

MEETING NOTICE AND AGENDA

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

Date and Time of Meeting: Wednesday, June 23, 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 4412
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. Presentation Concerning Credits on Terms of Imprisonment

Don Helling, Deputy Director, Nevada Department of Corrections

*III. Work Session – Discussion and Action on Recommendations
(See “Work Session Document” for a summary of recommendations.)

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

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

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

June 23, 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). The document contains a compilation of recommendations within the scope of the Advisory Commission that were presented during hearings or submitted in writing during the course of the 2009-2010 interim.

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

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

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

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).

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.

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 Mastro])

Background Information for Recommendation No. 2

Tab B – 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.

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 C – 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.

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 D – 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 and driving under the influence.

RECOMMENDATION NO. 5 — Draft legislation to revise provisions relating to the requirements to be certified by a panel before release on parole pursuant to NRS 213.1214. (Commissioner Bisbee)

Background Information for Recommendation No. 5

Tab E – Memorandum from Commissioner Bisbee regarding psychological review panel bill draft suggestions.

During the Advisory Commission meeting held on June 9, 2010, Commissioner Bisbee submitted a memorandum outlining potential legislative suggestions for revising the current psychological review panel under NRS 213.1214 (**Tab E**). Commissioner Bisbee’s proposed bill draft would: (1) revise the panel to make it an advisory function in lieu of certification; (2) allow the Parole Board to request a panel on any sex offender if the information would assist the Board in determining whether parole should be granted; (3) revise the current language pertaining to liability and delete the statutory language pertaining to the revocation of a panel certification; (4) require the panel to adopt regulations regarding the evaluation of prisoners and review their assessments and procedures at least once every 3 years and make a determination on the validity of their risk tools; (5) clarify that only convictions for child abuse or neglect that are deemed sexual in nature are required to be evaluated by the panel, and add the crime of kidnapping with intent to commit sexual assault to the list of offenses subject to the panel; (6) specify that the Parole Board may adopt regulations pertaining to the manner in which the sex offender risk assessment is to be used in conjunction with the parole standards; and (7) define certain terms such as “current term of imprisonment” and “custody of the Department of Corrections.”

Additionally, Commissioner Hardesty suggested that the proposed legislation should include clarification that panels under NRS 213.1214 are not subject to the Open Meeting Law. Language to exempt the panels from the Open Meeting Law has been included in the revised submitted bill draft language from Commissioner Bisbee (**Tab E**).

RECOMMENDATION NO. 6 — Draft legislation to authorize the aggregation of minimum prison sentences. (Commissioner Bisbee)

Background Information for Recommendation No. 6

Tab F – Memorandum from Commissioner Bisbee regarding aggregated sentences; Memorandum from Commissioner Bisbee relating to cost analysis for parole denials.

During the Advisory Commission meetings held on January 27 and June 9, 2010, Commissioner Bisbee recommended aggregating the minimum terms of imprisonment ordered to be served consecutively into one sentence. Commissioner Bisbee provided several examples in which a minimum sentence, such as a person serving 4 consecutive terms with a minimum term of 4 years and a maximum term of 10 years, could be combined into one longer 16 year minimum term. Ms. Bisbee stated that when a person is placed on parole from one sentence and still has additional sentences to serve, it is confusing and requires additional parole hearings by the Parole Board. She also indicated that aggregating the sentences would require fewer parole hearings because the Parole Board would not consider the prisoner for parole until he or she had completed the entire minimum sentence. She indicated that this would be less confusing for victims and for the family of the prisoner.

During the meeting held on June 9, 2010, Commissioner Bisbee suggested that there are still several areas which would need to be addressed to carry out an aggregated sentencing scheme when the sentence is determinate: (1) application of credits (AB510) which are applied to reduce a minimum sentence; (2) establishing limits to aggregated sentences when the offense is not one that would result in a life sentence; (3) prospective and retroactive application of aggregated sentences including new convictions which may be imposed while on parole; (4) the manner in which the Department of Corrections, the Board of Parole Commissioners and the Division of Parole and Probation would consider the offenses for the purposes of classification, parole guidelines and community supervision; and (5) costs related to database programming changes and implementation concerns. Additionally, Commissioner Bisbee submitted a memorandum outlining the potential cost savings, which she estimates a marginal cost savings of \$900,000 if 10 percent of the inmates are paroled at their initial hearing, under aggregated sentencing (**Tab F**).

RECOMMENDATION NO. 7 — Draft legislation to require DNA testing for all persons arrested for a felony. (Bring Bri Justice Foundation)

Background Information for Recommendation No. 7

Tab G – 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 G**) 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 G**); 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.

RECOMMENDATION NO. 8 — Draft legislation to amend NRS 180.010 to move the Office of the State Public Defender to the Office of the Governor or elsewhere in the Executive Branch. (Commissioners Parks and Hardesty)

Background Information for Recommendation No. 8

Tab H – NRS 180.010.

During the Advisory Commission meeting held on January 27, 2010, several Commissioners questioned the efficiency of having the Office of the State Public Defender located within the Department of Health and Human Services. Commissioners Parks and Hardesty suggested that it would be more appropriate and efficient to place the Office of the State Public Defender within the Office of the Governor.

RECOMMENDATION NO. 9 — Draft legislation to establish an oversight committee for the Department of Corrections. (Tonja Brown, Advocate for the Innocent)

Background Information for Recommendation No. 9

Tab I – NRS 176.0125.

During the Advisory Commission meeting held on June 9, 2010, Tonja Brown recommended that the Advisory Commission establish an oversight or advisory board for the Department of Corrections. Pursuant to subsection 4 of NRS 176.0125 (**Tab I**), the oversight or advisory board would perform various functions and make recommendations concerning policies for the operation of the Department of Corrections, budgetary issues and other related matters regarding the Department of Corrections.

RECOMMENDATION NO. 10 — Draft legislation to amend NRS 217.260 to provide that any remaining money in the Fund for the Compensation of Victims of Crime at the end of a fiscal year remain in the Fund and not revert to the State General Fund. (Commissioner Hardesty)

Background Information for Recommendation No. 10

Tab J – Assembly Bill No. 114 (2009), as introduced.

Assembly Bill No. 114 was requested on behalf of the Advisory Commission on the Administration of Justice during the 2009 Legislative Session. Section 2 of Assembly Bill No. 114 (**Tab J**), as introduced, sought to provide that any remaining money in the Fund for the Compensation of Victims of Crime at the end of the fiscal year must remain within the Fund and must not be reverted to the State General Fund. This recommendation for legislation proposes to re-draft section 2 of Assembly Bill No. 114 (2009).

RECOMMENDATION NO. 11 — Draft legislation to amend the *Nevada Revised Statutes* to prohibit a person under 21 years of age from working in a licensed brothel. (Commissioner Farley)

Background Information for Recommendation No. 11

State law is generally silent on the subject of brothels, except in Clark County (Las Vegas and vicinity) where they are prohibited by state statute. With the exception of Clark County, local governments have the option to either prohibit or permit the operation of brothels. Additionally, individual counties may impose age restrictions on licensees for employment in legal brothels. For instance, Churchill and Nye Counties require employees to be at least 21 years of age. This proposed bill draft would mandate in state law that all employees of a brothel must be at least 21 years of age.

Tab K - After the Advisory Commission meeting held on June 9, 2010, testimony opposing any change in state law from age 18 to 21 was submitted by UNLV Professors Crystal Jackson, Dr. Barbara Brents and Dr. Kate Korgan.

RECOMMENDATION NO. 12 — Draft legislation to waive certain fees relating to the issuance of certified copies of birth certificates and duplicate drivers' licenses and identification cards to persons released from prison. (Commissioner Siegel on behalf of the Religious Alliance of Nevada)

Background Information for Recommendation No. 12

Tab L – Assembly Bill No. 252 (2009), as introduced.

Existing law provides for the waiver of certain fees relating to the issuance of certified copies of birth certificates and duplicate drivers' licenses and identification cards to homeless persons. This recommendation is to re-draft Assembly Bill No. 252 (2009), which would provide for a similar waiver of such fees for persons who are released from prison.

RECOMMENDATION NO. 13 — Draft legislation to revise the laws governing compassionate release for seriously ill offenders. (Commissioner Siegel)

Background Information for Recommendation No. 13

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

This recommendation, based on the State of Washington's recently passed legislation (**Tab M**) 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.

RECOMMENDATION NO. 14 — Draft legislation to adjust the threshold amount for property offenses to current amounts using the Consumer Price Index. (Commissioner Siegel)

Background Information for Recommendation No. 14

Tab N – NRS 205.08345, 205.0835, 205.220, 205.222, 205.228 and 205.240.

Nevada law defines petit larceny as intentionally stealing or taking anything with a value of less than \$250 and grand larceny as intentionally stealing or taking anything with a value of \$250 or more. Grand larceny is a category C felony if the value of the property involved in the grand larceny is less than \$2,500 and it is a category B felony if the value of the property involved in the grand larceny is \$2,500 or more. The penalties for theft under any violation of NRS 205.0821 through 205.0835 also mirror those same dollar thresholds. It appears that the petit larceny/theft threshold amount was last revised in 1989, and the grand larceny/theft amount was set in 1997.

This recommendation seeks to increase the threshold amounts for larceny and theft offenses to 2010 levels adjusted for inflation based on the Consumer Price Index, as published by the Bureau of Labor Statistics. According to the CPI calculator, the 2010 inflationary value for \$250 is \$439.53, and the 2010 value for \$2,500 is \$3,395.78.

RECOMMENDATION NO. 15 — Draft legislation to award different amounts of credit to reduce terms of imprisonment based on the category of the offense. (Commissioner Siegel)

Background Information for Recommendation No. 15

During the Advisory Commission meeting held on June 9, 2010, Commissioner Siegel indicated that the report issued by the Sentencing Project, which outlined legislation from 19 states, had identified states (including Texas) that awarded credits to reduce sentences based on the category of the crime committed by the offender. This recommendation would authorize a varying amount of credit to be awarded to an offender for each level of felony (for example, a person convicted of a D felony may receive more credits than a person convicted of a C felony).

RECOMMENDATION NO. 16 — 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. 16

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.

RECOMMENDATION NO. 17 — Include a statement in the final report encouraging the State of Nevada to fully fund all indigent defense as raised in Assembly Bill No. 45 (2009). (Commissioner Siegel)

Background Information for Recommendation No. 17

Tab O – Assembly Bill No. 45 (2009), as introduced.

Testimony at the Advisory Commission meeting held on January 14, 2010, indicated that Nevada currently operates under a bifurcated system where Clark and Washoe Counties provide for indigent defense, with the State Public Defender providing such defense in all other counties. Commissioner Siegel suggested that this recommendation would include a statement encouraging the State of Nevada to fully fund indigent defense.

In addition, Chairman Horne suggested that additional fiscal research must be completed in terms of the actual cost of providing indigent defense, as the fiscal note for the State to assume all indigent defense under Assembly Bill No. 45 (2009) was approximately \$62 million per year.

