

MEETING NOTICE AND AGENDA

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

Date and Time of Meeting: Friday, September 24, 2010
9:30 a.m.

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

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

Grant Sawyer State Office Building
Room 4401
555 East Washington Avenue
Las Vegas, Nevada

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

AGENDA

[Items on this agenda may be taken in a different order than listed]

- I. Opening Remarks by the Chair
- *II. Approval of the Minutes of the Meetings of the Advisory Commission held on June 9, 2010 and June 23, 2010
- *III. Work Session – Discussion and Action on Recommendations
(See “Work Session Document II” for a summary of recommendations.)

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

- IV. Public Comment
- V. Adjournment

*Denotes items on which the Commission may take action.

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

Notice of this meeting was e-mailed and/or faxed for posting to the following Las Vegas, Nevada, locations: Clark County Government Center, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street.

Notice of this meeting was posted on the Internet through the Nevada Legislature’s website at www.leg.state.nv.us.



WORK SESSION DOCUMENT II

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

September 24, 2010

The following “Work Session Document” was prepared by staff of the Advisory Commission on the Administration of Justice (“Advisory Commission”) (*Nevada Revised Statutes* 176.0123). This is the second work session document of this interim and contains recommendations that the Advisory Commission requested to be continued from the meeting of June 23, 2010.

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

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

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

At the work session held on June 23, 2010, the Advisory Commission approved six total recommendations for the drafting of legislation. Additionally, the Advisory Commission approved one recommendation to include a statement in the final report. Finally, the Advisory Commission requested that the following seven recommendations be returned for further consideration:

RECOMMENDATION NO. 1 — Draft legislation to provide for the centralized collection of fines, fees and restitution from convicted persons. (Commissioner Hardesty)

Background Information for Recommendation No. 1

Tab A - Assembly Bill No. 271 (First Reprint) (2009).

Tab B - Proposal for legislation to centralize the collection of fines, administrative assessments, fees and restitution.

During the Advisory Commission meeting held on March 30, 2010, Commissioner Hardesty presented a detailed PowerPoint on the need for the centralized collection of fines, administrative assessments, fees and restitution from convicted persons. Commissioner Hardesty asserted that many of these past due amounts are not collected simply because no single entity is assigned the primary responsibility for coordinating and collecting the obligations. He suggested that there is also confusion over the priority in which to apply any amounts that are actually collected. Further, many offenders do not complete payment of their obligations before they are released from supervision, which further exacerbates collection problems.

Commissioner Hardesty noted that the issue of collecting past due amounts from convicted persons was previously raised in Assembly Bill No. 271 (2009) (**Tab A**) as was endorsed by the Advisory Commission during the 2008-2009 interim; however, that bill did not pass out of the Senate. As an alternative to AB 271, which would have required the Office of the Court Administrator to collect any past due fines, administrative assessments, fees and restitution, Commissioner Hardesty suggested that the Commission consider recommending alternative legislation to amend chapter 353C of NRS to centralize collections within the offices of the State Controller and the Attorney General.

*At the work session held on June 23, 2010, Commissioner Hardesty suggested that the Advisory Commission recommend redrafting AB 271, but delete all of the provisions relating to administrative probation. Additionally, Commissioner Masto further suggested that the State Controller rather than the Office of the Court Administrator collect any past due fines, administrative assessments, fees or restitution. (**Tab B**)*

RECOMMENDATION NO. 2 — **Draft legislation to amend the NRS to impose limitations on the use of psychological or psychiatric examinations of victims and witnesses in sexual offense prosecutions.** [Advisory Commission on the Administration of Justice’s Subcommittee on Victims of Crime (Commissioner Masto)]

Background Information for Recommendation No. 2

Tab C – Proposed language for a bill draft submitted by the Subcommittee on Victims of Crime.

This proposal for legislation would prohibit a court from ordering a victim or witness to submit to a psychological or psychiatric examination in a criminal prosecution of a sexual offense. The proposed legislation would also authorize a court to exclude such evidence absent a prima facie showing of a compelling need for a psychological or psychiatric examination and consent of the victim or witness to such examination.

At the work session held on June 23, 2010, the Advisory Commission requested this recommendation to be held for the next meeting.

RECOMMENDATION NO. 3 — Draft legislation to reclassify certain category B felonies, all B felonies with a penalty of 1-6 years or certain non-violent category B felonies to be lowered to a category C felony. (Commissioner Kohn)

Background Information for Recommendation No. 3

Tab D – Spreadsheets identifying all category B felonies and listing those category B felonies with a penalty of 1-6 years imprisonment.

The Advisory Commission on the Administration of Justice's Subcommittee on the Reclassification of Crimes held two meetings during which the possibility of reclassifying certain category B felonies was discussed. At those meetings, several Subcommittee members suggested that all category B offenses that currently provide a penalty of a minimum term of imprisonment of 1 year and a maximum term of imprisonment of 6 years, or conversely any category B felonies not involving violence, be lowered to a category C.

Testimony indicated that there are currently over 200 category B felonies currently in Nevada law and that 62 percent of Nevada's prison population is composed of inmates serving a sentence for a category B felony. The Subcommittee noted that one of the major issues with category B felonies is that a person sentenced for committing a category B felony is not eligible for additional credits to reduce the minimum term of imprisonment authorized for category C, D and E felonies pursuant to Assembly Bill No. 510 (2007). However, the Subcommittee did not officially take action on any particular recommendation to lower current category B felonies.

At the work session held on June 23, 2010, the Advisory Commission requested this recommendation to be held for the next meeting. Chairman Horne and Commissioner Hardesty indicated that they would contact the Pew Charitable Trust to determine the possibility of providing funding for future study of Nevada's sentencing scheme.

RECOMMENDATION NO. 4 — **Draft legislation to amend NRS 209.4465 to allow offenders convicted of certain category B felonies to be eligible for credits to reduce the minimum term of imprisonment imposed.** (Commissioner Kohn as was suggested by Dr. James Austin to the Advisory Commission on the Administration of Justice’s Subcommittee on the Reclassification of Crimes)

Background Information for Recommendation No. 4

Tab E – Bill draft proposal submitted by Commissioner Kohn.

This proposal would extend the application of good time credits earned by offenders convicted of certain category B felonies to the minimum term of imprisonment, as is currently authorized for offenders convicted of category C, D and E felonies pursuant to Assembly Bill No. 510 (2007). As per the existing statutory scheme under NRS 209.4465, this proposal would exclude category B felonies which involve any crime involving the use or threatened use of force or violence against the victim, a sexual offense or driving under the influence.

At the work session held on June 23, 2010, the Advisory Commission requested this recommendation to be held for the next meeting. Chairman Horne and Commissioner Hardesty indicated that they would contact the Pew Charitable Trust to determine the possibility of providing funding for future study of Nevada’s sentencing scheme.

RECOMMENDATION NO. 5 — Draft legislation to require DNA testing for all persons arrested for a felony. (Bring Bri Justice Foundation)

Background Information for Recommendation No. 5

Tab F – Bring Bri Justice Foundation - About Us; Brianna’s Law - Preliminary; and Assembly Bill No. 234 (2009).

During the Advisory Commission meeting held on March 30, 2010, Ms. Lauren Denison, Center Coordinator, Bring Bri Justice Foundation, along with several other members of the Bring Bri Justice Foundation, provided the Commission with an overview of their proposed legislation (Brianna’s Law) (**Tab F**) to mandate DNA testing of all persons arrested on felony charges. Similar legislation was introduced during the 2009 Legislative Session, Assembly Bill No. 234 (**Tab F**); however, that legislation did not pass. According to testimony, 21 other states and the federal government require DNA testing upon arrest for committing a felony. The Foundation members also asserted that such testing would save Nevada money by identifying felons before they can commit future crimes, thus leading to fewer victims and fewer prosecutions.

At the work session held on June 23, 2010, the Advisory Commission requested this recommendation to be held for the next meeting.

RECOMMENDATION NO. 6 — Draft legislation to revise the laws governing compassionate release for seriously ill offenders. (Commissioner Siegel)

Background Information for Recommendation No. 6

Tab G – Washington House Bill 2194 (2009); and NRS 209.3925.

This recommendation, based on the State of Washington's recently passed legislation (**Tab G**) seeks to revise NRS 209.3925 to authorize the Department of Corrections to release prisoners on parole who have serious medical problems when: 1) the offender has a medical condition that is serious enough to require costly care for treatment; 2) the offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and 3) granting the extraordinary medical placement will result in a cost savings to the State. The medical release would be unavailable to any prisoner serving a sentence of life without the possibility of parole or death. Additionally, any prisoner so released is required to be under electronic surveillance unless it interferes with the medical care, and the medical release may be revoked at any time.

At the work session held on June 23, 2010, the Advisory Commission requested this recommendation to be held for the next meeting. Additionally, staff was directed to compare Washington's law to existing Nevada law. In reviewing Washington's House Bill 2194 (2009) and NRS 209.3925, it does not appear that Washington's law provides any broader authority to grant medical release to an offender than under the current authority provided in NRS 209.3925.

Under current Nevada law, the Director may assign an offender to the Division of Parole and Probation to serve a term of residential confinement if: (1) the Director has reason to believe the offender is physically incapacitated or in ill health and does not pose a threat to the safety of the public or (2) is in ill health and expected to die within 12 months and does not pose a threat to the safety of the public, and (3) at least two physicians have verified the offender's health. The Washington law instead provides that three requirements must be met: (1) the offender has a medical condition that is serious enough to require costly care for treatment; (2) the offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; (3) and granting the extraordinary medical placement will result in a cost savings to the State.

The only other substantive difference between Washington's law and Nevada's current statute is that under Washington's law an offender is released to electronic surveillance. Several Commissioners indicated opposition at the June work session to any release of such offenders to electronic surveillance in Nevada.

RECOMMENDATION NO. 7 — Include a statement in the final report recognizing the need to investigate and support future study of Nevada’s criminal justice system. (Chairman Horne and Commissioner Hardesty)

Background Information for Recommendation No. 7

Chairman Horne and Commissioner Hardesty are working to schedule a future meeting with Dr. James Austin and the Pew Charitable Trust to examine the possibility of a financial collaboration to further explore Nevada’s criminal justice system, including the current sentencing structure. This recommendation would indicate a statement of support for continued ongoing research and study of Nevada’s criminal justice system.

At the work session held on June 23, 2010, the Advisory Commission requested this recommendation to be held for the next meeting. Chairman Horne and Commissioner Hardesty indicated that they would contact the Pew Charitable Trust to determine the possibility of providing funding for future study of Nevada’s sentencing scheme.