

MEETING NOTICE AND AGENDA

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

Date and Time of Meeting: Tuesday, October 21, 2014
9:00 a.m.

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

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

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

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

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

AGENDA

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

I. Call to Order.

II. Roll Call.

III. Public Comment.

(Because of time considerations, speakers are urged to avoid repetition of comments made by previous speakers. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted in person or by email, facsimile, or mail before, during or after the meeting.)

*For
Possible
Action*

IV. Approval of the Minutes of the Meeting of the Advisory Commission held on September 12, 2014.

*For
Possible
Action*

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

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

VI. Public Comment.

(Because of time considerations, speakers are urged to avoid repetition of comments made by previous speakers. A person may also have comments added to the minutes of the meeting by submitting them in writing either in addition to testifying or in lieu of testifying. Written comments may be submitted in person or by email, facsimile, or mail before, during or after the meeting.)

VII. Adjournment.

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

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

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



WORK SESSION DOCUMENT

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

October 21, 2014

The following “Work Session Document” was prepared by staff of the Advisory Commission on the Administration of Justice (“Advisory Commission”). (NRS 176.0123) The document contains recommendations that were presented during hearings or submitted in writing during the course of the 2013-2014 interim.

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

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

By way of background, the Advisory Commission previously approved the drafting of two letters on behalf of the Advisory Commission. On November 6, 2013, the Advisory Commission voted to approve the drafting of a letter to the Interim Finance Committee to highlight the issue of increased funding needed by the Division of Parole and Probation for additional writers of presentence investigation reports. Also at that meeting, and again at subsequent meetings, the Advisory Commission voted upon a recommendation directing staff to draft a letter to Bureau of Justice Assistance/Pew Charitable Trusts/Council of State Governments seeking technical assistance to review justice reinvestment initiatives and Nevada’s current sentencing scheme. These recommendations do not require any further action, but have been referenced herein. Both recommendations, along with the supporting letters, will be included in the final report.

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

RECOMMENDATION NO. 1 — Draft legislation requiring the Department of Corrections to issue recognizable and useable photo identification for offenders. (Commissioner Hardesty)

Background Information for Recommendation No. 1

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

Existing law, enacted pursuant to Senate Bill No. 423 (2013), requires the Director to provide a photo identification card, including the name, date of birth and a color photograph of the offender, to an offender upon his or her release if the offender requests such identification and is eligible to acquire a driver's license or identification card. (**Tab A**) During the Advisory Commission meeting held on November 6, 2013, Commissioner Cox indicated that the Department of Corrections was working to comply with this requirement and looking at other states who issue identification cards while the offenders are incarcerated. Commissioner Hardesty suggested that the Department needs to have the tools necessary to issue licenses, and could perhaps work with the Department of Motor Vehicles. The Advisory Commission may consider making the issuance of photo identification mandatory (regardless of whether the inmate so requests), making the issuance a requirement upon inmate intake (rather than on release), and/or requiring the Department of Motor Vehicles or another agency to issue the identification.

RECOMMENDATION NO. 2 — Include a policy statement in the final report recognizing and supporting the Nevada State Court Language Access Plan, which seeks to promote access to the courts by persons with limited English proficiency. (Justice Douglas)

Background Information for Recommendation No. 2

Tab B – Draft Nevada State Court Language Access Plan (w/o appendices).

During the Advisory Commission meeting held on January 27, 2014, Justice Michael Douglas testified that he was speaking to justice as it pertained to limited English proficiency. According to Justice Douglas, the State has a long history of providing language interpreters in the context of the criminal application; however, he said the State was not doing that in the area of civil litigation and administrative hearings. Justice Douglas testified that the counties of Washoe and Clark were doing an admirable job providing the services; however, it was more difficult in the rural areas. Justice Douglas also indicated that the Department of Justice (DOJ) had interacted with

approximately seven states in obtaining voluntary consent decrees for their failure to have a language access plan. He said that Nevada had a fledgling plan for the courts and was revising the plan as they received additional assets. He hoped they would not have an instance where the DOJ comes into the state based upon a complaint and orders compliance. Justice Douglas concluded by saying his aim was to make the Advisory Commission aware of the concern and the need to address the issue.

According to the draft Nevada State Court Language Access Plan, it has three primary purposes:

- 1) To provide guidance for the consistent application of policies and practices throughout the Nevada court system;
- 2) To provide the basis for training of judicial employees and staff to serve limited English proficient individuals; and
- 3) To inform such individuals about available language resources.

Furthermore, the draft Plan reflects the position of the Nevada Judicial Branch to take reasonable steps to provide meaningful access to all individuals in any encounter with Nevada courts regardless of their national origin, or limited ability to read, write, speak or understand the English language.

This recommendation would include a policy statement in support of the Nevada State Court Language Access Plan in the final report of the Advisory Commission to be issued to the 2015 Legislature.

RECOMMENDATION NO. 3 — Draft legislation to establish a uniform pretrial risk assessment tool.
(Advisory Commission)

Background Information for Recommendation No. 3

Tab C – LJAF Research Summary; Ohio Risk Assessment System Pretrial Assessment Tool (ORAS-PAT); Memorandum from Nicolas Anthony dated July 3, 2014; Carson City and Washoe County Pretrial Risk Assessment forms.

During the Advisory Commission meeting held on May 1, 2014, the Advisory Commission heard from Matt Alsdorf, Director of Criminal Justice, Arnold Foundation, who provided testimony regarding the use of pretrial risk assessments. Mr. Alsdorf discussed measuring and managing risk at the earliest stages of the criminal justice process. Mr. Alsdorf spoke of the need to ensure that the system operated as fairly and cost efficiently as possible, and stated that the Arnold Foundation sought to identify the areas of criminal justice with the greatest need for transformative change and where they could make a meaningful difference. Mr. Alsdorf said they focused on the front-end of the criminal justice system. Key decisions at the front-end of the system were often made with limited access to critical information and objective data.

Mr. Alsdorf indicated that pretrial risk assessment tools have been shown to be effective, but only 10 percent of jurisdictions utilize them due to cost. They looked for common factors to be used for risk assessments that would minimize financial and

human resources. He said they wanted to measure new criminal arrests, and failure to appear, but also the risk that a defendant would commit a violent crime during the pretrial period. They found with nine data points on each defendant they could create a risk assessment that was equally or more predictive than existing tools. He said all nine factors can be gathered without interviewing a defendant from an administrative record. The tools were made up of three six point scales; new criminal activity, new violent criminal activity, and failure to appear. He said the tools were meant to provide data to the decision makers, and they were not meant to replace the decision maker's discretion.

Through the assistance of the Arnold Foundation, the Kentucky PSA-Court pretrial risk assessment has been implemented statewide in Kentucky since July 2013. Mr. Alsdorf said that Kentucky has a statewide integrated court system and a statewide integrated pretrial system. He stated that all the groups reported to the same body so they were able to completely integrate the system; whereas, in most states it varies widely by individual county. Preliminary findings from Kentucky, included in the LJAF Research Summary, indicate that the PSA-Court assessment has been successfully predicting the propensity to reoffend and fail to return to court. **(Tab C)** Although the PSA-Court "form" is not currently available to Nevada, it is planned to be released through Arnold Foundation pilot projects. Mr. Alsdorf concluded by

stating that the ultimate goal of the Arnold Foundation was to make the tools available to everyone at no cost.

During the May 1, 2014, meeting, the Advisory Commission also heard testimony about the Ohio Risk Assessment, including the fact that the Department of Corrections currently uses a Nevada Risk Assessment for inmates modeled after the Ohio instrument. By way of background, in 2006, the Ohio Department of Rehabilitation and Corrections (ODRC) contracted with the University of Cincinnati, Center for Criminal Justice Research to develop a risk and needs assessment system that improved consistency and facilitated communication across criminal justice agencies. The goal was to develop risk/needs assessment tools that were predictive of recidivism at multiple points in the criminal justice system. Specifically, assessment instruments were to be developed at the following stages: (1) pretrial; (2) community supervision; (3) institutional intake; and (4) community re-entry. A copy of the Ohio Risk Assessment System Pretrial Assessment Tool is attached. **(Tab C)**

Additionally, during the Advisory Commission meeting on May 1, 2014, Commissioner Hardesty requested that staff procure the current pretrial risk assessments in use by each judicial jurisdiction. The Administrative Office of the Courts submitted copies of the pretrial risk assessments from Carson City and Washoe Counties. **(Tab C)**

RECOMMENDATION NO. 4 — **Draft a letter requesting the Arnold Foundation to consider establishing a pilot program for pretrial risk assessments in Clark County.**
(Commissioner Barker)

Background Information for Recommendation No. 4

During the Advisory Commission meeting held on May 1, 2014, Matt Alsdorf indicated that the Arnold Foundation is seeking to establish pilot programs (based on available funding) in various communities. Commissioner Barker suggested that the Arnold Foundation consider Clark County for a pilot project for pretrial risk assessments. This recommendation would direct staff to draft a letter to the Arnold Foundation requesting such consideration.

RECOMMENDATION NO. 5 — **Draft legislation to establish a Legislative Corrections Ombudsman for offenders.** (John Witherow)

Background Information for Recommendation No. 4

Tab D – Letter to the Advisory Commission, dated February 24, 2014; Michigan Compiled Laws 4.351–4.364; Michigan Department of Corrections Policy Directive.

During the Advisory Commission meeting held on May 1, 2014, John Witherow, President, NV-CURE, presented evidence of the State of Michigan’s Legislative Corrections Ombudsman. This recommendation would establish an independent office to review the actions of prison officials. Mr. Witherow testified that the current grievance process for inmates is not working, and that there needs to be an independent review process. At the meeting, several members of the Advisory Commission questioned the proposed cost for an Ombudsman system.

RECOMMENDATION NO. 6 — **Draft legislation to: (1) establish a Naloxone access law; (2) amend NRS 41.500 (the good samaritan law) to allow for the assistance to a victim of overdose; (3) amend NRS 453.521 to remove liability for possession of nasal inhaler for certain purposes; (4) amend NRS 125.480 “best interest” of the child determination to include alcohol/substance abuse; (5) amend NRS 484C.400 to remove the provision that failure to complete treatment is another crime; (6) and amend NRS 453.336 for second offense of possession of less than one ounce of marijuana to authorize, rather than require, a program of treatment and rehabilitation.** (Judge Dorothy Nash Holmes)

Background Information for Recommendation No. 6

Tab E – The Network for Public Health Law article entitled “Legal Interventions to Reduce Overdose Mortality: Naloxone Access and Overdose Good Samaritan Laws”; NRS 41.500; NRS 453.521; proposed conceptual amendment to NRS 125.480; NRS 484C.400; and NRS 453.336.

During the Advisory Commission meeting held on May 1, 2014, Reno Municipal Court Judge Dorothy Nash Holmes testified that 18 states currently have a Naloxone program. She said Naloxone was a prescription which reversed the effects of opioid overdose within two minutes. She compared the drug to Epipens for allergies. Nevada needed to create a policy favoring emergency aid to save lives from overdose. Judge Holmes also proposed amending the Good Samaritan Law to encourage the rendering aid.

Judge Holmes stated that the other part of the Naloxone program was a family law issue. She testified that substance abuse impacts families, and that a judge needs to know what was available to the kids. She recommended amending the best interest determination in child custody matters and referenced the fact that a similar law passed in California.

Judge Holmes said two other drug-related areas should also be considered by the Advisory Commission. The first is NRS 484C.400, which provides that a failure to complete treatment on a second DUI offense was guilty of another misdemeanor. She said treatment should be considered as a treatment issue rather than a criminal issue. The other statute is NRS 453.336, which provides penalties for possession of a controlled substance. She said a person convicted on possession of one ounce of marijuana or less was required to be examined by a substance abuse treatment professional or be fined \$600. Judge Holmes suggested that the Advisory Commission consider amending the statute to make the examination permissive on the first offense and mandatory on the second offense.

RECOMMENDATION NO. 7 — Draft legislation to require a review of the risk assessment tool used by the Division of Parole and Probation, and further require the availability of scores and restitution/collection reports. (Commissioner Hardesty)

Background Information for Recommendation No. 7

Tab F – Division of Parole and Probation’s Offender Assessment Overview

During the Advisory Commission meeting held on May 1, 2014, Dwight Gover, Captain, Division of Parole and Probation, gave a presentation on the Division’s Offender Assessment and how they utilized their tools. (**Tab F**) Mr. Gover said that the NRS established a level of supervision for a probationer or parolee under their charge. Mr. Gover said that the Division currently used an assessment tool based on the Wisconsin Client Management System. They utilized the assessment tool to aid in offender supervision levels. Within the first 30 days of supervision, officers were required to complete an initial risk and needs assessment. He said there were approximately 13,000 offenders under active supervision. The risk assessment tool was validated in October, 2007, by the National Council on Crime and Delinquency.

During the meeting, Commissioner Hardesty noted that the forms had not been updated in some time. This recommendation would require the Division to review and update the assessment tools, and to report back to next interim’s Advisory Commission.

Commissioner Hardesty was also concerned with the reporting and availability of scores.

During the meeting, Commissioner Hardesty also indicated that he suspected that most of the dishonorable discharges were associated with unpaid restitution. He said it would be helpful if that was broken out. He wanted to know the status of the Division's ability and effort to collect restitution and how many of the dishonorable discharges were related to unpaid restitution. Justice Hardesty stated that when he was a district court judge they requested a monthly or quarterly report of the status by defendant of restitution payments. He asked if the report was provided to district judges currently. Kim Madris, Deputy Chief, Division of Parole and Probation, testified that they did not distribute that type of report to the district judges. Commissioner Hardesty asked when they stopped providing the information or why they stopped. Ms. Madris said she did not have that information. She said in the Las Vegas area the number of individuals sentenced to probation and required to pay restitution was very large. She said they notified the courts with incidence reports as far as status restitution if someone fell behind in payments. They used other methods to report to the court on an individual's status concerning restitution payments.

Commissioner Hardesty said he was interested in having the information provided to the Advisory Commission. He was also interested in the status of collections by the Division on restitution, fines, and fees. He said in 2009 the Attorney General and he tried to improve collections on restitutions, fines and fees. He said they went to civil confessions of judgment to try to give the victims something to use to continue their collection efforts. This recommendation would require the information to be collected and provided by the Division of Parole and Probation.

RECOMMENDATION NO. 8 — Draft legislation or include a policy statement encouraging law enforcement agencies to adopt uniform evidence-based practices for eyewitness suspect identification. (Rebecca Brown)

Background Information for Recommendation No. 8

Tab G – Innocence Project Fact Sheet; Model legislation on Eyewitness Identification from the Innocence Project; NRS 171.1237.

During the Advisory Commission meeting held on July 8, 2014, Rebecca Brown, Director of State Policy Reform, Innocence Project, testified that eyewitness misidentification was a contributing cause in 73 percent of wrongful convictions.

NRS 171.1237 currently requires each law enforcement agency in the State to adopt policies and procedures governing the identification of a suspect by an eyewitness. As part of her recommendation, Ms. Brown suggested a uniform statewide implementation (including the possibility of non-legislative reforms), which may include the following:

1. A requirement that all agencies have a written policy that minimally comports with best practices;
2. Statewide model policy (perhaps modeled after updated LVMPD policy)
3. Training in best practices;

4. Effort to assure law enforcement appreciation for reform;
5. Implementation through the Advisory Commission; and
6. A plan to ensure goals are met.

RECOMMENDATION NO. 9 — Draft legislation to make traffic violations a civil infraction rather than a criminal offense. (Assemblywoman Fiore)

Background Information for Recommendation No. 9

Tab H – Assembly Bill No. 248 (2013), as introduced.

During the meeting held on July 8, 2014, Assemblywoman Fiore testified about the importance of Assembly Bill No. 248 (2013), which did not pass. Ms. Fiore said the bill moved minor traffic violations from a criminal violation and treated them as a civil fine.

Existing law provides that a violation of any traffic law or ordinance is a misdemeanor, unless a different penalty is prescribed by a different statute. (NRS 484A.900) Assembly Bill No. 248 sought to enact provisions based on Arizona law to provide for the imposition of civil penalties rather than criminal penalties for violations of certain traffic laws and ordinances. During the meeting, Assemblyman Frierson commented that the Assembly Committee on Judiciary has already submitted a bill draft request (BDR 93) for the 2015 Legislative Session, which may address the issue of civil traffic violations.

RECOMMENDATION NO. 10 — Draft a letter to the Governor and Legislature to request additional funding for the Division of Parole and Probation, Department of Corrections and the Board of Parole Commissioners. (Advisory Commission on the Administration of Justice)

Background Information for Recommendation No. 10

Throughout the interim, the Advisory Commission heard from numerous policy experts and agency officials on the need for increased funding in the area of criminal justice. Certain issues such as staffing levels of the Division of Parole and Probation for the issuance of presentence investigation reports, resources for the Department of Corrections and Parole hearing caseloads, raised concern from numerous members of the Advisory Commission. As such, while the Advisory Commission is a policy committee, this recommendation would urge the Governor and the Legislature to consider the pressing need for additional funding for the Division of Parole and Probation, Department of Corrections and Board of Parole Commissioners. For efficiency purposes, staff has combined all three agencies into a recommendation for a single letter.

RECOMMENDATION NO. 11 — Draft legislation to extend sentence credits for category B felonies; raise the threshold amounts for certain trafficking in controlled substances offenses; and statutorily differentiate between residential and commercial burglary. (Office of Justice Programs Diagnostic Center)

Background Information for Recommendation No. 11

Tab I – Penalties for Category B Felonies prepared by the Research Division; Assembly Bill No. 136 (enrolled/vetoed 2011); Diagnostic Center Status Report; NRS 453.3385; NRS 205.060; NRS 205.067.

Throughout the interim, the Advisory Commission heard from numerous presenters regarding the number of inmates currently incarcerated under category B offenses. During the meeting held on January 27, 2014, Wendy Naro Ware, Vice President, JFA Institute, gave a presentation on the correctional population forecast, legislative impacts, and various other correctional research projects for Nevada since 1994. She gave an overview of the sentence credits legislation passed in Nevada. Ms. Ware reiterated that Assembly Bill No. 510 (2007) increased sentence credits for C, D, and E felonies that did not include violence, sexual offense or driving under the influence. The credits helped reduce the minimum sentence making parole eligibility occur faster. It also increased good time credit for education, vocational training and substance abuse programs. Ms. Ware also said Assembly Bill No. 136 (2011), which was passed by the legislature but subsequently vetoed by the Governor, would have extended the credits to B felons with the exception of violent crimes, sexual assault, and history of driving under the influence. Ms. Ware testified that there was a consistent increase in the number of category B felons going to prison. She said new commitments went down in total, but a subset of B felons were rising. Commissioner Kohn queried as to how many people would have been impacted by Assembly Bill No. 136 if it had passed. Ms. Ware answered about 48 percent.

Given the ongoing level of discussion on category B felonies during the interim, and in previous years, Commissioner Cox contacted the Office of Justice Programs Diagnostic Center. At the May 1, 2014, meeting, Jessica Herbert, Diagnostic Specialist and Steve Rickman, Senior Advisor, of the Diagnostic Center presented to the Advisory Commission. Katherine Darke-Schmitt, Policy Advisor with the Office of the Assistant Attorney General also provided an overview of the Diagnostic Center. Mrs. Darke-Schmitt said the Diagnostic Center is a technical assistance program operated by the Department of Justice, Office of Justice Programs. The purpose is to assist state, local and tribal criminal justice agencies build capacity to use data to solve criminal justice problems. She said their funding stream allowed them to address criminal justice and safety issues across the spectrum. Based on the preliminary request submitted by Commissioner Cox, the Diagnostic Center accepted Nevada for technical assistance. Throughout the summer, the Diagnostic Center conducted numerous site visits and conference calls with interested stakeholders.

Jessica Herbert and Steve Rickman of the Diagnostic Center held an informational conference call with Commissioner Cox and Advisory Commission staff on October 3, 2014, to discuss the preliminary results of their findings. Based on their research to date, the Diagnostic Center preliminarily supports three legislative policy recommendations for the Advisory Commission's review. The Advisory Commission may consider any

and/or all of the three recommendations, which may be combined into a single bill draft request.

Recommendation I, is to draft legislation to extend the current so-called “A.B. 510 credits” to all category B felons with the exception of crimes including physical harm. In addition, while there is the presumption for the eligibility for good time credits, a judge may use discretion to exclude other category B felons from eligibility of good time credits based on aggravating factors such as threat of physical harm, significant financial harm and extensive criminal history. The proposed legislation would also allow both the prosecution and defense to participate in those good time credit decisions by the sentencing judge.

Recommendation II, is to draft legislation to increase the threshold amounts for certain Schedule I drug trafficking offenses. According to the Diagnostic Center’s research, Nevada’s category B drug trafficking offenses have low weight thresholds and conflict with national trends for addressing high-level traffickers. NRS 453.3385 currently provides that a person who sells, manufactures, delivers, brings into this State or possesses certain substances is guilty of a category B felony if the quantity involved is 4 grams or more, but less than 28 grams. If the amount is greater than 28 grams, the person is guilty of a category A felony. This recommendation would repeal the lower threshold amounts, thereby raising the minimum threshold amount for trafficking of Schedule I controlled substances (other than marijuana) to a quantity of 28 grams or more. It would also revise the penalty for such an offense from a category A to a category B felony. (NRS 453.3385)

Recommendation III, is to draft legislation to statutorily differentiate between residential and commercial burglary. Existing law provides that a person who enters certain structures with the intent to commit grand or certain petit larcenies, assault or battery, any felony or to obtain money by false pretenses is guilty of the crime of burglary. (NRS 205.060) Existing law also provides that a person who, by day or night, forcibly enters an inhabited dwelling without permission of the owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty of invasion of the home. (NRS 205.067) Currently, the crimes of burglary and invasion of the home are both punishable as a category B felony, with 1 to 10 years imprisonment and/or a fine of not more than \$10,000. This recommendation seeks to draft legislation to differentiate between a burglary and a theft, where no forced entry is committed, in a commercial location.

RECOMMENDATION NO. 12 — Draft legislation to enact reforms similar to the justice reinvestment initiatives passed in Oregon House Bill No. 3194 (2013). (Commissioner Hardesty)

Background Information for Recommendation No. 12

Tab J – Oregon House Bill No. 3194 (2013); Memorandum on Oregon Public Safety Reforms dated June 6, 2014.

Throughout the interim, the Advisory Commission heard from presenters such as the Vera Institute, Right on Crime, the Council of State Governments and the Oregon

Criminal Justice Commission. Additionally, the Chair and Vice-Chair of the Advisory Commission met with the Governor and secured support to contact the Bureau of Justice Assistance, Council of State Governments, Urban Institute and Pew Charitable Trust to seek funding for justice reinvestment initiatives in Nevada. Although the deadline had already passed for Nevada to seek technical assistance in this biennium, as the Advisory Commission heard from numerous presenters, the Advisory Commission may choose to move forward with justice reinvestment type initiatives without the assistance of a national technical assistance provider. It was noted that other states, such as Alaska, had produced justice reinvestment type reforms on their own accord.

At the meeting held on March 5, 2014, Craig Prins, Executive Director of the Oregon Criminal Justice Commission, gave a presentation on the public safety reforms that Oregon was able to accomplish through the assistance of the Pew Charitable Trusts. The overarching goal of the Oregon legislation was to use an evidence based approach to reduce prison costs and to reinvest those savings in programs like specialty courts and victims services. In summary, some of the Oregon reforms that the Advisory Commission may wish to consider include:

A. Sentencing Reforms

1. Probation for Marijuana Offenses
2. Probation for Felony Driving with a Suspended License
3. Sentence Reduction for Robbery in the Third and Identity Theft Offenses
4. Revising the crime of misdemeanor harassment to include distributing a visual recording of sexually explicit material of another person when the other person is under 18 years of age.

B. Transitional Leave, Earned Discharge and Downward Disposition for Drug Delivery/Manufacturing Sentences

C. Probation Reforms

D. Establishing a Task Force on Public Safety

E. Measuring Outcomes

F. Establishing a Center for Policing Excellence

G. Establishing a Justice Reinvestment Grant Program and Reentry Courts

H. Making Various Reinvestment Appropriations (including Specialty Courts, Community Corrections and Victims Services)

RECOMMENDATION NO. 13 — Draft legislation to revise various provisions relating to medical marijuana. (Subcommittee on the Medical Use of Marijuana)

Background Information for Recommendation No. 13

Tab K – Report of the Advisory Commission’s Subcommittee on the Medical Use of Marijuana.

The Subcommittee on the Medical Use of Marijuana (NRS 176.01247) held two meetings during the interim. At the Subcommittee’s final meeting held on August 21, 2014, the Subcommittee voted upon and approved a total of 10 recommendations to be forwarded to the full Advisory Commission on the Administration of Justice. For purposes of this recommendation, staff has listed below the 10 recommendations of the Subcommittee on the Medical Use of Marijuana. As you will note, some recommendations contain multiple parts. Because the subject matter relates to a single subject, some or all of the recommendations may be combined into a single bill draft request or they may be submitted as multiple bill draft requests.

A. Draft legislation to authorize the sale and transportation of medical marijuana across county lines.

B. Draft legislation to amend NRS 453A.200 to further extend the sunset limitation (currently expiring by limitation on March 31, 2016), during which persons who are authorized to engage in the medical use of marijuana and who were cultivating, growing or producing marijuana on or before July 1, 2013, are “grandfathered” to continue such activity. This recommendation would extend the sunset limitation for an additional two years, through March 31, 2018.

C. Draft legislation to authorize the Division of Public and Behavioral Health to adopt regulations requiring background checks and state licensure of third party vendors and ancillary businesses associated with the medical marijuana industry (such as harvesting, trimming, infusion, insurance, cash management, massage therapists, etc.).

D. Draft legislation to amend Nevada’s criminal laws to provide that weights for purposes of prosecution of certain marijuana offenses (such as possession and trafficking) must only include the usable active amount of THC or marijuana and not the total weight of an edible or infused product.

E. Draft legislation to provide exceptions for medical marijuana registry identification cardholders for considerations in drug court, child custody, child abuse and neglect proceedings, foster care and offender program eligibility.

F. Draft legislation to require the University system (NSHE) to allow medical marijuana registry cardholders to possess and use medical marijuana on campus. Further, amend NRS 453A.600 to remove the provisions requiring approval of the Federal Government before the University of Nevada School of Medicine establishes a program for the evaluation and research of the medical use of marijuana.

G. Draft legislation to eliminate the “per se” nanogram amounts for driving under the influence of marijuana or marijuana metabolite. (NRS 484C.110, 484C.120, 488.410) Also, draft legislation to remove any prohibitions in employment contexts for employees who lawfully use medical marijuana. Finally, draft legislation to require the State Board of Pharmacy to reschedule marijuana from a Schedule I to a Schedule II controlled substance.

H. Draft legislation to authorize a cooperative (co-op) form of ownership for medical marijuana establishments.

I. Draft legislation to amend state law regarding the allocation of dispensaries by county, to allow the largest local government jurisdictions (by census population) in each county to have the largest number of allocated dispensaries. (NRS 453A.324) Also, draft legislation to repeal the confidentiality provisions of applications, records or other written documentation for LLC’s or any business entity that applies for a medical marijuana license through the Division. (NRS 453A.700)

J. Draft legislation to allow for the transfer of marijuana establishment licenses, and model the approach after the “transfer of interests” process used for gaming licenses. Also, draft legislation to establish a regulatory structure, similar to the Nevada Gaming Control Board, to oversee and regulate the medical marijuana program.

RECOMMENDATION NO. 14 — Draft a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff’s Office) and the Central Repository of Nevada Records of Criminal History, encouraging the entities to research and review the seven states that currently utilize automatic expungement for arrestee DNA records and to further develop best practices should Nevada choose to proceed with automatic expungement in the future. (Subcommittee to Review Arrestee DNA)

Background Information for Recommendation No. 14

Tab L – Report of the Advisory Commission’s Subcommittee to Review Arrestee DNA.

The Advisory Commission on the Administration of Justice’s Subcommittee to Review Arrestee DNA (NRS 176.01246) held two meetings. At the Subcommittee’s final meeting held on August 25, 2014, the Subcommittee voted upon and approved a total of three recommendations to be forwarded to the full Advisory Commission on the Administration of Justice. This recommendation is to draft a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff’s Office) and the Central Repository of Nevada Records of Criminal History, encouraging the entities to research and review the seven states that currently have automatic expungement for arrestee DNA records and to further develop best practices should Nevada choose to proceed with automatic expungement in the future.

RECOMMENDATION NO. 15 — **Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, urging the Governor and the Legislature to consider budgetary funding for a statewide computer database to track criminal records and adjudications that, among many other uses, could assist in identifying and expunging DNA records. (Subcommittee to Review Arrestee DNA)**

Background Information for Recommendation No. 15

At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved this recommendation to draft a letter to the Governor and the respective chairs of the legislative money committees urging them to consider budgetary funding for a statewide computer database for criminal justice. In their deliberations, the Subcommittee noted that such a database could assist in identifying and expunging DNA records. Currently there is no statewide system to accurately track offender records from arrest through release from custody.

RECOMMENDATION NO. 16 — **Include a policy statement in the final report of the 2013-14 Advisory Commission on the Administration of Justice, encouraging all interested criminal justice stakeholders (district attorneys, criminal defense attorneys, judges, court clerks, crime laboratories, law enforcement and the Central Repository) to work together to develop a statewide criminal justice information sharing database. In an ideal world, the computer database should include the following information related to DNA and criminal records: criminal charges and records, race/nationality statistics, demographic crime statistics, percentage of felony arrests resulting in conviction (further broken down by type of resulting conviction), any known actual immigration consequences of conviction, data on voluntary versus forced collection of DNA (including whether the DNA is appropriately categorized as arrestee or convicted person DNA), date related to expungement efforts, any exonerations resulting from arrestee DNA, and any other data deemed appropriate or desirable by the interested criminal justice stakeholders. (Subcommittee on Arrestee DNA)**

Background Information for Recommendation No. 16

During the course of two Subcommittee meetings, the Subcommittee members noted and discussed the lack of a statewide computer database to adequately track criminal records. While the Subcommittee noted the potential monumental task and potential fiscal cost, it was encouraged by the statements of interested persons to work together. At the Subcommittee's final meeting held on August 25, 2014, the Subcommittee voted upon and approved this recommendation to include a policy statement encouraging all interested stakeholders to work together to develop a statewide criminal justice computer database.

RECOMMENDATION NO. 17 — Draft legislation authorizing the Department of Corrections to provide certain confidential information to the Office of the Attorney General.
(Subcommittee on Victims of Crime)

Background Information for Recommendation No. 17

Tab M – Proposed draft legislation authorizing the release of certain confidential information as recommended by the Advisory Commission’s Subcommittee on Victims of Crime.

During the 2013-14 interim, the Advisory Commission’s Subcommittee on Victims of Crime (NRS 176.01245) held several meetings to discuss ongoing issues impacting victims of crime. The Subcommittee was chaired by Commissioner Masto and included 13 members from various criminal justice backgrounds. Upon its conclusion of business, the Subcommittee advanced three recommendations to the full Advisory Commission.

This proposed draft legislation seeks to amend NRS 209.521 to authorize the Director of the Department of Corrections to release personal information, including, but not limited to, a current or former address which pertains to a victim, to the Office of the Attorney General. The information would be used solely for the purpose of notifying the victim of the status of pending litigation.

RECOMMENDATION NO. 18 — Draft legislation relating to the enforcement of restitution.
(Subcommittee on Victims of Crime)

Background Information for Recommendation No. 18

Tab N – Proposed draft legislation relating to restitution as recommended by the Advisory Commission’s Subcommittee on Victims of Crime.

Existing law requires an affidavit of renewal of judgment in order to renew or collect the restitution contained in an existing criminal judgment once the defendant is delinquent in paying the restitution. (NRS 17.214, NRS 176.064, NRS 176.275) Existing law also specifies that a restitution order constitutes a civil liability upon the date of a defendant’s discharge from probation. (NRS 176A.850, NRS 176A.870) At the Subcommittee’s final meeting, the Subcommittee voted to recommend proposed legislation which allows enforcement of an order of restitution contained in a criminal judgment without taking the additional renewal steps or within the limited timeframe required under existing law.

RECOMMENDATION NO. 19 — Draft legislation authorizing the Victims of Crime Compensation Fund to be used for the reimbursement of counties for the cost of sexual assault examinations. (Subcommittee on Victims of Crime)

Background Information for Recommendation No. 19

Tab O – Proposed draft legislation relating to reimbursement for the cost of sexual assault examinations as recommended by the Subcommittee on Victims of Crime.

Existing law permits the payment of compensation to certain persons from the Fund for the Compensation of Victims of Crime. (NRS 217.160) At the Subcommittee's final meeting, the Subcommittee voted to recommend proposed legislation to permit the reimbursement of counties for the cost of sexual assault examinations from the Fund. The legislation would also limit the reimbursement per year to a total of ten examinations in each county, or up to \$10,000, whichever is greater.

RECOMMENDATION NO. 20 — Draft legislation to require testing of inmates for the hepatitis C virus. (John Witherow)

Background Information for Recommendation No. 20

Tab P – Proposed draft legislation to amend NRS 209.385 as provided by John Witherow.

During the Advisory Commission meeting held on September 12, 2014, John Witherow, President, NV-CURE, testified as to the need to test all offenders committed to the custody of the Department of Corrections for the hepatitis C virus. The proposed bill draft language would mirror the current statutory language for testing of offenders for the human immunodeficiency virus, and provide that any incarcerated offenders not already tested, would be tested with 12 months of the passage of the legislation.

RECOMMENDATION NO. 21 — Draft legislation relating to solitary confinement. (Vanessa Spinazola)

Background Information for Recommendation No. 21

Tab Q – Senate Bill No. 107 (2013) (enrolled); Draft recommendations for legislation proposed by Vanessa Spinazola, Legislative and Advocacy Director, American Civil Liberties.

Senate Bill No. 107 (2013) required the Advisory Commission to conduct a study concerning certain aspects of detention and incarceration in this State. (**Tab Q**) During the Advisory Commission meetings held on March 5, 2014, and September 12, 2014, the Advisory Commission heard from national policy experts and agencies charged with housing offenders, on the general topic of solitary confinement including: protective

segregation, administrative segregation, disciplinary segregation, disciplinary detention, corrective room restriction and solitary confinement. Martin Horn, Distinguished Lecturer, John Jay College of Criminal Justice, and Terry Kupers, MD, MSP, Professor, The Wright Institute testified about national trends, including a recent settlement between the ACLU and the State of New York and recommendations from the American Bar Association. Much of the testimony centered on the current policies for jails and prisons in Nevada, and the need to classify and safely segregate offender populations. The Department of Corrections and local law enforcement officials also testified as to the use of voluntary and involuntary protective segregation.

During the meeting held on September 12, 2014, Vanessa Spinazola proposed draft legislation relating to the use of solitary confinement, including the following:

1. Use of alternatives to segregation in prisons and jails;
2. Prohibition of the placement of the mentally ill in solitary confinement;
3. Guarantees of sanitary conditions and access to hygiene products while segregated;
4. Clear parameters on which violations may lead to placement in segregation;
5. Due process guarantees for placement into segregation;
6. Regular status checks during all types of segregation;
7. Access to programming while segregated;
8. Written procedures on earning early release; and
9. 30-day limitation on most types of segregation.