of a cumulative number of aging prisoners serving long or life prison terms. Some states have projected immediate increased public defender and judicial costs, based on likelihood that more cases will go to trial under such laws.

The Department of Corrections in California, in a fairly extensive impact analysis of the law passed there, estimates corrections costs will increase by \$75 million by 1995-96 and nearly \$2 billion by the year 2000. Kansas estimates it will need a new prison by the end of the decade to accommodate prisoners for whom sentences were doubled on the guidelines grid. Wisconsin's law calls for a comprehensive fiscal analysis.

"Truth" and Sentencing

States have taken a variety of other approaches this year to "truth" and certainty in sentencing. Arizona passed a law restricting prosecutors from dismissing charges in plea agreements for crimes committed by repetitive criminals and in cases of crimes against children or those committed while on parole. The Legislature also amended parole laws to require the parole board to discharge serious offenders only with majority approval if four or more members consider the action or by unanimous affirmative vote if fewer consider.

Under a new law in Connecticut, parole is eliminated for offenders sentenced to a capital felony, felony murder, arson murder, and any offense committed with a firearm or on or within 1,500 feet of a school. Other states, including Georgia, Maryland, North Carolina, Virginia, West Virginia, and Wisconsin, also have restricted or changed parole eligibility for some serious offenders. Some of the no-parole provisions passed this year were part of the "three-strikes" package.

Tennessee approved a law to require the judge in criminal cases to inform the jury of how much time the defendant will serve if convicted of the offenses charged.

Stalkers, sex offenders and those who victimize children are targets of increased penalties in the states. Utah created

the offense of child abuse homicide and provided penalties; and Wyoming similarly established abuse of a child resulting in death as first degree murder. Utah also increased penalties for stalking under certain circumstances, as did Kansas and South Dakota. A measure approved in Kentucky prohibits suspended sentences for sex offenders; and North Carolina also increased sentences for rapists and other sex offenders with significant prior records or whose crimes include aggravating circumstances. Many states, including Georgia, Kentucky, Mississippi, Virginia, South Dakota, Tennessee, Wisconsin and Wyoming, changed or added provisions for registration of released sex offenders. The New York Senate has passed on to the Assembly a bill that sets penalties for a course of sexual conduct against a child; as well as other measures dealing with a sex offender DNA data bank, rape victim services, stalkers and those who violate orders of protection.

In addition to a pending "three strikes" measure, Ohio has several important sentencing measures still in works, including implementation of recommendations of the Criminal Sentencing Commission, and provisions dealing with drug laws, sentence appeals and judicial release. New Jersey has a measure pending that would ban plea bargaining for repeat offenders, as well as other pending proposals to provide mandatory sentences for repeat criminals and those convicted of murder and sexual assault. California and Illinois each have several sentencing measures still being considered this year, including "truth" proposals requiring offenders to serve at least 85 percent of the sentence. Pennsylvania has major sentencing reform legislation pending which would keep violent prisoners incarcerated longer and deal with prison overcrowding by expediting release for appropriate non-violent offenders. The legislation also would promote increased use of alternatives to incarceration for certain low-risk offenders.

Sentencing legislation passed in Texas during its last legislative session in 1993 revised several aspects of law so that violent offenders serve significantly greater proportions of prison sentences. Aggravated offenders serve 50 percent of their sentences or 30 years, whichever is less. Nonviolent offenders are punished at the bottom end of the felony system as "state jail felonies." New facilities for that category of offenders provide greater capacity for drug treatment.

Alternatives to incarceration remain of interest elsewhere. In its last legislative session in 1993, Arkansas approved transfer of certain offenders to community punishment facilities 120 days prior to projected parole-eligibility dates. That state created a new Department of Community Punishment, under authority of a newly structured Board of Correction and Community Punishment. The New York Assembly has a crime bill pending that would increase penalties for violent and repeat offenders, while also providing a comprehensive community corrections program and treatment options for non-violent offenders.

Juvenile Crime and Justice

Much of the country's current anti-crime mood has to do with increasing violence among juveniles. In recent years states have explored how to adapt handling youthful offenders to better fit the increasingly serious and violent nature of

juvenile crime, and a number of states are breaking new ground in 1994. States have created new systems and services to expand options for dealing with juvenile offenders, with some acts so sweeping as to expand the very concept of juvenile justice. (See Chart B.)

Florida passed a massive juvenile justice act this year, creating a Department of Juvenile Justice that will administer and be required to report on effectiveness of programs and services. In addition to a juvenile boot camp program already in place (and for which the new law makes some revisions to placement criteria), the act creates a basic training youthful offender program in the Department of Corrections. The new program is to include development of post-release plans for offenders and a system for tracking recidivism.

Other states, as well, have created "intermediate" systems for serious, violent juvenile offenders, often those who through direct file or waiver have been sent to the adult criminal system. **Colorado** appears to have pioneered this concept with a Youthful Offender System created in special session in late 1993. At least five other states, **Arizona**, **Florida**, **Minnesota**, **North Carolina**, and **Wisconsin**, have since passed laws creating similar system components. **Arizona**, which actually considered such legislation in early 1993 and held it for a year to fully develop and study, authorized the Department of Corrections to establish and run facilities for juveniles prosecuted as adults. **Minnesota's** new system, authorized in a comprehensive juvenile justice package, will provide secure and residential facilities for "extended jurisdiction juveniles." **Wisconsin's** new program, part of the Department of Corrections, will house some juveniles until they are 25 years old. **Wisconsin** also will start a juvenile boot camp as a result of 1994 legislation. Like **Florida**, **North Carolina** will implement a boot camp-type program for juvenile offenders within the Department of Corrections.

Prosecuting and handling serious, violent juvenile offenders in the adult system has been an integral part of other juvenile crime enactments this year. At least 13 states have related new laws: **Alabama**, **Arizona**, **Florida**, **Georgia**, **Indiana**, **Kansas**, **Minnesota**, **Mississippi**, **North Carolina**, **South Dakota**, **Tennessee**, **Wisconsin** and **Wyoming**. Some of those enactments broadly change age criteria for discretionary transfer to adult court. Others provide that certain serious charges against juveniles must be handled in the adult system. (See Chart C.)

Legislation related to juvenile gangs is seen with some frequency again in the states this year. **Kansas**, as part of sentencing legislation, added gang-associated crime as an aggravating factor that allows for doubling the ordinary sentence. **Florida's** juvenile justice act not only revised penalties for offenses committed as part of a pattern of gang activity, it also added crimes related to gangs in the definition of "racketeering activity," indicating that a criminal street gang constitutes an enterprise applicable to the organized crime act. A late 1993 act in **Wisconsin** similarly included the new offense of discharging a firearm from a vehicle in the definition of "racketeering activity" in the state's Organized Crime Control Act. **Illinois** passed a late 1993 law creating the felony crime of discharging a firearm from a motor vehicle.

Arizona and **Georgia** also passed new laws this year with regards to "drive-by" shootings..

Louisiana expects to go into special session in June, with lawmakers there preparing to address juvenile crime, prevention and system issues.

Crime Prevention

Efforts to deal with the causes and prevention of crime have been prominent in state legislatures this year. Activity has focused on high-risk juveniles, schools and high-crime communities. (See Chart D.)

A Youthbuild Violence Prevention Program created in **Washington** includes "community empowerment zone" incentives. Tax credits for contributions to the program and for eligible business projects, tax deferrals for investments in distressed areas, and promotion of other economic opportunities for at-risk youth, are part of that legislation. **Florida's** juvenile justice act encourages "innovation zones" for development of programs like alternatives to youth incarceration, dropout prevention, juvenile offender job training, health-related parenting programs, drug treatment and prevention.

A recent **Wisconsin** enactment provides grants to cities for various law enforcement purposes and for restoration efforts in neighborhoods most affected by crime. **Illinois** has pending proposals to provide more state funds to increase numbers of local law enforcement officers. Included in the **New York** Senate's pending crime proposals are measures to address school violence and safety.

Virginia law continues its Joint Subcommittee Studying Crime and Violence Prevention Through Community Economic Development; and **Pennsylvania** has legislation pending to continue the work of the Pennsylvania Anti-Violence Education Initiative (PAVE). A first-year report of the PAVE project recommended state-local and interagency collaboration, uniform data collection on violence and possession and use of weapons, program evaluation review of confidentiality as it relates to programs and policies to address juvenile violence, and attention to violence in schools. Legislation is expected to follow in **Pennsylvania** incorporating some of those initial recommendations.

A report earlier this year by the Legislative Analyst's Office in **California** reached similar conclusions. The report indicated that incarceration, while being an important part of achieving objectives of the criminal justice system, may have a limited affect on crime. It recommended that crime-reduction efforts recognize trends in violent as opposed to property crimes, seek to imprison the small number of offenders who commit a large number of total offenses, provide substance abuse and other rehabilitative services to first-offenders, and place priority on early prevention and intervention.

Near the end of the legislative session in **Colorado**, lawmakers approved a grant program to provide communities with new crime prevention programs and resources. Since its enforcement-oriented special session on youth violence in late

1993, much interim work and discussion in that state had focused on how also to provide for crime prevention at the state level.

Other Notable Actions

Death penalty legislation so far in 1994 has included efforts to provide more expedient ways to handle cases following conviction. **Arizona**, **Connecticut** and **Idaho** each passed related new laws. Legislation pending in **Ohio** would place time limitations on appeals as well as require that all grounds for review be raised in the original petition.

Kansas reinstated the death penalty as a possible sentence for those 18 and older convicted of capital murder. **Indiana** amended its law so that criminal gang activity may be considered an aggravating circumstance for imposing the sentence of death; and **Colorado** made multiple killings and murder of a child statutory aggravating factors in consideration of the death penalty.

Georgia and **Utah** passed laws creating the crime of carjacking this year. **Connecticut**, **Delaware**, **Florida**, **Illinois**, **Louisiana**, **Maryland**, **Massachusetts**, **Michigan**, **New Jersey**, **New York**, **Pennsylvania**, **Rhode Island** and **Pennsylvania**, all passed such laws in 1993.

Many victim's measures also are being enacted in the states this year. Amendments to victim's laws in **Michigan** included adding government and business entities to definition of a crime victim for restitution purposes, as well as revising maximums on court-ordered restitution and assessments for crime victim's services in juvenile cases. **Maine** authorized assessments against income earned in prison as payments to the Victim's Compensation Fund; and a new law in **Virginia** provides for seizure of state tax refunds from offenders who owe criminal restitution.

Conclusion

In addition to many crime and sentencing policy enactments, states also will spend more than \$5 billion this year to build and operate prisons. And crime control has prompted much legislative activity in the states to regulate sales and possession of firearms. Children's codes and education policy are other areas of state law being affected by wide-ranging efforts to address crime and violence. The common denominator of this interest and activity is, of course, public safety. One state described its legislative approach as seeking to be tough on, but also smart about, crime. That philosophy, successfully crafted and implemented, may represent today's model approach to criminal justice in the states.

CHART A
"THREE STRIKES" AND SIMILAR HABITUAL OFFENDER ENACTMENTS

NATURE/SENTENCE

CRIMES INCLUDED

WASHINGTON

Initiative 593 (1993)

Provides life imprisonment without possibility of parole for "persistent offenders" convicted of third "serious felony."

More than 20 serious felonies, including any Class A felony and any felony with a deadly weapon; many crimes against children.

CALIFORNIA

A 971 (1994)

Mandatory life sentence for third felony if there have been two prior "serious" or violent felonies, with offenders spending a minimum of 25 years imprisoned. The prison sentence also is doubled for any felony if there has been one prior serious or violent felony.

"Violent felonies" include murder, mayhem, many sex crimes, any felony in which great bodily injury is inflicted. In addition, some 25 "serious felonies" include those above plus some assaults, robbery, kidnapping, some attempted felonies, felonies in which defendant used deadly weapon, some drug sales to minors.

CONNECTICUT

H 5385 (1994) Awaits Governor

Increases maximum sentence court may impose under "persistent dangerous felony offender" law from 25 to 40 years with one previous violent felony conviction; and from 25 years to life for two previous. Life sentence is 60 years, determinate.

Manslaughter, arson, kidnapping, first degree assault, many sexual assaults including aggravated and with a firearm, first or second degree robbery.

GEORGIA

S 441, 1994

"Sentence Reform Act of 1994" provides mandatory life without parole for second "serious violent felony" conviction. Fourth conviction on any felony requires maximum sentence to be served before eligible for parole.

"Serious violent felonies" under "two strikes" are murder or felony murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, aggravated sexual battery.

INDIANA

H 1063 (1994)

"Three strikes" law, providing mandatory life without parole if in separate charge state proves two prior unrelated felony convictions. Court also has discretion (absent separate habitual charge) to sentence to life without parole if found subject to provisions.

Many serious felonies, including murder, battery, rape, sexual battery with a deadly weapon, child molesting, arson, robbery, burglary resulting in serious bodily injury or with deadly weapon, dealing drugs.

KANSAS

H 2788 (1994)

Doubled sentences on sentencing guidelines grid for second and third "person felonies," at judge's discretion.

"Person felonies" include many serious, violent crimes including various classifications of murder, sex crimes, battery, assault.

MARYLAND

H 1112 (1994) Awaits Governor

Mandatory life sentence without parole for fourth conviction of crime of violence, for which offender has served three separate prison terms. Third crime of violence after two such convictions and at least one prison term results in mandatory 25 years. Second crime of violence following prison term results in mandatory 10 year sentence. Person sentenced under provisions who is 65 years old and served 15 years may petition for and be granted parole.

More than 20 "crimes of violence," including murder, rape, robbery, robbery with a deadly weapon, carjacking or armed carjacking, first and second degree sex offenses, arson, burglary, kidnapping, manslaughter, mayhem, maiming, use of handgun in commission of felony, attempt to commit any of the aforesaid, assault with intent to commit murder, rape, robbery, sexual offenses.

CHART A
"THREE STRIKES" AND SIMILAR HABITUAL OFFENDER ENACTMENTS
 (continued)

NATURE/SENTENCE

CRIMES INCLUDED

NEW MEXICO

S 73 AND 742, Chapter 24 (1994)

Mandatory life imprisonment, in addition to other term imposed, for third violent felony conviction. Parole eligibility after 30 years of the life term served.

Violent crimes including first and second degree murder; and several crimes resulting in great bodily harm, including shooting from a motor vehicle, kidnapping, criminal sexual penetration and robbery.

NORTH CAROLINA

H 39, Part 6 Chapter 22, Extra Session, 1994

Life without parole required upon third violent felony conviction and finding, under separate indictment, that offender is "violent habitual felon." Separate law (SB 2, also of Extra Session of 1994) provides for review after 25 years served of life without parole sentence.

Effective May 1, 1994, applies to 40 "violent felonies" enumerated in statute. After October 1, 1994, when structured sentencing takes effect, provisions will apply to 47 Class A, B, B1, B2, C, D and E felonies.

VIRGINIA

H 273 (1994)

"Three strikes" law, providing mandatory life without parole for offender convicted of third felony involving designated acts of violence. Those sentenced under this law who reach 65 years of age and have served five years may petition parole board for conditional release.

"Acts of violence" include first and second degree murder, mob-related felonies, kidnapping or abduction, robbery and carjacking, sexual assault felonies, conspiracy to commit any of the above.

WISCONSIN

1993 S 781, Act 289 (1994)

"Persistent repeater" who has had two previous, separate "serious felony" convictions, receives mandatory life sentence without parole.

"Serious felonies" include murder, manslaughter, battery and aggravated battery, mayhem, vehicle theft, robbery, and many crimes against children including sexual assault, physical abuse, sexual exploitation, abduction.

CHART B
JUVENILE JUSTICE SYSTEMS AND SERVICES, SELECTED ENACTMENTS

ARIZONA

H 2542, S 1182 (1994)

Authorizes Corrections Department to establish and run juvenile correctional facilities for juveniles tried as adults; also requires inmates to participate in literacy, citizenship and other programs. Other act requires counties operating juvenile detention center to provide education services.

COLORADO

93S-9, Special Session (1993)

Provides for expanded direct file to adult court for some serious juvenile offenders and creates Youthful Offender System for violent juveniles ages 14-18, in adult corrections department.

FLORIDA

S 68 (1994)

Juvenile justice reform act creates Department of Juvenile Justice and requires it to report on effectiveness of programs and services. Authorizes court to order parents to perform community service, co-sign order or restitution, pay certain fees for care of child committed to department. Redefines "serious or habitual juvenile offender." Changes some criteria regarding placement in juvenile boot camps. Creates basic training youthful offender program (boot camp) in Department of Corrections and includes post release plans and recidivism tracking system.

MINNESOTA

H 2074 (1994)

Creates new juvenile offender category and programming for "extended jurisdiction juveniles" who are serious repeat offenders.

MISSISSIPPI

S 2775

Authorizes juvenile correctional facilities including Adolescent Offender pilot program involving mental health agencies and Youth Challenge Program under Mississippi National Guard.

NORTH CAROLINA

S 150 Extra Session (1994)

Creates IMPACT boot camp program for offenders aged 16-25, under Department of Corrections and including aftercare and evaluation. Also authorizes "teen court" diversion programs in judicial districts; and similar programs for handling school-based problems. Funds alternatives to detention program for juveniles, also in judicial districts.

WASHINGTON

H 2242, H 2319, S 6593, (1994)

Requires regular review of adjudicated juveniles to determine best treatment options; transitions juvenile offenders from facilities to community; creates Learning and Life Skills Program for court-involved youths, including competency, return-to-school, job training, employment or post-secondary program.

WISCONSIN

Act 377 (1993)

Creates youthful offender program in Department of Corrections, providing facility and intensive sanction services to youth offenders committed to the DOC by juvenile courts. For age 16 and older adjudicated delinquent; some may remain in program until age 25. Act also creates juvenile boot camp in Department of Health and Social Services.

CHART C
JUVENILE JURISDICTION/WAIVER. SELECTED ENACTMENTS

ALABAMA
H 433 (1994)

Provides that a juvenile age 16 at the time of the crime shall be handled as an adult if the crime committed would constitute a Class A felony or certain other listed serious criminal offenses, if committed by an adult. A juvenile not yet age 16, but who has attained age 14 at the time of the act or conduct charged, shall be subject to Juvenile Court jurisdiction.

ARIZONA
S 1356 (1994)

Provides for prosecution as an adult those 16 and 17 charged with murder, sexual assault, other serious crimes. Provides for restrictions on firearms and suspension of driver's licenses.

FLORIDA
S 68 (1994)

Juvenile justice reform act, includes provisions for request for transfer to adult court for child 14 or older committing fourth felony, one or more involving firearm or violence.

GEORGIA
S 440 (1994)

Provides that certain juvenile offenders who commit certain violent felonies shall be tried as adults in the superior court, and upon conviction, sentenced directly to the custody of the Department of Corrections for placement in designated youth confinement.

INDIANA
S 410 (1994)

Specifies that juvenile court does not have jurisdiction over an individual who commits criminal gang activity, criminal gang intimidation, or carries a handgun without a license.

KANSAS
S 500 (1994)

Provides that after one felony-type conviction, any 16 or 17-year-old charged with another felony shall be treated as an adult.

MINNESOTA
H 2074 (1994)

Provides that juveniles age 16 and over charged with first degree murder will be prosecuted in adult criminal court.

MISSISSIPPI
S 2767 (1994)

Provides for original jurisdiction in circuit court for a juvenile committing a felony with deadly weapon. Revises age jurisdictions of Youth Court generally. Also opens to Youth Court and schools law enforcement records of youth felons. Makes public records of juvenile convicted as adult.

NORTH CAROLINA
H 39 Extra Session (1994)

Lowers to 13 age at which a juvenile may be transferred to adult court for felony and must be transferred to adult court for first-degree murder. Law also authorizes study of mandatory transfer to adult court, and ages, requiring report in 1995.

SOUTH DAKOTA
S 91 (1994)

Provides that any child transferred to adult court is to remain in adult court for the duration of the child's minority.

TENNESSEE
S 2850 (1994)

Allows juvenile courts to transfer certain juvenile offenders, 14 years of age or younger, to criminal court to be tried and sentenced as adults.

WISCONSIN
Act 98 (1993)

Authorizes juvenile court to waive jurisdiction and transfer to adult court system child 14 years or older having committed specified serious offenses, including violation committed with criminal gang that would constitute felony if committed by adult.

WYOMING
H 157 (1994)

Allows filing against minor 14 years and over charged with violent felony, and minors 14 and over charged with felony and previously adjudicated as delinquent under two separately filed juvenile petitions, to be originally commenced in juvenile court or in district court.

CHART D
CRIME PREVENTION, SELECTED ENACTMENTS

FLORIDA

S 68 (1994)

Juvenile justice reform act, includes school-based services for at-risk children and their parents. Encourages "Innovation Zones" for programs like alternatives to youth incarceration, dropout prevention, juvenile offender job training, health-related parenting, alternative education, drug treatment and prevention.

GEORGIA

S 560 (1994)

Provides for community risk reduction programs to be established and operated by juvenile and other courts.

NORTH CAROLINA

S 150 Extra Session (1994)

Creates Support Our Students (S.O.S.) Program in Department of Human Resources for grants to neighborhood and community organizations for after-school programs.

UTAH

H 197 (1994)

Relates to Coordinating Council on Community Violence. Amends Utah Substance Abuse Coordinating Council to add component on community violence and creates anti-violence subcommittee.

VIRGINIA

H 1114, HJR 236,

HJR 253, HJR, 279,

SJR 2319 (1994)

Relates to establishment of a Crime Prevention Center; continues Joint Subcommittee Studying Crime and Violence Prevention Through Community Economic Development; study of night basketball leagues to combat crime; establishes Commission on Family Violence Prevention; continues Commission on Reduction of Sexual Assault.

WASHINGTON

H 2319, H 2699 (1994)

Enacts programs to reduce youth violence, including nonviolent conflict resolution, family services, productive activities for at-risk youths; empowers communities to develop, coordinate local prevention programs and services. Other act creates Youthbuild Violence Prevention Program, and provides Community Empowerment Zone incentives including tax deferrals and credits for creating economic opportunities for at-risk youth; provides assistance for community policing.

WISCONSIN

Act 98 (1993),

S 607 (1994)

Creates Gang Violence Prevention Council. Also provides funding to Department of Health and Social Services for grant programs to provide job training, counseling and other services to youths 16-23 years who reside in neighborhoods with gang problems. 1994 law provides grants to cities to reduce violent crime.

WYOMING

S 43 (1994)

Establishes a Commission on Youth, requires recommendations in a juvenile justice report.

STATE LEGISLATIVE REPORTS

"State Early Retirement Programs in FY 1992 and FY 1993" (Vol. 18, No. 5) (ISBN 1-55516-225-8)	March 1993
"Do State Balanced Budgets Really Happen?" (Vol. 18, No. 6) (ISBN 1-55516-334-3)	April 1993
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APPENDIX H

Chart comparing felony crimes and sentences in Nevada, prepared by
Dennis Neilander, Senior Research Analyst, Research Division,
Legislative Counsel Bureau

Crimes Punishable by Death or Life Imprisonment				
Citation	Crime	Sentencing Factors	Imprisonment	Fine
199.160	Procuring execution of innocent person by perjury		Life without	None
200.030	Murder, 1st degree	10-year minimum served for parole	Death if aggravating circumstances; life with or without if no aggravating circumstances	None
200.030	Murder, 2nd degree	5-year minimum served for parole	Life with or not less than 5 years	None
200.320	Kidnapping, 1st degree, SBH	10-year minimum served for parole	Life with or without	None
	No SBH	5-year minimum served for parole	Life with or not less than 5 years	None
200.366	Rape, SBH	10-year minimum served for parole (Bd. must certify)	Life with or without	None
	No SBH	5-year minimum served for parole (Bd. must certify)	Life with or minimum of 5 years	None
	If victim is child under 14	10-year minimum served for parole (Bd. must certify)	Life with	None
200.400	Battery with intent to rape, SBH	10-year minimum served for parole (No Bd. certify)	Life with or without	None
200.410	Fighting duel resulting in death		Same as murder 1	None
200.465	Involuntary servitude, sale of person	5-year minimum served for parole eligibility	Life with or minimum of 5 years	May be fined less than \$50,000
200.730	Child pornography	5-year minimum served for parole eligibility	Life with or minimum of 5 years	May be fined less than \$100,000
201.450	Necrophilia	5-year minimum for parole eligibility (Bd. must certify)	Life with	And/or less than \$20,000
202.270	Blow-up occupied building		Life with or without	None

Citation	Crime	Sentencing Factors	Imprisonment	Fine
207.010	Habitual criminal, current felony plus three prior felonies or five prior fraud based crimes	Minimum of 10 years served for parole eligibility	Life with or without	None
453.321	Import, sell, etc., schedule I or II drugs, 2nd offense	No probation or suspended sentence	Life with or 5 to 20 years	May be fined less than \$20,000
	3rd offense	No probation or suspended sentence	Life with or a minimum of 15 years	May be fined less than \$20,000
	Import, sell, etc., schedule III, IV, or V drugs, 2nd offense	No probation or suspended sentence	Life with or 2 to 15 years	May be fined less than \$15,000
	3rd offense	No probation or suspended sentence	Life with or 5 to 20 years	May be fined less than \$20,000
453.333	Providing drug causing death		Murder (See murder sentencing provisions)	None
453.334	Sale to minor, 2nd offense		Life with	May be fined less than \$20,000
453.338	Possession for sale of schedule III, IV, or V substances, 3rd offense	No suspension or probation	Life with or 2 to 10 years	May be fined less than \$10,000
453.3385	Trafficking, schedule I (except marijuana)	14 to 28 grams (No suspension or probation for any trafficking crimes, no parole until minimum time is served)	Life with or not less than 10 years	Mandatory fine not less than \$100,000
		Greater than 28 grams	Life with or not less than 25 years	Mandatory fine not less than \$500,000
453.339	Trafficking, marijuana	Greater than 10,000 pounds	Life with or not less than 15 years	Mandatory fine not less than \$200,000
453.3395	Trafficking, schedule II	Greater than 400 grams	Life with or not less than 15 years	Mandatory fine not less than \$250,000

Crimes with Sentences Exceeding 10 Years				
Citation	Crime	Sentencing Factors	Imprisonment	Fine
200.330	Kidnapping, 2nd degree		1 to 15 years	May be fined less than \$15,000
200.380	Robbery		1 to 15 years	None
200.390	Administration of poison with intent to kill		1 to 20 years	None
200.405	Administration of drugs to aid in felony		1 to 15 years	None
200.460	False imprisonment by prisoner with deadly weapon		1 to 20 years	None
200.481	Battery by prisoner with deadly weapon		2 to 20 years	None
200.508	Child abuse or neglect causing physical or mental harm		1 to 20 years	None
200.730	Promoting child pornography	Minimum 5 years served for parole	Minimum of 5 years	Mandatory fine less than \$100,000
201.205	Knowingly engaging in conduct likely to spread HIV		1 to 20 years	And/or less than \$10,000
202.780	Transportation or receipt of explosives for unlawful purpose	SBH	2 to 20 years	And/or not less than \$2,000 nor more than \$20,000
202.820	Use or possession of explosives during commission of felony, 2nd offense	No suspension of sentence of parole until minimum time served	2 to 20 years	None

Citation	Crime	Sentencing Factors	Imprisonment	Fine
202.830	Use of explosive to destroy property	SBH	2 to 20 years	And/or not less than \$2,000 nor more than \$20,000
205.010	Arson, 1st degree		1 to 15 years	May be fined less than \$15,000
205.075	Burglary using explosives		1 to 20 years	None
207.010	Habitual criminal, current felony plus two prior felonies or three fraud-based crimes		10 to 20 years	None
207.400	Racketeering		5 to 20 years	May be fined less than \$25,000
453.316	Maintaining drug house, 2nd offense		2 to 20 years	May be fined less than \$20,000
453.321	Sale of certain narcotics, schedule I and II, 2nd offense	No probation or suspended sentence	5 to 20 years	May be fined less than \$20,000
	3rd offense	No probation or suspended sentence	Life or at least 15 years	May be fined less than \$20,000
453.322	Sale of certain narcotics, schedule III, IV, and V, 2nd offense	No probation or suspended sentence	2 to 15 years	May be fined less than \$15,000
	3rd offense	No probation or suspended sentence	5 to 20 years	May be fined less than \$20,000
453.336	Possession not for sale, 3rd offense		1 to 20 years	May be fined less than \$20,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
453.337	Possession for sale, 1st offense		1 to 15 years	May be fined less than \$5,000
	2nd offense	No probation or suspended sentence	5 to 15 years	May be fined less than \$10,000
	3rd offense	No probation or suspended sentence	15-year minimum	May be fined less than \$20,000
453.3385	Trafficking, schedule I	4 to 14 grams	3 to 20 years	Mandatory fine not less than \$50,000
		14 to 28 grams	10-year minimum	Mandatory fine not less than \$100,000
		Greater than 28 grams	Life or 25-year minimum	Mandatory fine not less than \$500,000
453.339	Trafficking, marijuana	100 to 2,000 pounds	3 to 20 years	Mandatory fine not less than \$25,000
		2,000 to 10,000 pounds	5 to 20 years	Mandatory fine not less than \$50,000
		Greater than 10,000 pounds	Life or a minimum of 15 years	Mandatory fine not less than \$200,000
453.3395	Trafficking, schedule II	28 to 200 grams	3 to 20 years	Mandatory fine not less than \$50,000
		200 to 400 grams	5 to 20 years	Mandatory fine not less than \$100,000
		Greater than 400 grams	Life or a minimum of 15 years	Mandatory fine not less than \$250,000
453.401	Conspiracy to violate the controlled substances act, 3rd offense	No suspension of sentence or probation	5 to 20 years	May be fined less than \$20,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
463.360	Gaming without a license		1 to 20 years	And/or less than \$50,000
476.050	Endangering property using explosives		1 to 20 years	None
484.219	Failure to stop at accident involving death or personal injury		1 to 20 years	Mandatory \$2,000 to \$5,000
484.3795	DUI causing SBH or death		1 to 20 years	Mandatory \$2,000 to \$5,000
705.480	Destruction or obstruction of railroad tracks		2 to 20 years	None

Enhanced Penalties for Certain Crimes				
Citation	Crime	Sentencing Factors	Imprisonment	Fine
193.161	Felony on school bus		Double primary sentence	None
193.163	Use of armor piercing bullets in commission of crime		Double primary sentence	None
193.165	Use of deadly weapon in commission of crime	No probation or suspension of sentence if murder, kidnapping, sexual assault, or robbery	Double primary sentence	None
193.167	Crimes against the elderly		Double primary sentence	None
193.168	Gang-related felony crimes		Double primary sentence	None
453.3345	Sale of drugs near school, school bus stop, recreation center		Double primary sentence	None

Crimes with Minimum Mandatory Sentences, Maximum Not to Exceed 10 Years				
Citation	Crime	Sentencing Factors	Imprisonment	Fine
197.010	Bribery of executive officer		1 to 10 years	May be fined less than \$10,000
197.020	Bribery of public officer		1 to 10 years	May be fined less than \$10,000
197.030	Accepting bribe		1 to 10 years	May be fined less than \$10,000
197.150	Public officer paying false claim	Amount exceeding \$250	1 to 10 years	And/or less than \$10,000
197.210	Fraudulent appropriation of property	Amount exceeding \$250	1 to 10 years	And/or less than \$10,000
199.010	Bribery of judicial officer		1 to 10 years	May be fined less than \$10,000
199.020	Accepting bribe		1 to 10 years	May be fined less than \$10,000
199.030	Juror accepting bribe		1 to 10 years	May be fined less than \$10,000
199.100	Rescuing felony prisoner		1 to 10 years	May be fined less than \$10,000
199.120	Perjury		1 to 10 years	May be fined less than \$10,000
199.130	False complaint to effect arrest or search		1 to 10 years	May be fined less than \$10,000
199.140	Use of fictitious name to effect arrest or search		1 to 10 years	May be fined less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
199.210	Offering false evidence		1 to 10 years	May be fined less than \$10,000
199.240	Bribery or intimidation of witness		1 to 10 years	May be fined less than \$50,000
199.250	Witness accepting bribe		1 to 10 years	May be fined less than \$10,000
199.360	Fraudulent birth pretenses, inheritance		1 to 10 years	May be fined less than \$10,000
199.370	Substitution of child		1 to 10 years	May be fined less than \$10,000
199.490	Solicitation to commit murder		1 to 10 years	May be fined less than \$10,000
199.530	Notification of search or seizure		1 to 10 years	And/or less than \$10,000
199.540	Notification of wire tap		1 to 10 years	And/or less than \$10,000
200.080	Involuntary manslaughter		1 to 10 years	May be fined less than \$10,000
200.210	Killing unborn quick child		1 to 10 years	May be fined less than \$10,000
200.220	Woman taking drugs to terminate pregnancy	After 24th week	1 to 10 years	May be fined less than \$10,000
200.230	Killing by overloading vessel	Willful Conduct	1 to 10 years	May be fined less than \$10,000
200.280	Mayhem		1 to 10 years	Less than \$10,000
200.368	Statutory sexual seduction	Offender over 21 years of age	1 to 10 years	May be fined less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
200.400	Battery with intent to kill, commit rape, mayhem, robbery, or larceny		2 to 10 years	May be fined less than \$10,000
200.450	Challenge to fight, duel; ensuing death		1 to 10 years	May be fined less than \$10,000
200.481	Battery	Without weapon; SBH	1 to 10 years or up to 1 year in county jail	May be fined less than \$10,000
		Without weapon; SBH upon an officer or school employee	1 to 10 years	May be fined less than \$10,000
		With deadly weapon	2 to 10 years	May be fined less than \$10,000
201.120	Abortion not pursuant to law		1 to 10 years	May be fined less than \$10,000
201.180	Incest		1 to 10 years	May be fined less than \$10,000
201.230	Lewdness with child	Bd. Certified for Parole	1 to 10 years	May be fined less than \$10,000
201.300	Pandering	F or TF	1 to 10 years	May be fined less than \$10,000
201.310	Placing spouse in brothel	F or TF	1 to 10 years	May be fined less than \$10,000
201.360	Placing person in house of prostitution	For TF	1 to 10 years	May be fined less than \$10,000
202.170	Willfully poisoning food, water or medicine		1 to 10 years	And/or less than \$10,000
202.255	Setting spring gun	Causing death	1 to 10 years	May be fined less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
203.115	Criminal anarchy		1 to 10 years	May be fined less than \$10,000
204.020	Unlawful use of public funds	Exceeding \$250	1 to 10 years	And/or less than \$10,000
204.030	Misappropriation and falsification of public accounts		1 to 10 years	And/or less than \$10,000
204.050	Misappropriation by treasurer	Exceeding \$250	1 to 10 years	And/or less than \$10,000
205.015	Arson, 2nd degree		1 to 10 years	May be fined less than \$10,000
205.060	Burglary	No probation or suspension if prior conviction of same	1 to 10 years	May be fined less than \$10,000
205.060	Burglary with a weapon		2 to 10 years	May be fined less than \$10,000
205.0835	Theft	Amount exceeding \$250	1 to 10 years	May be fined less than \$10,000
205.090	Forgery		1 to 10 years	And/or less than \$10,000
205.130	NSF check, willful	Amount exceeding \$250	1 to 10 years	And/or less than \$10,000
205.160	Possession or receiving forged instrument		1 to 10 years	And/or less than \$10,000
205.175	Forging state seal		1 to 10 years	And/or less than \$10,000
205.180	Counterfeiting		1 to 10 years	And/or less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
205.220	Grand larceny	Amount exceeding \$250	1 to 10 years	May be fined less than \$10,000
205.225	Cattle rustling		1 to 10 years	Not less than \$1,000 per animal
205.270	Taking not amounting to robbery	No probation or suspension of sentence if victim is elderly or physical condition	1 to 10 years	May be fined less than \$10,000
205.2707	Theft from vending machine	Amount exceeding \$250	1 to 10 years	May be fined less than \$10,000
205.273	Receiving or transporting stolen vehicle		1 to 10 years	And/or less than \$10,000
205.275	Receiving or possessing stolen goods		1 to 10 years	And/or less than \$10,000
205.320	Extortion		1 to 10 years	And/or less than \$10,000
205.365	Fraudulent sale of same real property more than once		1 to 10 years	And/or less than \$10,000
205.370	Swindling credit by false representation		1 to 10 years	And/or less than \$10,000
205.415	Collecting for benefit without authority		1 to 10 years	And/or less than \$10,000
205.435	Fraudulent issuance of stock		1 to 10 years	And/or less than \$10,000
205.445	Defrauding restaurant or hotel		1 to 10 years	And/or less than \$10,000
205.520	Issuance of title to goods not received		1 to 10 years	And/or less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
205.540, 205.570	Fraudulent issuance of title to goods		1 to 10 years	And/or less than \$10,000
205.580	Fraudulent inducement of bailee to release title to goods		1 to 10 years	And/or less than \$10,000
205.740	Credit card fraud		1 to 10 years	And/or less than \$10,000
206.260	Fraudulent or malicious destruction of writings		1 to 10 years	May be fined less than \$10,000
206.300	False signals endangering cars	Causing injury or damage	1 to 10 years	May be fined less than \$10,000
207.195	Use of monetary instrument derived from unlawful act		1 to 10 years	May be fined less than \$50,000
207.340	Food stamp fraud	Amount exceeding \$250	1 to 10 years	And/or less than \$10,000
212.090	Escape of felon prisoner		1 to 10 years	May be fined less than \$10,000
212.100	Aiding escape of felon prisoner		1 to 10 years	May be fined less than \$10,000
212.110	Custodian allowing escape of felon		1 to 10 years	May be fined less than \$10,000
212.120	Ministerial officer allowing escape		1 to 10 years	May be fined less than \$10,000
212.130	Concealing escaped felon		1 to 10 years	May be fined less than \$10,000
218.590	Bribery of legislator		1 to 10 years	And/or less than \$10,000
218.600	Legislator accepting bribe		1 to 10 years	Less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
239.300	Stealing, altering, defacing public records		1 to 10 years	And/or less than \$10,000
239.320	Officer injuring or concealing public record		0 to 10 years	And/or less than \$10,000
281.190	Officer out of office withholding or destroying records		1 to 10 years	May be fined less than \$10,000
281.230	Unlawful commissions	Amount exceeding \$250	1 to 10 years	May be fined less than \$10,000
351.060	Fraud in use of facsimile signature of state seal		1 to 10 years	And/or less than \$10,000
356.110	Unlawful depository of state money		1 to 10 years	And/or less than \$10,000
364.090	Unlawful issuance of county license		1 to 10 years	And/or less than \$10,000
369.495	Activities involving liquor with intent to defraud the state		1 to 10 years	And/or less than \$10,000
370.380	Forge tax stamp or county license	2nd offense	1 to 10 years	And/or less than \$10,000
403.151	County recorder of supervisor, certain conflicts		1 to 10 years	May be fined less than \$10,000
422.368	Obtaining medical aid benefits fraudulently		1 to 10 years	And/or less than \$10,000
422.410	Welfare fraud		1 to 10 years	And/or less than \$10,000
453.316	Maintaining drug house	1st offense	1 to 10 years	May be fined less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
453.322	Sale of schedule III, IV, or V drugs		Life imprisonment or 1 to 10 years	May be fined less than \$10,000
453.323	Offer to sell I or II drugs, sale of another drug	If prior selling conviction, no probation or parole	Up to 1 year in county jail, or 1 to 10 years	May be fined less than \$10,000
453.336	Possession not for sale	2nd offense	1 to 10 years	May be fined less than \$10,000
453.337	Possession with intent to sell, III, IV, or V	2nd offense, No probation or suspension of sentence	1 to 10 years	May be fined less than \$10,000
		3rd offense, No probation or suspension of sentence	Life imprisonment or 2 to 10 years	May be fined less than \$20,000
453.337	Trafficking, schedule III, IV, or V	2nd offense, No probation or suspension of sentence	1 to 10 years	May be fined less than \$10,000
		3rd offense, No probation or suspension of sentence	Life imprisonment or 2 to 10 years	May be fined less than \$10,000
453.401	Conspiracy to traffic	2nd offense, No probation or suspension of sentence	1 to 10 years	May be fined less than \$10,000
453.562	Providing drug paraphernalia to minor		1 to 10 years	May be fined less than \$10,000
454.306	Using minor as an agent - furnishing drugs to minor		1 to 10 years	And/or less than \$10,000
454.316	Possessing prescription drugs without prescription		1 to 10 years	None
457.220	Certain violations of cancer treatment chapter	2nd offense	1 to 10 years	And/or less than \$10,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
465.088	Gaming crimes	1st offense	1 to 10 years	May be fined less than \$10,000
		2nd offense, no probation or suspension of sentence	1 to 10 years	May be fined less than \$10,000
475.105	Theft of fire prevention device	Amount exceeding \$250	1 to 10 years	May be fined less than \$10,000
517.300	False mining claims		1 to 10 years	May be fined less than \$10,000
574.150	Poisoning livestock		1 to 10 years	And/or less than \$10,000
616.675	False statement to obtain unemployment benefits		1 to 10 years	And/or less than \$10,000
616.681	Certain health care provider violations		1 to 10 years	And/or less than \$10,000
668.055	Banking-related embezzlement		1 to 10 years	And/or less than \$10,000
668.095	False financial statement concerning bank by an examiner		1 to 10 years	May be fined less than \$10,000
677.810	Thrift company embezzlement		1 to 10 years	And/or less than \$50,000

Crimes with Minimum Mandatory Sentences, Maximum Not to Exceed 6 Years

Note: All crimes in this category are and/or crimes unless otherwise noted. The judge has the discretion to impose the prescribed fine, or term of imprisonment, or both.

Citation	Crime	Sentencing Factors	Imprisonment	Fine
90.650	Securities fraud		1 to 6 years	Less than \$20,000
91.340	Commodities fraud		1 to 6 years	Less than \$20,000
119.330	Fraudulent sale of subdivided land		1 to 6 years	Less than \$10,000
125.510	Child abduction, concealment by parent or person under court order		1 to 6 years	Less than \$5,000
			1 to 6 years	Less than \$5,000
127.300	Unlicensed placement of child		1 to 6 years	Less than \$5,000
197.050	Improper division of salary by public official		1 to 6 years	Less than \$5,000
197.200	Oppression under color of office	F or TF	1 to 6 years	Less than \$5,000
199.100	Rescuing gross misdemeanor or misdemeanor prisoner	Use of weapon	1 to 6 years	Less than \$5,000
199.230	Preventing person from testifying	F or TF	1 to 6 years	Less than \$50,000
199.280	Resisting officer	F or TF	1 to 6 years	Less than \$5,000
199.290	Compounding or concealing a crime	Felony crime	1 to 6 years	Less than \$5,000
199.300	Intimidating public officer	F or TF	1 to 6 years	\$5,000
199.305	Hindering the reporting of a crime		1 to 6 years	Less than \$10,000
199.310	Malicious prosecution	Felony accusation	1 to 6 years	Less than \$5,000
199.335	Failure to appear after bail	Felony crime, 30-day delay	1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
199.460	Extortion of confession	F or TF	1 to 6 years	Less than \$5,000
199.480	Conspiracy to commit murder, robbery, kidnapping in 1st and 2nd degrees, sexual assault, or arson in the 1st or 2nd degrees		1 to 6 years	Less than \$5,000
199.530	Disclosure of information to subject of investigation		1 to 5 years	Less than \$5,000
200.090	Involuntary manslaughter		1 to 6 years or not more than 1 year in the county jail	Less than \$5,000
200.230	Killing by overloading a vessel	Negligence	1 to 6 years	Less than \$5,000
200.240	Harboring vicious animal	Willful conduct	1 to 6 years	Less than \$5,000
200.260	Unlawful storage or manufacture of explosives		1 to 6 years	Less than \$5,000
200.450	Challenge to fight	Fight to involve weapon	1 to 6 years	Less than \$5,000
200.460	False Imprisonment	Prisoner without a weapon, other person with a weapon	1 to 6 years	None
200.471	Assault	Use of weapon	1 to 6 years	Less than \$5,000
200.481	Battery	By prisoner without a weapon	1 to 6 years	None
200.495	Criminal neglect of patient	Death or SBH	1 to 6 years	Less than \$5,000
200.5099	Criminal neglect of elderly person	SBH or mental harm	1 to 6 years	None
200.575	Aggravated stalking		1 to 6 years	Less than \$5,000
	Unlawful interception of wire communication		1 to 6 years	Less than \$5,000
200.730	Possession of child pornography	2nd offense	1 to 6 years	Less than \$5,000
201.020	Spouse of child desertion	More than 1 year	1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
201.160	Bigamy		1 to 6 years	Less than \$5,000
201.170	Marry a married person		1 to 6 years	Less than \$5,000
201.190	Sexual acts in public		1 to 6 years	None
201.195	Soliciting minor to commit infamous crime against nature	If act engaged in. Bd. must certify for parole	1 to 6 years	None
201.210	Open or gross lewdness	2nd offense, Bd. must certify for parole or psychologist for probation	1 to 6 years	Less than \$5,000
201.220	Indecent or obscene exposure	2nd offense, Bd must certify for parole or psychologist for probation	1 to 6 years	Less than \$5,000
201.300	Pandering	No F or TF	1 to 6 years	Less than \$5,000
201.310	Placing spouse in a brothel	No F or TF	1 to 6 years	Less than \$5,000
201.330	Living from the earnings of a prostitute		1 to 6 years	Less than \$5,000
201.340	Detention in brothel because of debt		1 to 6 years	Less than \$5,000
201.340	Transporting a prostitute	No F or TF	1 to 6 years	Less than \$5,000
201.360	Placing person in house of prostitution	No F or TF	1 to 6 years	Less than \$5,000
202.2485	Sale or injection of liquid silicone		1 to 6 years	Less than \$5,000
202.255	Spring gun trap	Non-fatal injury	1 to 6 years	Less than \$5,000
202.260	Possession, manufacture, or disposition of bomb		1 to 6 years	Less than \$5,000
202.275	Possession, manufacture, or disposition of sawed-off shotgun or rifle		1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
202.280	Manufacture or sale of armor-piercing bullets		1 to 6 years	Less than \$5,000
202.285	Drive-by shooting		1 to 6 years	Less than \$5,000
202.350	Unlawful carrying of concealed weapon	2nd offense	1 to 6 years	Less than \$5,000
202.360	Ex-felon, possession of firearm		1 to 6 years	Less than \$5,000
202.380	Ex-felon, possession of tear gas		1 to 6 years	Less than \$5,000
202.500	Vicious dog	SBH	1 to 6 years	Less than \$5,000
202.840	Bomb threats		1 to 6 years	Less than \$5,000
203.117	Criminal syndicalism		1 to 6 years	Less than \$5,000
205.020	Arson, 3rd degree		1 to 6 years	Less than \$5,000
205.025	Arson, 4th degree		Minimum of 1 year	Less than \$5,000
205.030	Arson, aiding and abetting		1 to 6 years	Less than \$5,000
205.300	Obtaining signatures by false pretenses		1 to 6 years	Less than \$5,000
205.465	False identification crimes		1 to 6 years	Less than \$5,000
205.4765	Computer fraud		1 to 6 years	Less than \$100,000
205.690	Credit card fraud		1 to 6 years	Less than \$5,000
205.920	Obtaining telephone service with intent to avoid payment		1 to 6 years	Less than \$5,000
205.950	Taking money of another to secure loan	Amount exceeding \$1,000	1 to 6 years	Less than \$5,000
205.960	Fraudulent acts by intermediary		1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
207.190	Coercion	F or TF	1 to 6 years	Less than \$5,000
207.260	Annoyance or molestation of minor	2nd offense	1 to 6 years	Less than \$5,000
207.280	Aid or conceal escaped prisoner	Use of weapon	1 to 6 years	Less than \$5,000
207.290	Bribery regarding sporting event		1 to 6 years	Less than \$5,000
210.020	Inhumanity to prisoner	SBH	1 to 6 years	Less than \$5,000
210.090	Escape from prison, gross misdemeanor prisoner	Use of weapon	1 to 6 years	Less than \$5,000
210.100	Aid in escape of gross misdemeanor prisoner	Use of weapon	1 to 6 years	Less than \$5,000
212.160	Furnishing weapons or drugs to prisoner		1 to 6 years	Less than \$5,000
212.185	Possession of weapon or facsimile by prisoner		1 to 6 years	None
218.560	Altering legislative measure		1 to 6 years	Less than \$5,000
218.570	Altering enrolled bill or resolution		1 to 6 years	Less than \$5,000
239.330	Offering false instrument for filing or recording		1 to 6 years	Less than \$5,000
361.525	County assessor offering false tax receipt		1 to 6 years	Less than \$5,000
383.180	Robbery, Native American burial site	2nd offense	1 to 5 years	Mandatory \$5,000 to \$10,000
422.366	Medicaid card fraud		1 to 6 years	Less than \$5,000
422.369	Medicaid provider fraud		1 to 6 years	Less than \$5,000
422.570	Failure to maintain certain medical records (program for indigent)		1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
433.554	Abuse or neglect of patient by mental health provider	SBH	1 to 6 years	Less than \$5,000
433A.750	False admission of another to mental facility		1 to 6 years	Less than \$5,000
433B.340	Willful abuse or neglect of mentally ill child		1 to 6 years	Less than \$5,000
440.765	Birth certificate fraud to commit a felony		1 to 6 years	Less than \$5,000
445.334	Violations of Clean Water Act		1 to 6 years	Less than \$50,000
451.030	Removal of remains of dead body		1 to 6 years	Less than \$5,000
453.232	Failure to register with pharmacy board		1 to 6 years	Less than \$5,000
453.256	Prescription violations		1 to 6 years	Less than \$5,000
453.323	Offer to sell category III, IV, or V drugs, sale of another drug		1 to 6 years or not more than 1 year in county jail	Less than \$5,000
453.326	D violations of Controlled Substances Act (drug house, record keeping, refuse entry to inspector)		1 to 6 years	Less than \$5,000
453.331	E violations of Controlled Substances Act (prescription fraud)		1 to 6 years	Less than \$5,000
453.332	Sale of imitation controlled substance	To minor by person over 18	1 to 6 years	Less than \$5,000
453.336	Possession not for sale	1st offense	1 to 6 years	Less than \$5,000
453.336	Possession of less than 1 ounce of marijuana	Person under 21, 1st offense	1 to 6 years and up to \$2,000 or up to 1 year, up to \$1,000 and driver's license suspension	

Citation	Crime	Sentencing Factors	Imprisonment	Fine
453.336	Possession of less than 1 ounce of marijuana	Person under 21, 2nd offense	1 to 6 years	Less than \$5,000
453.338	Possession for purpose of sale, categories III, IV, or V	1st offense	1 to 6 years	Less than \$5,000
453.401	Conspiracy to sell	1st offense	1 to 6 years	Less than \$5,000
453.411	Unlawful use of substance		1 to 6 years	Less than \$5,000
453.441	Fraudulent activities concerning prescription refills		1 to 6 years	Less than \$5,000
453.560	Manufacture, delivery, sale, possession of drug paraphernalia		1 to 6 years	Less than \$5,000
454.221	Furnishing dangerous drug without prescription		1 to 6 years	Less than \$5,000
454.311	Fraudulent possession of prescription drugs		1 to 6 years	Less than \$5,000
454.326	Misrepresentation using telephone to obtain dangerous drugs		1 to 6 years	Less than \$5,000
459.600	Unlawful hazardous waste disposal		1 to 6 years	Less than \$50,000
463.270	Disposal of assets while under supervision		1 to 6 years	Less than \$5,000
463.360	Gaming tax evasion		1 to 6 years	Less than \$5,000
463.360	Violations of gaming cash reporting requirements		1 to 6 years	Less than \$5,000
463.480	Disseminating race information without license		1 to 6 years	Less than \$5,000
465.090	Unlawful dissemination of certain wire information		1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
475.100	False fire alarm	Malice, SBH	1 to 6 years	Less than \$5,000
475.547	Unlawful offer or sale of automobile		1 to 6 years	Less than \$5,000
484.348	Failure to obey signal by officer	SBH	1 to 6 years	Less than \$5,000
484.3595	Failure to obey roadblock	SBH	1 to 6 years	Less than \$5,000
484.377	Reckless driving, willful conduct	SBH	1 to 6 years	Less than \$5,000
484.3792	DUI, 3rd offense in 7 years	No probation or suspension of sentence	1 to 6 years	Mandatory \$2,000 to \$5,000
485.316	Willful disclosure of information from certain insurance data bases		1 to 6 years	Less than \$5,000
488.285	Improper mooring causing death		1 to 6 years	Less than \$5,000
488.290	Operating boat in unsafe condition, death resulting		1 to 6 years	Less than \$5,000
574.070	Staging dog fights		1 to 6 years	Less than \$5,000
576.125	Failure to pay for livestock, conditions	Amount exceeding \$1,000	1 to 6 years	Less than \$1,000
583.543	Animal inspector accepting bribe		1 to 6 years	Less than \$5,000
598.0999	Deceptive trade practices	3rd offense	1 to 6 years	Less than \$5,000
598A.280	Unfair trade practices (price fixing)		1 to 6 years	Less than \$100,000
598B.255	Unlawful telephone solicitations	3rd offense	1 to 6 years	Less than \$50,000
616.682	Destruction of records regarding accident benefits		1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
630.400 to 638.170	Improper use of title or practicing profession without certificate for: medical doctors, chiropractors, homeopathic practitioners, dentists, veterinarians, and real estate agents		1 to 6 years	Less than \$5,000
631.2815	False charge against state public assistance program by doctor		1 to 6 years	Less than \$5,000
645B.165	Failure to place advance money in escrow	Amount exceeding \$1,000	1 to 6 years	Less than \$5,000
645B.225	Violation of escrow of impound account		1 to 6 years	Less than \$5,000
647.145	Criminally receiving junk	Junk dealers	1 to 6 years	Less than \$1,000
		Second-hand dealers	1 to 5 years	Less than \$1,000
658.165	Willful violations of banking laws		1 to 6 years	Less than \$5,000
668.015	False bank financial statements		1 to 6 years	Less than \$5,000
668.045	Bank receiving deposits with knowledge of insolvency		1 to 6 years	Less than \$5,000
669.290	Willful violations of trust company laws		1 to 6 years	Less than \$5,000
677.850	Trust company receiving deposits with knowledge of insolvency		1 to 6 years	Less than \$5,000
686A.290	False statements on insurance application		1 to 6 years	Less than \$5,000
686A.291	False claims for insurance benefits		1 to 6 years	Less than \$5,000
686B.040	Insurance company soliciting without permit		1 to 6 years	Less than \$5,000

Citation	Crime	Sentencing Factors	Imprisonment	Fine
692C.480	Willful violation of insurance chapter		1 to 6 years	Less than \$5,000
704.800	Obtaining utility service with intent to avoid payment, destruction of utility property		1 to 6 years	Less than \$5,000

Abbreviations:

SBH - Substantial Bodily Harm.

F or TF - Force or Threat of Force.

Bd. Must Certify - Indicates that a panel of psychological experts must certify that an offender is not a danger to the public before that offender may be released on parole.

DN/dr crimes 6/2/94

APPENDIX I

Suggested Legislation

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SUMMARY--Makes various changes to provisions governing admission of defendants to bail. (BDR 14-976)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to bail; authorizing courts to appoint an officer to assist in the determination of bail; imposing an administrative assessment on certain persons who post bail; providing an additional method of posting bail; making various other changes related to the admission of defendants to bail; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 178 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *A court or magistrate may appoint an officer to assist the court or magistrate in determining whether to release a person with or without bail pursuant to NRS 178.4851. The court or magistrate may:*

(a) Authorize the officer to act on behalf of the court or magistrate and release the person with or without bail according to his findings pursuant to subsection 2; or

(b) Require the officer to evaluate the person and submit a written recommendation to the court or magistrate regarding the release of the person.

2. The officer shall, unless it is impracticable:

(a) Interview each person entitled to bail; and

(b) Review the considerations set forth in NRS 178.4853,

in determining whether to release or recommend the release of a person with or without bail.

Sec. 3. 1. A defendant who gives bail to a justice's court, municipal court or district court, pursuant to NRS 178.502 shall pay, in addition to any fee imposed pursuant to paragraph (o) of subsection 1 of NRS 4.060, an administrative assessment to the court in the amount of:

(a) Twelve dollars and fifty cents; or

(b) Five percent of the amount of his bail, but not more than \$200.

whichever is greater.

2. A court shall impose the administrative assessment set forth in subsection 1 at the time that bail is established. If the defendant gives bail by depositing money with the court, the court may subtract the administrative assessment from the amount deposited with the court. If the defendant gives bail by providing a bond from a bail bondsman, the defendant shall pay the administrative assessment directly to the court.

3. The money collected for administrative assessments imposed pursuant to this section must be paid by the clerk of the court to the county treasurer on or before the fifth day of each month for the preceding month. The county treasurer shall, on or before the 15th day of that month, deposit the money in

the county general fund for credit to a special account for the use of the county's courts to pay for any costs related to releasing a person to bail and for services provided and proceedings that take place before trial.

Sec. 4. NRS 178.4851 is hereby amended to read as follows:

178.4851 1. Upon a showing of good cause, a court may release without bail any person entitled to bail if it appears to the court that he will appear at all times and places ordered by the court.

2. In releasing a person without bail the court may impose such conditions as it deems necessary to ensure that he will appear at all times and places ordered by the court [.] , *including, without limitation:*

(a) Requiring the person to be released into the care of a qualified person who accepts responsibility for supervising him and assuring his appearance in court;

(b) Restricting the activities, associations and residences of the person;

(c) Releasing the person from custody only during working hours; or

(d) Any combination of those restrictions.

3. Upon a showing of good cause, a sheriff or chief of police may release without bail any person charged with a misdemeanor pursuant to standards established by a court of competent jurisdiction.

4. Before any person may be released without bail, he must file with the clerk of the court of competent jurisdiction a signed document stating that:

(a) He will appear at all times and places as ordered by the court releasing him and as ordered by any court before which the charge is subsequently heard;

(b) He will comply with the other conditions which have been imposed by the court and are stated in the document;

(c) If he fails to appear when so ordered and is taken into custody outside of this state, he waives all his rights relating to extradition proceedings; and

(d) He understands that any court of competent jurisdiction may revoke the order of release without bail and may order him into custody or require him to furnish bail or otherwise ensure his appearance.

5. If a jurisdiction incurs any costs in returning a person to the jurisdiction to stand trial, the person failing to appear is responsible for paying those costs as restitution.

Sec. 5. NRS 178.502 is hereby amended to read as follows:

178.502 1. [A] *Except as otherwise provided by subsection 2, a person required or permitted to give bail shall execute a bond for his appearance. The magistrate or court or judge or justice, having regard to the considerations set forth in NRS 178.498, may require one or more sureties or may authorize the acceptance of cash or bonds or notes of the United States in an amount equal to or less than the face amount of the bond.*

2. *If a defendant provides proof that after sufficient efforts he is unable to give bail in the amount established by the court or magistrate pursuant to NRS 178.498, the court or magistrate may instead require the defendant to deposit with the court \$25 or 10 percent of the amount which was set for his bail, whichever is greater, as a condition for his release.*

3. Any bond or undertaking for bail must provide that the bond or undertaking extends, for a period of at least 1 year unless bail is exonerated

earlier pursuant to the provisions of subsection 4, to any action or proceeding in a justice's court, municipal court or district court:

(a) Arising from the charge on which bail was first given in any of these courts; and

(b) Arising from a later charge, filed before the expiration of the periods provided in subsection [4.] 5, which is substantially similar to the charge upon which bail was first given and is based upon the same act or omission as that charge.

This subsection does not require that any bond or undertaking extend to proceedings on appeal.

[3.] 4. If an action or proceeding against a defendant who has been admitted to bail is transferred to another trial court, the bond or undertaking must be transferred to the clerk of the court to which the action or proceeding has been transferred.

[4.] 5. If the action or proceeding against a defendant who has been admitted to bail is dismissed, the bail must not be exonerated until a period of 30 days has elapsed from the entry of the order of dismissal unless the defendant requests that bail be exonerated before the expiration of the 30-day period. If no formal action or proceeding is instituted against a defendant who has been admitted to bail, the bail must not be exonerated until a period of 30 days has elapsed from the day the bond or undertaking is posted unless the defendant requests that bail be exonerated before the expiration of the 30-day period.

[5.] 6. If, within the periods provided in subsection [4,] 5, the defendant is charged with a public offense arising out of the same act or omission supporting the charge upon which bail was first given, the prosecuting attorney shall forthwith notify the clerk of the court where the bond was posted, the bail must be applied to the public offense later charged, and the bond or undertaking must be transferred to the clerk of the appropriate court. Within 10 days after its receipt, the clerk of the court to whom the bail is transferred shall mail notice of the transfer to the surety on the bond and the bail agent who executed the bond.

[6.] 7. Bail given originally on appeal must be deposited with the magistrate or the clerk of the court from which the appeal is taken.

SUMMARY--Provides in skeleton form schedule of uniform bail for application throughout state. (BDR 14-981)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to bail; providing in skeleton form a schedule of uniform bail for application throughout the state; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 178.498 is hereby amended to read as follows:

178.498 If the defendant is admitted to bail, the bail must be set at [an amount which in the judgment of the magistrate will reasonably ensure the appearance of the defendant and the safety of other persons and of the community, having regard to:

1. The nature and circumstances of the offense charged;
2. The financial ability of the defendant to give bail;
3. The character of the defendant; and
4. The factors listed in NRS 178.4853.] *the amount established pursuant to this section for the offense with which the defendant has been charged. The amount of bail for a person charged with:*

1. A violation of subsection 1 of NRS 200.340 is \$10,000.

2. A violation of NRS 453.339 is \$10,000.

3. A violation of NRS 201.160 is \$3,000.

4. A violation of NRS 201.450 is \$3,000.

5. A violation of NRS 200.220 is \$1,000.

6. A violation of NRS 202.265 is \$1,000.

7. A violation of NRS 205.760 is \$200.

8. A violation of NRS 205.465 is \$200.

Sec. 2. NRS 178.502 is hereby amended to read as follows:

178.502 1. A person required or permitted to give bail shall execute a bond for his appearance. The magistrate or court or judge or justice, [having regard to the considerations set forth in NRS 178.498,] may require one or more sureties or may authorize the acceptance of cash or bonds or notes of the United States in an amount equal to [or less than] the face amount of the bond.

2. Any bond or undertaking for bail must provide that the bond or undertaking extends, for a period of at least 1 year unless bail is exonerated earlier pursuant to the provisions of subsection 4, to any action or proceeding in a justice's court, municipal court or district court:

(a) Arising from the charge on which bail was first given in any of these courts; and

(b) Arising from a later charge, filed before the expiration of the periods provided in subsection 4, which is substantially similar to the charge upon

which bail was first given and is based upon the same act or omission as that charge.

This subsection does not require that any bond or undertaking extend to proceedings on appeal.

3. If an action or proceeding against a defendant who has been admitted to bail is transferred to another trial court, the bond or undertaking must be transferred to the clerk of the court to which the action or proceeding has been transferred.

4. If the action or proceeding against a defendant who has been admitted to bail is dismissed, the bail must not be exonerated until a period of 30 days has elapsed from the entry of the order of dismissal unless the defendant requests that bail be exonerated before the expiration of the 30-day period. If no formal action or proceeding is instituted against a defendant who has been admitted to bail, the bail must not be exonerated until a period of 30 days has elapsed from the day the bond or undertaking is posted unless the defendant requests that bail be exonerated before the expiration of the 30-day period.

5. If, within the periods provided in subsection 4, the defendant is charged with a public offense arising out of the same act or omission supporting the charge upon which bail was first given, the prosecuting attorney shall forthwith notify the clerk of the court where the bond was posted, the bail must be applied to the public offense later charged, and the bond or undertaking must be transferred to the clerk of the appropriate court. Within 10 days after its receipt, the clerk of the court to whom the bail is transferred shall mail notice

of the transfer to the surety on the bond and the bail agent who executed the bond.

6. Bail given originally on appeal must be deposited with the magistrate or the clerk of the court from which the appeal is taken.

SUMMARY--Increases penalty for certain convicted habitual criminals.

(BDR 15-977)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to crimes; increasing the penalty for certain convicted habitual criminals; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 207 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *1. A person who:*

(a) Has been convicted in this state of a felony listed in subsection 2; and

(b) Previously has been two times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony listed in subsection 2, before the commission of the felony under paragraph (a) of this subsection,

is a habitual felon and shall be punished by imprisonment in the state prison for life with or without possibility of parole. If the penalty fixed by the court is

life imprisonment with the possibility of parole. eligibility for parole begins when a minimum of 10 years has been served.

2. The district attorney shall include a count under this section in any information or shall file a notice of habitual felon if an indictment is found, if each prior conviction and the alleged offense committed by the accused constitutes a violation of NRS 199.160, 200.010, 200.310, 200.340, 200.366, 200.380, 200.390, 200.400, 200.405, 200.410, subsection 4 of NRS 200.460, NRS 200.465, paragraph (g) of subsection 2 of NRS 200.481, subsection 2 of NRS 200.508, NRS 200.710, 200.720, 201.205, 201.358, 201.450, 202.270, subsection 2 of NRS 202.780, paragraph (b) of subsection 2 of NRS 202.820, subsection 2 of NRS 202.830, NRS 205.010, 205.075, 476.050, 484.3795 or 705.460.

Sec. 3. 1. A conviction under either NRS 207.010 or section 2 of this act operates only to increase, not to reduce the sentence otherwise provided by law for the principal crime.

2. If a count under either NRS 207.010 or section 2 of this act is included in an information charging the primary offense, each previous conviction must be alleged in the accusatory pleading, but no such conviction may be alluded to on trial of the primary offense, nor may any allegation of the conviction be read in the presence of a jury trying the offense or a grand jury considering an indictment for the offense. A count under NRS 207.010 or section 2 of this act may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed, or the hearing required by subsection 3 held, until 15 days after the separate filing.

3. *If a defendant charged under NRS 207.010 or section 2 of this act is found guilty of, or pleads guilty to, the primary offense, but denies any previous conviction charged, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the defendant. The court shall impose sentence:*

(a) Under NRS 207.010 upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual criminality; or

(b) Under section 2 of this act upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual felon.

4. *Nothing in the provisions of this section, NRS 207.010 or section 2 of this act limits the prosecution in introducing evidence of prior convictions for purposes of impeachment.*

5. *For the purposes of NRS 207.010 and section 2 of this act, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.*

Sec. 4. NRS 207.010 is hereby amended to read as follows:

207.010 1. [Every] *Unless a person is prosecuted pursuant to section 2 of this act, a person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who [has] :*

(a) Has previously been [twice] two times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been three times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an

element. is [an] a habitual criminal and shall be punished by imprisonment in the state prison for not less than 10 years nor more than 20 years.

[2. Every person convicted in this state of any crime of which fraud or intent to defraud is an element, or of petit larceny, or of any felony, who has]

(b) Has previously been three times convicted, whether in this state or elsewhere, of any crime which under the laws of the situs of the crime or of this state would amount to a felony, or who has previously been five times convicted, whether in this state or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element, shall be punished by imprisonment in the state prison for life with or without possibility of parole. If the penalty fixed by the court is life imprisonment with the possibility of parole, eligibility for parole begins when a minimum of 10 years has been served.

[3. Conviction under this section operates only to increase, not to reduce, the sentence otherwise provided by law for the principal crime.

4.] 2. It is within the discretion of the district attorney whether or not to include a count under this section in any information or file a notice of habitual criminality if an indictment is found. The trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.

[5. If a count under this section is included in an information charging the primary offense, each previous conviction must be alleged in the accusatory pleading, but no such conviction may be alluded to on trial of the primary offense, nor may any allegation of the conviction be read in the presence of a

jury trying the offense or a grand jury considering an indictment for the offense. A count under this section may be separately filed after conviction of the primary offense, but if it is so filed, sentence must not be imposed, or the hearing required by subsection 6 held, until 15 days after the separate filing.

6. If a defendant charged under this section is found guilty of, or pleads guilty to, the primary offense, but denies any previous conviction charged, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the defendant. The court shall impose sentence pursuant to subsections 1 and 2 of this section upon finding that the defendant has suffered previous convictions sufficient to support an adjudication of habitual criminality.

7. Nothing in this section limits the prosecution in introducing evidence of prior convictions for purposes of impeachment.

8. A certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.]

Sec. 5. NRS 173.095 is hereby amended to read as follows:

173.095 1. The court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

2. If an indictment is found charging a primary offense upon which a charge of habitual criminality *or habitual felon* may be based, the district attorney may file a notice of habitual criminality *or habitual felon* with the court.

3. The court shall permit an information to be amended pursuant to subsection 4 of NRS 173.035.

Sec. 6. NRS 176.185 is hereby amended to read as follows:

176.185 1. Whenever any person has been found guilty in a district court of a crime upon verdict or plea, the court, except in cases of murder of the first or second degree, kidnaping in the first degree, sexual assault, an offense for which the suspension of sentence or the granting of probation is expressly forbidden, or where the defendant is found to be a habitual criminal pursuant to NRS 207.010 [,] *or a habitual felon pursuant to section 2 of this act*, may by its order suspend the execution of the sentence imposed and grant probation to the convicted person as the judge thereof deems advisable. The court may grant probation to a person convicted of indecent or obscene exposure or of lewdness only if a certificate of a psychologist or psychiatrist, as required by NRS 201.210, 201.220 or 201.230, is received by the court. The court shall consider the standards adopted pursuant to NRS 213.10988 and the recommendation of the chief parole and probation officer, if any, in determining whether to grant probation.

2. If the court determines that a defendant is otherwise eligible for probation but requires more supervision than would normally be provided to a person granted probation, the court may, in lieu of sentencing him to a term of imprisonment, grant him probation pursuant to the program of intensive supervision established pursuant to NRS 176.198.

3. The district judge shall not, except as otherwise provided in this subsection, grant probation to a person convicted of a felony until the judge

receives a written report from the chief parole and probation officer. The chief parole and probation officer shall submit a written report not later than 30 days following a request for a probation investigation from the county clerk, but if no report is submitted by the chief parole and probation officer within 30 days the district judge may grant probation without the written report.

4. If the court determines that a defendant is otherwise eligible for probation, the court shall when determining the conditions of that probation consider the imposition of such conditions as would facilitate timely payments by the defendant of his obligation, if any, for the support of a child and the payment of any such obligation which is in arrears.

Sec. 7. NRS 646.060 is hereby amended to read as follows:

646.060 A pawnbroker, and a clerk, agent or employee of a pawnbroker, is guilty of a misdemeanor if he:

1. Fails to make an entry of any material matter in his book or record kept as provided for in NRS 646.020.
2. Makes a false entry in his book or record.
3. Obliterates, destroys or removes from his place of business the book or record.
4. Refuses to allow the district attorney or a peace officer to inspect the book or record or any goods in his possession, during the ordinary hours of business.
5. Reports a material matter falsely to the sheriff or to the chief of police.
6. Fails to report forthwith to the sheriff or to the chief of police the possession of property which he may have good cause to believe has been lost

or stolen, together with the name of the owner, if known, and the date when and the name of the person from whom he received the property.

7. Removes property received or allows it to be removed from his place of business, except upon redemption by the owner thereof, within 30 days after the receipt thereof is reported to the sheriff or to the chief of police.

8. Receives property from a person under the age of 18 years, common drunkard, habitual user of controlled substances, habitual criminal, *habitual felon*, person in an intoxicated condition, known thief or receiver of stolen property, or known associate of a thief or receiver of stolen property, whether the person is acting in his own behalf or as the agent of another.

9. Violates any of the provisions of NRS 646.050.

Sec. 8. NRS 647.140 is hereby amended to read as follows:

647.140 A secondhand dealer and a clerk, agent or employee of a secondhand dealer is guilty of a misdemeanor if he:

1. Fails to make an entry of any material matter in his book or record kept as provided for in NRS 647.110.

2. Makes a false entry in his book or record.

3. Obliterates, destroys or removes from his place of business the book or record.

4. Refuses to allow the district attorney or a peace officer to inspect the book or record or any goods in his possession, during the ordinary hours of business.

5. Reports a material matter falsely to the sheriff or to the chief of police.

6. Fails to report forthwith to the sheriff or to the chief of police the possession of property which he may have good cause to believe has been lost or stolen, together with the name of the owner, if known, and the date when and the name of the person from whom he received the property.

7. Removes specifically marked or otherwise individually identifiable property received or allows it to be removed from his place of business in violation of the provisions of NRS 647.130.

8. Receives property from a person under the age of 18 years, common drunkard, habitual user of controlled substances, habitual criminal, *habitual felon*, person in an intoxicated condition, known thief or receiver of stolen property, or known associate of a thief or receiver of stolen property, whether the person is acting in his own behalf or as the agent of another.

SUMMARY--Revises provisions relating to disposition of confiscated weapons by law enforcement agencies. (BDR 15-978)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to weapons; revising provisions relating to the disposition of confiscated weapons by law enforcement agencies; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 202.340 is hereby amended to read as follows:

202.340 1. Except as otherwise provided for firearms forfeitable pursuant to NRS 453.301, when any of the instruments or weapons described in NRS 202.350 are taken from the possession of any person charged with the commission of any public offense or crime the instruments or weapons must be surrendered to:

(a) The head of the police force or department of an incorporated city if the possession thereof was detected by any member of the police force of the city;
or

(b) The chief administrator of a state law enforcement agency, for disposal pursuant to NRS 333.220, if the possession thereof was detected by any member of the agency.

In all other cases, the instrument or weapon must be surrendered to the sheriff of the county or the sheriff of the metropolitan police department for the county in which the instrument or weapon was taken.

2. Except as otherwise provided in subsection 5, the governing body of the county or city or the metropolitan police committee on fiscal affairs shall at least once a year order the local law enforcement officer to whom any instrument or weapon is surrendered pursuant to subsection 1 to:

(a) Retain the confiscated instrument or weapon for use by the law enforcement agency headed by the officer;

(b) Sell the confiscated instrument or weapon to another law enforcement agency at a price not less than its prevailing market value; or

(c) [Sell the confiscated instrument or weapon at a public auction to be held at least once in each year, after notice giving the place and time of the auction and describing the instruments or weapons to be sold is published once a week for 2 weeks immediately preceding the date of the auction in a newspaper of general circulation in the county or city.] *Destroy or direct another officer or employee of the law enforcement agency to destroy the confiscated instrument or weapon which was not otherwise required to be destroyed pursuant to subsection 5.*

3. All proceeds of a sale ordered pursuant to subsection 2 by:

(a) The governing body of a county or city must be deposited with the county treasurer or the city treasurer and the county treasurer or the city treasurer shall credit the proceeds to the general fund of the county or city.

(b) A metropolitan police committee on fiscal affairs must be deposited in a fund which was created pursuant to NRS 280.220.

4. Any officer receiving an order [as provided in] *pursuant to* subsection 2 shall comply with the order as soon as practicable.

5. The officer to whom a confiscated instrument or weapon is surrendered pursuant to subsection 1 shall:

(a) Destroy or direct [to be destroyed] *another officer or employee of the law enforcement agency to destroy* any instrument or weapon which is determined to be dangerous to the safety of the public.

(b) Return any instrument or weapon, which has not been destroyed pursuant to paragraph (a), upon demand, to the person from whom the instrument or weapon was confiscated if the person is acquitted of the public offense or crime of which he was charged.

(c) Retain the confiscated instrument or weapon held by him pursuant to an order of a judge of a court of record or by direction of the attorney general or district attorney that the retention is necessary for purposes of evidence, until the order or direction is rescinded.

SUMMARY--Makes various changes related to possession of firearms by minors. (BDR 15-979)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to crimes; making the restriction on possession of firearms applicable to all minors; increasing the penalty for certain offenses relating to possession of a firearm by a minor; increasing the penalty for selling certain firearms to a minor; suspending the driving privilege of a minor who unlawfully possesses a firearm and requiring him to perform public service; requiring the juvenile division of the district court to certify certain minors as adults for trial; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 202.300 is hereby amended to read as follows:

202.300 1. A minor under the age of [14] 18 years shall not handle or have in his possession or under his control, except while accompanied by or under the immediate charge of an adult person, any firearm of any kind for hunting or target practice or for other purposes.

2. Every person violating any of the provisions of subsection 1. or aiding or knowingly permitting [any such] *a* minor to violate [the] *that* subsection is guilty of a *gross* misdemeanor.

3. In determining the appropriate penalty for a violation of subsection 2, the court shall consider as an aggravating factor, if applicable, whether the defendant left a loaded firearm within reach of or easily accessible to a minor who used the firearm to inflict injury or death upon himself or another person, unless:

(a) The firearm was stored in a securely locked container or at a location which a reasonable person would have believed to be secure;

(b) The minor obtained the firearm as a result of an unlawful entry by any person in or upon the premises where the firearm was stored;

(c) The injury or death resulted from an accident which was incident to target shooting, sport shooting or hunting; or

(d) The minor gained possession of the firearm from a member of the military or a law enforcement officer, while the member or officer was performing his official duties.

Sec. 2. NRS 202.310 is hereby amended to read as follows:

202.310 1. Any person in this state who sells or barter to another *person* under the age of 18 years either a pistol, revolver or a firearm capable of being concealed upon the person [shall be] *is* guilty of a [misdemeanor.] *felony*.

2. The term "firearm capable of being concealed upon the person" as used in this section applies to and includes all firearms having a barrel less than 12 inches in length.

Sec. 3. Chapter 62 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 and 5 of this act.

Sec. 4. 1. *In addition to the options set forth in NRS 62.211 and 62.213, if a child is adjudicated delinquent pursuant to paragraph (b) of NRS 62.040 because he handled or possessed a firearm or had a firearm under his control in violation of NRS 202.300, the court shall:*

(a) For the first offense:

(1) Require him to perform 100 hours of public service in the manner provided in paragraph (e) of subsection 1 of NRS 62.211; and

(2) Suspend his driver's license for not more than 1 year or, if he does not possess a driver's license, prohibit the child from applying for a driver's license for not more than 1 year:

(I) Immediately following the date of the order, if the child is eligible to apply for a driver's license.

(II) After the date he becomes eligible to apply for a driver's license, if the child is not eligible to apply for a license on the date of the order.

(b) For the second offense:

(1) Require him to perform at least 100 hours, but not more than 250 hours of public service in the manner provided in paragraph (e) of subsection 1 of NRS 62.211; and

(2) Suspend his driver's license for not more than 2 years or, if he does not possess a driver's license, prohibit the child from applying for a driver's license for not more than 2 years:

(I) Immediately following the date of the order, if the child is eligible to apply for a driver's license.

(II) After the date he becomes eligible to apply for a driver's license, if the child is not eligible to apply for a license on the date of the order.

2. The court may order the parent or guardian of a minor who is adjudicated delinquent in the manner set forth in subsection 1 to attend an educational class on parenting skills designated by the court.

Sec. 5. 1. If the court issues an order suspending the driver's license of a child pursuant to NRS 62.226 or section 4 of this act, the judge shall require the child to surrender to the court all driver's licenses then held by the child. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses, together with a copy of the order.

2. If, pursuant to NRS 62.226 or section 4 of this act, the court issues an order delaying the ability of a child to apply for a driver's license, the court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety a copy of the order.

3. If a child is found to have committed a subsequent unlawful act set forth in NRS 62.226 or section 4 of this act, the court shall order the suspension or delay, as appropriate, in the issuance of his driver's license. If the child is already the subject of a court order suspending or delaying the issuance of his driver's license, the court shall order an additional suspension or delay, as appropriate, to apply consecutively with the previous order.

4. The department of motor vehicles and public safety shall not:

(a) Treat such an unlawful act in the manner statutorily required for moving traffic violations.

(b) Report a suspension pursuant to this section to an insurance company or its agent inquiring about the child's driving record.

(c) Require the child to submit to the tests and other requirements which are adopted by regulation pursuant to subsection 1 of NRS 483.495 as a condition of reinstatement or reissuance after a suspension of his license pursuant to NRS 62.226 or section 4 of this act, unless the suspension also resulted from his poor performance as a driver.

Sec. 6. NRS 62.080 is hereby amended to read as follows:

62.080 1. *[If] Except as otherwise provided by subsection 2, if a child 16 years of age or older is charged with an offense which would be a felony if committed by an adult, the juvenile division of the district court, after full investigation, may retain jurisdiction or certify the child for proper criminal proceedings to any court which would have jurisdiction to try the offense if committed by an adult, but no child may be so certified unless he was 16 years of age or older at the time he allegedly committed the offense charged.*

2. *If:*

(a) A child 14 years of age or older is charged with committing an offense which would be a felony if committed by an adult;

(b) The court in this state or the juvenile court of another state has on at least two prior occasions determined that the child has committed an offense which would be a felony if committed by an adult; and

(c) Either the offense charged or one of the prior offenses involved the use of a firearm.

then the juvenile division of the district court shall certify the child for proper criminal proceedings to any court which would have jurisdiction to try the offense if committed by an adult. A child must not be so certified unless he was 14 years of age or older at the time he allegedly committed the last offense charged.

3. Except as otherwise provided in subsection [3, after such] 4, *after* a child has been certified for proper criminal proceedings *pursuant to subsection 1 or 2*, and his case has been transferred out of the juvenile division, original jurisdiction of his person for that case and any offense with which he is later charged rests with the court to which he has been certified and he may thereafter petition for transfer back to the juvenile division only upon a showing of exceptional circumstances. If a child is remanded to the juvenile division, the judge of that division shall determine whether the exceptional circumstances warrant accepting jurisdiction.

[3.] 4. If a child is certified as an adult pursuant to subsection 1 [,] *or 2*, original jurisdiction of his person for any offense with which he is later charged does not rest with the court to which he has been certified if the case that was transferred out of the juvenile division is dismissed or he is found not guilty of those charges.

Sec. 7. NRS 62.226 is hereby amended to read as follows:

62.226 1. Except as otherwise provided in subsection 3, whenever any child is found to have committed the unlawful act of:

(a) Using, possessing, selling or distributing a controlled substance; or

(b) Purchasing, consuming or possessing an alcoholic beverage in violation of NRS 202.020,

the judge, or his authorized representative, may, if the child possesses a driver's license, issue an order suspending the child's driver's license for 6 months. [If such an order is issued, the judge shall require the child to surrender to the court all driver's licenses then held by the child. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses, together with a copy of the order.]

2. If the child does not possess a driver's license and the child is or will be eligible to apply for a driver's license within the 2 years immediately following the date of the order, the judge, or his authorized representative, may issue an order prohibiting the child from applying for a driver's license within the 6 months:

(a) Immediately following the date of the order, if the child is eligible to apply for a driver's license.

(b) After the date the child will be eligible to apply for a driver's license, if the child is not eligible to apply for [such] a license on the date of the order.

[The court shall, within 5 days after issuing the order, forward to the department a copy of the order.]

3. If a child is found to have committed a subsequent unlawful act as set forth in subsection 1, the court shall order the suspension or delay, as appropriate, in issuance of his driver's license. If the child is already the subject of a court order suspending or delaying the issuance of his driver's

license, the court shall order an additional suspension or delay, as appropriate, to apply consecutively with the previous order.

4. The department shall not:

(a) Treat such an unlawful act in the manner statutorily required for moving traffic violations.

(b) Report a suspension pursuant to this section to an insurance company or its agent inquiring about the child's driving record.

(c) Require the child to submit to the tests and other requirements which are adopted by regulation pursuant to subsection 1 of NRS 483.495 as a condition of reinstatement or reissuance after a suspension of his license pursuant to this section unless the suspension also resulted from his poor performance as a driver.]

Sec. 8. NRS 62.385 is hereby amended to read as follows:

62.385 1. When a child applies for a driver's license, the department of motor vehicles and public safety shall notify the child of the provisions of NRS 62.226 [.] *and sections 4 and 5 of this act.*

2. After providing the notice pursuant to subsection 1, the department shall require the child to sign an affidavit acknowledging that he is aware that his driver's license may be suspended pursuant to NRS 62.226 [.] *or section 4 of this act.*

Sec. 9. NRS 483.250 is hereby amended to read as follows:

483.250 The department shall not issue any license under the provisions of NRS 483.010 to 483.630, inclusive:

1. To any person who is under the age of 16 years, except that the department may issue:

(a) A restricted license to a person between the ages of 14 and 16 years pursuant to the provisions of NRS 483.267 and 483.270.

(b) An instruction permit to a person who is at least 15 1/2 years of age pursuant to the provisions of subsection 1 of NRS 483.280.

(c) A restricted instruction permit to a person under the age of 16 years pursuant to the provisions of subsection 3 of NRS 483.280.

2. To any person whose license has been revoked until the expiration of the period during which he is not eligible for a license.

3. To any person whose license has been suspended [;] , but, upon good cause shown to the administrator, the department may issue a restricted license to him or shorten any period of suspension.

4. To any person who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to legal capacity.

5. To any person who is required by NRS 483.010 to 483.630, inclusive, to take an examination, unless he has successfully passed the examination.

6. To any person when the administrator has good cause to believe that by reason of physical or mental disability that person would not be able to drive a motor vehicle with safety upon the highways.

7. To any person who is not a resident of this state.

8. To any child who is the subject of a court order issued pursuant to NRS 62.226 or section 4 of this act which delays his privilege to drive.

Sec. 10. NRS 483.460 is hereby amended to read as follows:

483.460 1. [Unless] *Except as* otherwise provided by statute, the department shall revoke the license, permit or privilege of any driver upon receiving a record of his conviction of any of the following offenses, when that conviction has become final, and the driver is not eligible for a license, permit or privilege to drive for the period indicated:

(a) For a period of 3 years if the offense is:

(1) Violation of NRS 484.3795 or subsection 2 of NRS 484.377 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

(2) A third or subsequent violation within 7 years of NRS 484.379.

(b) For a period of 1 year if the offense is:

(1) Any other manslaughter resulting from the driving of a motor vehicle or felony in the commission of which a motor vehicle is used, including the unlawful taking of a motor vehicle.

(2) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or bodily injury of another.

(3) Perjury or the making of a false affidavit or statement under oath to the department under NRS 483.010 to 483.630, inclusive, or under any other law relating to the ownership or driving of motor vehicles.

(4) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(5) A second violation within 7 years of NRS 484.379 and the driver is not eligible for a restricted license during any of that period.

(6) A violation of NRS 484.348.

(c) For a period of 90 days, if the offense is a first violation within 7 years of NRS 484.379.

2. The department shall revoke the license, permit or privilege of a driver convicted of violating NRS 484.379 who fails to complete the educational course on the use of alcohol and controlled substances within the time ordered by the court and shall add a period of 90 days during which the driver is not eligible for a license, permit or privilege.

3. When the department is notified by a court that a person who has been convicted of violating NRS 484.379 has been permitted to enter a program of treatment pursuant to NRS 484.3794 the department shall reduce by half the period during which he is not eligible for a license, permit or privilege to drive, but shall restore that reduction in time if notified that he was not accepted for or failed to complete the treatment.

4. The department shall revoke the license, permit or privilege of a driver who is required to install a device pursuant to NRS 484.3943 but operates a motor vehicle without such a device:

(a) For 1 year if it is his first such offense during the period of required use of the device.

(b) For 5 years if it is his second such offense during the period of required use of the device.

5. When the department is notified that a court has, pursuant to NRS 62.226 [,] *or section 4 of this act*, ordered the suspension or delay in issuance of a child's license, the department shall take such actions as are necessary to carry out the court's order.

Sec. 11. NRS 483.490 is hereby amended to read as follows:

483.490 1. Except as otherwise provided in subsection 2, after a driver's license has been suspended or revoked for an offense other than a second violation within 7 years of NRS 484.379 and half the period during which the driver is not eligible for a license has expired, the department may, unless the statute authorizing the suspension prohibits the issuance of a restricted license, issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle:

(a) To and from work or in the course of his work, or both; or

(b) To acquire supplies of medicine or food or receive regularly scheduled medical care for himself or a member of his immediate family.

Before a restricted license may be issued, the applicant must submit sufficient documentary evidence to satisfy the department that a severe hardship exists because the applicant has no alternative means of transportation and that the severe hardship outweighs the risk to the public if he is issued a restricted license.

2. After a driver's license has been suspended pursuant to NRS 62.226 [,] *or section 4 of this act*, the department may issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle:

(a) If applicable, to and from work or in the course of his work, or both;
and

(b) If applicable, to and from school.

3. A driver who violates a condition of a restricted license issued under subsection 1 or by another jurisdiction is guilty of a misdemeanor, and if his license was suspended or revoked for a violation of NRS 484.379, 484.3795, 484.384 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct, he shall be punished in the manner provided by subsection 2 of NRS 483.560.

4. The periods of suspensions and revocations under this chapter and under NRS 484.384 must run consecutively, except as provided in NRS 483.465 and 483.475, when the suspensions must run concurrently.

5. Whenever the department suspends or revokes a license, the period of suspension, or of ineligibility for a license after the revocation, begins upon the effective date of the revocation or suspension as contained in the notice thereof.

Sec. 12. NRS 483.495 is hereby amended to read as follows:

483.495 The department shall by regulation:

1. Except as otherwise provided in subsection 4 of [NRS 62.226,] *section 5 of this act*, set forth any tests and other requirements which are a condition for the reinstatement of a license after any suspension, revocation, cancellation or voluntary surrender of the license. The tests and requirements:

(a) Must provide for a fair evaluation of a person's ability to operate a motor vehicle; and

(b) May allow for the waiver of certain tests or requirements as the department deems necessary.

2. Set forth the circumstances under which the administrator may, for good cause shown, rescind the revocation, suspension or cancellation of a license, or shorten the period for the suspension of a license.

Sec. 13. NRS 483.580 is hereby amended to read as follows:

483.580 A person shall not cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any highway when the minor is not authorized under the provisions of NRS 483.010 to 483.630, inclusive, or in violation of any of the provisions of NRS 483.010 to 483.630, inclusive, or if his license is suspended pursuant to NRS 62.226 [.] *or section 4 of this act.*

SUMMARY--Makes various changes in judicial system related to treatment of certain persons who abuse alcohol or drugs. (BDR 16-974)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the judicial system; requiring the department of prisons and the division of parole and probation of the department of motor vehicles and public safety to establish a system to collect certain information regarding the program of treatment provided to offenders who abuse alcohol or drugs; expanding the program of treatment; requiring the suspension of a driver's license of a child less than 18 years of age if he is found to have committed certain unlawful acts relating to a controlled substance or an alcoholic beverage; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 209 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The department and the division of parole and probation of the department of motor vehicles and public safety shall jointly establish a system to:

(a) Maintain a record of the name of each offender who participates in a program for the treatment of an offender who abuses alcohol or drugs established pursuant to subsection 1 of NRS 209.425;

(b) Monitor the rate of recidivism of such offenders after they complete the program; and

(c) Analyze the costs and benefits of providing the program to offenders.

2. The department and the division of parole and probation shall cooperatively prepare a written report containing the information obtained pursuant to subsection 1 for delivery to the director of the legislative counsel bureau on or before January 1 of each odd-numbered year for distribution to the chairmen of:

(a) The assembly standing committee on judiciary;

(b) The senate standing committee on judiciary; and

(c) The senate standing committee on transportation.

Sec. 2. NRS 209.351 is hereby amended to read as follows:

209.351 The director shall:

1. Establish a system of ongoing classification and evaluation to ensure the individualized custody, care and training of offenders under the department's jurisdiction. *As part of the system, he shall cause each offender to be evaluated upon admittance to an institution or a facility of the department to determine whether the offender is an abuser of alcohol or drugs.*

2. Keep, or cause to be kept, records for each offender containing:

(a) The offender's name, age, date of birth, race, sex, height, weight, complexion, color of eyes and hair, and peculiarities of build or features.

(b) The offender's place of birth (state, county or city, or country, province or city).

(c) The offender's occupation and whether he can read and write.

(d) The offender's record of conviction, including the date of sentence, name of the judge passing sentence, county from which sentenced, crime charged, date of incarceration, term of imprisonment and expiration date of minimum and maximum terms of imprisonment.

(e) Such other desirable or pertinent information as may be necessary.

3. Maintain a comprehensive record of the behavior of each offender reflecting his accomplishments and progress as well as charges of infractions of regulations, punishments imposed and medical services rendered.

Sec. 3. NRS 209.425 is hereby amended to read as follows:

209.425 1. The director shall, with the approval of the board, establish a program for the treatment of an abuser of alcohol or drugs who is imprisoned [pursuant] :

(a) Pursuant to paragraph (c) of subsection 1 of NRS 484.3792 or NRS 484.3795 [.] ;

(b) For the unlawful possession, use or sale of alcohol or drugs; or

(c) For any other reason, if upon admittance to prison the offender is assessed as an abuser of alcohol or drugs pursuant to NRS 209.351.

2. The program must include an initial period of intensive mental and physical rehabilitation in a facility of the department, followed by regular sessions of education, counseling and any other necessary or desirable treatment.

[2.] 3. *A program for the treatment of an offender enrolled pursuant to paragraph (b) of subsection 1 must include at least 90 days of treatment while he is imprisoned. The 90 days of treatment may include the initial period of rehabilitation required pursuant to subsection 2.*

4. *Notwithstanding the provisions of NRS 209.446 and 209.447, an offender who is sentenced to imprisonment on or after October 1, 1993, and who is required to enroll in a program of treatment pursuant to subsection 1 that fails to complete the program is not eligible for any credits to reduce the length of his sentence.*

5. The director may, upon the request of the offender after the initial period of rehabilitation, allow the offender to earn wages under any other program established by the department if the offender assigns to the department any wages he earns under such a program. The director may deduct from the wages of the offender an amount determined by the director, with the approval of the board, to:

(a) Offset the costs, as reflected in the budget of the department, to maintain the offender in a facility or institution of the department and in the program of treatment established pursuant to this section; and

(b) Meet any existing obligation of the offender for the support of his family or restitution to any victim of his crime.

Sec. 4. NRS 209.429 is hereby amended to read as follows:

209.429 1. The director may, at the request of an offender *who is imprisoned pursuant to paragraph (c) of subsection 1 of NRS 484.3792 or NRS 484.3795 and who has:*

(a) Established a position of employment in the community; and

(b) Successfully completed the initial period of rehabilitation required under the program of treatment established pursuant to NRS 209.425,

assign the offender to the custody of the division of parole and probation of the department of motor vehicles and public safety to serve a term of residential confinement, pursuant to NRS 213.380, for not longer than the remainder of his sentence.

2. If an offender assigned to the custody of the division of parole and probation pursuant to this section escapes or violates any of the terms or conditions of his residential confinement:

(a) The division of parole and probation may, pursuant to the procedure set forth in NRS 213.410, return the offender to the custody of the department of prisons.

(b) The offender forfeits all or part of the credits for good behavior earned by him before the escape or violation, as determined by the director. The director may provide for a forfeiture of credits pursuant to this paragraph only after proof of the offense and notice to the offender, and may restore credits forfeited for such reasons as he considers proper. The decision of the director regarding such a forfeiture is final.

3. The assignment of an offender to the custody of the division of parole and probation pursuant to this section shall be deemed:

(a) A continuation of his imprisonment and not a release on parole; and

(b) For the purposes of NRS 209.341, an assignment to a facility of the department of prisons,

except that the offender is not entitled to obtain any benefits or to participate in any programs provided to offenders in the custody of the department of prisons.

4. No person has a right to be assigned to the custody of the division of parole and probation pursuant to this section, or to remain in that custody after such an assignment, and it is not intended that the provisions of this section or of NRS 213.371 to 213.410, inclusive, create any right or interest in liberty or property or establish a basis for any cause of action against the state, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

Sec. 5. NRS 62.226 is hereby amended to read as follows:

62.226 1. Except as otherwise provided in subsection 3, whenever any child is found to have committed the unlawful act of:

(a) Using, possessing, selling or distributing a controlled substance; or

(b) Purchasing, consuming or possessing an alcoholic beverage in violation of NRS 202.020,

the judge, or his authorized representative, [may,] *shall*, if the child possesses a driver's license, issue an order suspending the child's driver's license for *not less than 90 days nor more than 6 months*. [If such an order is issued,] *Upon issuance of the order*, the judge shall require the child to surrender to the court all driver's licenses then held by the child. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses, together with a copy of the order.

2. If the child does not possess a driver's license and the child is or will be eligible to apply for a driver's license within the 2 years immediately following the date of the order, the judge, or his authorized representative, [may] *shall* issue an order prohibiting the child from applying for a driver's license [within the] *for not less than 90 days nor more than 6 months*:

(a) Immediately following the date of the order, if the child is eligible to apply for a driver's license.

(b) After the date the child will be eligible to apply for a driver's license, if the child is not eligible to apply for [such] a *driver's* license on the date of the order.

The court shall, within 5 days after issuing the order, forward to the department a copy of the order.

3. If a child is found to have committed a subsequent unlawful act as set forth in subsection 1, the court shall order the suspension or delay, as appropriate, in issuance of his driver's license. If the child is already the subject of a court order suspending or delaying the issuance of his driver's license, the court shall order an additional suspension or delay, as appropriate, to apply consecutively with the previous order.

4. The department shall not:

(a) Treat such an unlawful act in the manner statutorily required for moving traffic violations.

(b) Report a suspension pursuant to this section to an insurance company or its agent inquiring about the child's driving record.

(c) Require the child to submit to the tests and other requirements which are adopted by regulation pursuant to subsection 1 of NRS 483.495 as a condition of reinstatement or reissuance after a suspension of his license pursuant to this section unless the suspension also resulted from his poor performance as a driver.

Sec. 6. NRS 453.3363 is hereby amended to read as follows:

453.3363 1. If a person who has not previously been convicted of any offense under NRS 453.011 to 453.552, inclusive, or under any statute of the United States or of any state relating to narcotic drugs, marihuana, or stimulant, depressant or hallucinogenic substances tenders a plea of guilty, nolo contendere or similar plea to a charge under NRS 453.336, 453.411 or 454.351, or is found guilty of one of those charges, the court, without entering a judgment of conviction and with the consent of the accused, may suspend further proceedings and place him on probation upon terms and conditions that must include attendance and successful completion of an educational program or, in the case of a person dependent upon drugs, of a program of treatment and rehabilitation pursuant to NRS 453.580.

2. *The terms and conditions of probation of a person who is required to complete a program of treatment and rehabilitation pursuant to subsection 1 must include:*

(a) The required appearance of the person before the court at least once each calendar month for 12 calendar months to report on his progress; and

(b) *If the court determines that the person is not rehabilitated after 12 calendar months, the required appearance of the person before the court at least once each calendar month for an additional 6 calendar months.*

3. *A person on probation pursuant to subsection 1 shall submit to any testing ordered by the court to detect the presence of alcohol or drugs and to any monitoring or treatment ordered by the court.*

4. *Upon violation of a term or condition [,] of probation. including, without limitation. failing to complete successfully a program of treatment and rehabilitation. the court may enter a judgment of conviction and proceed as provided in the section under which the accused was charged. Upon fulfillment of the terms and conditions, the court shall discharge the accused and dismiss the proceedings against him. A nonpublic record of the dismissal must be transmitted to and retained by the division of parole and probation of the department of motor vehicles and public safety solely for the use of the courts in determining whether, in later proceedings, the person qualifies under this section.*

[3.] 5. *Except as otherwise provided in subsection [4,] 7, discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the person discharged, in the contemplation of the law, to the status occupied before the arrest, indictment or information. He*

may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of him for any purpose.

6. Discharge and dismissal under this section may occur only once with respect to any person.

[4.] 7. A professional licensing board may consider a proceeding under this section in determining suitability for a license or liability to discipline for misconduct. Such a board is entitled for those purposes to a truthful answer from the applicant or licensee concerning any such proceeding with respect to him.

SUMMARY--Requires development of program to track prescriptions for controlled substances filled by pharmacies. (BDR 40-973)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to controlled substances; requiring the board of pharmacy and the investigation division of the department of motor vehicles and public safety to develop a computerized program to track prescriptions for controlled substances that are filled by pharmacies; limiting the board's authority to impose an additional fee to cover the costs of the program; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board and the division shall cooperatively develop a computerized program to track each prescription for a controlled substance that is filled by a pharmacy. The program must be developed in a manner which allows each pharmacy to determine whether the person seeking to have a prescription filled has had a similar prescription filled at another pharmacy.

2. *The board and division must have access to the program established pursuant to subsection 1 for the purpose of identifying any suspected fraudulent or illegal activity related to the dispensing of controlled substances.*

3. *The board and division shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency and provide the law enforcement agency with the relevant information obtained from the program for further investigation.*

4. *Information obtained from the program is confidential and, except as otherwise provided by this subsection must not be disclosed to any person. Information obtained from the program must be disclosed:*

(a) Upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

Sec. 2. NRS 453.153 is hereby amended to read as follows:

453.153 The board and division shall cooperate with each other in effectuating the purposes of NRS 453.011 to 453.552, inclusive [.] , and section 1 of this act.

Sec. 3. NRS 453.221 is hereby amended to read as follows:

453.221 1. The board may adopt regulations and charge reasonable fees relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state.

2. *The board may charge an additional fee for dispensing controlled substances included in schedules I to V, inclusive, to cover the cost of developing and maintaining the computerized program developed pursuant to*

section 1 of this act. The amount of the fee must be set so that the aggregate amount received from the fee does not exceed the estimated costs of developing and maintaining the program.

Sec. 4. The program developed pursuant to section 1 of this act must be operational not later than January 1, 1996.

Sec. 5. 1. This section and sections 1, 2 and 4 become effective on October 1, 1995.

2. Section 3 of this act becomes effective on July 1, 1995.

SUMMARY--Requires peace officers to receive training in cultural awareness.

(BDR 43-980)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to peace officers; requiring peace officers to receive training in cultural awareness; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 481 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Regulations adopted pursuant to NRS 481.053 and 481.0545 by the peace officers' standards and training committee apply to all agencies of the state and of local governments which employ persons as peace officers.

2. Regulations adopted by the committee pursuant to NRS 481.053:

(a) Must require that all peace officers receive training in the handling of cases involving abuse or neglect of children or missing children;

(b) Must require that all peace officers receive not less than 20 hours of training in cultural awareness as a condition to certification;

(c) Must require that all peace officers receive not less than 4 hours of training in cultural awareness each year; and

(d) May require that training be carried on at institutions which it approves in those regulations.

3. The director may adopt regulations necessary for the operation of the committee and the enforcement of laws administered by the committee.

Sec. 2. NRS 481.053 is hereby amended to read as follows:

481.053 1. The governor shall appoint the peace officers' standards and training committee.

2. The committee consists of seven members, one appointed from Clark County, one from Washoe County, three from any other counties, one from category II peace officers and one from category III peace officers. Members serve terms of 2 years from the date of appointment. Members serve without compensation but are entitled to the per diem allowance and travel expenses provided by law for state officers and employees generally.

3. The governor shall make the appointments from recommendations submitted by Clark County, Washoe County, professional organizations of sheriffs and police chiefs of this state, category II peace officers and category III peace officers.

4. The committee shall:

(a) Meet at the call of the chairman, who must be elected by the members of the committee.

(b) Provide for and encourage training and education of peace officers in order to improve the system of criminal justice.

(c) Adopt regulations establishing minimum standards for certification and decertification, recruitment, selection and training of peace officers.

(d) Make necessary inquiries to determine whether agencies of the state and of local governments are complying with standards set forth in its regulations.

(e) Carry out the duties required of the committee pursuant to NRS 432B.610 and 432B.620.

5. [Regulations adopted by the committee:

(a) Apply to all agencies of the state and of local governments which employ persons as peace officers;

(b) Must require that all peace officers receive training in the handling of cases involving abuse or neglect of children or missing children; and

(c) May require that training be carried on at institutions which it approves in those regulations.

6. The director may adopt regulations necessary for the operation of the committee and the enforcement of laws administered by the committee.

7.] As used in this section:

(a) "Category II peace officer" means:

(1) The bailiff of the supreme court;

(2) The bailiffs of the district courts, justices' courts and municipal courts whose duties require them to carry weapons and make arrests;

(3) Constables and their deputies whose official duties require them to carry weapons and make arrests;

(4) Inspectors employed by the public service commission of Nevada who exercise those powers of enforcement conferred by chapters 704, 705 and 706 of NRS;

(5) Parole and probation officers;

(6) Special investigators who are employed full time by the office of any district attorney or the attorney general;

(7) Investigators of arson for fire departments who are specially designated by the appointing authority;

(8) The assistant and deputies of the state fire marshal;

(9) The brand inspectors of the division of agriculture of the department of business and industry who exercise the powers of enforcement conferred in chapter 565 of NRS;

(10) Investigators for the state forester firewarden who are specially designated by him and whose primary duties are the investigation of arson;

(11) School police officers employed by the board of trustees of any county school district;

(12) Agents of the state gaming control board who exercise the powers of enforcement specified in NRS 281.0353, 463.140 or 463.1405, except those agents whose duties relate primarily to auditing, accounting, the collection of taxes or license fees, or the investigation of applicants for licenses;

(13) Investigators and administrators of the bureau of enforcement of the registration division of the department of motor vehicles and public safety who perform the duties specified in subsection 3 of NRS 481.048;

(14) Officers and investigators of the section for the control of emissions from vehicles of the registration division of the department of motor vehicles and public safety who perform the duties specified in subsection 3 of NRS 481.0481;

(15) Legislative police officers of the State of Nevada;

(16) Police officers of the buildings and grounds division of the department of administration;

(17) Parole counselors of the division of child and family services of the department of human resources;

(18) Juvenile probation officers and deputy juvenile probation officers employed by the various judicial districts in Nevada or by a department of family, youth and juvenile services established pursuant to NRS 62.1264 whose official duties require them to enforce court orders on juvenile offenders and make arrests;

(19) Field investigators of the taxicab authority; and

(20) Security officers employed full time by a city or county whose official duties require them to carry weapons and make arrests.

(b) "Category III peace officer" means peace officers whose authority is limited to correctional services, and includes the superintendents and correctional officers of the department of prisons.

SUMMARY--Urges development of program to track prescriptions for controlled substances filled by pharmacies. (BDR R-972)

CONCURRENT RESOLUTION--Urging the Department of Motor Vehicles and Public Safety and the State Board of Pharmacy to organize a task force to develop a computerized program to track prescriptions for controlled substances filled by pharmacies.

WHEREAS, The unlawful sale and use of prescription drugs in this state is an increasing problem; and

WHEREAS, The unlawful sale and use of prescription drugs has contributed to the growing percentage of persons addicted to drugs in this state; and

WHEREAS, Drug abuse is linked to the increase in the cost of health care and to the increase in violent crime; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA. THE

CONCURRING, That the Nevada Legislature hereby urges the Investigation Division of the Department of Motor Vehicles and Public Safety and the State Board of Pharmacy to organize a multidisciplinary task force to develop a computerized program to track prescriptions for controlled substances filled by pharmacies in this state to identify fraudulent and illegal activity related to the dispensing of controlled substances; and be it further

RESOLVED, That the Nevada Legislature hereby urges the Investigation Division of the Department of Motor Vehicles and Public Safety and the State Board of Pharmacy to instruct the task force:

1. To develop a method to collect information for the program and to analyze and use information in the program which assures consumers of pharmaceuticals the appropriate confidentiality;

2. To seek the cooperation of pharmacies in this state to obtain information regarding the dispensing of controlled substances by prescription;

3. To conduct an analysis of the costs and benefits of the program; and

4. To make recommendations to the Nevada Legislature concerning proposed legislation relating to the program to track prescriptions for controlled substances;

and be it further

RESOLVED, That the _____ of the _____ prepare and transmit a copy of this resolution to the Chief of the Investigation Division of the Department of Motor Vehicles and Public Safety and to the President of the State Board of Pharmacy.

1. An examination of the criminal statutes of this state to determine if certain criminal statutes are unnecessary or duplicative and as such should be eliminated;

2. A comparison of the criminal sentence imposed for each crime to determine whether the duration of the sentences is equitable and reflects the severity of the crimes;

3. A review of the effectiveness of mandatory minimum sentencing and of a criminal statutory scheme embracing the concept of truth in sentencing; and

4. A consideration of the feasibility of developing a new scheme for classifying crimes, including the possibility of eliminating the gross misdemeanor as a classification of crimes;

and be it further

RESOLVED, That the results of the study and any recommended legislation be reported to the 69th session of the Nevada Legislature.