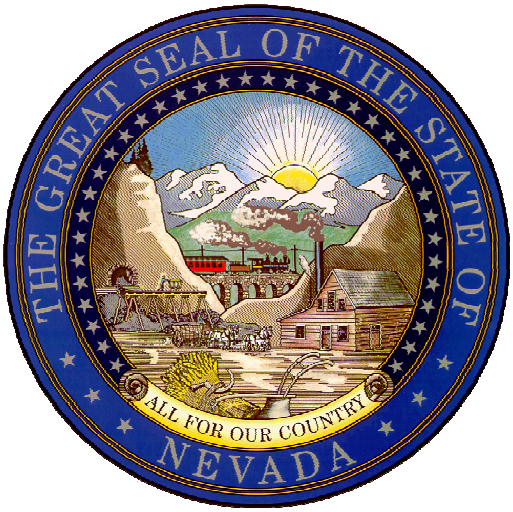
ADVISORY COMMISSION
on the
ADMINISTRATION of JUSTICE



FINAL REPORT

JANUARY 2013

TABLE OF CONTENTS

FINAL REPORT

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

January 2013

The following "Final Report" was prepared by staff of the Advisory Commission on the Administration of Justice ("Advisory Commission") (Nevada Revised Statutes 176.0123).

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. Although the Advisory Commission does not have statutory authority to request bill drafts, individual Legislators and the Assembly Committee on Judiciary have chosen to sponsor the Advisory Commission's recommendations for legislation.

This report is intended to provide an overview of the Advisory Commission's course of action during the 2011-2012 interim. It includes a summary of recommendations and a full report detailing each of the meetings held throughout the interim, including the background discussion on the development of each final recommendation.

For purposes of this document, the final recommendations of the Advisory Commission have been organized by type of recommendation and are not listed in preferential order. By category, each recommendation falls within a request to: (1) draft legislation to amend the Nevada Revised Statutes; (2) draft a letter; or (3) include a statement of support in the final report.

ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

SUMMARY OF FINAL RECOMMENDATIONS

The 2011-2012 Advisory Commission on the Administration of Justice held a final work session on October 10, 2012. At that work session, the Advisory Commission voted to approve six recommendations for the drafting of legislation, two recommendations for the drafting of a letter, and one recommendation to include a statement in the final report.

BILL DRAFT REQUESTS

1. Draft legislation to revise provisions relating to the eligibility of certain convicted persons to complete a program of regimental discipline (NRS 176A.780). **(BDR 740)**

2. Draft legislation to reinstate a 90 day diagnostic "Safe Keeper Evaluation" prison term (See former NRS 176.158). **(BDR 742)**

3. Draft legislation to amend chapter 176 of NRS to require certain time periods for submittal of presentence investigation reports. **(BDR 741)**

4. Draft legislation to expand (by 50 persons) and extend the sunset date (by two years) of the pilot diversionary program for alcohol/drug abuse and mental illness established by Assembly Bill No. 93 (2011). **(BDR 744)**

5. Draft legislation authorizing the Director of the Department of Administration to enter into interlocal agreements to use the Fund for Compensation of Victims of Crime to reimburse counties for the fees associated with sexual assault exams. The proposal also seeks to expand the list of potential applicants to the Fund. **(BDR 743)**

6. Draft legislation to reintroduce Senate Bill No. 265 (2011), first reprint, relating to the aggregation of consecutive sentences. **(BDR 447)**

DRAFT A LETTER

7. Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, requesting the Governor and the Legislature to consider sufficiently funding all of the policy recommendations from the Advisory Commission on the Administration of Justice. This letter would include requests for funding relating to: regimental discipline, the safe keeper program, presentence and postconviction reports, the pilot diversionary program, and funding of the Office of State Public Defender.

8. Draft a letter to the Chairs of the Assembly and Senate Committees on Judiciary and the Chairs of the Assembly and Senate Committees on Government Affairs requesting that the respective legislative committees examine the appropriate location, assignment and delegation of the Office of Sate Public Defender and to provide adequate funding for the operation of that Office (NRS 180.010).

INCLUDE A STATEMENT

9. Include a statement in the final report recognizing the need to continue to investigate and support the future study of Nevada's criminal justice system, and to continue to identify possible outside non-state resources for the funding of such technical assistance.

REPORT TO THE 77th SESSION OF THE NEVADA LEGISLATURE BY THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

I. INTRODUCTION

Criminal justice has been defined as a system of policies and practices aimed at upholding social control, deterring and mitigating unlawful behavior, and sanctioning those who violate the laws with significant penalties and rehabilitation efforts. Since Nevada's early territorial days and the punishment of stage robbers and claim jumpers, criminal justice has had a lasting and significant role in the history of the State. Given the recent budgetary constraints facing both Nevada's state and local governments, even more emphasis has been placed on the proper allocation of the government's limited resources versus ensuring the public safety of its citizens. Throughout the interim period between Legislative Sessions, the Advisory Commission is charged with considering numerous policy decisions with an eye towards rehabilitation and cost effective criminal justice.

II. ADVISORY COMMISSION DUTIES AND MEMBERS

This Advisory Commission was born out of the former Advisory Commission on Sentencing (Sentencing Commission). The Sentencing Commission was originally established by statute in 1995 after the Legislature enacted "truth in sentencing," which required a defendant to serve 100 percent of his or her minimum sentence. However, the Sentencing Commission, whose membership was limited, laid largely dormant for many years. Then in 2007, the Legislature enacted Assembly Bill No. 508, which reconstituted and broadened the membership, duties and scope of the Sentencing Commission to resemble its current form as the Advisory Commission.

Members of the Advisory Commission are appointed each interim and serve for a two year term between biennial sessions of the Nevada Legislature. Throughout the interim, the Advisory Commission holds numerous public meetings to review the criminal justice system in Nevada.

Under NRS 176.0125, the Advisory Commission is statutorily required to:

1. Identify and study the elements of this State's system of criminal justice which affect the sentences imposed for felonies and gross misdemeanors;

2. Evaluate the effectiveness and fiscal impact of various policies and practices regarding sentencing which are employed in this State and other states;

3. Recommend changes in the structure of sentencing in this State;

4. Evaluate the effectiveness and efficiency of the Department of Corrections and the State Board of Parole Commissioners;

5. Evaluate the effectiveness of specialty court programs in this State;

6. Evaluate the policies and practices concerning presentence investigations and reports made by the Division of Parole and Probation of the Department of Public Safety;

7. Evaluate, review and comment upon issues relating to juvenile justice in this State;

8. Compile and develop statistical information concerning sentencing in this State;

9. Identify and study issues relating to the application of chapter 241 of NRS to meetings held by the:
   (a) State Board of Pardons Commissioners to consider an application for clemency; and
   (b) State Board of Parole Commissioners to consider an offender for parole;

10. Identify and study issues relating to the operation of the Department of Corrections;

11. Evaluate the policies and practices relating to the involuntary civil commitment of sexually dangerous persons; and

12. For each regular session of the Legislature, prepare a comprehensive report including the Commission's recommended changes pertaining to the administration of justice in this State, the Commission's findings and any recommendations of the Commission for proposed legislation.

The following members were appointed to and served on the Advisory Commission for the 2011-2012 interim:

Assemblyman William Horne, Chair
Justice James W. Hardesty, Nevada Supreme Court, Vice Chair
Senator Greg Brower
Senator David R. Parks
Assemblyman Richard McArthur
Judge David Barker, Eighth Judicial District Court
Connie Bisbee, Chair, Board of Parole Commissioners
Chuck Callaway, Police Director, Intergovernmental Services, Las Vegas METRO
Catherine Cortez Masto, Attorney General

James "Greg" Cox, Director, Department of Corrections
Larry Digesti, Representative, State Bar of Nevada
Lisa Morris Hibbler, Victims' Rights Advocate
Mark Jackson, Douglas County District Attorney
Phil Kohn, Clark County Public Defender
Jorge Pierrott, Sergeant, Division of Parole and Probation
Richard Siegel, Legislative Chairperson, ACLU of Nevada, Inmate Advocate
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office

The Legal Division of the Legislative Counsel Bureau staff services were provided by Nicolas Anthony, Senior Principal Deputy Legislative Counsel; Melissa Mundy, Deputy Legislative Counsel; and Angela Clark, Deputy Administrator.

III. ADVISORY COMMISSION MEETINGS

Over the course of the 2011-2012 interim, the Advisory Commission held six full committee meetings and a work session. Three meetings, and the work session, were held at the Grant Sawyer State Office Building in Las Vegas, and three meetings were conducted at the Legislative Building in Carson City. All meetings were simultaneously videoconferenced between the two locations. Due to the extensive nature of the subject matter, each meeting was scheduled to address specific agenda topics within the statutory duties of the Advisory Commission.

During the course of the interim, the Advisory Commission received extensive testimony from both national experts and local criminal justice practitioners. The Advisory Commission heard from: representatives of the Office of the Attorney General; Offices of the Clark, Douglas and Washoe County District Attorney; Offices of the Clark and Washoe County Public Defender; Department of Corrections; Division of Parole and Probation of the Department of Public Safety; State Board of Parole Commissioners; members of the Nevada Judiciary; American Civil Liberties Union; JFA Institute; families and representatives of victims; families and representatives of inmates; and members of the medical, legal, and religious communities. The Advisory Commission also heard from numerous concerned members of the public and other interested persons.

A. FIRST MEETING

Organizational Matters

At the first meeting of the Advisory Commission held on January 24, 2012, the Advisory Commission addressed organizational matters and selected Assemblyman William Horne as Chair and Justice James Hardesty as Vice Chair. The Advisory Commission then proceeded with an overview of statutory duties and a review of the 2011 legislation impacting the responsibilities of the Advisory Commission.

Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legislative Counsel Bureau, provided an overview of the 2009-2010 Final Report of the Advisory Commission, and updated the new Advisory Commission as to the final status of the nine former Advisory Commission recommendations for legislation that were considered by the 2011 Legislature. Mr. Anthony indicated that four of the Advisory Commission recommendations were passed and signed into law, one was vetoed by the governor, and four measures did not pass. Additionally, it was noted that although the original bill related to waiver of fees for driver's licenses and identification cards (Assembly Bill No. 92) did not pass in its original form, it was subsequently amended into Senate Bill No. 159. Thus, the 2009-2010 Advisory Commission saw five of its nine legislative recommendations signed into law. A full list of the final action for each of the measures is attached as **Appendix A.**

Presentation by the Nevada Department of Corrections

Sheryl Foster, Deputy Director, Nevada Department of Corrections (NDOC), appeared before the Advisory Commission on behalf of Director Greg Cox. Ms. Foster opened her presentation with a review of the current population of inmates housed within the NDOC and indicated that the total in-house population was 12,517 inmates.

By way of overview, Ms. Foster reviewed the functions and capacities at each of the NDOC's facilities. She said the highest majority of the prisoners (60.29%), were housed in medium custody facilities. Ms. Foster said male offenders made up 92.38% of the population and females made up 7.6% of the population. Further, she noted that the male population was declining while the female population was significantly increasing. The average current age of the male inmates was 37.9 and the female average age was 36.9. She said the majority of the inmates were sentenced to 2-5 years and the second highest population was the inmates sentenced to indeterminate life sentences.

Continuing, Ms. Foster said the total full-time staff for the NDOC was 2,431, and part-time staff was 46 employees. She said there were approximately 200 vacancies throughout the Department. She said there were some recruitment and retention problems, especially in the professional staff in rural areas. She said retention issues were usually related to low pay. Additionally, she said they projected 30 staff members would receive layoff notices due to closing Nevada State Prison; however, all those employees had the opportunity to transfer to other vacant positions.

Ms. Foster opened a discussion on general budget issues. She said the total budget for the Department for fiscal year 2012 was $281,137,000. She said the numbers were based on an inmate projection population of 12,568 inmates. The budgeted cost per inmate per year for fiscal year 2012 was $20,381.00, and for fiscal year 2013 was $20,172.00. She said inmate-driven costs including food, clothing, bakery operating and inmate labor, were $1,123.25 per inmate per year. She said it did not include medical costs. The medical inmate-driven cost for fiscal year 2012 was $1,315.47 and for fiscal year 2013 was $1,370.99. She said closing Nevada State Prison was projected to save approximately $15,000,000 over the biennium. She

said elimination of shift and differential pay was projected to save $500,000 each year of the biennium. Elimination of the senior correctional officer classification was projected to be $55,000 each year of the biennium. A reduction in non-nutritional food items for inmates was an estimated savings of $210,000 per year.

Ms. Foster also discussed some program highlights for the NDOC. She said they emphasized secondary education and they worked with local school districts in order to have adult education programs. She said in 2010, there were 4,754 inmates enrolled in basic education programs. 142 inmates received a GED and 445 received a high school diploma. She said most completed courses were in the areas of commitment to change and victim empathy programs. Vocation classes were offered in AutoCAD, automotive repair, Braille, business computers, construction, culinary, horticulture and HVAC.

Throughout Ms. Foster's presentation, the Advisory Commission asked numerous questions relating to inmate health care, transportation, costs, sentencing, HIV, boot camp and regimental discipline, and parole.

Presentation by the State Board of Parole Commissioners

Connie Bisbee, Chair, State Board of Parole Commissioners (Parole Board), gave a brief overview of the Parole Board. Ms. Bisbee indicated that the Parole Board was a full-time agency that made over 8,000 parole decisions annually. She said the total hearings in fiscal year 2010 were 8,750, and in 2011 the total number was 8,577.

The primary statutory duties were to review the eligible inmates for release on parole or to a consecutive sentence and to grant or deny parole. She said hearings were generally heard three months before parole eligibility, which gave Parole and Probation time to form a release plan for the inmate. Ms. Bisbee said agendas were properly prepared ahead of time, noting the time, date, and location of each hearing. The agenda was provided to the inmate and any victims who requested notification. She said the meetings were public and conducted by three Commissioners, two Commissioners, or a Commissioner assigned with a case hearing representative. She said inmates were permitted representatives at their own expense. Once a final action occurred, a final order was prepared, and the Board provided the results in writing within 10 working days of the action.

Ms. Bisbee said the Parole Board was responsible for conducting due process hearings on parolees accused of violating parole conditions. She said they were public hearings conducted in-person at the location where the inmate was housed. The accused parole violator was entitled to confront and cross-examine any evidence presented. The Board sets the conditions of lifetime supervision for certain sex offenders expiring a term of prison, parole, or probation. Hearings are heard in absentia after receiving input from the Division of Parole and Probation. In-person hearings are scheduled for the lifetime supervision clients who requested a modification or change to their conditions set by the Board.

Ms. Bisbee next addressed the impact of Legislation enacted by the 2011 Legislature on the Parole Board and the Pardons Board. She said Assembly Bill No. 18 made significant changes in the way parole hearings were conducted. She said it was attached as an amendment having to do with sex offenders in Senate Bill No. 471 (2007). Ms. Bisbee indicated that Assembly Bill No. 59 amended Nevada's Open Meeting Law by providing that meetings deemed quasi-judicial were required to comply with chapter 241 of NRS. She said A.B. 59 exempted the Parole Board from having to comply with portions of the Open Meeting Law when acting to grant, deny, continue or revoke parole, or when establishing or modifying parole for prisoners.

Ms. Bisbee further testified that Assembly Bill No. 12 eliminated the Parolees Revolving Loan Account. She said a fund had been set up with an initial amount of $4,500.00 to help some parolees in buying equipment to help them get employed. She said loans were made and never repaid. A.B. 12 eliminated the Account and returned the money to the General Fund. Ms. Bisbee said the Pardons Board's bill was Assembly Bill No. 66. The bill required that people who had their records sealed be advised that it did not restore their right to bear arms. It also allowed the Pardons Board's staff or agents to see the sealed records if the person had requested a pardon.

Ms. Bisbee lastly addressed budgetary issues. Ms. Bisbee said three staff positions were eliminated during the budget downsizing. She said there were only 24 people currently employed by the Board, and that they had one vacant position. The major impact was decreasing the ability to coordinate Pardons Board functions, and the slowdown in response to non-hearing related activities.

Ms. Bisbee further indicated that the lifetime supervision caseload continued to grow and required more attention by the Board and staff. Ms. Bisbee said the primary issue pertained to funds for contracted case hearing representatives. There has been a 50 percent increase in the number of cases resulting in no action being taken. She said parole violations were the largest number of cases. She said, as an example, a parole violator coming back before the Board with a pending felony offense was continued until they had further information, and it resulted in a no-action case. She said the primary reason pertained to the waiving of the presentence investigations (PSIs). The PSI was the document the Parole Board relied on during hearings. She suspected there was an increase in the number of cases because the counties must now pay for a portion of the cost to prepare the PSIs. She said another reason for an increase in no-action cases included inmates being moved after being scheduled for a hearing, interpreters not being available, and inmates not being available at the time of the hearing. She said this had caused a "mini" bubble."

Presentation by the Division of Parole and Probation

Jorge Pierrott, Sergeant, Division of Parole and Probation of the Department of Public Safety, introduced his staff and gave an overview of the current functions and responsibilities of the Division of Parole and Probation (Division).

He said the mission of the Division was to ensure public safety, offender accountability and victims' rights through community corrections. The statutory duties and requirements were accountable for the supervision of probationers, parolees, lifetime supervision sex offenders, and conditionally released inmates. He said if an individual was granted probation, he was assigned to the Division for supervision.

Mr. Pierrott addressed the offender population in Nevada. The Division was separated into several areas: the Northern Command-Rural, Northern Command-Urban, Headquarters, and Southern Command. He said current supervision levels were 18,358 offenders statewide. Headquarters oversaw 6,535 offenders, Northern Command supervised 3,638 offenders, and Southern Command supervised 8,135 people.

Mr. Pierrott said the following laws enacted in the 2011 Legislature were identified as having an impact on the Division: Assembly Bill No. 66, Assembly Bill No. 181, and Senate Bill No. 45. He said A.B. 66 allowed inspection of the sealed records by the Pardons Board and its agents. The effect on the Division was a benefit to the applicant as well as the Division because it expedited the process. He said after the investigation was done, it previously was submitted to the district attorney for review and their opinion. It was determined the district attorneys did not have the right to look at the criminal history because the record was still sealed. He said it was now directly submitted to the Pardons Board. He said A.B. 181 provided for evaluation by the Advisory Commission on the Administration of Justice of the policies and practices relating to the involuntary civil commitment of sexually dangerous persons. Mr. Pierrott said S.B. 45 revised provisions conferring the powers of a peace officer upon certain personnel of the Department of Public Safety. It moved Parole and Probation from category II, with restricted peace officer authority, to category I with full peace officer authority without restriction.

Staffing issues was the next subject discussed by Mr. Pierrott. The budget eliminated 45 positions. It increased the general supervision ratio from 70 offenders per officer to 80 offenders. The Legislature approved restoration of 39 officers and 5 sergeant positions and retained the proposed general supervision ratio of 80 offenders per officer. He listed the restored staffing positions. He said the Division currently had a total of 40 vacancies with 5 positions pending interviews. Some other budget issues included the PSI report functions. He said that in previous years, the PSI function was funded entirely by a General Fund appropriation. The 2011 Legislative Session approved billing the counties for 70 percent of the cost of the PSI and the remaining 30 percent came through General Fund appropriation. It resulted in a reduction of approximately $7,500,000 in the General Fund over the 2011-2013 bienniums. Finally, Mr. Pierrott concluded that statistical data showed that although the budget was reduced, the Division continued to supervise an average of 18,485 offenders.

Additional Topics for Future Meetings

The Advisory Commission concluded its first meeting with a discussion of topics for future meetings, including: a discussion of the projected increase in female population; PEW Charitable Trusts research and reform proposals; intermediate sanctions; category B felony

good time credits; sex offenders, including civil commitment; Ely settlement on mental and medical health care; life imprisonment (impacts on prison system and society); potential subcommittees of the Advisory Commission; review of other criminal justice committees and potential overlap with the Advisory Commission; A.B. 510 credits for category B felons; boot camp; diagnostic 120 day prison sentence; recidivism rates; court jurisdiction to correct PSIs (*Stockmeier*); A.B. 107, requiring law enforcement agencies to adopt identification procedures of suspects; Victims of Crime Subcommittee - sex trafficking of minors; lifetime supervision and those impacts on the Division; coroner's inquest process; assault weapons and gun laws; reclassification of category B felonies; sentencing - study of numbers driving NDOC forecasts; and a review of Advisory Commission measures that did not pass the Legislature in 2011.

Public Comment

Finally, the January 24, 2012, meeting closed with public comment from interested members of the public. Michelle Ravell commented that it was a productive meeting. She said sex offenses were an issue creating problems for everything. The problems might be caused by the overuse of sex offenses. She also said lifetime supervision was being overused and that she wanted the Commission to study determinate sentencing. Another item she wanted discussed was life with the possibility of parole. She said after 20 years nothing was changed or accomplished.

Wes Goetz said putting people in prison for 10 to 20 years for a sex offense was redundant. Treatment for sex offenders lowered the recidivism rate. He said treatment in the prisons was not effective because it was not intense and was led by unlicensed psychologists. They needed special education to treat sex offenders. He said there were ways to treat sex offenders and lower their recidivism rate. Finally, Mr. Goetz said if they were on parole and still receiving treatment, their tier level should be lowered.

Tonja Brown said Mr. Houston, deceased, asked her to be a trustee of his trust. She said the NDOC made false allegations and she was removed as the trustee. She said the Attorney General's office cleared her of any wrongdoing in 2005. Mr. Houston was supposed to revoke the trust, but he never signed it so the trust was intact. The NDOC slandered her name and her brother's name. She concurred with Ms. Ravell and her recommendations. Ms. Brown said that DNA was a major topic, and she requested that people be allowed to have DNA testing at their own expense.

B. SECOND MEETING

Opening Remarks

During the second meeting of the Advisory Commission, held on March 7, 2012, the Advisory Commission considered five major topics and discussed an outline for future meetings. In his opening remarks, Chair Horne discussed the budgetary need to limit the number of meetings of the Advisory Commission and any Subcommittees.

Public Comment

Laurie Johnson, Recovery Group, Inc., said she was the current Director of Programs and Rehabilitation for a Recovery Group. She was actively involved in proper justice, healing on victim and offender levels, the safety of all community members, and proper prevention moving forward. She submitted her comments for consideration by the Commission for the treatment of sexual abusers.

Tonja Brown, Advocate for the Innocent, said she had information regarding the computer glitch from 2007. She said the NDOC installed a computer system in 2007 that was unable to handle indeterminate sentences, meaning life sentences. She said the NDOC lacked the manpower to compare 13,000 inmates' files with the original criminal history and presentence reports. She said there was a report that it had happened up to 1,300 times since 2007. She referred to Nolan Klein's file printed January 24, 2011, showing the computer glitch was still in his file.

Chair Horne asked if there were questions on this issue. He said he was seeking information from Director Cox and Attorney General Masto on the issue. He had concerns that some inmates had felony convictions on their records of which they were never convicted. It may have had an effect on their parole release. He said it was premature to say that because a conviction was placed erroneously on their file it automatically resulted in a denial. He was interested in how many inmates were possibly affected by the computer glitch. He was also interested in remedies to the problem.

Appointment of Subcommittees

Chair Horne noted the overlap of the standing Committee on Child Welfare and Juvenile Justice (chaired by Senator Wiener), and thus stated that he did not feel it was necessary to appoint a subcommittee on Juvenile Justice. However, the Advisory Commission voted to re-appoint the Subcommittee on Victims of Crime (chaired by Attorney General Masto), and to establish a new Subcommittee to Review Presentence Investigation Report Process (chaired by Phil Kohn).

Review of Criminal Justice Committees with Similar Jurisdiction to the Advisory Commission

Nicolas Anthony, Legislative Counsel Bureau, presented an overview of all of the statutory, standing and appointed committees pertaining to criminal justice topics that may overlap with the Advisory Commission. He presented a short summary of each of the committees along with backup materials to statutory authority and information from websites. He outlined the statutory duties of the Advisory Commission under NRS 176.0125.

He said there was a Legislative Committee on Child Welfare and Juvenile Justice chaired by Senator Wiener and it had met twice this interim. The Committee reviewed issues ranging from youth risk behavior, bullying, cybercrime, gangs, statewide juvenile justice reform, and

sex trafficking of minors. He said another standing committee was on Industrial Programs and it was charged with looking at programming for inmate offenders in the Nevada prisons.

Additionally, Mr. Anthony testified that Governor Sandoval has indicated that he would continue the Nevada Crime Commission established by Governor Gibbons. Governor Sandoval said he wanted the Crime Commission to focus on public education, crime solutions, monitoring crime trends, recidivism, legislation supporting law enforcement, and seeking fundraising and grant opportunities.

In addition, Mr. Anthony outlined all of the committees under the auspices of the Office of the Attorney General and indicated that all of the committees met regularly. The committees included Domestic Violence, the Nevada Council for Prevention of Domestic Violence, Multidisciplinary Teams to Review the Death of Victims, Committee to Study Laws Concerning Sex Offender Registration, Technological Crime Board, Substance Abuse Working Group, Open Meeting Law Task Force, and Victim Information Notification. He said the Open Meeting Law Task Force and the Victim Information Committees were not statutorily created.

Mr. Anthony also covered potential overlaps with the Supreme Court of Nevada. He said overlap of their review of specialty courts occurred with the Commission. The Commission on Indigent Defense established a determination for indigence, adopted a performance standard for indigent defense counsel, and established a uniform definition of case. The Juvenile Delinquency Procedural Rules Commission was established by the Supreme Court. The Court also established a Commission on Statewide Juvenile Justice Reform.

Mr. Anthony commented that there were several other nonlegislative committees. The Advisory Committee on Criminal Justice Information Sharing was through the Department of Public Safety. The State Council for Interstate Adult Offender Supervision and Juvenile Supervision were statutory requirements of all 50 states. Finally, Mr. Anthony referenced the work of the Prosecution Advisory Council.

Presentation Concerning the Use of Boot Camp

Sheryl Foster, Deputy Director, NDOC, said the establishment of the boot camps fell under NRS 209.356. Originally it was designed as a type of diversion program in lieu of imposition of sentence, or a type of shock probation program. She said it was a 190-day maximum program which involved strenuous physical exercise and hard labor, military style drills and sessions of instruction, stress management, building good character, rational behavior thinking, and preparing for and obtaining employment. The current requirements included being male, convicted of a nonviolent felony, at least 18 years old, never in jail or prison as an adult for more than six months, and eligible for probation. The positives of boot camp were that an individual would only spend 190 days maximum in incarceration. Boot camp was currently located at Three Lakes Valley Correctional Center and cost $42.30 per day per inmate. She said they added an education component and one for community service projects to the program.

Ms. Foster said some of the research on boot camps noted that several other states and the Bureau of Prisons discontinued the use of boot camps as there was not enough of a positive effect on recidivism to justify the costs. Expanding the current program required money for additional staff and resources. She said for the interim, they had the capacity for a maximum of 65 inmates, but they could expand it to 75 participants with the current staffing and resources. She said one of the biggest negatives of the program was the lack of transitional support once boot camp was completed. She said they were released into society into the uncontrolled environment they were in prior to boot camp. Aftercare and transitional housing was needed for success of the program. The current staffing resulted in cutbacks in community service projects.

Ms. Foster offered some statistics from 2008 to 2011 for boot camp. She said the numbers were slightly skewed because it included offenders brought into the program during 2007 and completed in 2008. She said the raw numbers were of the 890 people assigned to boot camp; 86 offenders failed the program; 81 offenders quit the program; 6 offenders were rejected for medical reasons and 59 did not complete the program for unspecified reasons. She said in the last 3 years, 390 participants were returned to prison for various reasons.

Ms. Foster said during the last Session the question arose about the Youthful Offender Program becoming a boot camp style program. She said there were issues with the suggestion. Inmates placed in the Youthful Offender Program did not meet the criteria for boot camp because most of them were violent offenders and some had served prior prison sentences. Thus, they did not qualify for minimum custody and some had very lengthy sentences. Finally, Ms. Foster indicated that such a program would require a large increase in staff and resources.

Presentation Concerning a Diagnostic 120 Day Prison Sentence

Ms. Foster stated the 120-day evaluation program, also known as the "safe keeper evaluation program," was originally designed as an evaluation program. The offender came into the system, went through an intake process, and was there for 120 days. She said during that time their prior criminal record, their mental and physical health, and the rehabilitation resources available were evaluated. The criteria for the program was someone convicted of a felony for which he might be sentenced to imprisonment, and had never been sentenced to imprisonment as an adult for more than six months.

She said they were unable to determine a recidivism rate based upon the data available. However, earlier testimony stated 600 out of 2,000 people placed in the program had been returned to prison. She did not know who gave that testimony. She said the Advisory Board recommended the elimination of the program in 1997 due to budgetary concerns and limited bed space. Ms. Foster said the positives of the program were that the offender only spent 120 days in incarceration and education was emphasized in the program. She also mentioned that some life skills programs were available to the offenders. Ms. Foster said the negatives of the program were that there was never an appropriation for staffing or resources for the program. She added that if the program was reinstated, there needed to be staffing appropriated in order

to conduct the program. She said the program was considered a costly use of medium custody beds. She said if the program was reinstated and housed at Southern Desert Correctional Center it would cost approximately $48.00 a day. She said appropriate staff needed to include a caseworker, mental health counselor, re-entry staff, and additional custody staff.

Presentation Concerning the Ely Prison Settlement on Medical Health Care

Mr. Kandt, Special Deputy Attorney General, Office of the Attorney General, said *Riker v. Gibbons* was a federal lawsuit filed by inmates of the Ely State Prison for which an amended complaint was filed April 2008. He said it was a class action challenging the medical care provided at Ely State Prison. He said the case was settled and dismissed with prejudice. Mr. Kandt said the issue of mental health care was not addressed in the Riker litigation or the settlement. Mr. Kandt indicated that Dr. Bannister would provide additional information on the administration of the settlement agreement.

Bruce Bannister, Medical Director, NDOC, summarized the actions of the settlement agreement. Ely was monitored under six categories. The categories included medication, which involved administration of medication, chronic disease management, management of sick call, management of intersystem transfers, provision of specialty care, and the care provided in the infirmary of the institutions. He said they had received partial compliance on five of the categories and substantial compliance on one after the first visit. The second visit had substantial compliance in three areas and partial compliance in three areas.

Update on Litigation/Compliance with the Sex Offender Registration and Notification Act

Mr. Kandt said A.B. 579 and S.B. 471 were enacted during the 2007 Legislative session and were scheduled to go into effect July 2008. He said A.B. 579 revised Nevada's existing sex offender registration laws and made them compliant with the Sex Offender Registration and Notification Act (SORNA). He said there were five differences between SORNA and Nevada law prior to enactment of A.B. 579. He said it went from an offender based system to an offense based system. S.B. 471 imposed on certain sex offenders new residency and movement restrictions. He said a number of lawsuits challenging A.B. 579 and S.B. 471 were initiated in both state and federal courts. He said on March 30, 2009, the Legislative Counsel Bureau issued an opinion which determined the sex offender laws in effect prior to the passage of A.B. 579 and S.B 471 remain in effect during the pendency of the litigation. The Office of the Attorney General issued an official Attorney General Opinion 2010-01 which concurred with the LCB opinion. He said in April 2010, the U.S. Department of Justice notified the Governor that the State had taken all the necessary steps to substantially implement SORNA.

Public Comment

Katrina Rogers, Legal Fellow, American Civil Liberties Union of Nevada, commented on Justice Hardesty's questions regarding the litigation on the coroner's inquest. She said there were two suits filed, one in state court and one in federal court. The federal court order has

been decided and they remanded one part of the decision to state court. She said unless there was an appeal to the Ninth Circuit Court, there were no federal court cases. The other matter in the state court was still pending.

Ms. Rogers addressed Agenda Item IX, concerning the Ely prison settlement. She visited the Ely prison as part of the group monitoring the process of the medical reviews. She said they were pleased with the NDOC's cooperation and the access given to counsel and medical monitors regarding the facilities and reviews of the files. She said the NDOC had met with substantial compliance with the concerns in the settlement.

Ms. Rogers discussed Agenda Item X concerning the status of the litigation regarding the Sex Offender Registration and Notification Act. She said the ACLU filed a petition to the United States Court of Appeals in the Ninth Circuit for a rehearing. Some of the main concerns regarding the decision were that it was based on new factual findings and they said it should have remanded back to state court for an additional hearing. The ACLU also had concerns regarding the punitive effects of A.B. 579 and whether or not it would be applied retroactively. The final concern was with some due process issues on registered offenders determining whether or not their convictions actually trigger A.B. 579. The petition to the Court of Appeals asked that they review their decision en banc before it proceeded to any other court level.

Tonja Brown testified and said she contacted the press. She said in 2011, legislation was passed to have an ombudsman oversee the NDOC. She said the Attorney General's Office failed to tell her who the ombudsman was or to return her telephone calls. Misinformation still existed in 2010 on the NDOC website. She said there were other medical problems besides the ACLU settlement agreement that did not involve the agreement. She said there were concerns also with the inmate welfare fund and money entering the fund and then disappearing. She concluded by stating that it was time for an oversight committee for the inmate welfare fund.

C. THIRD MEETING

During the third meeting of the Advisory Commission, held on April 17, 2012, the Advisory Commission considered six major topics.

Public Comment

Tonja Brown opened her discussion concerning the computer glitch. She said she also wished to discuss the materials provided to the Commission regarding her requests for 2013 Legislation. She said laws needed to be changed and asked the Commission to accept Senator Parks' recommendation and bring back the items not passed from the Advisory Commission recommendations from 2010. She asked that her recommendations be considered for future legislation, including DNA testing by prisoners at their own expense. She referred to the inmates who did not receive medical treatment at the Nevada Department of Corrections (NDOC). She said the NDOC was not properly treating inmates who had the "super bug," and

she said slanderous and false information was provided in inmates files. The computer glitch affected inmates who had false charges and their credits taken away. She said the computer glitch occurred on June 5, 2007.

Lawrence Wilgus said he watched the story on television concerning the computer errors. He said he was a victim of the errors. He said he worked as a crane operator and his position was held for him for six months. Due to the computer error, he still did not have a job. He was not allowed to view his information summary, so he did not know there were errors in his documents.

Presentation on Good Time Credits for Persons Convicted of Certain Category B Felonies and Review of Governor's Veto on Assembly Bill No. 136 (2011)/ Presentation on Sentencing and Nevada Prison Population Forecasts/ Presentation Concerning the Projected Increase of Female Inmates and Possible Approaches to Mitigate Such Outcomes/ Presentation on Offender Recidivism Rates in Nevada/Presentation on the Reclassification of Certain Category B Felonies/ Presentation and Update on PEW Research and Reform Proposals

Dr. James Austin, President, JFA Institute, introduced himself to the new members of the Commission. He said he did research for a variety of states, including Nevada. The Institute is responsible for the population projections for the State. He said he worked with the Nevada Parole Board on its risk guidelines.

There were a number of agenda items he would discuss. He opened with charts concerning the current correctional population trends in Nevada. He said the crime rate chart showed the dramatic drop in the serious crimes reported to police agencies by citizens and discovered by the police. Crime rates rose in 1960, peaked in 1980, and then started going down. He said Nevada's crime rate dropped more dramatically than most of the other states. The crime rate in Nevada had dropped to where it was in 1960. He said the State was much safer than it was 10 or 15 years ago.

Dr. Austin said A.B. 510 changed the range and extension of punishment and gave more good time credits and credits to probationers. He referred to the prison population trends. He said he estimated Nevada was saving between 87 and 90 million dollars a year through A.B. 510 without the crime rate going up, when it actually went down. He said fewer crimes were being committed in Las Vegas compared to 1988 or 1989. He said the accuracy of the projections were relatively accurate. He said their 10-year forecast concerning admissions was flat. He said the State had gone from one of the highest incarceration rates in the country to below the average for incarceration. Nevada was one of the safer states in terms of overall crime rates. The Parole Board was doing a fantastic job in terms of the declining rates. He said there was stability in the leadership of the Parole Board and they adopted guidelines, a validated risk instrument, and a high compliance with their guidelines. He said they paroled low, moderate risk people at their parole eligibility date and they did it with great success. He said if the Parole Board lowered the rates, the prison population would go up.

Dr. Austin said that in 2010, changes were made to the risk instrument and it was revalidated. He discussed recidivism rates and said Nevada had a low recidivism rate. There were three ways to measure recidivism. He said Nevada used the three-year return to prison rate. The national return rate was in the 44-45 percent range. Nevada's rate was a 25-26 percent rate of return. Chair Horne asked if the transitory nature of Nevada affected the rates. Dr. Austin said it had some role in the rates. He said approximately 20 percent of the parolees were returned to California. He said the ICE transfers were also a consideration for the lower rate. There were a number of low risk people in Nevada. He said there were deterrents, treatments, programs and maturation effects. He said most people who went to prison did not go back to prison.

Mr. Cox said the female population rate lacked enough data to determine what was actually occurring with the group. He said any increase in the female population looked like a large increase due to the small number of female inmates. The recidivism rate was currently 26.89 percent. The California population did affect the rate because of buses and transportation out of the State. He said the population was getting older and did not come back to prison. There was also a good amount of policing in the State, thus making the State safer.

Dr. Austin said the number of parole violators had increased. He said it was not the rate, but the number, because more people were going on parole. He said if it was a technical violation, they were usually paroled again fairly quickly. Going through the booking process was expensive, and if the numbers were reduced, it would help on expenses. Technical violations typically did not occur just for the failure of one condition of their probation supervision. He said they saw a number of violations occurring and often resulting in an arrest of some kind. They seldom committed a new felony, but they made multiple mistakes. He said a more immediate response to the first violation might lower the rate.

Dr. Austin next referred to the probation population. He said it was significant in that it had gone down from about 9,200 to 7,500 and was the direct result of A.B. 510. He said it allowed probationers to earn credits off their probation term. The program had been cited nationally and it was working very well. He said the parole population had increased slightly because more people were eligible for parole. There was good success of people terminating off parole. He said it was in the 85-90 percent range and more good news for the State. He said most states were lucky to have a 55-60 percent success rate. He said since A.B. 510 was passed, there was a big bump up in the probation success rates.

Dr. Austin showed a chart of the number of Class B felonies being admitted to the NDOC. He said it was approximately 65 percent of all the prison admissions. After A.B. 510 was passed in 2007, there was a slight drop, and then it went back up. He said the effect of the rise in Class Bs could not be explained by crime or arrest behavior by the police. He said it was something going on in the courts between 2008 and 2009. They escalated the number of people coming into prison for Class Bs. He said the Bs had much higher sentences than the Cs, Ds, and Es and they were restricted on some of the good time credits they could receive.

Dr. Austin then referred to his exhibits and the types of crimes being committed. He said other violent crimes were assault and robbery cases. Drug cases tended to be possession with intent of sale. He said he did an impact study of what might happen if some of the non-violent Class Bs were put into the C and D categories where they would receive more good time credits. They also looked at probation sentences. He said the State was already taking a large number of Class Bs and putting them on probation. They looked at taking the non-violent cases and putting them into Class C, thus allowing them to earn additional credits. He said the impact was approximately an 800 to 900 reduction in prison population. He said it would take approximately 3 years to get to that level. He closed by mentioning two things that would have impact, including resubmitting A.B. 136. He said he believed it would not have an impact on the crime rate or recidivism. He added there was another group in the prison population that were approved for parole but were waiting for Parole and Probation to approve the release. He said some of the inmates chose not to be released and preferred to finish their time in prison and not have any supervision. He said others might have problems securing suitable housing. He said it was a big number of people and a potential reduction in the prison population of 1,000 to 1,500 inmates.

Dr. Austin said nationally there was a drop in the jail populations. He said it was a function of the crime rate and arrests dropping. The federal government estimated that there were approximately 130,000 empty jail beds in the country. He said most of the drop was due to arrests going down. However, Dr. Austin said Nevada's violent crime rate had not dropped as much as the national violent crime rate. He said Nevada historically had a higher than average violent crime rate.

Mr. Kandt said he wanted to know what the state prison commitment rate was. He also was interested in the figures for the categories of felons sentenced directly to prison, probation failures sentenced to prison, parolees returned to prison for a conviction of a new crime, and finally, parolees returned for violating the terms of their parole.

Dr. Austin said information about the parolees with a new conviction while on parole would be readily available, as would the information about the technical violators. He said the data was there. He said for many years the Division of Parole and Probation was unable to analyze the information on a regular basis due to lack of resources. He recommended that Parole and Probation be combined with the NDOC so there was one seamless system for information and risk assessments. He said because they were separated, it was difficult to answer the questions.

Dr. Austin said the State's penal system was designed to incarcerate people who committed violent crimes longer than those incarcerated for drug or property crimes. He said how much time people should serve needed discussion. He said it was not up to him to make those decisions. There was a cost savings, but also a cost.

Dr. Austin said A.B. 510 did not cause the crime rate to go down. He said the work Las Vegas METRO did had much more influence on the crime rates. He said that in New York City they changed the way they policed and started arresting people more for misdemeanor things as

proactive police work. The felony arrests dropped, although misdemeanor rates went up. The jail population dropped, the probation population dropped, and the prison population dropped in New York City. The changes were attributed to the New York Police Department. The work in Las Vegas had a lot to do with the drop in crimes.

Mr. Siegel said A.B. 136 was a bill vetoed and there was another bill in the Legislature which said judges should attempt to be reluctant to do technical violations. He asked Dr. Austin what kind of legislative proposals the Commission could make that would satisfy people who were right of center as expressed in the Governor's letter on A.B. 136. He asked if there was an area the Commission had not yet discussed that Dr. Austin might suggest. He said Texas was adopting measures in this area.

Dr. Austin encouraged the Commission to look at the organizational structure. He recommended moving parole agents to the NDOC or under the Parole Board. He said the State was out of step with the rest of the country with respect to organizational alignment of its correctional resources. He said it eliminated the 400 people waiting to get out of prison due to some bureaucratic delay and it also provided a better transition of assessment as they went through the system. The other areas were economic incentives. The states were giving incentives to local governments to manage their problems. California gave most of their short term, non-violent, and non-sexual offenders to the counties to manage. The counties received money to manage a certain portion of people coming to state prisons. He said economic incentives worked in a number of places successfully. He reiterated the need to realign the correctional agencies.

Mr. Jackson said Dr. Austin's presentation said Nevada was much safer now than it was 10 years ago. He said the Bureau of Justice's statistics showed Nevada ranked number one in crime rate in the nation and number one in violent crimes and that was contrary to the earlier statements made by Dr. Austin.

Dr. Austin said Nevada was not number one in crime rate. The state was number one in violent crime rate, particularly in the area of assaults. He said there was also a lot of movement into Nevada. There was also the effect of the gambling industry. He said it was clear the crime rate had dropped dramatically from 9,000 per 100,000 to almost one-half of that number. He said work was needed in the violent crime rate with emphasis on the assault rate. He said statistics showed actions were coming from certain places. He said there were areas in Las Vegas that were totally safe, but there were also areas that were not safe. The targeted communities were the feeder systems for the police, the jail, and the district attorney. He said if something could be done in those areas, it would have a good impact on making those parts of the communities safer.

Status Report From the Advisory Commission on the Administration of Justice's Subcommittee to Review Presentence Investigation Report Process

Mr. Kohn, Chair, Subcommittee to Review Presentence Investigation Report Process, referred to the case *Stockmeier v. State*. He said it brought to their attention the inherent problems in the probation reports that may have errors or omissions. He said errors cannot be revisited or revised later in time. He recently held a subcommittee meeting concerning the *Stockmeier* issue.

Chair Kohn added that approximately two years ago, Ms. Bisbee and former director of prisons, Howard Skolnik, held a continuing legal education class on the importance of probation reports to the sentencing judge and the Department of Corrections in deciding how to house an inmate, and on the release of an inmate. He said the Nevada Supreme Court pointed out the federal system and suggested it should be used as a guideline. The current problem was the probation report needed to be given to the defense attorney 72 hours prior to sentencing. He added Parole and Probation had done a good job of getting the report to them within 72 hours.

Chair Kohn also said the U.S. Supreme Court decided two cases in the past months, *Lafler v. Cooper* and *Missouri v. Frye*. The Court pointed out that 97 percent of all cases were plea bargained. He said in Clark County, he expected that 99 percent of all cases were plea bargained.

Chair Kohn also stated that the Subcommittee discussed amending NRS 176 to require the Division of Parole and Probation to provide a report to the prosecutor, counsel, and the court 35 days prior to sentencing. He said within 14 days either party should provide to the court and the other side any objections they had to the report. He said the number of days could be adjusted based on the discussions and the realities of Parole and Probation's budget. He said it was critical to have the time to make the corrections as necessary. The PSI report followed people throughout their time in the judicial process and the three days provided now was insufficient. He requested discussion of the proposed legislation by the full Commission.

Discussion of Potential Topics, Dates and Locations for Future Meetings

Chair Horne opened Agenda Item XII, a discussion on potential topics and dates for future meetings. He said intermediate sanctions, lifetime supervision and the impacts on the Division, coroner's inquests, review of the measures not passed in 2011 Session, an update on the PSI Subcommittee, and an update of Victims of Crime Subcommittee were tentatively scheduled for discussion.

Public Comment

Pat Hines said she was representing Nevada Cure. She said they had started a chapter in Nevada and she was asked to mention things they wanted the Advisory Commission to do for them. She mentioned the computer glitch. She said there had not been a true investigation on it and it needed to be done by outside personnel. Another issue they were concerned about was quasi-judicial for the Parole Board and if they were subject to the Open Meeting Law. She said another issue was Nevada's lack of a good definition of the meaning of violent and non-violent crimes. She said the most important issue for her was a request for a subcommittee on adult sex offender issues. The biggest issue was the need for a study on notification, registration, and tier levels. Ms. Hines commented on Dr. Austin's report referring to parole violators from 2000 to 2011. She said the report went to 2011, but year 2007 was noted as "information unavailable." The year 2007 was the year of the computer glitch.

Tonja Brown referred to Agenda Item XII. She recommended the new Commissioners look over the old minutes and agendas from previous meetings. She said the minutes of the Advisory Commission of June 8, 2008, had a case study on misidentification and wrongful convictions. She requested a change in the law requiring the evidence of a crime be turned over at the time of the arrest to the defense and prosecution. She said evidence had been withheld in earlier cases concerning Nolan Kline, her brother. She was concerned about the computer glitch she had referred to earlier. Chair Horne requested Ms. Brown get specific inmates' names who had been harmed by the computer glitch and had a conviction placed on their record that was not valid.

Wes Goetz said in an earlier meeting that it cost the State between $20,000 and $40,000 to keep one inmate in prison for one year. He said it included medical costs for elderly prisoners and mental problems. He referred to Dr. Austin's comments concerning funding for counties to help people stay on parole besides sending them back to prison for a technical violation. He said it would be good for Nevada to have funding for support networks for people coming out on parole and use the funding to educate the community that the people on parole want their lives back. He said they needed a job and a place to live. If they did not have them, they tended to revert back to crime. He recommended programs be funded for Parole and Probation officers to go to the prisons to prepare people in prison to help them get employment and housing. He said the community was safer when the prisoner on parole had employment and a place to live. He said when he got out of prison, Parole and Probation did not help him find a job, and that it took a year to get a job.

D. FOURTH MEETING

Introduction

Chair Horne called the fourth meeting of the Advisory Commission to order on June 6, 2012.

Public Comment

Tonja Brown said S.B. 201 (2011) was brought to the Commission in 2010. The bill concerned the ombudsman. She said the majority of the information was deleted through an amendment to the legislation; however, she requested that the measure be reintroduced as written for an ombudsman for the NDOC. She said it would eliminate future litigation. The computer glitch could have been resolved. She said she also requested DNA testing in 2010 at the inmates' own expense.

Pat Hines commended Commissioner Bisbee for a grant for a study on sex offenders. She said the Commission had very little for sex offender benefits. She hoped some beneficial laws would be in effect in the next Legislature. She was also concerned about the computer glitch. She gave the Commission a copy of the Parole Violators Admitted By Year: 2000-2011, which omitted the year 2007.

Presentation on the Washington Intensive Supervision Project (WISP)

Anmarie Aylward and Sandy Mullins offered an overview of the Washington State System and discussed the pilot, The Washington State Intensive Supervision Project (WISP). She said they also would give an overview of the bill development from the pilot project. She said they gave materials to the Commission, including a paper on changes in supervision, called Changing Community Supervision. They had focused on higher-risk offenders. She said they moved the community supervision population from the early 2000s of 65,000 offenders on active supervision down to 18,000 cases. Today they were supervising just over 15,000 offenders. She said it was a significant shift downward in the number of cases supervised in the State. They were focused primarily on higher-risk offenders with the addition of alternatives to incarceration. The state moved to risk need and responsiveness. She referenced the HOPE Program from Hawaii and looking at swift and certain responses to violations. She said violation of conditions resulted in immediate arrest for short-term periods. They saw a significant decrease in the number of violations, an increase in accountability with the offenders, and an increase in compliance with the rules of supervision.

Presentation on the Opportunity for Probation with Enforcement in Nevada Program (OPEN)

Bradford Glover, Nevada Department of Corrections, provided a PowerPoint presentation to the Commission. He said he would give a brief presentation concerning the OPEN program. He said Kim Madris from Parole and Probation would discuss what needed to occur to increase participation in the OPEN program. He said that in 2009, the NDOC visited the HOPE

program in Hawaii. HOPE was an open probation enforcement program and was the basis for the Nevada OPEN program. He said a pilot program was begun in 2010 by the NDOC, and P&P started a program for offenders who violated their terms of probation and were sent to Casa Grande. The program limited the term to Casa Grande to a maximum of 90 days as opposed to a minimum of one-year custody in the NDOC. It allowed a response to a violation within a week rather than three or four weeks. He said Dr. Deborah Shaffer was doing a third-party evaluation to determine if the program was succeeding. He said OPEN was a year-long, high-intensity supervision program. Since the beginning of the program in 2010, 23 have graduated the OPEN program, 6 were revoked, 21 probationers were referred to Intensive Day Treatment, and 15 graduated.

Mr. Glover said Casa Grande was used as a transitional center with approximately 400 beds. He said there were about 320 individuals there at this time, and some beds were always set aside for the OPEN program. He said A.B. 93 only granted 50 participants in the program and is designed as a pilot program.

Presentation Concerning the Coroner's Inquest Process in Clark County

Michael Murphy, Clark County Coroner, provided information in reference to the coroner's inquest process as it was in Clark County. He said there were two types of coroner's inquests used by their office. The first was per NRS 259.050 which was used to investigate the cause of death and questionable death dating back to 1944. He said that since 1969, a coroner's inquest was conducted on a death at the hands of law enforcement in Clark County. He said the coroner made a commitment in 1969, after the death of a youth by police, to review those types of deaths. The sheriff and district attorney were elected positions, and the coroner's office in Clark County was an appointed position. He said at the inception of the process, it was closed to the public and was very similar to a grand jury. He said that between 1979 and 1980, they began the use of hearing masters who were appointed from the defense bar and the coroner no longer sat as the hearing official. Rulings of "criminal", "justified", or "excusable" were introduced into the process. He said "criminal" meant the individual responsible for the death acted outside their legal right and acted in a criminal manner. "Justified" meant the police officer used deadly force with intention and as a result the death was justified. He said "excusable" was when the officer acted under the color of office, but no intent to use deadly force was present. He said these sometimes occurred when a struggle took place.

He said that in the mid-1980s, the process was further revamped and allowed for questioning of the officers. A later development only allowed written questions. The list of hearing masters was established and used in a rotation process. In 2006 a committee was formed to again look at the process as a result of some sentinel cases, and changes were made to the process in 2007. It was decided to use the justice of the peace instead of the hearing masters of the jurisdiction in which the case came forward. It allowed individuals who represented the third

degree of consanguinity of the family member to ask questions. He said that often involved the spouse, children, parents, brothers and sisters asking questions. He said attorneys were also allowed to be present to ask written questions as well as the attorneys for the police.

Mr. Murphy said there were more events which occurred regarding the inquest. In 2010 a panel with many community stakeholders enacted Clark County Ordinance 2.12.080, and it was amended by the County Commissioners. The Commissioners established that an ombudsperson would now represent the family and the public et al and be able to ask questions in open court. He said seven ombudspersons were appointed and two pre-inquest meetings were established before the inquest. The meetings outlined what would happen during the inquest process and allowed all the individuals to vet their concerns. The family representative, along with an attorney, was allowed to attend the pre-inquest meetings. He said questions were handled by the district attorney, and also legal representatives of the law enforcement community, and the ombudsperson. He said it was important to note where multiple jurisdiction agencies and officers represented by separate groups came together with multiple attorneys. He said there was no ruling to be determined by the coroner's panel, instead a list of interrogatories was created. He said they were questions asked to answer factual information, not pre-assignment of guilt or innocence. He said the changes occurred in October 2010. There were nineteen inquests currently pending.

Chuck Callaway, Director, Intergovernmental Services, Las Vegas Metro Police Department (LVMPD), said he believed the inquest process was important because it allowed the public to hear from officers why they used deadly force. He said the agency's position was to give the new process a chance to see if it worked. He said that during the 2011 Legislative Session, they opposed A.B. 320 which would have abolished the inquest process. He said the process faced legal challenges and there had not been an inquest since 2010. Many officers stated they would not participate in the process. He said LVMPD was dedicated to being as transparent as possible with the public where the officers used deadly force. In 2010 they created a critical incidence review team to perform reviews of deadly force incidences. He said that in February 2012 they created the Office of Internal Oversight. They were tasked with conducting in-depth reviews and recommending correct action and reporting their results to the public. They were the first law enforcement group in the country to participate in the U.S. Department of Justice's Community Oriented Policing Service Program. He said members were conducting a review of LVMPD's use of deadly force incidents and will make recommendations for change for the better. He said they released two reports on their website providing the public with detailed facts related to the use of deadly force by the officers. The first report was a force investigation team report detailing the information gathered by the homicide detectives at the scene of an incidence. The second report was an Office of Internal Oversight review covering any training, policy, or tactile issues they improved upon as a result of the critical internal review. He said there was a void in transparency with the public due to the inquest process being stalled. The district attorney's office decided to review the backlog of deadly force cases and publish their findings. The release of LVMPD's reports also gave the public more insight to the incidences. He said they would continue to be pro-active in their efforts to ensure the safety of their officers was upheld and also to reduce deadly force incidents.

Mr. David Roger, Attorney, said he was with the Las Vegas Police Protective Association (LVPPA). Deputy Director Chris Collins and Mr. Josh Reisman were also with the LVPPA. He said Mr. Reisman would address the constitutional issues of the ordinance involving the coroner's inquest.

Mr. Josh Reisman said the constitutional challenges currently on appeal before the Nevada Supreme Court raised four issues. They were the jurisdictional question, separation of powers, due process, and equal protection. He said the justice of the peace under the ordinance was required to serve as presiding officer over the coroner's inquest and officer-involved deaths in Clark County. He said there was only one statute in Nevada that granted justice courts authority to preside over coroners' inquests; it was NRS 259 and it limited the jurisdiction of the courts to preside over inquests to coroners' district counties. He said Clark County was not a coroner's district county. Clark County's use expanded the justice courts' jurisdiction to non-coroners' district counties in violation of Article 6, Section 8 of the Nevada Constitution. He said with regard to the separation of powers, the ordinance violated it by mandating that justices of the peace perform the duties of a prosecutor. The justice of the peace is conscripted under the ordinance to serve as an adjunct advisory and investigate the instrumentality of the executive branch in its role as prosecutor. It violated the separation of powers doctrine.

Mr. Reisman said in regard to due process, officer-involved death inquests or accusatory proceedings did not meet the minimal requirements of due process. He said it limited officers to one attorney representative and lacked individual subpoena powers. It did not provide for the exercise of the officers' Fifth Amendment rights. He said equal protection employed a classification of persons distinguishing between persons who were peace officers and caused death while acting in their capacity, and persons who were not peace officers and caused death.

Christopher Laurent, Chief Deputy District Attorney, Clark County, said he did the last 50 inquests for the office. He presented information on the impact of the new ordinance. He said prior to the change, the law enforcement officers in Clark County cooperated fully in every police-involved investigation. They always gave information. He had two cases pending and he did not anticipate any police participation other than the submitting officer because of the Garrity statements. He said in the future there will be no statements coming from officers because they will invoke their Fifth Amendment rights. He said he doubted the process would achieve transparency due to the lack of the officers' statements. His office now put forth decision letters which analyzed the case and reviewed it to be sure there was no criminality. If there was criminality, they recommended charges.

Mr. Richard Boulware, First Vice President, NAACP of Las Vegas, Assistant Federal Public Defender, said he was here because of a series and history of problems in terms of shootings and the deaths of unarmed minorities. They had many questions as to why the deaths were occurring and had not received any information. The inquests were borne of the Civil Rights Movement. He said there was lack of transparency from the district attorney's office and the police department. The purpose of the inquest was to provide information when none was given. He said the inquests were a way to provide information and transparency to the process.

Ms. Katrina Rogers, ACLU of Nevada, said the ACLU was involved in the coroner's inquest process through the review boards in 2007 and 2010. She said the process today provided more protection for officers and more procedural safeguards, even though they are not needed. She said it provided a process that was more fair and neutral than any inquests done before. She said that in 2007 and again in 2011, the PPA and district attorney's office and LVMPD agreed with the implementation of justices of the peace as the presiding officer in an inquest process. The ACLU was concerned about the need for a neutral third party reviewing the facts when an officer takes a life. The process in place in Clark County was neutral. She added that the process was just fact-finding, not associated with guilt or fault. The process only took place after the district attorney decided no charges were going to be brought against the officer. She reiterated the changes made things more fair and balanced and provided more protections for the police. She said the hostility with the officers and their refusal to cooperate was because the inquest process was public. She said earlier it was done behind closed doors and in-house. She added that the ACLU was not on a witch hunt of police officers. They appreciated those at LVMPD who worked with the ACLU to get the information and facts to the public. She said confidence for police officers by the public was served by the inquest process.

Presentation on Legislation Sponsored by the 2009-2010 Advisory Commission That Did Not Pass During the 2011 Legislative Session

Nicolas Anthony, Legislative Counsel Bureau, discussed legislation sponsored by the 2009-2010 Advisory Commission on the Administration of Justice that did not pass in the last legislative session. The first bill, A.B. 136, would have extended A.B. 510 credits to certain Category B felons. It was passed by the Legislature and was vetoed by the Governor. He said three other bills did not pass. One was A.B. 96 which prohibited or limited a court from ordering a victim or witness to submit to a psychological exam. He also said S.B. 123 did not pass out of the Senate Committee on Government Affairs.

Mr. Anthony said S.B. 365 also did not pass out of committee. Finally, there was Senate Joint Resolution 1 (SJR 1), introduced by the 2007-2008 Advisory Commission and passed by the Legislature in 2009. It was a resolution that proposed amending the Constitution, so it had to pass twice in identical form; however, it was not passed during the 2011 Session.

Status Report From the Subcommittee to Review Presentence Investigation Report Process

Mr. Kohn, Chair, said the Subcommittee recently held a second meeting concerning the presentence investigation report process. The Subcommittee submitted a working draft document reviewing proposed changes to NRS Chapter 176. He recapped the Nevada Supreme Court case, *Stockmeier v. State*, which said any perceived errors or omissions in a PSI report had to be addressed prior to sentencing. He said it would not be fair to try to re-litigate some of the issues 10 years after the fact. Mr. Kohn said the Committee looked at the federal rule which gave the probation reports to the attorneys 35 days in advance. That was difficult for the Division of Parole and Probation. He said the Committee suggested the report be given to the parties 21 days in advance of sentencing; within 7 days either party can suggest changes; then

7 more days to meet and confer and resolve the changes. He said they also brought the NDOC in to ask what form the corrections needed to take. Probation reports were also used by the NDOC for many purposes, including classifications, and later by the parole board. An accurate report was important. Mr. Kohn said the criminal justice system needed rules set forth and everybody knew the rules. He said the U.S. Supreme Court decided two cases that also made it clear there was a right to effective assistance of counsel at plea hearings and at sentencing hearings. He said the proposed changes would help everyone in the criminal justice system.

Status Report From the Subcommittee on Victims of Crime

Attorney General Cortez Masto, Chair, reported on the meeting of the Subcommittee on Victims of Crime. She said they worked on identifying model legislation they could present to the Legislature. Chair Masto said the Subcommittee focused on the human trafficking component and addressing the commercial, sexual exploitation of individuals. Another issue they dealt with was the licensing of nurses for the SART/SANE programs for sexual assault exams in the State. She said the requirement to keep up certification in the programs was difficult in the rural communities. The other area they addressed was the sexual assault exam fees. Victims of sexual assault who go to a hospital for an exam do not pay for the exam by statute. However, the fees charged by the counties ranged from $200 to several thousand dollars. She said conditions should not be attached to sexual assault victims seeking an exam. The last area the Subcommittee continued to monitor was the VINE project, which was the victim notification program. She said it was a program to let the victim know where the perpetrator was and what was happening with him. They received funding from the federal government to fund the VINE project. She said it was an automated program that contacted the victim and gave the information electronically and coordinated with all the law enforcement in the State. They hoped to have the program in all the counties by the end of the year.

Public Comment

Tonja Brown commented on failed bills, including S.B. 265 which dealt with credits. She talked about inmates placed in segregated units who did not receive credits, and said such inmates should not be penalized because they were unwell and placed in a segregated unit. She commented on John Witherow's testimony and said he did not commit a murder, but was in for habitual crimes. She asked the board to consider limiting a life with possible parole to a maximum 20-year term. She also discussed infections in the prisons and said there needed to be a public notification of the dangers.

Pat Hines said she was not in favor of an audit by the LCB and thought the audit should be done by an independent agency. She requested an audit on the amount of money the Attorney General spent in the last five years to keep the Adam Walsh Act in active status. She said the money could have been better spent on victims, inmates, and their families. Nevada did not offer benefits to a felon with a sexual assault charge. She said it was time to give some advice and consideration to what could be done for adult sex offenders. She also said public education for the general population was needed.

E. FIFTH MEETING

Chair Horne called the fifth meeting of the Advisory Commission to order on July 17, 2012.

Public Comment

Wes Goetz presented detailed information concerning recidivism rates among sex offenders. He said the research had many different reports concerning treatment and therapy for sex offenders. He wanted a study completed in connection with the University of Nevada concerning sex offender recidivism rates. He said after 10 years a sex offender could go to court and ask to be taken off lifetime supervision.

Michaele Atkinson said she lived in Fallon, Nevada, and the judicial system was not working in Fallon. Ms. Atkinson said her son was killed by a truck last year while riding his bicycle. The sheriff's department did a shoddy investigation of the death. She said the man driving the truck was a local man and was part of "the good old boys system." He was drug and alcohol tested, but never spent a day in jail. Ms. Atkinson said she did dog rescue and raised Golden Retrievers. A neighbor had poisoned eight of her Golden Retrievers and shot four of them. They shot a hole through the dog barn and stole a dog. She said the neighbors called and complained about every move she made. When she complained to the sheriff's department about the neighbor's actions, she was told they were unable to do anything. She wished the sheriff's department was held responsible.

Jerod Updike talked about lifetime supervision. He had been against the law for the past five years. He said he was 22 years old when he was convicted of using a computer to lure children. He received lifetime supervision and said he was confused between lifetime supervision and sex offender register. He said he was stuck under supervision by Parole and Probation for possibly the rest of his life. He said the supervision was too much. He said one law for everybody did not fit all the offenders. He requested help in changing the lifetime supervision law.

Tonja Brown said she had new information for the Commission. She said the DNA petition had 135,586 individual signatures to allow DNA testing to be conducted. She said she was pleased to see a presentation on postconviction reports on the Agenda. Ms. Brown supplied copies of information concerning Nolan Klein to the Commission. She claimed her documents showed the Attorney General's office withheld evidence in her particular case. She said her brother was listed as having gang affiliations because of his earth based religion. She reiterated her concern with the computer glitch she had discussed at the previous meetings.

Patrick Davis said he was an advocate for Reform Sex Offender Laws from California and Nevada and also for civil liberties. He asked Chair Horne to be allowed to submit letters of rebuttal or misinformation to the Commission to be included in the record.

Presentation on Lifetime Supervision and Impacts on the Department of Parole and Probation

Tom Ely, Department of Public Safety, Parole and Probation, presented some background on lifetime supervision and discussed the impacts of the program on the Division. He said lifetime supervision was a special sentence included for specific times per NRS 176.0931. The sentence of lifetime supervision began following any term of probation, parole, or release from custody. The special conditions for offenders were set by the Parole Board and the individuals were supervised by the Division of Parole and Probation, Exhibit G. He said the Division supervised over 665 lifetime supervision offenders. The number receiving the sentence and supervised by the Division continued to increase. The Division had noted a 47 percent increase in case load over the past three years. He said more officer resources were devoted to sex offender units for supervision of the high risk case load. The case load was mandated at 45 to 1 officer.

Mr. Ely said compliant offenders may apply for release from lifetime supervision after serving ten years from the date of their last conviction. He said noncompliant offenders and those who continue to commit crimes remained on lifetime supervision. Good time credits did not apply to lifetime supervision. He said per NRS 213.1243, violations of lifetime supervision must be prosecuted as new felony offenses in the county where the original sex offense conviction occurred. He said there had been confusion and inconsistency regarding the prosecution of violation of lifetime supervision new charges. New charges had their own criminal case number and thus did not relate to the original sex offense conviction. He said district attorneys often did not have the details of the offender's criminal case history when preparing for prosecution. He said there were numerous violations that could be committed by offenders including visiting locations where children were present, use of the Internet, and contacting victims and children.

He said parole and probation violations may be handled in a matter of weeks; however, the prosecution of new charges may be many months or a year out. The existing laws create obstacles for the Division and for law enforcement. He said lifetime supervision offenders are not welcome in some states as they cannot arrest, hold, or expedite the offender for violations as they would with a parole or probation offender. He said Arizona was reluctant to accept lifetime supervision cases. The Division proposed the Nevada Legislature establish a new, longer probation and parole term for sex offenders who currently qualify for the special sentence of lifetime supervision. He said they suggested keeping the jurisdiction of the case with the sentencing judge on probation cases and with the Parole Board on parole cases. They recommended the elimination of the special sentence of lifetime supervision by July 1, 2013. He said they desired an understanding of the issues and consideration of all the legal partners. He said there were some benefits to community safety including that the current lifetime supervision laws provided for the offender to serve a minimum of 10 years under lifetime supervision before they are eligible to apply for release. The proposed changes provided the person sentenced under the new law will still be supervised. The proposed new probation lengths shall not be more than 15 years, however, they may be less. He said proposed parole terms for specific sex crimes would increase to a minimum term of not less than 10 years, with eligibility for parole after a minimum of 2 years had been served. The improvement was

related to the Dangerous Offender Notification System, DONS. He said DONS was developed in 1996 to provide notification to Nevada officers and investigators regarding the risk posed by individuals they contacted or may be investigating. He said DONS provided real time, immediate information regarding the parole or probation status and the risk posed by an offender. DONS was also a tool which enabled the parole and probation officers to preset rules and conditions for a hold or the arrest of a parolee or probationer.

Presentation on Policies and Procedures for the Identification of Criminal Suspects (Assembly Bill No. 107, 2011)

Robert Roshak, Director, Nevada Sheriffs and Chiefs Association, said with regard to A.B. 107, all the members of the Nevada Sheriffs and Chiefs Association were briefed on the bill and given copies of existing policies that matched the requirements of the bill. He said he offered several examples and a form that listed a group of agencies using a company called Lexipol which provided police agencies with the best practices and policies. He said at least 10 major agencies in the State had adopted policies and others were working on it.

Presentation on Postconviction Reports

Ms. Bisbee said as a result of an increase in waived PSIs the Parole Board asked for postconviction reports (PCR). She said somewhere between 5 and 8 percent of the PSIs that impact the Parole Board's work were waived. She said before the new law, they had very few PCRs. She said in July they requested 4 reports and in August the request was for 55 PCRs, in September 25, October 39, in November 72 requests. Originally they requested the reports within 45 days of the request. Parole and Probation asked for 60 days to complete the reports. She said for all reports requested between July and November, they received all of them by February. She said problems started in December when 56 reports were requested. They requested 53 reports in January and the last reports were received in April and May. They were still waiting for 17 of the reports requested in February. They requested 55 in March and received 8; in April they requested 30 and received 1; in May they requested 52 and received 1. She said they held 7,842 hearings in fiscal year 2012. They predicted approximately 3 percent would not be heard. A total of 949 hearings were continued for various reasons in 2012. She said the major portion were parole violation hearings. She said what was different now was 246 people were continued because they were unable to hold the hearing so it was continued to another agenda. She said it was a rare occurrence in previous years. She said the reports were now as much as six months behind. She said they typically saw people 2 to 3 months before they were parole eligible. She said now the Board was seeing people either right at the eligibility date or when they were past the date.

Ms. Bisbee said if a PSI was done within the last 12 months, she asked for an offense summary on the current case. She said they had their entire criminal and social history based on the 12 month old history. The reason they needed the summary was NRS 213 required the Board to consider the facts of the incident offense when making decisions to grant or deny parole. The other reason was she said it was ludicrous for them to consider granting someone without any

information on what they had done. She agreed with the Division in those cases, they did not need a full PCR, but they needed an offense summary. She said because of staffing issues with the Division of Parole and Probation that had become an issue. She said there was only one person doing PCRs and at this time they were behind on the reports. She said it had an impact on the parolee and on the Board because there was an increase in hearings. She said Parole and Probation needed increased staff. She strongly supported the need for increased personnel.

Mr. Ely opened his discussion on PCRs. He said originally the Division was informed that there would be about 10 PCRs a year. He said with that number as a guide, the Division assigned that task to one investigator. The decision was made after the budget was submitted and there was no way to provide for increased staffing. He said the Division experienced overtime and comp time costs and the reports became an unfunded mandate. He said the Division and the Parole Board agreed the PCRs would be handled on a first served basis. He said the Division began completing 20 PCRs per month and no overtime or comp time was required. He said without additional staffing the Division will not be able to keep up with the demand for the reports and there will continue to be a backlog.

Status Report From the Advisory Commission on the Administration of Justice's Subcommittee to Review Presentence Investigation Report Process

Subcommittee Chair Kohn was unable to appear and provide a status report due to a scheduling conflict; however, he indicated that he would provide a final report of the Subcommittee's activities at the next full Advisory Commission meeting. Chair Horne opened the hearing as scheduled.

David Sonner, Division of Parole and Probation, detailed a report they were asked to provide to the Commission today concerning PSI reports. He said they generated 5,975 PSI reports from June 2011 to June 2012. The Divisions case management system contained the data indicating the sentence date for each case, the due date, three business days prior to sentencing, as well as the actual delivery date. Captain Sonner said the majority of the reports were delivered from 3 to 7 days prior to the sentence date. He said all the reports were hand carried, hard copy reports distributed to their criminal justice partners. The Division now had the ability to electronically transfer the reports to the Eighth District Court. He said his Division was in favor of all criminal justice reports being delivered seven business days prior to the sentence date. He said this accommodation was a more reasonable approach rather than a 21 day extension of the sentencing process. He said 7 days would cause minimal impact to the defendants, jails, district courts, and Division, while providing adequate time for defense counsel to review the report with their client prior to the sentencing. The Division also recommended during the judge's canvassing prior to the imposition of sentence, any objections, or errors, or inaccuracies in the PSI reports were given a minimum 2 week continuance so the court can order the error corrected.

Status Report From the Advisory Commission on the Administration of Justice's Subcommittee on Victims of Crime

Brett Kandt, on behalf of Attorney General Cortez Masto, said the last meeting of the Victims of Crime Subcommittee was held June 20, 2012. The Subcommittee discussed two major issues; the chronic shortage of sexual assault nurse examiners (SANE), and the second issue dealt with the cost incurred when a victim of a sexual offense received emergency medical care. He said Nevada law specified in NRS 449.244 and NRS 217.300 that the cost of the care and examinations cannot be charged to the victim. He said the costs often were incurred by counties and the Subcommittee looked at whether the cost of the care could be paid for out of the Fund for Compensation of Victims of Crime and lessen the burden on the counties.

F. SIXTH MEETING

The sixth meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William Horne, Chair, on August 28, 2012.

Public Comment

Tonja Brown commented on Agenda Item VII, concerning policies and procedures for the identification of criminal suspects. She said many people had been wrongfully convicted through eye witness identifications. She said 162 people positively identified Mr. Klein in the same photo lineup that was shown to the victim and it led to his arrest and conviction. She was interested in a study of wrongful convictions on people who had maintained their innocence, and concluded by stating that NRS 213 needed to be tightened.

Final Report From the Advisory Commission on the Administration of Justice's Subcommittee to Review Presentence Investigation Report Process

Mr. Kohn said the Subcommittee had prepared proposed conceptual legislation to amend NRS chapter 176 regarding probation reports and when the reports must be filed. He said he brought up the matter because of a case decided by the Nevada Supreme Court in May 2011, *Stockmeier vs. State*. He said the Court ruled on the finality of presentence reports once a case was concluded. He said the presentence reports were used by the court to arrive at a sentence and also by the Department of Corrections in their classification of inmates and by the Parole Department when determining when someone should be paroled. Mr. Kohn said there was no rule as to when reports must be filed. He said there was a tradition in Nevada the reports were filed three or four days in advance by the Division of Parole and Probation. He said based on the numbers from Parole and Probation between June 2011 and June 2012, 3,200 of the nearly 6,000 probation reports where filed 3 or 4 days prior to sentencing. He said 3 days was not enough time for the defense to thoroughly review with their clients, and especially when the 3 days included weekends. He proposed working on legislation that gave Parole and Probation more time to do the out-of-custody reports and it will take less time for those in custody. Mr. Kohn presented a statutory scheme where the probation report was due 21 days in advance of

sentencing, the defense had 7 days to make any objections, and the prosecution had 7 days to answer those questions and 7 days before the court received comments and concerns from both sides. He said the proposal would cut down on time in custody. He was asking for a rule telling everybody when reports were due and amendments or concerns were due and giving the court and counsel time to answer. He asked the committee to adopt the conceptual legislation.

Final Report From the Advisory Commission on the Administration of Justice's Subcommittee on Victims of Crime

Attorney General Cortez Masto, Chair, reported the Subcommittee looked at two issues. The first issue was with respect with SART/SANE nurse certification. She said the challenge they faced across the state was the forensic certification of the nurses necessary to conduct the sexual assault examinations that occur throughout the state. She said one area was addressing the certification issue through the Nursing Board. She said there was some concern the nurses in the State needed to be a SART or SANE nurse because in order to get the certification they had to conduct some sort of training. However, the training was unavailable without the certification at the national level. She said they had proactive meetings with the Executive Director of the Nursing Board and the Board's lobbyist. They hoped to avoid having to introduce any legislation mandating the types of requirements necessary by the nurses. She said the goal was to work with the Board to address the issue.

Ms. Masto said the second issue involved the State's funding from the Violence Against Women Act. She said as a condition of the State receiving funding, particularly involving sexual assault exams, the Act mandated the victim of sexual assault should be able to receive an exam and not have to pay for the exam or file any type of complaint with a law enforcement agency. She said the Subcommittee had a proposed bill draft recommendation addressing the issue; however, she said it was not a final draft. The funding for sexual assault exams was mandated to be paid by the local counties. The Subcommittee was trying to determine if the State's Fund for Compensation of Victims of Crime could pay for the initial sexual assault exams. She said it was still being determined if there were enough funds to cover the exams.

Presentation on Policies and Procedures for the Identification of Criminal Suspects (Assembly Bill No. 107, 2011)

Robert Roshak opened the discussion with a list of agencies in compliance with A.B. 107 and with policies in place or that are still developing policies. He said there were a few agencies he had not received any information from concerning their status. He said he heard from two agencies today, the Washoe County School District and the College of Southern Nevada. He said the college indicated they had a policy in place and the school district was still developing their policy. He said A.B. 107 did not appear to have a formal date of when the policies had to be in place. He said the agencies in the State took the bill seriously.

Mr. Roshak said many of the agencies involved were redoing their entire department policies based on the Lexipol model. He said Lexipol was the company contracted throughout the State to provide agencies with the best practices. He said all the agencies he was waiting to hear from except one were working with Lexipol. He did not know why he was not contacted by some of the agencies.

Presentation on Assault Weapons Laws

The scheduled agenda item on assault weapons was removed from the agenda by vote of the members of the Advisory Commission. The August 28, 2012, meeting of the Advisory Commission being the last full meeting, the item was not rescheduled for further consideration.

Public Comment

Mercedes Maharis said last time she mentioned five items to the Commission. She said she was focused on one item today. She requested they reopen the psych panel issues. She said many had waited for years for this issue to be discussed. She said it was critically important to public safety.

Tonja Brown discussed several things based on personal experiences. She referred to the 162 people that picked her brother out of a photo lineup, and said that there were actually 164 and that 2 people did not pick him. She requested all law enforcement agencies conform to the same standards including lighting and distance. She asked the Commission to look at cases where the defendant maintained their innocence.

IV. SUBCOMMITTEES

The Advisory Commission appointed two subcommittees during the 2011-2012 interim. The two subcommittees that met regularly during the interim were the Advisory Commission on the Administration of Justice's Subcommittee to Review Presentence Investigation Report Process, chaired by Phil Kohn, and the Advisory Commission on the Administration of Justice's Subcommittee on Victims of Crime, chaired by Attorney General Masto. Additionally, because the statutory jurisdiction of the Advisory Commission's Subcommittee on Juvenile Justice overlapped with the Legislative Committee on Child Welfare and Juvenile Justice, the Advisory Commission did not formally appoint and convene the Subcommittee on Juvenile Justice.

A. SUBCOMMITTEE TO REVIEW PRESENTENCE INVESTIGATION REPORT PROCESS

The Subcommittee to Review Presentence Investigation Report Process (Presentence Subcommittee) consisted of:

Phil Kohn, Clark County Public Defender, Chair
Judge David Barker, Eighth Judicial District Court
Connie Bisbee, Chair, Board of Parole Commissioners
James "Greg" Cox, Director, Department of Corrections
Mark Jackson, Douglas County District Attorney
Kim Madris, Deputy Chief, Parole and Probation

The Presentence Subcommittee held two meetings during the interim, with the first meeting on April 9, 2012, and the second on May 22, 2012.

At the meeting held on April 9, 2012, the Presentence Subcommittee focused its discussion on the presentence investigation report process. Chair Kohn said the Subcommittee was a result of a Nevada Supreme Court case, *Stockmeier v. State*. It was a civil case, but the Court stated its primary question was to decide whether under Nevada law, a prisoner may seek to amend his presentence investigation report (PSI) after he was sentenced. He said *Stockmeier* was sentenced for a sexual abuse case. There was discussion as to whether there were threatening acts, and *Stockmeier* objected at the time of his sentencing. The Court did nothing about his objections. He was denied in 1990, and when he was denied by the Parole Board in 2006, he filed a civil case. The Court asked the question: could one seek to amend, and answered the question by saying Nevada law did not provide any administrative or judicial scheme for amending a PSI after sentencing. Chair Kohn asked if that was okay, and if not, how could it be improved. If a material, factual error in the probation report was present, how could it be fixed? He said when he was practicing, he did not understand the importance of the probation report and how much it was used by the Nevada Department of Corrections (NDOC) in the placement of prisoners. He said it was used by the Parole Department when they decided to parole someone. Chair Kohn said approximately two years ago Ms. Bisbee and Director Skolnik of the NDOC put on a continuing legal education class for all the district court judges. They discussed how important the probation report was for determining procedures. He said if changes were made in court, and they were not incorporated into the original PSI, the changes never got to the NDOC or to the Parole Board.

Mr. Jackson disagreed with the way Chair Kohn framed the issue. He believed Justice Hardesty in *Stockmeier* was critical that there was no set procedure in the State for dealing with factual inaccuracy at the time of sentencing. He said there were 20 separate states that had decided the issue. Mr. Jackson said no state or the federal government allowed factual changes by a court or anybody else after a sentencing. He said changes were made at the time of sentencing. Nevada did not have a procedure set for making the changes.

Chair Kohn referred to footnote 5 in the *Stockmeier* decision. He proposed to make two changes. If the first idea of giving a judge the opportunity to fix things at a later date was not appropriate, the Court in footnote 5 referred to the federal system. Chair Kohn said based on that, he proposed changes to NRS 176.156. The proposed changes looked at the federal requirements and gave more time to make changes to the PSI. He said he agreed with Mr. Jackson that the right time to make the changes was in court the first time. He said he recommended turning to the proposed changes in NRS 176.156. The Nevada Supreme Court had used footnotes to foreshadow future cases, future rulings and future issues brought before the Court. He said *Stockmeier* was a civil case, and he did not want to open the State to liability every time someone found a mistake in the probation report. Chair Kohn said the right way to do it was to have more information and a more careful screening of the PSI at the original sentencing. He asked if there were comments about the proposed new statute to NRS 176.156.

Mr. Jackson said the proposed change tended to follow the federal court and the West Virginia case. It was more detailed because it had steps and appeared to have more definitions. He said all the others he studied ended by saying if the party failed to challenge the accuracy of the PSI at the time of sentencing, the matter was considered waived. He said the proposed new statute appeared to omit the last statements. He said the federal guidelines discussed the 14 days before the sentencing hearing and opportunity to each party to object to factual errors in any such report and to comment on any recommendations. Mr. Jackson said it was not about the Division but presenting in front of a judge. He said it needed clarification; they were discussing a sentencing judge and not the Division. He said it gave the opportunity for a party to provide information to the Division they may have overlooked. He was concerned about the length of time. He said under the federal system it started within 14 days before the sentencing hearing, and the parties must state in writing any alleged inaccuracies in the PSI. He asked Chair Kohn how he arrived at 35 days in reference to the 14-day receipt of the PSI.

Chair Kohn said the numbers were from the federal statute. He said it was open for discussion or negotiations. Judge Barker said from the bench's perspective, they all agreed the issue needed to be an accurate representation of facts and it needed to be done efficiently so a just determination and sentencing could be made.

Ms. Madris reviewed the materials and they understood the importance of the PSI and what an important tool it was to the NDOC and the Parole Board. She said accuracy was one of their concerns. She said if a time limit was put into place, it would impact the Division. She said the way the proposed statute was written, it put an emphasis on court service writers attending court in the Las Vegas area again.

At the second meeting of the Presentence Subcommittee held on May 22, 2012, Chair Kohn said he wanted to engage the Nevada Department of Corrections (NDOC) in the discussion. He said if they made any changes to the PSI reports that were stipulated to by the parties or found by the Court, what form did the amendment have to be in for the purposes of the NDOC and for Parole and Probation.

Captain Sonner from the Division of Parole and Probation appeared before the Presentence Subcommittee and said they produced a total of 624 PSIs in April 2012. He said 196 were in-custody PSIs which equaled 31 percent of the total. He said in May they had completed 551 PSIs and 202 were in-custody, which represented 37 percent. He said they were comfortable saying anywhere between 30 and 40 percent of the PSIs were in-custody reports.

Chair Kohn said he presented a document at the last meeting mirroring the federal guidelines which got the reports 35 days in advance. He said he recognized it would be a burden on Parole and Probation. As there was no rule now, he did not think they could go forward after the next Legislature with no rules.

Chuck Callaway, Las Vegas Metropolitan Police Department, said his concerns were very clear. The concerns were about holding inmates in their facilities for a much longer time than they were currently being held. He said they supported changes that made the process more efficient and helped get accurate PSI reports.

Additionally, Chair Kohn said it recently came to his attention there were reports requested of the Division of Parole and Probation, and by the Parole Department, of cases where somebody was going before the Parole Board, but there were no PSI reports done in their specific case. He asked what the reports were called. Ms. Madris said it was a Post Conviction Report. Chair Kohn said he was unaware of the existence of these reports. He asked if they were legal after the decision in *Stockmeier*. He said probation reports could not be changed, but could they create a new report; however, he said the Post Conviction Report was expensive. Thus, the Subcommittee did not take up a recommendation concerning Post Conviction Reports, and felt that issue may be better left to the full Advisory Commission.

In conclusion, the Subcommittee proposed keeping the draft proposal concerning time limits on presentence investigation reports as presented and changing the 35 days in paragraph 1 to 21 days. In closing, the Subcommittee voted to recommend conceptual language to amend chapter 176 of NRS to the full Advisory Commission (see Recommendation No. 3).

B. VICTIMS OF CRIME

The Victims of Crime Subcommittee consisted of the following members and non-members:

Catherine Cortez Masto, Attorney General, Chair
Barbara Aupperle, Program Administrator Victim Witness Assistance Center, Clark County
Christine Conti, Liaison, Washoe County Health District
Traci Dory, Victims Services Officer, Nevada Department of Corrections
Ben Felix, Coordinator, Sexual Assault Support Services, Crisis Call Center
Lori Fralick, Victim Services Unit, Reno Police Department
Liz Greb, Grants and Policy Analyst, Office of the Attorney General (non-member)
Elynne Greene, Director, Southern Nevada Human Trafficking Task Force
Maxine Lantz, Program Director, Victim/Witness Services, White Pine, Lincoln, Eureka

Chris Lovass-Nagy, Division of Child and Family Services
Sue Meuschke, Executive Director, Nevada Network Against Domestic Violence
Kareen Prentice, Domestic Violence Ombudsman, Office of the AG (non-member)
Julie Proctor, Executive Director, SAFE House
Kari Ramos, Program Director, Nevada Coalition Against Sexual Violence
Suzanne Ramos, Victim Advocate, Office of the Reno City Attorney
Rebecca D. Salazar, Victims of Crime Program, Department of Administration (for Brian Nix)
Maureen Seitz, FBI (non-member)
Julie Skow, Victim-Witness Assistance Center, Washoe County DA's Office
Laurel Stadler, Mothers Against Drunk Driving
Michelle Youngs, Victim-Witness Assistance Center, Washoe County DA's Office

Chair Masto indicated that the Subcommittee on Victims of Crime (Victims Subcommittee) met several times during the interim. She reported that the Victims Subcommittee considered numerous topics and proposals; however, the Victims Subcommittee agreed on one suggested proposal for legislation that they wanted to present to the full Advisory Commission.

According to Chair Masto, one area the Victims Subcommittee considered included a survey to identify gaps in services to be sent to various stakeholders in the legal community. The other area of focus for the Victims Subcommittee addressed a concern about the nurses who were certified to conduct sexual assault examinations after an assault on a victim. The Victims Subcommittee contacted the State Board of Nursing and discussed the problems and how they could be addressed; however, it was an ongoing issue which needed further review.

Chair Masto concluded that the Victims Subcommittee focused on the necessary funding for sexual assault exams and the interplay between state funds and county funds. Chair Masto indicated that this issue involved the State's funding from the Violence Against Women Act. She said as a condition of the State receiving funding, particularly involving sexual assault exams, the Act mandated the victim of sexual assault should be able to receive an exam and not have to pay for the exam or file any type of complaint with a law enforcement agency. She said the Victims Subcommittee had a draft addressing the issue, but that it was not a final draft. The funding for sexual assault exams was mandated to be paid by the local counties. The Victims Subcommittee was trying to determine if the State's Fund for the Compensation of Victims of Crime could pay for the initial sexual assault exams. She said it was still being determined if there were enough funds to cover the exams. She said the draft was not final, but they hoped to move forward with a bill draft request, which would became the basis for a recommendation to the full Advisory Commission (see Recommendation No. 5).

V. DISCUSSION OF ISSUES AND FINAL RECOMMENDATIONS

This report is intended to provide a brief summary, with relevant background, of each final recommendation adopted by the Advisory Commission. The outline is organized by requested action type (drafting legislation, drafting a letter, and including a statement in the final report) as approved at the Advisory Commission's October 10, 2012, work session meeting. At that work session, the Advisory Commission considered 21 total recommendations. Ultimately, the Advisory Commission approved six recommendations for bill drafts, two recommendations to draft letters and one recommendation to include a statement in the final report.

A. RECOMMENDATIONS TO DRAFT LEGISLATION

1. *Recommendation on Regimental Discipline*

During the Advisory Commission meeting held on January 24, 2012, Commissioner Kohn asked Ms. Sheryl Foster, Deputy Director of the Nevada Department of Corrections (NDOC), how many inmates are involved in the boot camp program provided for by Nevada law. Ms. Foster said that there are approximately 60 to 62 people in the program. There used to be more, but the number was reduced because of less available staffing. Commissioner Kohn commented that boot camp programs are incredibly effective and reduce recidivism, and that members of the district court are concerned with the reduction of the program in Nevada. He also indicated that he hoped the number of people participating in the boot camp can increase, and that the scope of the boot camp can be widened with regard to who may participate.

In furtherance, Ms. Foster gave a presentation on the boot camp program during the Advisory Commission meeting held on March 7, 2012. Ms. Foster indicated that the boot camp was originally designed as a type of diversion program used instead of the imposition of a sentence, and described the program as a type of "shock probation" program. The program is a maximum of 190 days, and involves strenuous physical exercise, hard labor and military-style drills, and sessions of instruction on stress management, building good character, rational behavior thinking, and preparing for and obtaining employment. To participate in the program, a person must be a male who is at least 18 years of age, convicted of a nonviolent felony, eligible for probation, and must never have been in jail or prison as an adult for more than 6 months. Ms. Foster said that there was research that several other states and the Bureau of Prisons discontinued the use of boot camps because there was not enough of a positive effect on recidivism to justify the costs of the program. Ms. Foster noted that one of the biggest negatives of the program is the lack of transitional support available to a person once he completes the program. Therefore, aftercare and transitional housing is needed for success of the program. Upon inquiry by Chairman Horne, Mr. Rex Reed from the NDOC indicated that there is available capacity for recent graduates of boot camp at the Casa Grande Transitional Center.

Commissioner Kohn said that it is time to reevaluate who qualifies to participate in boot camp, and he said that he is concerned with a blanket restriction that prohibits offenders who have committed a violent crime from participation in the program. Commissioner Kohn indicated

that some first time offenders who have committed a violent crime are exactly the type of people to be placed in the boot camp program. Chairman Horne commented that while such a blanket provision is problematic, there also should not be wide-open discretion with regard to who may participate. Therefore, a discussion of the definition of a crime of violence is important. Commissioner Hardesty suggested possibly amending the regimental discipline statute to expand judicial discretion to some felonies.

At the October 10, 2012, work session, the Commission voted to approve a recommendation to amend NRS 176A.780 to allow persons who were previously ineligible (due to an act of violence) to now be ordered to complete a program of regimental discipline; however, persons convicted of a category A felony would not be eligible for such a program. After much discussion, the Advisory Commission felt that it was imperative to give judges more discretion to allow persons to enter the program. As requested, this recommendation would seek to amend paragraph (b) of subsection 1 of NRS 176A.780 by deleting the language "that does not involve an act of violence." The proposed bill draft would further amend NRS 176A.780 by specifically prohibiting persons convicted of a category A felony from being eligible to complete a program of regimental discipline.

> **RECOMMENDATION NO. 1** — Draft legislation to revise provisions relating to the eligibility of certain convicted persons to complete a program of regimental discipline (NRS 176A.780). **(BDR 740)**

Attached as **Appendix 1** is current NRS 176A.780.

2. *Recommendation on "Safe Keeper Evaluation"*

During the Advisory Commission meeting held on March 7, 2012, Ms. Sheryl Foster gave a presentation on the former 120-day NDOC "Safe Keeper Evaluation Program" (see former NRS 176.158), which was originally designed as an evaluation program. Under the Program, an offender would enter the system, go through an intake process and remain in the Program for 120 days, during which time the offender's prior criminal record, his mental and physical health, and the rehabilitation resources available to him were evaluated. The only people eligible for the Program were those who had been convicted of a felony for which they might be sentenced to imprisonment and who had never been sentenced to imprisonment as an adult for more than 6 months. The Program was eliminated in 1997 because of budgetary concerns and limited bed space. Ms. Foster testified that the positive aspects of the Program included the fact that an offender only spent 120 days in incarceration, and that the Program emphasized education. The negative aspects of the Program included there never having been an appropriation for staffing or resources. Ms. Foster said that if the Program is reinstated, there needs to be an appropriation for staffing, which would include a caseworker, mental health counselor, re-entry staff and additional custody staff.

Commissioner Kohn stated his belief that the Program was one of the most important programs in the criminal justice system. He said this "scared straight program" gave young offenders who were not able to go to boot camp an idea of how serious prison is. Commissioner Kohn also indicated that he would like the courts to have as much discretion as possible. Chairman Horne requested that Commissioner Barker ask his colleagues of their thoughts of the 120-day diagnostic prison sentence.

During the October 10, 2012, work session, the Advisory Commission voted to recommend legislation to reinstate a diagnostic "Safe Keeper Evaluation" prison term, as the Advisory Commission noted the program worked in the past and was an effective tool to deter offenders early. However, the Advisory Commission felt that the period should be limited to 90 days instead of the former 120 days.

> **RECOMMENDATION NO. 2** — Draft legislation to reinstate a 90 day diagnostic "Safe Keeper Evaluation" prison term (See former NRS 176.158). **(BDR 742)**

Attached as **Appendix 2** is former NRS 176.158.

3. *Recommendation on Presentence Investigation Reports*

During the Advisory Commission meeting held on March 7, 2012, Commissioner Hardesty suggested forming a subcommittee to examine the area concerning the correction of presentence investigation reports as a result of a recent Nevada Supreme Court case, *Stockmeier v. State*, 255 P.3d 209 (2011). A subcommittee was appointed and Commissioner Kohn was appointed as Chair.

The Advisory Commission's Subcommittee to Review Presentence Investigation Report Process held meetings on April 9, 2012, and May 22, 2012, during which the Subcommittee examined the presentence investigation report process in this State and the inherent problems with presentence investigation reports that contain errors or omissions. Commissioner Kohn explained that the Nevada Supreme Court held in *Stockmeier* that any perceived errors or omissions in a presentence investigation report must be addressed prior to sentencing.

Commissioner Kohn indicated during the Advisory Commission meeting held on April 17, 2012, that the Nevada Supreme Court in *Stockmeier* suggested that the federal system could be used as a guideline in Nevada. Under the federal system, probation reports are given to attorneys 35 days before sentencing. Commissioner Kohn noted that this 35 day time limit would be difficult for the Division of Parole and Probation, but he stressed the importance of having the time to make any necessary corrections.

At the work session, the Advisory Commission voted to approve the Subcommittee's recommendation to propose language for a bill draft that requires a presentence investigation report to be given to the parties at least 21 days before sentencing. Within 7 days of the parties receiving the report, the parties must state any objections to the report. At least 7 days prior to

sentencing, the Division must submit to the court the presentence report and an addendum containing any unresolved objections. If a party fails to challenge the accuracy of a presentence investigation report at the time of sentencing, then the matter must be considered to be waived.

> **RECOMMENDATION NO. 3** — Draft legislation to amend chapter 176 of NRS to require certain time periods for submittal of presentence investigation reports. **(BDR 741)**

Attached as **Appendix 3** is proposed conceptual language to amend chapter 176 of NRS.

4. *Recommendation on Pilot Diversionary Program*

Assembly Bill No. 93 (2011) requires the NDOC to establish a pilot diversion program within the facilities maintained by the Department to provide treatment to certain probation violators if a court has reasonable cause to believe that the probation violators are alcoholics or drug addicts or in need of treatment for a mental illness, and if the probation violators are ordered to the custody of the NDOC to receive such treatment. The housing of such probation violators in the program is limited to no more than 50 at one time. The provisions of Assembly Bill No. 93 are currently set to expire by limitation on July 1, 2015.

During the Advisory Commission meeting held on January 24, 2012, Ms. Sheryl Foster explained that probation violators participating in this pilot diversion program, the Opportunity for Probation with Enforcement in Nevada (known as the OPEN program), are housed at the Casa Grande Transitional Center.

During the Advisory Commission meeting held on June 6, 2012, a PowerPoint presentation was given on the OPEN program by Mr. Bradford Glover from the NDOC. Mr. Glover also provided a fact sheet on the OPEN program. Mr. Glover explained that OPEN is a one-year long, high intensity supervision program that is currently only being used for drug offenders, but that could also be used for non-violent offenders. The program is an extension of a program initially started by Eighth Judicial District Court Judge Jackie Glass. Ms. Kim Madris, Deputy Chief of the Division of Parole and Probation in Southern Nevada, explained that because only individuals in a status of non-compliance with the terms of their probation are referred to the program, a Parole and Probation officer is the only one to refer such an offender to a judge for acceptance into the program. However, she also explained that it would be ideal for officers to be able to refer offenders to the program who they believed were in need of more structured supervision. Ms. Madris stated that there are several obstacles with the program, such as the fact that it is unfunded. Due to funding cuts, the Division of Parole and Probation has only been able to have one officer work with the program. Problems with staffing, lack of involvement by the courts, and available space at Casa Grande make it difficult for the program to continue. Mr. Rex Reed from the NDOC noted that because of the layout of Casa Grande, if the program is expanded, the number of participants needs to be increased in units of 50.

During the work session, the Advisory Commission noted that the OPEN program was originally initiated without funding as a pilot measure to determine whether it would be successful by reducing the number of people going to prison. Justice Hardesty stated that the 21 people who have successfully graduated from the OPEN program have not had their probations revoked, and that they were now supervised under a more cost effective probation function without being sent back to prison. He then said the amount of money saved far outpaced the costs to supervise the program. Thus, the Advisory Commission voted to request legislation to expand (by 50 persons) and extend the sunset date (by two years) of the pilot diversion program (OPEN).

> **RECOMMENDATION NO. 4** — Draft legislation to expand (by 50 persons) and extend the sunset date (by two years) of the pilot diversionary program for alcohol/drug abuse and mental illness established by Assembly Bill No. 93 (2011). **(BDR 744)**

Attached as **Appendix 4** is a copy of Assembly Bill No. 93 (2011).

5. *Recommendation on Sexual Assault Exam Fees*

During the Advisory Commission meeting held on June 6, 2012, Commissioner Masto explained that, by statute, victims of sexual assaults do not pay for sexual assault exams, rather those fees are charged to the county. Fees charged by counties range from $200 to several thousand dollars. Commissioner Masto further asserted that conditions should not be attached to sexual assault victims seeking exams.

This recommendation, originally proposed by the Victims of Crime Subcommittee and approved by the full Advisory Commission at the work session, seeks to authorize the Director of the Department of Administration to enter into interlocal agreements with counties to provide for forensic medical examination costs to be submitted and reimbursed from the Fund for Compensation of Victims of Crime. The proposal also permits the payment of medical treatment for sexual assaults without requiring the victim to file a police report, and authorizes certain eligible persons to apply for emotional and psychological treatment. The bill draft proposal also extends the time for submitting to a forensic medical examination from three days to seven days after the occurrence. Finally, the proposal permits non-citizens and persons who were not lawfully entitled to reside in the United States at the time of the incident to be awarded compensation from the Fund for Compensation of Victims of Crime, and authorizes a guardian ad litem to make an application to the Fund on behalf of a minor.

> **RECOMMENDATION NO. 5** — Draft legislation authorizing the Director of the Department of Administration to enter into interlocal agreements to use the Fund for Compensation of Victims of Crime to reimburse counties for the fees associated with sexual assault exams. The proposal also seeks to expand the list of potential applicants to the Fund. **(BDR 743)**

Attached as **Appendix 5** is proposed draft language as submitted by the Victims of Crime Subcommittee.

6. *Recommendation on the Aggregation of Consecutive Sentences*

Senate Bill No. 265 (2011) was requested on behalf of the 2009-2010 Advisory Commission on the Administration of Justice but was not passed by the 2011 Legislature. Senate Bill No. 265 would have required the aggregation of consecutive sentences for offenders whose crimes were committed on or after July 1, 2012, unless any of the sentences includes life without the possibility of parole or death. Inmates already serving consecutive sentences may submit a request to the NDOC to make an irrevocable election to aggregate any remaining sentences for which parole has not previously been considered. The aggregation of sentences does not apply to sentences for offenses entered into at different times.

Senate Bill No. 265 would have also limited the current aggregation of multiple life sentences so the sentences for any crime committed on or after July 1, 2012, will be aggregated, and revises the manner in which credits are applied toward the minimum term of imprisonment and aggregated sentences.

Additionally, Senate Bill No. 265 sought to revise provisions for inmates who were 16 years of age when the crime was committed and who are sentenced to life in prison with the possibility of parole. First, the measure provides that the Board of Parole Commissioners is not required to release the inmate on parole if he or she is considered a high risk to reoffend or if there is a reasonable probability that the inmate will pose a danger to the public safety. Second, if the inmate is released on parole and then violates the conditions of parole, he or she will not be considered for release on parole pursuant to the original qualification as an inmate under age 16, but must instead be considered pursuant to other provisions of law.

At the work session on October 10, 2012, the Advisory Commission recommended, based on its past examination and work on the issue, to support Bill Draft Request (BDR) 447 as sponsored by Senator Parks, which is a bill draft to reintroduce the first reprint of Senate Bill No. 265 (2011).

> **RECOMMENDATION NO. 6** — Draft legislation to reintroduce Senate Bill No. 265 (2011), first reprint, relating to the aggregation of consecutive sentences. **(BDR 447)**

Attached as **Appendix 6** is Senate Bill No. 265 (2011), first reprint.

B. RECOMMENDATIONS TO DRAFT LETTERS

7. *Recommendation to Fund Policy Recommendations*

At the work session held on October 10, 2012, the Advisory Commission discussed the importance of adequately funding and prioritizing criminal justice. The members noted that nearly all of the Advisory Commission's policy recommendations potentially have a fiscal impact, but that in many cases that impact was greatly outweighed by future cost savings. Regardless, the members were reminded that the Advisory Commission is charged with examining the policy considerations of the criminal justice system, and that the financial

implications are largely debated in the State's budgetary process. Thus, in support of the Advisory Commission's approved recommendations for legislation, and in furtherance of two additional general policy recommendations regarding proper funding for postconviction reports and indigent defense, the Advisory Commission voted to draft a letter to the Governor and Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance.

> **RECOMMENDATION NO. 7** — Draft a letter to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance, requesting the Governor and the Legislature to consider sufficiently funding all of the policy recommendations from the Advisory Commission on the Administration of Justice. This letter would include requests for funding relating to: regimental discipline, the safe keeper program, presentence and postconviction reports, the pilot diversionary program, and funding of the Office of State Public Defender.

Attached as **Appendix 7** is a Letter dated January 7, 2013, from the Advisory Commission to the Governor and the Chairs of the Assembly Committee on Ways and Means and the Senate Committee on Finance.

8. *Recommendation Regarding the Office of State Public Defender*

Under existing law, the Office of State Public Defender exists within the Department of Health and Human Services to represent indigent persons charged with a public offense. Senate Bill No. 123 (2011) was requested on behalf of the 2009-2010 Advisory Commission on the Administration of Justice but was not passed by the 2011 Legislature. Senate Bill No. 123 sought to move the Office of State Public Defender from the Department of Health and Human Services to the Office of the Governor.

In light of the non-passage of Senate Bill No. 123, the 2011-2012 Advisory Commission felt it necessary to authorize the drafting of a letter to the Chairs of the Assembly and Senate Committees on Government Affairs and Judiciary, requesting that the Legislature further examine the location, assignment, duties and funding of the Office of State Public Defender.

> **RECOMMENDATION NO. 8** — Draft a letter to the Chairs of the Assembly and Senate Committees on Judiciary and the Chairs of the Assembly and Senate Committees on Government Affairs requesting that the respective legislative committees examine the appropriate location, assignment and delegation of the Office of State Public Defender and to provide adequate funding for the operation of that Office (NRS 180.010).

Attached as **Appendix 8** is a Letter to the Chairs of the Assembly and Senate Committees on Judiciary and the Chairs of the Assembly and Senate Committees on Government Affairs dated January 7, 2013.

C. RECOMMENDATION TO INCLUDE A STATEMENT

9. *Recommendation to Support Future Study of Nevada's Criminal Justice System*

During the 2009-2010 interim, the Advisory Commission directed Chair Horne and Vice Chair Hardesty to continue to work with Dr. James Austin and the PEW Center on the States to examine the possibility of financial collaboration to further explore Nevada's criminal justice system, including the current sentencing structure. This recommendation produced reports by Dr. Austin and testimony in support of further examining the current classification of category B felonies in Nevada. Although there may not be any future collaborative projects currently scheduled with Dr. Austin and/or the PEW Center on the States, the Advisory Commission felt it important to make a strong statement in furtherance of continued research in the area of criminal justice.

Thus, at the work session held on October 10, 2012, the Advisory Commission voted to approve a recommendation to include a statement recognizing the compelling need to continue to investigate and support future study of Nevada's criminal justice system.

> **RECOMMENDATION NO. 9** — Include a statement in the final report recognizing the need to continue to investigate and support the future study of Nevada's criminal justice system, and to continue to identify possible outside non-state resources for the funding of such technical assistance.

VI. CONCLUSION

Throughout the 2011-2012 interim, the focus of the Advisory Commission was to efficiently and effectively evaluate the criminal justice system in Nevada. With that mission, the Advisory Commission was able to meet its statutory duties and complete its work in a thorough and expeditious manner. Through the use of knowledgeable resources, which included members from all aspects of the criminal justice system and numerous experts and concerned individuals, the Advisory Commission was able to generate meaningful discussion and propose significant recommendations to strengthen Nevada's criminal justice system.

The Advisory Commission wishes to thank all of the individuals who attended and testified throughout the interim. It is the goal of the Advisory Commission to forward the approved recommendations to the 2013 Nevada Legislature, and to prospectively encourage future reforms that are lasting and beneficial to the criminal justice system in Nevada.

2011 LEGISLATIVE BILLS INTRODUCED
ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE
(Measures may be viewed at http://www.leg.state.nv.us/Session/76th2011/Reports/)

MEASURES ENACTED

Assembly Bill 142 (BDR 15-599) Assemblyman Ohrenschall
Assembly Bill 142 changes the threshold, expressed in terms of the amount of money or value misappropriated, stolen, or taken, between lesser and greater property crimes. The bill amends the penalty provisions for various property crimes, including accepting a kickback; fraud against an innkeeper; fraud in the course of an enterprise or occupation; issuance of a bad check; Medicaid fraud; misappropriation by a public officer; participation in an organized retail theft ring; receiving stolen property; theft; theft of scrap metal; unauthorized use of food stamps; unemployment insurance fraud; workers' compensation fraud; and others.

In general, the bill changes the threshold between a misdemeanor and a gross misdemeanor, or between a misdemeanor and a category C or D felony, from $250 to $650. It also changes certain thresholds between a category B felony and a lesser felony from $2,500 to $3,500.

Assembly Bill 196 (BDR 14-557) Assembly Committee on Judiciary (Originally requested by Assemblyman Carpenter)
Assembly Bill 196 establishes procedures for collecting administrative assessments, fees, and fines from criminal defendants who plead guilty or are found guilty of a felony or a gross misdemeanor. The bill requires the district court entering a judgment of conviction to forward the information necessary to collect any assessment, fee, or fine to the county treasurer or other designated county office. If the county is successful in collecting, the defendant must also pay the county's actual costs and fees, and a fee of 2 percent of the amount owed. The bill establishes similar procedures for collecting from a defendant who was ordered to pay for expenses incurred in providing a defense attorney.

If the county treasurer or other designated office is unable to collect after 60 days, the bill authorizes the county to assign responsibility for collection to the Office of the State Controller, if the Controller agrees. If the Office of the State Controller succeeds in collecting, it must return the money collected to the originating county, after subtracting costs and fees.

The measure also requires a district court judge imposing an assessment, fee, or fine on a criminal defendant who pleads guilty or is found guilty of a felony or a gross misdemeanor to advise the defendant that the judgment constitutes a lien, and that collection efforts may be undertaken.

Finally, A.B. 196 authorizes the Office of the State Controller to act as the collection agency for any governmental entity, pursuant to a cooperative agreement, and authorizes the Controller or his or her designee to enter into a reciprocal agreement with the federal government for the collection and offset of indebtedness.

Assembly Bill 355 (BDR 16-597) Assemblyman Frierson
Assembly Bill 355 provides that any money remaining in the Fund for the Compensation of Victims of Crime at the end of each fiscal year does not revert to the State General Fund and must be carried over to the next fiscal year.

Senate Bill 187 (BDR 16-640) Senate Committee on Judiciary
Senate Bill 187 replaces the requirement that a prisoner convicted of certain sexual offenses may only be released on parole by the State Board of Parole Commissioners with certification by a panel that the prisoner does not represent a high risk to reoffend. Instead, the bill requires that before being granted or continued on parole, the prisoner must be evaluated by a panel within 120 days before a parole hearing. The panel must adopt regulations to ensure that the evaluations are based on currently accepted standards of assessment, contain a statement about other relevant information known about the prisoner, and rate the prisoner's risk to reoffend.

The measure also authorizes the Board to require an evaluation of a sex offender to assist in determining parole and clarifies that a prisoner does not have a right to an evaluation or reevaluation more frequently than the prisoner's regularly scheduled parole hearings. Finally, S.B. 187 requires that certain meetings of the panel are subject to the Open Meeting Law.

Assembly Bill 92 (BDR 40-598) Assemblywoman Flores / Senate Bill 159 (BDR 16-74) Senator Gustavson
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. Senate Bill 159, among other changes, provides for a similar waiver of such fees for persons who were released from prison within the immediately preceding 90 days.

MEASURES PASSED BUT VETOED BY THE GOVERNOR

Assembly Bill 136 (BDR 16-634) Assembly Committee on Judiciary
Assembly Bill 136 requires the Department of Corrections to apply credits earned by an offender convicted of a category B felony to the offender's eligibility for parole if the offender satisfies the criteria in the bill. The offender must not have been convicted of a felony involving the use of force or violence, a felony sexual offense, or felony driving under the influence. In addition, the offender must not have served three or more separate prison terms for felony convictions in Nevada or five or more terms for felony convictions in any jurisdiction, must not be serving an enhanced sentence for use of a

firearm, and must not be serving a sentence for possession of a firearm by a person prohibited from doing so. The bill also prohibits the Department from applying credits earned by any offender convicted as a habitual criminal to the offender's eligibility for parole.

Assembly Bill 136 also authorizes a person who was arrested for alleged criminal conduct to petition the court to seal the records relating to the arrest if the prosecuting attorney declined to prosecute the charges. If records are sealed under these circumstances, the bill allows the prosecuting attorney to file the charges before the statute of limitations has run out and, if charges are filed, requires the court to order the inspection of the records without the filing of a petition.

MEASURES THAT DID NOT PASS

Assembly Bill 96 (BDR 4-558) Assembly Committee on Judiciary (Originally requested by Assemblyman Carpenter)
Assembly Bill 96 prohibits a court from ordering a victim of or a witness to an alleged sexual offense to submit to a psychological or psychiatric examination. Assembly Bill 96 also authorizes a court to exclude certain testimony concerning a previous psychological or psychiatric examination of a victim of or a witness to an alleged sexual offense upon a showing of a compelling need for an additional psychological or psychiatric examination and a refusal by the victim or witness to consent to the additional examination.

Senate Bill 123 (BDR 18-641) Senate Committee on Judiciary
Under existing law, the Office of State Public Defender exists within the Department of Health and Human Services to represent indigent persons charged with a public offense. Senate Bill 123 moves the Office from the Department to the Office of the Governor.

Senate Bill 265 (BDR 14-311) Senator Parks
Senate Bill 265 requires the aggregation of consecutive sentences for offenders whose crimes were committed on or after July 1, 2012, unless any of the sentences includes life without the possibility of parole or death. Inmates already serving consecutive sentences may submit a request to the Department of Corrections to make an irrevocable election to aggregate any remaining sentences for which parole has not previously been considered. The aggregation of sentences does not apply to sentences for offenses entered into at different times.

The bill limits the current aggregation of multiple life sentences so the sentences for any crime committed on or after July 1, 2012 will be aggregated, and revises the manner in which credits are applied toward the minimum term of imprisonment and aggregated sentences.

Finally, S.B. 265 revises provisions for inmates who were 16 years of age when the crime was committed and who are sentenced to life in prison with the possibility of parole. First, the measure provides that the Board of Parole Commissioners is not

required to release the inmate on parole if he or she is considered a high risk to reoffend or there is a reasonable probability that the inmate will pose a danger to the public safety. Second, if the inmate is released on parole and then violates the conditions of parole, he or she will not be considered for release on parole pursuant to the original qualification as an inmate under age 16, but must instead be considered pursuant to other provisions of law.

Senate Joint Resolution 1 (BDR C-552) Senator Parks

SJR 1 was originally requested by the 2007-08 Advisory Commission and was passed by the 2009 Legislature; however it was not passed in identical form during the 2011 Legislature. SJR 1 proposes to amend the Nevada Constitution to replace the State Board of Pardons Commissioners with the Clemency Board appointed by the Governor and to require the Legislature to provide for the organization and duties of the Clemency Board.

1

NRS 176A.780 Eligibility; procedure; completion; deduction of time from sentence.

1. If a defendant:

(a) Is male;

(b) Has been convicted of a felony that does not involve an act of violence;

(c) Is at least 18 years of age;

(d) Has never been incarcerated in jail or prison as an adult for more than 6 months; and

(e) Is otherwise eligible for probation,

➥ the court may order the defendant satisfactorily to complete a program of regimental discipline for 150 days before sentencing the defendant or in lieu of causing the sentence imposed to be executed upon violation of a condition of probation or suspension of sentence.

2. If the court orders the defendant to undergo a program of regimental discipline, it:

(a) Shall place the defendant under the supervision of the Director of the Department of Corrections for not more than 190 days, not more than the first 30 days of which must be used to determine the defendant's eligibility to participate in the program.

(b) Shall, if appropriate, direct the Chief Parole and Probation Officer to provide a copy of the defendant's records to the Director of the Department of Corrections.

(c) Shall require the defendant to be returned to the court not later than 30 days after the defendant is placed under the supervision of the Director, if the defendant is determined to be ineligible for the program.

(d) May require such reports concerning the defendant's participation in the program as it deems desirable.

3. If the defendant is ordered to complete the program before sentencing, the Director of the Department of Corrections shall return the defendant to the court not later than 150 days after the defendant began the program. The Director shall certify either that the defendant satisfactorily completed the program or that the defendant did not, and shall report of the results of the Director's evaluation, including any recommendations which will be helpful in determining the proper sentence. Upon receiving the report, the court shall sentence the defendant.

4. If the defendant is ordered to complete the program in lieu of causing the sentence imposed to be executed upon the violation of a condition of probation and the defendant satisfactorily completes the program, the Director of the Department of Corrections shall, not later than 150 days after the defendant began the program, return the defendant to the court with certification that the defendant satisfactorily completed the program. The court shall direct that:

(a) The defendant be placed under supervision of the Chief Parole and Probation Officer; and

(b) The Director of the Department of Corrections cause a copy of the records concerning the defendant's participation in the program to be provided to the Chief Parole and Probation Officer.

5. If a defendant is ordered to complete the program of regimental discipline in lieu of causing the sentence imposed to be executed upon the violation of a condition of probation, a failure by the defendant satisfactorily to complete the program constitutes a violation of that condition of probation and the Director of the Department of Corrections shall return the defendant to the court.

6. Time spent in the program must be deducted from any sentence which may thereafter be imposed.

(Added to NRS by 1989, 1852; A 1993, 1942; 2001 Special Session, 222)

2

sentence imposed was not abuse of discretion and was well within statutory limits of NRS 484.3795. Etcheverry v. State, 107 Nev. 782, 821 P.2d 350 (1991)

176.156 Disclosure of report and recommendations.

1. The court shall disclose to the district attorney, the counsel for the defendant and the defendant the factual content of the report of the presentence investigation and the recommendations of the division and afford an opportunity to each party to object to factual errors and comment on the recommendations.

2. If the Immigration and Naturalization Service of the United States Department of Justice requests the disclosure of a report of a presentence investigation, the court shall disclose the factual content of the report to the Immigration and Naturalization Service for the limited purpose of performing its duties, including, but not limited to, conducting hearings that are public in nature for the deportation of aliens.

3. Except for the disclosures required by subsections 1 and 2, the report and its sources of information are confidential and must not be made a part of any public record.

(Added to NRS by 1967, 1434; A 1969, 405; 1975, 576; 1981, 1209; 1985, 149; 1993, 1513; 1995, 1057)

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NEVADA CASES.

Disclosure and opportunity to comment limited to report. Requirements of NRS 176.156 concerning disclosure and opportunity to comment relate to factual content of report of presentence investigation, not to document denied consideration in sentencing procedure. Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)

Trial court's decision manifestly was affected by information contained in police report not disclosed to defendant's counsel. Sentence of imprisonment was reversed on appeal and matter remanded for resentencing where trial court's decision manifestly was affected by information contained in police reports not disclosed to defendant's counsel as required by NRS 176.156. Defendant was denied opportunity to comment on factual assertions contained in police reports and consequently was deprived of due process of law. Shields v. State, 97 Nev. 472, 634 P.2d 468 (1981)

During penalty hearing for defendant convicted of murder, disclosure of report of presentence investigation prepared for previous conviction of defendant was proper. During penalty hearing for defendant convicted of murder of first degree (see NRS 175.552), employee of department of parole and probation who had prepared reports of presentence investigations on defendant for his previous convictions, testified for state and recounted statements made to her by defendant during two presentence investigation interviews. Defendant argued that admission of such testimony was prejudicial error because, pursuant to NRS 176.156, such statements could only be used in sentencing him in cases for which corresponding presentence reports were prepared, and that such reports were otherwise confidential. Court rejected defendant's argument, holding that NRS 175.552 gives trial court broad discretion on questions concerning admissibility of evidence at penalty hearing. Guy v. State, 108 Nev. 770, 839 P.2d 578 (1992)

176.158 Commitment to custody of director of department of prisons; conduct of evaluation; report and recommendations; sentencing.

1. If a defendant has:

(a) Been convicted of a felony for which he may be sentenced to imprisonment; and

(b) Never been sentenced to imprisonment as an adult for more than 6 months,

the court may, before sentencing the defendant and in lieu of ordering the defendant to complete a program of regimental discipline pursuant to NRS 176.2248, commit

him to the custody of the director of the department of prisons for not more than 120 days. The period of commitment may be extended once for another period of 60 days at the request of the department of prisons. During the time for which a defendant is committed to the custody of the director, the director may assign the defendant to appropriate programs of rehabilitation to facilitate the evaluation of the defendant required under subsection 2.

2. The department of prisons shall conduct a complete evaluation of the defendant during the time of commitment under this section, and shall inquire into such matters as his previous delinquency or criminal record, social background and capabilities, his mental, emotional and physical health, and the resources and programs available to suit his needs for rehabilitation.

3. The department of prisons shall return the defendant to the court not later than the end of the period for which he was committed under this section and provide the court with a report of the results of its evaluation, including any recommendations which it believes will be helpful to the court in determining the proper sentence.

4. Upon receiving the report and recommendations, the court shall sentence the defendant to:

(a) An appropriate term of imprisonment the duration of which must be computed from the date of commitment under subsection 1; or

(b) Probation, a condition of which must be that the defendant serve a number of days in the state prison equal to or greater than the number of days spent in confinement under subsection 1, including the day of commitment.

(Added to NRS by 1979, 1123; A 1981, 74; 1989, 1854)

WEST PUBLISHING CO.
Criminal Law ⇐ 986.3, 986.4(1).

WESTLAW Topic No. 110.
C.J.S. Criminal Law §§ 1496, 1506, 1510.

WITHDRAWAL OF PLEA

176.165 When plea of guilty, guilty but mentally ill or nolo contendere may be withdrawn. Except as otherwise provided in this section, a motion to withdraw a plea of guilty, guilty but mentally ill or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.

(Added to NRS by 1967, 1434; A 1989, 1983; 1995, 2456)

WEST PUBLISHING CO.
Criminal Law ⇐ 274(9).
WESTLAW Topic No. 110.
C.J.S. Criminal Law § 411.

NEVADA CASES.

Discretion to set aside judgment or grant new trial was vested in trial court. Under former NRS 169.110 (cf. NRS 178.598), discretion to set aside judgment or grant new trial after conviction on criminal charge on ground of error which resulted in miscarriage of justice or prejudiced defendants in respect to substantial right was vested in trial court. (See also NRS 176.165.) State v. Sorenson, 73 Nev. 218, 315 P.2d 508 (1957), cited, Warden v. Lischko, 90 Nev. 221, at 226, 523 P.2d 6 (1974), dissenting opinion, Warden v. Craven, 91 Nev. 485, at 486, 537 P.2d 1198 (1975)

Question of defendant's guilt or innocence is not issue on motion to withdraw guilty plea. On appeal from conviction for burglary, where defendant pleaded guilty to burglarizing gunshop to obtain gun tools which formerly belonged to him and where, on advice of trial judge at hearing for sentence, defendant withdrew guilty plea, trial judge was not in error in permitting defendant to withdraw plea because under NRS 176.165, which provides for withdrawal of guilty pleas, action of judge is discretionary and will not be reversed on appeal unless there has been clear abuse of discretion. Question of defendant's guilt or innocence is

3

Subcommittee to Review Presentence Investigation Report Process
Proposed Conceptual Legislation to Amend Chapter 176 of NRS
Revised per action taken May 22, 2012

1. The Division shall disclose to the prosecuting attorney, the counsel for the defendant and the defendant, and the court, at least 21 days before sentencing unless the defendant waives this minimum period, the factual content of the report of any presentence investigation made pursuant to NRS 176.135 and the recommendations of the Division.

2. Within 7 days after receiving the presentence report, the parties shall state in writing any objections, including objections to material information, and policy statements contained in or omitted from the report.

3. An objecting party shall provide a copy of its objections to the opposing party and to the Division.

4. After receiving objections, the Division may meet with the parties to discuss the objections. The Division may then investigate further and revise the presentence report as appropriate.

5. At least 7 days before sentencing, the Division shall submit to the court and to the parties the presentence report and an addendum containing any unresolved objections, the grounds for those objections, and the Division's comments on them.

6. At sentencing, the court shall:

(a) Verify that the defendant and the defendant's attorney have read and discussed the presentence report and any addendum to the report.

(b) Allow the parties' attorneys to comment on the Division's determinations and other matters relating to an appropriate sentence; and may, for good cause, allow a party to make a new objection at any time before sentence is imposed.

(c) For any disputed portion of the presentence report or other controverted matter, set forth written findings of fact and/or conclusions of law on the dispute, which must be included in the presentence report or addendum, or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.

7. If a party fails to challenge the accuracy of the presentence investigation report at the time of sentencing, that matter must be considered to be waived.

4

Assembly Bill No. 93–Assemblyman Segerblom

Joint Sponsors: Senators Horsford and Parks

CHAPTER.....

AN ACT relating to criminal offenders; requiring the Department of Corrections to establish a pilot diversion program for certain probation violators to receive treatment for alcohol or drug abuse or mental illness; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person who violates the conditions of his or her probation must be brought before the court to determine the actions to be taken, which may include causing the sentence imposed to be executed. (NRS 176A.630) Existing law also authorizes the establishment of programs of treatment for alcohol and drug abuse by the district courts for the treatment of certain offenders. (NRS 453.580) A person who elects to participate in such a treatment program may have his or her sentence set aside upon successful completion of the treatment program. (NRS 458.330) **Section 1** of this bill requires the Department of Corrections to establish a pilot diversion program within the facilities maintained by the Department. The pilot diversion program must be used to provide treatment to certain probation violators if a court has reasonable cause to believe that the probation violators are alcoholics or drug addicts or in need of treatment for a mental illness and if the probation violators are ordered to the custody of the Department to receive such treatment. The Department of Corrections is required to provide food and housing as well as emergency medical services, but is not responsible for providing treatment to the persons placed in the facilities. **Section 1** also requires probationers to release in writing the Department of Corrections from liability as a condition of participation in the pilot diversion program.

Section 3 of this bill identifies the probation violators who are eligible to elect placement in the pilot diversion program. **Section 6** of this bill provides that a person placed in the pilot diversion program is required to pay for the cost of his or her treatment and supervision to the extent of his or her financial resources and authorizes a court to require such a person to perform community service upon completion of treatment to contribute toward the cost of his or her treatment and supervision.

Section 7.5 of this bill provides that upon satisfaction of the terms and conditions imposed upon a probation violator for participation in the pilot diversion program, the court shall release the probationer from supervision and order the probationer to complete any period of probation. If a probation violator violates the rules of the program or does not satisfy the terms and conditions of participation or successfully complete treatment, the court may revoke probation. **Section 8** of this bill requires the Department of Corrections and the Division of Parole and Probation of the Department of Public Safety to jointly provide a report which provides certain data for the Interim Finance Committee. This bill is established as a pilot program, and **section 11** of this bill makes it expire by limitation on July 1, 2015.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets [~~omitted material~~] is material to be omitted

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

Section 1. 1. The Department of Corrections shall establish a pilot diversion program within the correctional institutions or other facilities maintained by the Department.

2. The Department of Corrections shall ensure that facilities of adequate capacity for the pilot diversion program are available in one or more suitable locations within the State. The Department shall not be required to provide housing for more than 50 probation violators at one time.

3. The Department of Corrections shall provide a healthful diet and appropriate, secure and sanitary housing and necessary emergency medical services for the probation violators who are placed in the pilot diversion program, but the Department is not responsible for providing treatment to the probation violators remanded to the pilot diversion program pursuant to section 3 of this act.

4. As a condition of participation in the program, a probationer must release in writing the Department from liability and agree to abide by the applicable rules and regulations of the Department.

Sec. 2. (Deleted by amendment.)

Sec. 3. 1. A district court may remand a probationer who is returned to the district court for a violation of his or her probation to the pilot diversion program established pursuant to section 1 of this act for supervision, subject to such terms and conditions as established by the court. The court may allow the probationer who is remanded to the pilot diversion program to:

(a) Leave the facilities of the Department of Corrections during the day for education, treatment or employment; or

(b) Reside outside the facilities of the Department.

2. The court may require the probationer to receive treatment for alcohol or drug abuse or a mental illness if the court has reason to believe that the probationer is an alcoholic or drug addict or in need of treatment for a mental illness and the court finds that the probationer:

(a) Agrees to participate in the pilot diversion program;

(b) Was not returned to the court for committing an act involving violence, the use of force, or the threat of violence or the use of force;

(c) Meets the requirements for assignment to an institution or facility of minimum security as set forth in NRS 209.481; and

(d) Is not rejected for participation in the pilot diversion program by the Department of Corrections as posing a threat to the health, safety and welfare of:

(1) Other probationers remanded to the program; or

(2) Employees of the Department of Corrections and its agents.

Secs. 4 and 5. (Deleted by amendment.)

Sec. 6. 1. A probation violator who is placed in the pilot diversion program for supervision and, if appropriate, to receive treatment for alcohol or drug abuse or a mental illness shall pay the cost of his or her treatment and supervision to the extent of his or her financial resources.

2. A court shall not refuse to place a probation violator in the pilot diversion program if the probation violator does not have the financial resources to pay any or all of the related costs.

3. The court may order a probation violator who is placed in the pilot diversion program to perform a specified amount of community service upon release from the program to contribute toward the cost of his or her treatment and supervision. Any such community service must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of the State of Nevada or a charitable organization that renders service to the community or its residents.

4. The court may issue a judgment against a probation violator and in favor of the State for the costs of treatment and supervision which remain unpaid when the probationer is released from the pilot diversion program but in no event may the amount of the judgment include any amount of debt which was extinguished by the successful completion of community service pursuant to subsection 3.

Sec. 7. (Deleted by amendment.)

Sec. 7.5. 1. When the court determines that a probation violator who was remanded to the pilot diversion program has satisfied the applicable terms and conditions established pursuant to section 3 of this act, the court shall release the probationer from supervision and order the probationer to complete any remaining or additional period of probation as determined by the court.

2. If the court determines that a probation violator who was remanded to the pilot diversion program is violating the rules of participation in the program, has not satisfied the terms or conditions of participation in the program or has not successfully

completed the treatment for alcohol or drug abuse or a mental illness, the court may revoke probation.

Sec. 8. The Department of Corrections and the Division of Parole and Probation of the Department of Public Safety shall jointly submit a report at least twice annually to the Director of the Legislative Counsel Bureau for transmittal to the Interim Finance Committee. The report must include:

1. The number of probationers participating in the pilot diversion program;
2. The reasons the probationers entered the program;
3. The number of probationers who satisfied the terms and conditions of their participation in the program; and
4. The status of the probationers who are in the program at the time the report is prepared.

Secs. 9 and 10. (Deleted by amendment.)

Sec. 11. This act becomes effective upon passage and approval and expires by limitation on July 1, 2015.

5

DRAFT – NOT FINAL

BILL DRAFT REQUEST FROM EXECUTIVE AGENCIES

REQUEST LIMITED TO

ONE SUBJECT ONLY

FOR LCB USE ONLY

BDR #_____

FROM: Advisory Commission on the Administration of Justice's Subcommittee on the Rights of Victims and Sources of Funding for Victims of Crime, Victims of Crime Sub-committee

TO: Legislative Counsel

I. Intent of Proposed Bill: (Brief summary of intended effect)
To clarify the statutes dealing with the payment of medical expenses and forensic medical examinations of victims of sexual assault. To provide that submission to a forensic medical examination is the equivalent of a police report filed with law enforcement.

II. Justification or Purpose: (Brief narrative of requirement. Use continuation sheet if necessary)

Sexual assault cases are in the unique position of needing the cooperation of the victim to collect "evidence" of the crime, as the victim is a living crime scene. Due to the extremely invasive and personal nature of the crime of sexual assault, legislators have recognized the need to aid victims in recovering from their trauma so they can best aid in the criminal prosecution of the offenders. The requested amendments bring the Nevada statutes in compliance with the federal Violence Against Women Act (VAWA) of 2005. **Section 1** amends NRS 449.244 to remove confusion between NRS 449.244 and NRS 217.310. The statute authorizes the Director of the Department of Administration to enter into interlocal agreements to provide for forensic medical examination costs to be submitted and reimbursed from the Fund for Compensation of Victims of Crime, to the extent of available funding. In addition, the statute permits the payment of a forensic medical examination by the county in which the assault occurred without requiring the victim to file a police report. The amendment also provides a definition of 'initial emergency medical care.' Finally, the amendment further removes language regarding the costs paid for follow-up care. This language is contained in NRS 217.320 **(Section 3)**. **Sections 2-4** amend NRS 217.310 to 217.340, to permit victims of sexual assault to receive payment of follow-up care treatment through the victim's submission to a forensic medical examination or the filing of a report with law enforcement. The amendments further define those persons other than the victim who may apply to the board of county commissioners in the county where the sexual assault occurred for aftercare treatment at the county expense. **Section 4** increases the number of days in which the victim may report the crime to law enforcement in order to qualify for compensation of aftercare. **Section 5** permits non-citizens and persons who were not lawfully entitled to reside in the United States at the time of the incident to be awarded compensation from the Fund for Compensation

of Victims of Crime. Finally, **Section 6** authorizes a guardian ad litem to make an application to the Fund for Compensation of Victims of Crime on behalf of a minor.

III. NRS Title, Chapter and Section affected: (If applicable)
NRS Title 40, Chapter 449, Section 244; Title 16, Chapter 217, Sections 310, 320, and 340.

IV. Effective Date:
__X_ Default (October 1, 2013)

____ July 1, 2013

____ Upon Passage and Approval

____ Other _____

V. Suggested language: (Optional) (Use continuation sheet if necessary)

Section 1. NRS 449.244 Certain costs for *forensic medical* examination or treatment of victims of sexual offenses to be charged to county.

1. Any costs incurred by a hospital ***or health care provider*** for~~:~~

~~(a) T~~ ***t***he ***forensic medical*** examination of the victim of a sexual offense, when the examination is performed for the purposes of gathering evidence for possible prosecution of the person who committed the offense~~; or~~

(b) Initial emergency medical care for the victim,

~ must not be charged directly to the victim. ~~The~~ ***Except as otherwise provided in subsection 3, the*** costs must be charged to the county in whose jurisdiction the offense was committed.

2. ~~Whenever~~ ***Except as otherwise provided in subsection 3, whenever*** costs are incurred by a hospital for treatment which has been approved by the board of county commissioners pursuant to NRS 217.310 for the victim of a sexual assault and any other person eligible for treatment, the costs of the treatment, not to exceed $1,000, must be charged to the county which authorized the treatment. Any remainder must be handled the same as other hospital costs.

3. The Director of the Department of Administration may enter into an interlocal agreement with the county in whose jurisdiction the offense was committed for payment from the Fund for Compensation of Victims of Crime for the costs incurred for the forensic medical examination of the victim of a sexual offense, to the extent of available funding.

4. A victim must not be required to file a police report or to cooperate with the criminal justice system in order to receive a forensic medical examination pursuant to this section.

5. A forensic medical examination conducted pursuant to this section will serve to satisfy the reporting requirements of NRS 217.290-217.340.

6. The costs associated with the forensic medical examination are not included in the aftercare treatment costs provided for in NRS 217.310.

7. As used in this section, "forensic medical examination" means an examination provided to a victim of a sexually-oriented crime as defined pursuant to NRS 217.280 by any health care provider who gathers evidence of a sexual assault in a manner suitable for use in a court of law.

8. As used in this section, "initial emergency medical care" is the medical care provided upon the initial visit to the health care professional to treat any physical injuries sustained as a result of the reported sexual assault.

Sec. 2. NRS 217.310 Application for medical and psychological treatment of victim and *eligible persons* ~~spouse~~; companionship during counseling; prerequisite to approval. If any victim of sexual assault requires medical treatment for physical injuries as a result of the sexual assault, ***in addition to*** any initial emergency medical care provided, or if any victim or ***eligible person*** ~~spouse of such a victim~~ suffers emotional trauma as a result of the sexual assault, the victim or ***eligible person*** ~~spouse~~ may, upon submitting an affidavit as required by subsection 2, apply to the board of county commissioners in the county where the sexual assault occurred for treatment at county expense.

2. The board shall approve an application for treatment upon receiving an affidavit from the applicant declaring that:

(a) The applicant is a victim of sexual assault or ***eligible person*** ~~spouse of such a victim~~;

(b) The sexual assault occurred in the county; and

(c) The victim requires medical treatment for physical injuries, or the victim or ***eligible person*** ~~spouse~~ has suffered emotional trauma, as a result of the sexual assault.

3. A victim who has suffered emotional trauma may select a relative or close friend to receive counseling with the victim if the counselor agrees that such companionship will be helpful to the victim. If the victim's application for treatment is approved, counseling for the relative or friend must also be approved.

4. The filing of a report with the appropriate law enforcement agency, ***or submission to a forensic medical examination pursuant to NRS 449.244,*** is a prerequisite to qualify for treatment under the provisions of this section.

5. An "eligible person" for purposes of NRS 217.310 to 217.350, inclusive, means a member of the victim's immediate family, including but not limited to the victim's spouse or intimate partner, parent, brother, sister, or child, or any other person living in the household of that person and related to that person by blood or marriage.

Sec. 3. NRS 217.320 Availability of medical and psychological treatment; limitation of cost.

1. Upon approval by the board of county commissioners as provided in NRS 217.310, medical treatment for the victim's physical injuries or treatment in the form of psychological, psychiatric and marital counseling for the victim~~, the~~

~~victim's spouse and any~~ ***or any*** other eligible person must be made available at a county hospital or other facility with which the board may contract for the purpose of providing such treatment.

2. Any costs for treatment provided pursuant to this section, not exceeding $1,000 ***per person***, shall be paid by the county which authorized the treatment.

3. Any costs in excess of $1,000 may be covered by the Fund for Compensation of Victims of Crime.

Sec. 4. NRS 217.340 Limitations on time for treatment. No order for treatment pursuant to NRS 217.310 and 217.320 may be made by the board of county commissioners unless:

1. The application for treatment is made within 60 days after the date of the sexual assault; ~~or~~ ***and***

2. The sexual assault was reported to the police within 7 ~~3~~ days after its occurrence, or if the offense could not reasonably have been reported within that period, within 7 ~~3~~ days after the time when a report could reasonably have been made~~.~~***; or***

3. The victim submits to a forensic medical examination as provided in NRS 449.244. Such examinations must be conducted within 7 days after the occurrence.

Sec. 5. NRS 217.220 Award of compensation prohibited under certain circumstances; exceptions.

1. Except as otherwise provided in subsections 2 and 3, compensation must not be awarded if the victim:

(a) Was injured or killed as a result of the operation of a motor vehicle, boat or airplane unless the vehicle, boat or airplane was used as a weapon in a deliberate attempt to harm the victim or unless the driver of the vehicle injured a pedestrian, violated any of the provisions of NRS 484C.110 or the use of the vehicle was punishable pursuant to NRS 484C.430 or 484C.440;

~~(b) Was not a citizen of the United States or was not lawfully entitled to reside in the United States at the time the incident upon which the claim is based occurred or the victim is unable to provide proof that the victim was a citizen of the United States or was lawfully entitled to reside in the United States at that time;~~

(c) Was a coconspirator, codefendant, accomplice or adult passenger of the offender whose crime caused the victim's injuries;

(d) Was injured or killed while serving a sentence of imprisonment in a prison or jail;

(e) Was injured or killed while living in a facility for the commitment or detention of children who are adjudicated delinquent pursuant to title 5 of NRS; or

(f) Fails to cooperate with law enforcement agencies. Such cooperation does not require prosecution of the offender.

2. Paragraph (a) of subsection 1 does not apply to a minor who was physically injured or killed while being a passenger in the vehicle of an offender who violated NRS 484C.110 or is punishable pursuant to NRS 484C.430 or 484C.440.

3. A victim who is a relative of the offender or who, at the time of the personal injury or death of the victim, was living with the offender in a continuing relationship may be awarded compensation if the offender would not profit by the compensation of the victim.

4. The compensation officer may deny an award if the compensation officer determines that the applicant will not suffer serious financial hardship. In determining whether an applicant will suffer serious financial hardship, the compensation officer shall not consider:

(a) The value of the victim's dwelling;

(b) The value of one motor vehicle owned by the victim; or

(c) The savings and investments of the victim up to an amount equal to the victim's annual salary.

Sec. 6. NRS 217.100 Application for compensation; medical reports.

1. Any person eligible for compensation under the provisions of NRS 217.010 to 217.270, inclusive, may apply to the Board for such compensation. Where the person entitled to make application is:

(a) A minor, the application may be made on his or her behalf by a parent, ~~or~~ guardian ***or guardian ad litem***.

(b) Mentally incompetent, the application may be made on his or her behalf by a parent, guardian or other person authorized to administer his or her estate.

2. The applicant must submit with his or her application the reports, if reasonably available, from all physicians who, at the time of or subsequent to the victim's injury or death, treated or examined the victim in relation to the injury for which compensation is claimed.

VI. FISCAL NOTE:

Effect on the State

Yes __X___ No _____ Contains Appropriation _____

Executive Budget _____ Effect Less Than $2,000 _____

Effect on Local Government

Yes __X__ No _____ Contains Appropriation _____

VII. Name of person to be consulted if more information is needed:

Name: _____ Telephone No. _____

VIII. Name, title and mailing address of person to whom a copy of the drafted bill request should be mailed.

***

_____
Signature of head of agency

_____
Date

From: Department of Administration

To: Legislative Counsel

Approved for preparation of bill draft.

_____
Signature, Department of Administration

6

EXEMPT

(Reprinted with amendments adopted on April 26, 2011)

FIRST REPRINT **S.B. 265**

SENATE BILL NO. 265–SENATORS PARKS, LESLIE; AND DENIS

MARCH 17, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing sentencing of criminal offenders and determining eligibility of prisoners for parole. (BDR 14-311)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to offenders; requiring the aggregation of certain consecutive sentences of imprisonment imposed on an offender; making credits earned by a prisoner to reduce his or her sentence applicable to an aggregated sentence; revising the manner in which credits are earned to reduce the minimum term of imprisonment; revising provisions relating to the parole of certain prisoners; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Under existing law, a person who is convicted of committing more than one crime may be sentenced to serve the sentences imposed for each crime concurrently or consecutively. If a person is sentenced to serve consecutive sentences, he or she must complete or be paroled from one sentence before beginning to serve the next sentence. (NRS 176.035) Existing law further provides that for crimes committed on or after July 1, 2009, if two or more sentences of life imprisonment with the possibility of parole are imposed, the minimum sentences are aggregated for purposes of determining parole eligibility. By aggregating the minimum sentences, the prisoner is not paroled from the first offense separately, but rather becomes eligible for parole after the minimum aggregate term of imprisonment has been served. (NRS 213.1213) If the crimes were committed before July 1, 2009, existing law authorizes a prisoner serving two or more sentences of life imprisonment with the possibility of parole to request to have the sentences aggregated. Otherwise, parole eligibility continues to be determined for each sentence separately.

Section 1 of this bill provides that when a court imposes consecutive sentences, those sentences must be aggregated if the crimes were committed on or after July 1, 2012, unless any of the sentences includes a sentence of life without the possibility of parole or death. **Section 9** of this bill further provides that a prisoner who is

serving consecutive sentences may submit a request to the Director of the Department of Corrections to make an irrevocable election to aggregate any remaining sentences for which parole has not previously been considered. **Sections 1 and 9** provide that sentences for offenses which are entered at different times may not be aggregated. For example, a felony that is committed while serving a sentence for another felony may not be aggregated with the earlier sentence. By aggregating sentences, a prisoner will become eligible for parole after the minimum aggregate term of imprisonment has been served. **Section 13** of this bill limits the current aggregation of multiple life sentences so that the sentences for any crime committed on or after July 1, 2012, will be aggregated in the manner provided in **sections 1 and 9**.

Existing law further provides that prisoners may earn certain credits to reduce their sentences. Most credits earned reduce only the maximum term of imprisonment, however, in some cases, the credits earned reduce both the minimum and maximum terms of imprisonment. When the credits are authorized to be deducted from the minimum term of imprisonment, the credits are deducted from the minimum term until the offender becomes eligible for parole. (NRS 209.4465) **Section 4** of this bill instead provides that for offenses committed on or after July 1, 2012, such credits may reduce the minimum term imposed by the sentence by not more than 58 percent. **Sections 2-8** of this bill revise provisions governing credits earned by offenders to reduce their sentences to ensure that the credits also apply to aggregated sentences. **Section 9** of this bill further clarifies that with respect to such credits, the credits apply to the aggregated sentences to the same extent that they would apply had the sentences not been aggregated. **Sections 10-18** of this bill make technical changes to various statutes to include necessary references to aggregated sentences.

Existing law also requires under certain circumstances that a prisoner who was sentenced to life imprisonment with the possibility of parole and who was less than 16 years of age at the time the prisoner committed the offense for which he or she was imprisoned be: (1) granted parole from his or her current term of imprisonment to his or her subsequent term of imprisonment, if the prisoner still has a consecutive sentence to be served; or (2) released on parole if the prisoner does not have a consecutive sentence to be served. (NRS 213.1215) **Section 14** of this bill provides that the State Board of Parole Commissioners is not required to release such a prisoner on parole if: (1) the prisoner is determined to be a high risk to reoffend; or (2) the Board determines that there is a reasonable probability that the prisoner will be a danger to public safety while on parole. **Section 16** of this bill provides that such a prisoner released on parole whose parole is revoked for a violation of any rule or regulation governing his or her conduct cannot be considered again for release on parole pursuant to his or her qualification under such provisions but may be considered for release on parole pursuant to other provisions of law.

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

Section 1. NRS 176.035 is hereby amended to read as follows:

176.035 1. Except as otherwise provided in subsection ~~[2.]~~ *3*, whenever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed. Except as otherwise provided in

subsections ~~[2.]~~ *3* and ~~[3.]~~ *4*, if the court makes no order with reference thereto, all such subsequent sentences run concurrently. ***For offenses committed on or after July 1, 2012, if the court imposes the sentences to run consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment pursuant to subsection 2, unless the defendant is sentenced to life imprisonment without the possibility of parole or death.***

2. When aggregating terms of imprisonment pursuant to subsection 1:

(a) If at least one sentence imposes a maximum term of imprisonment for life with the possibility of parole, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment, and the maximum aggregate term of imprisonment shall be deemed to be imprisonment in the state prison for life with the possibility of parole.

(b) If all the sentences impose a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment.

3. Except as otherwise provided in this subsection, whenever a person under sentence of imprisonment for committing a felony commits another crime constituting a felony and is sentenced to another term of imprisonment for that felony, the latter term must not begin until the expiration of all prior terms ~~[.]~~ ***, including the expiration of any prior aggregated terms.*** If the person is a probationer at the time the subsequent felony is committed, the court may provide that the latter term of imprisonment run concurrently with any prior terms or portions thereof. If the person is sentenced to a term of imprisonment for life without the possibility of parole, the sentence must be executed without reference to the unexpired term of imprisonment and without reference to eligibility for parole.

~~[3.]~~ *4.* Whenever a person under sentence of imprisonment commits another crime constituting a misdemeanor or gross misdemeanor, the court shall provide expressly whether the sentence subsequently pronounced runs concurrently or consecutively with the one first imposed.

~~[4.]~~ *5.* Whenever a person under sentence of imprisonment commits another crime for which the punishment is death, the sentence must be executed without reference to the unexpired term of imprisonment.

~~[5.]~~ *6.* This section does not prevent the State Board of Parole Commissioners from paroling a person under consecutive sentences of imprisonment from a current term of imprisonment to a subsequent term of imprisonment.

Sec. 2. NRS 209.443 is hereby amended to read as follows:

209.443 1. Every offender who is sentenced to prison after June 30, 1969, for a crime committed before July 1, 1985, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement, or the laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated under sentence; and

(b) For the period the offender is in residential confinement,

➥ a deduction of 2 months for each of the first 2 years, 4 months for each of the next 2 years and 5 months for each of the remaining years of the term, and pro rata for any part of a year where the actual term served is for more or less than a year. Credit must be recorded on a monthly basis as earned for actual time served.

2. The credits earned by an offender must be deducted from the maximum term ***or the maximum aggregate term*** imposed by the sentence , ***as applicable,*** and, except as otherwise provided in subsection 5, must apply to eligibility for parole.

3. In addition to the credits for good behavior provided for in subsection 1, the Board shall adopt regulations allowing credits for offenders whose diligence in labor or study merits such credits and for offenders who donate their blood for charitable purposes. The regulations must provide that an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 30 days.

(b) For earning a high school diploma, 60 days.

(c) For earning an associate degree, 90 days.

4. Each offender is entitled to the deductions allowed by this section if the offender has satisfied the conditions of subsection 1 or 3 as determined by the Director.

5. Credits earned pursuant to this section do not apply to eligibility for parole if a statute specifies a minimum sentence which must be served before a person becomes eligible for parole.

Sec. 3. NRS 209.446 is hereby amended to read as follows:

209.446 1. Every offender who is sentenced to prison for a crime committed on or after July 1, 1985, but before July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement, or the

laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated under sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

➥ a deduction of 10 days from the offender's sentence for each month the offender serves.

2. In addition to the credit provided for in subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 30 days.

(b) For earning a high school diploma, 60 days.

(c) For earning an associate degree, 90 days.

3. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit pursuant to this subsection is entitled to the entire 20 days of credit each month which is authorized in subsections 1 and 2.

4. The Director may allow not more than 90 days of credit each year for an offender who engages in exceptional meritorious service.

5. The Board shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to this section.

6. Credits earned pursuant to this section:

(a) Must be deducted from the maximum term ***or the maximum aggregate term*** imposed by the sentence ~~[.]~~ ***, as applicable;*** and

(b) Apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence which must be served before a person becomes eligible for parole.

Sec. 4. NRS 209.4465 is hereby amended to read as follows:

209.4465 1. An offender who is sentenced to prison for a crime committed on or after July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement or the laws of the State recorded against the offender, and who performs in a faithful,

orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated pursuant to his or her sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

➥ a deduction of 20 days from his or her sentence for each month the offender serves.

2. In addition to the credits allowed pursuant to subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 60 days.

(b) For earning a high school diploma, 90 days.

(c) For earning his or her first associate degree, 120 days.

3. The Director may, in his or her discretion, authorize an offender to receive a maximum of 90 days of credit for each additional degree of higher education earned by the offender.

4. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit pursuant to this subsection is eligible to earn the entire 30 days of credit each month that is allowed pursuant to subsections 1 and 2.

5. The Director may allow not more than 90 days of credit each year for an offender who engages in exceptional meritorious service.

6. The Board shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to this section.

7. Except as otherwise provided in ~~[subsection]~~ ***subsections*** 8 ~~[.]~~ ***and 9,*** credits earned pursuant to this section:

(a) Must be deducted from the maximum term ***or the maximum aggregate term*** imposed by the sentence ~~[.]~~ ***, as applicable;*** and

(b) Apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.

8. Credits earned pursuant to this section by an offender who has not been convicted of:

(a) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim;

(b) A sexual offense that is punishable as a felony;

(c) A violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430 that is punishable as a felony; or

(d) A category A or B felony,

➥ apply to eligibility for parole and , ***except as otherwise provided in subsection 9,*** must be deducted from the minimum term ***or the minimum aggregate term*** imposed by the sentence , ***as applicable,*** until the offender becomes eligible for parole and must be deducted from the maximum term ***or the maximum aggregate term*** imposed by the sentence ~~.~~ , ***as applicable.***

9. Credits earned pursuant subsection 8 may reduce the minimum term imposed by the sentence by not more than 58 percent for an offender who:

(a) Is serving a sentence for an offense committed on or after July 1, 2012; or

(b) On or after July 1, 2012, makes an irrevocable election to have his or her consecutive sentences aggregated pursuant to section 9 of this act.

Sec. 5. NRS 209.447 is hereby amended to read as follows:

209.447 1. An offender who is sentenced after June 30, 1991, for a crime committed before July 1, 1985, and who is released on parole for a term less than life must, if the offender has no serious infraction of the terms and conditions of his or her parole or the laws of this state recorded against the offender, be allowed for the period the offender is actually on parole a deduction of 2 months for each of the first 2 years, 4 months for each of the next 2 years and 5 months for each of the remaining years of the term, and pro rata for any part of a year where the actual term served is for more or less than a year. Credit must be recorded on a monthly basis as earned.

2. An offender who is sentenced after June 30, 1991, for a crime committed on or after July 1, 1985, and who is released on parole for a term less than life must, if the offender has no serious infraction of the terms and conditions of his or her parole or the laws of this state recorded against the offender, be allowed for the period the offender is actually on parole a deduction of 10 days from the offender's sentence for each month the offender serves.

3. An offender is entitled to the deductions authorized by this section only if the offender satisfies the conditions of subsection 1 or 2, as determined by the Director. The Chief Parole and Probation Officer or other person responsible for the supervision of an offender shall report to the Director the failure of an offender to satisfy those conditions.

4. Credits earned pursuant to this section must, in addition to any credits earned pursuant to NRS 209.443, 209.446, 209.4465, 209.4475, 209.448 and 209.449, be deducted from the maximum term ***or the maximum aggregate term*** imposed by the sentence ~~.~~ , ***as applicable.***

5. The Director shall maintain records of the credits to which each offender is entitled pursuant to this section.

Sec. 6. NRS 209.4475 is hereby amended to read as follows:

209.4475 1. In addition to any credits earned pursuant to NRS 209.447, an offender who is on parole as of January 1, 2004, or who is released on parole on or after January 1, 2004, for a term less than life must be allowed for the period the offender is actually on parole a deduction of 20 days from the offender's sentence for each month the offender serves if:

(a) The offender is current with any fee to defray the costs of his or her supervision pursuant to NRS 213.1076; and

(b) The offender is current with any payment of restitution required pursuant to NRS 213.126.

2. In addition to any credits earned pursuant to subsection 1 and NRS 209.447, the Director may allow not more than 10 days of credit each month for an offender:

(a) Who is on parole as of January 1, 2004, or who is released on parole on or after January 1, 2004, for a term less than life; and

(b) Whose diligence in labor or study merits such credits.

3. An offender is entitled to the deductions authorized by this section only if the offender satisfies the conditions of subsection 1 or 2, as determined by the Director. The Chief Parole and Probation Officer or other person responsible for the supervision of an offender shall report to the Director the failure of an offender to satisfy those conditions.

4. Credits earned pursuant to this section must, in addition to any credits earned pursuant to NRS 209.443, 209.446, 209.4465, 209.447, 209.448 and 209.449, be deducted from the maximum term ***or the maximum aggregate term*** imposed by the sentence ~~.~~ , ***as applicable.***

5. The Director shall maintain records of the credits to which each offender is entitled pursuant to this section.

Sec. 7. NRS 209.448 is hereby amended to read as follows:

209.448 1. An offender who has no serious infraction of the regulations of the Department or the laws of the State recorded against the offender must be allowed, in addition to the credits provided pursuant to NRS 209.433, 209.443, 209.446 or 209.4465, a deduction of not more than 60 days from the maximum term ***or the maximum aggregate term*** of the offender's sentence ***, as applicable,*** for the successful completion of a program of treatment

for the abuse of alcohol or drugs which is conducted jointly by the Department and a person who is licensed as a clinical alcohol and drug abuse counselor, licensed or certified as an alcohol and drug abuse counselor or certified as an alcohol and drug abuse counselor intern or a clinical alcohol and drug abuse counselor intern, pursuant to chapter 641C of NRS.

2. The provisions of this section apply to any offender who is sentenced on or after October 1, 1991.

Sec. 8. NRS 209.449 is hereby amended to read as follows:

209.449 1. An offender who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement, or the laws of the State recorded against the offender must be allowed, in addition to the credits provided pursuant to NRS 209.433, 209.443, 209.446 or 209.4465, a deduction of 60 days from the maximum term ***or the maximum aggregate term*** of the offender's sentence , ***as applicable,*** for the successful completion of:

(a) A program of vocational education and training; or

(b) Any other program approved by the Director.

2. If the offender completes such a program with meritorious or exceptional achievement, the Director may allow not more than 60 days of credit in addition to the 60 days allowed for completion of the program.

Sec. 9. Chapter 213 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Notwithstanding any other provision of law, if a prisoner is sentenced pursuant to NRS 176.035 to serve two or more consecutive sentences, the terms of which have been aggregated:

(a) The prisoner shall be deemed to be eligible for parole from all such sentences after serving the minimum aggregate term of imprisonment; and

(b) The Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate term of imprisonment.

2. For purposes of determining parole eligibility, a prisoner whose sentences have been aggregated may earn credit pursuant to NRS 209.433 to 209.449, inclusive, which must be deducted from the minimum aggregate term of imprisonment or the maximum aggregate term of imprisonment, as applicable. Such credits may be earned only to the extent that the credits would otherwise be earned had the sentences not been aggregated.

3. Except as otherwise provided in subsection 3 of NRS 176.035, a prisoner who is serving consecutive sentences which have not been aggregated may submit a written request to the Director to make an irrevocable election to have the sentences

aggregated. If the prisoner makes such an irrevocable election to have the sentences aggregated and:

(a) The prisoner has not been considered for parole on any of the sentences, the Department of Corrections shall aggregate the sentences in the manner set forth in NRS 176.035 and the Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate term of imprisonment.

(b) The prisoner has been considered for parole on one or more of the sentences, the Department of Corrections shall aggregate only the sentences for which parole has not been considered. The Board is not required to consider the prisoner for parole on the aggregated sentences until the prisoner has served the minimum aggregate term of imprisonment.

Sec. 10. NRS 213.1085 is hereby amended to read as follows:

213.1085 1. The Board shall appoint an Executive Secretary, who is in the unclassified service of the State.

2. The Executive Secretary must be selected on the basis of his or her training, experience, capacity and interest in correctional services.

3. The Board shall supervise the activities of the Executive Secretary.

4. The Executive Secretary is the Secretary of the Board and shall perform such duties in connection therewith as the Board may require, including, but not limited to, preparing the agenda for board meetings and answering correspondence from prisoners in the state prison.

5. The Executive Secretary shall prepare a list at least 30 days before any scheduled action by the Board showing each person then eligible for parole indicating:

(a) The name of the prisoner;

(b) The crime for which the prisoner was convicted;

(c) The county in which the prisoner was sentenced;

(d) The date of the sentence;

(e) The length of the sentence, including the minimum term *or minimum aggregate term, as applicable,* and *the* maximum term *or maximum aggregate term, as applicable,* of imprisonment or the definite term of imprisonment, if one is imposed;

(f) The amount of time actually served in the state prison;

(g) The amount of credit for time previously served in a county jail; and

(h) The amount of credit allowed to reduce the sentence of the prisoner pursuant to chapter 209 of NRS.

➥ The Executive Secretary shall send copies to all law enforcement agencies in this state and to other persons whom the Executive

Secretary deems appropriate, at least 30 days before any scheduled action by the Board. Each law enforcement agency that receives the list shall make the list available for public inspection during normal business hours.

Sec. 11. NRS 213.1099 is hereby amended to read as follows:

213.1099 1. Except as otherwise provided in this section and NRS 213.1214 and 213.1215, the Board may release on parole a prisoner who is otherwise eligible for parole pursuant to NRS 213.107 to 213.157, inclusive.

2. In determining whether to release a prisoner on parole, the Board shall consider:

(a) Whether there is a reasonable probability that the prisoner will live and remain at liberty without violating the laws;

(b) Whether the release is incompatible with the welfare of society;

(c) The seriousness of the offense and the history of criminal conduct of the prisoner;

(d) The standards adopted pursuant to NRS 213.10885 and the recommendation, if any, of the Chief; and

(e) Any documents or testimony submitted by a victim notified pursuant to NRS 213.130.

3. When a person is convicted of a felony and is punished by a sentence of imprisonment, the person remains subject to the jurisdiction of the Board from the time the person is released on parole under the provisions of this chapter until the expiration of the maximum term ***or the maximum aggregate term*** of imprisonment imposed by the court ***, as applicable,*** less any credits earned to reduce his or her sentence pursuant to chapter 209 of NRS.

4. Except as otherwise provided in NRS 213.1215, the Board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order to be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that the prisoner does not have a history of:

(a) Recent misconduct in the institution, and that the prisoner has been recommended for parole by the Director of the Department of Corrections;

(b) Repetitive criminal conduct;

(c) Criminal conduct related to the use of alcohol or drugs;

(d) Repetitive sexual deviance, violence or aggression; or

(e) Failure in parole, probation, work release or similar programs.

5. In determining whether to release a prisoner on parole pursuant to this section, the Board shall not consider whether the prisoner will soon be eligible for release pursuant to NRS 213.1215.

6. The Board shall not release on parole an offender convicted of an offense listed in NRS 179D.097 until the Central Repository for Nevada Records of Criminal History has been provided an opportunity to give the notice required pursuant to NRS 179D.475.

Sec. 12. NRS 213.120 is hereby amended to read as follows:

213.120 1. Except as otherwise provided in NRS 213.1213 and as limited by statute for certain specified offenses, a prisoner who was sentenced to prison for a crime committed before July 1, 1995, may be paroled when the prisoner has served one-third of the definite period of time for which the prisoner has been sentenced pursuant to NRS 176.033, less any credits earned to reduce his or her sentence pursuant to chapter 209 of NRS.

2. Except as otherwise provided in NRS 213.1213 and as limited by statute for certain specified offenses, a prisoner who was sentenced to prison for a crime committed on or after July 1, 1995, may be paroled when the prisoner has served the minimum term of imprisonment imposed by the court. Except as otherwise provided in NRS 209.4465, any credits earned to reduce his or her sentence pursuant to chapter 209 of NRS while the prisoner serves the minimum term of imprisonment may reduce only the maximum term ***or the maximum aggregate term, as applicable,*** of imprisonment imposed and must not reduce the minimum term ***or the minimum aggregate term, as applicable,*** of imprisonment.

Sec. 13. NRS 213.1213 is hereby amended to read as follows:

213.1213 1. If a prisoner is sentenced pursuant to NRS 176.035 to serve two or more concurrent sentences, whether or not the sentences are identical in length or other characteristics, eligibility for parole from any of the concurrent sentences must be based on the sentence which requires the longest period before the prisoner is eligible for parole.

2. Notwithstanding any other provision of law, if a prisoner is sentenced pursuant to NRS 176.035 to serve two or more consecutive sentences of life imprisonment with the possibility of parole:

(a) For offenses committed on or after July 1, 2009 ~~.~~ , ***but before July 1, 2012:***

(1) All minimum sentences for such offenses must be aggregated;

(2) The prisoner shall be deemed to be eligible for parole from all such sentences after serving the minimum aggregate sentence; and

(3) The Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate sentence.

(b) For offenses committed before July 1, 2009, in cases in which the prisoner has not previously been considered for parole for any such offenses:

(1) The prisoner may, by submitting a written request to the Director of the Department of Corrections ~~.~~ ***before July 1, 2012,*** make an irrevocable election to have the minimum sentences for such offenses aggregated; and

(2) If the prisoner makes such an irrevocable election to have the minimum sentences for such offenses aggregated, the Board is not required to consider the prisoner for parole until the prisoner has served the minimum aggregate sentence.

Sec. 14. NRS 213.1215 is hereby amended to read as follows:

213.1215 1. Except as otherwise provided in this section and in cases where a consecutive sentence is still to be served, if a prisoner sentenced to imprisonment for a term of 3 years or more:

(a) Has not been released on parole previously for that sentence; and

(b) Is not otherwise ineligible for parole,

➥ the prisoner must be released on parole 12 months before the end of his or her maximum term ~~.~~ ***or maximum aggregate term, as applicable,*** as reduced by any credits the prisoner has earned to reduce his or her sentence pursuant to chapter 209 of NRS.

2. Except as otherwise provided in this section, a prisoner who was sentenced to life imprisonment with the possibility of parole and who was less than 16 years of age at the time that the prisoner committed the offense for which the prisoner was imprisoned must, if the prisoner still has a consecutive sentence to be served, be granted parole from his or her current term of imprisonment to his or her subsequent term of imprisonment or must, if the prisoner does not still have a consecutive sentence to be served, be released on parole, if:

(a) The prisoner has served the minimum term of imprisonment ***or the minimum aggregate term of imprisonment*** imposed by the court ~~.~~ ***, as applicable;***

(b) The prisoner has completed a program of general education or an industrial or vocational training program;

(c) The prisoner has not been identified as a member of a group that poses a security threat pursuant to the procedures for identifying security threats established by the Department of Corrections; and

(d) The prisoner has not, within the immediately preceding 24 months:

(1) Committed a major violation of the regulations of the Department of Corrections; or

(2) Been housed in disciplinary segregation.

3. ***If a prisoner who meets the criteria set forth in subsection 2 is determined to be a high risk to reoffend pursuant to NRS 213.1214, the Board is not required to release the prisoner on parole pursuant to this section. If the prisoner is not granted parole, a rehearing date must be scheduled pursuant to NRS 213.142.***

4. The Board shall prescribe any conditions necessary for the orderly conduct of the parolee upon his or her release.

~~[4.]~~ ***5.*** Each parolee so released must be supervised closely by the Division, in accordance with the plan for supervision developed by the Chief pursuant to NRS 213.122.

~~[5.]~~ ***6.*** If the Board finds ~~[, at least 2 months before a prisoner would otherwise be paroled pursuant to subsection 1 or 2]~~ that there is a reasonable probability that ~~[the]~~ ***a*** prisoner ***considered for release on parole pursuant to subsection 1*** will be a danger to public safety while on parole, the Board may require the prisoner to serve the balance of his or her sentence and not grant the parole ~~[provided for in subsection 1 or 2.]~~ . If, pursuant to this subsection, the Board does not grant the parole provided for in subsection 1 , ~~[or 2.]~~ the Board shall provide to the prisoner a written statement of its reasons for denying parole.

7. If the Board finds that there is a reasonable probability that a prisoner considered for release on parole pursuant to subsection 2 will be a danger to public safety while on parole, the Board is not required to grant the parole and shall schedule a rehearing pursuant to NRS 213.142. Except as otherwise provided in subsection 3 of NRS 213.1519, if a prisoner is not granted parole pursuant to this subsection, the criteria set forth in subsection 2 must be applied at each subsequent hearing until the prisoner is granted parole or expires his or her sentence. If, pursuant to this subsection, the Board does not grant the parole provided for in subsection 2, the Board shall provide to the prisoner a written statement of its reasons for denying parole, along with specific recommendations of the Board, if any, to improve the possibility of granting parole the next time the prisoner may be considered for parole.

~~[6.]~~ ***8.*** If the prisoner is the subject of a lawful request from another law enforcement agency that the prisoner be held or detained for release to that agency, the prisoner must not be released on parole, but released to that agency.

~~[7.]~~ ***9.*** If the Division has not completed its establishment of a program for the prisoner's activities during his or her parole

pursuant to this section, the prisoner must be released on parole as soon as practicable after the prisoner's program is established.

~~[8.]~~ ***10.*** For the purposes of this section, the determination of the 12-month period before the end of a prisoner's term must be calculated without consideration of any credits the prisoner may have earned to reduce his or her sentence had the prisoner not been paroled.

Sec. 15. NRS 213.15185 is hereby amended to read as follows:

213.15185 1. A prisoner who is paroled and leaves the State without permission from the Board or who does not keep the Board informed as to his or her location as required by the conditions of his or her parole shall be deemed an escaped prisoner and arrested as such.

2. Except as otherwise provided in subsection 2 of NRS 213.1519, if parole is lawfully revoked and the parolee is thereafter returned to prison, the parolee forfeits all previously earned credits for good behavior earned to reduce his or her sentence pursuant to chapter 209 of NRS and shall serve any part of the unexpired maximum term ***or the maximum aggregate term, as applicable,*** of his or her original sentence as may be determined by the Board.

3. Except as otherwise provided in subsection 2 of NRS 213.1519, the Board may restore any credits forfeited pursuant to subsection 2.

4. Except as otherwise provided in NRS 213.15187, the time a person is an escaped prisoner is not time served on his or her term of imprisonment.

Sec. 16. NRS 213.1519 is hereby amended to read as follows:

213.1519 1. Except as otherwise provided in ~~[subsection 2,]~~ ***subsections 2 and 3,*** a parolee whose parole is revoked by decision of the Board for a violation of any rule or regulation governing his or her conduct:

(a) Forfeits all credits for good behavior previously earned to reduce his or her sentence pursuant to chapter 209 of NRS; and

(b) Must serve such part of the unexpired maximum term ***or the maximum aggregate term, as applicable,*** of his or her original sentence as may be determined by the Board ~~[.]~~ ***, with rehearing dates scheduled pursuant to NRS 213.142.***

➥ The Board may restore any credits forfeited under this subsection.

2. A parolee released on parole pursuant to ***subsection 1 of*** NRS 213.1215 whose parole is revoked for having been convicted of a new felony:

(a) Forfeits all credits for good behavior previously earned to reduce his or her sentence pursuant to chapter 209 of NRS;

(b) Must serve the entire unexpired maximum term ***or the maximum aggregate term, as applicable,*** of his or her original sentence; and

(c) May not again be released on parole during his or her term of imprisonment.

3. A parolee released on parole pursuant to subsection 2 of NRS 213.1215 whose parole is revoked for a violation of any rule or regulation governing his or her conduct:

(a) Forfeits all credits for good behavior previously earned to reduce his or her sentence pursuant to chapter 209 of NRS;

(b) Must serve such part of the unexpired maximum term or the maximum aggregate term, as applicable, of his or her original sentence as may be determined by the Board; and

(c) Must not be considered again for release on parole pursuant to subsection 2 of NRS 213.1215 but may be considered for release on parole pursuant to NRS 213.1099, with rehearing dates scheduled pursuant to NRS 213.142.

➥ The Board may restore any credits forfeited under this subsection.

Sec. 17. NRS 213.625 is hereby amended to read as follows:

213.625 1. Except as otherwise provided in this section, if a judicial program has been established in the judicial district in which a prisoner or parolee may be paroled, the Chair of the Board may, after consulting with the Division, refer a prisoner who is being considered for parole or a parolee who has violated a term or condition of his or her parole to the reentry court if the Chair believes that the person:

(a) Would participate successfully in and benefit from a judicial program; and

(b) Has demonstrated a willingness to:

(1) Engage in employment or participate in vocational rehabilitation or job skills training; and

(2) Meet any existing obligation for restitution to any victim of his or her crime.

2. Except as otherwise provided in this section, if the Chair is notified by the reentry court pursuant to NRS 209.4883 that a person should be ordered to participate in a judicial program, the Board may, in accordance with the provisions of this section:

(a) If the person is a prisoner who is being considered for parole, upon the granting of parole to the prisoner, require as a condition of parole that the person participate in and complete the judicial program; or

(b) If the person is a parolee who has violated a term or condition of his or her parole, order the parolee to participate in and complete the judicial program as a condition of the continuation of

his or her parole and in lieu of revoking his or her parole and returning the parolee to confinement.

3. If a prisoner who has been assigned to the custody of the Division to participate in a judicial program pursuant to NRS 209.4886 is being considered for parole:

(a) The Board shall, if the Board grants parole to the prisoner, require as a condition of parole that the person continue to participate in and complete the judicial program.

(b) The Board is not required to refer the prisoner to the reentry court pursuant to subsection 1 or to obtain prior approval of the reentry court pursuant to NRS 209.4883 for the prisoner to continue participating in the judicial program while the prisoner is on parole.

4. In determining whether to order a person to participate in and complete a judicial program pursuant to this section, the Board shall consider:

(a) The criminal history of the person; and

(b) The safety of the public.

5. The Board shall adopt regulations requiring persons who are ordered to participate in and complete a judicial program pursuant to this section to reimburse the reentry court and the Division for the cost of their participation in a judicial program, to the extent of their ability to pay.

6. The Board shall not order a person to participate in a judicial program if the time required to complete the judicial program is longer than the unexpired maximum term ***or the maximum aggregate term, as applicable,*** of the person's original sentence.

Sec. 18. NRS 213.632 is hereby amended to read as follows:

213.632 1. Except as otherwise provided in this section, if a correctional program has been established by the Director in the county in which an offender or parolee may be paroled, the Chair of the Board may, after consulting with the Division, refer a prisoner who is being considered for parole or a parolee who has violated a term or condition of his or her parole to the Director if the Chair believes that the person:

(a) Would participate successfully in and benefit from a correctional program; and

(b) Has demonstrated a willingness to:

(1) Engage in employment or participate in vocational rehabilitation or job skills training; and

(2) Meet any existing obligation for restitution to any victim of his or her crime.

2. Except as otherwise provided in this section, if the Chair is notified by the Director pursuant to NRS 209.4887 that a person is suitable to participate in a correctional program, the Board may, in accordance with the provisions of this section:

(a) If the person is an offender who is being considered for parole, upon the granting of parole to the offender, require as a condition of parole that the offender participate in and complete the correctional program; or

(b) If the person is a parolee who has violated a term or condition of his or her parole, order the parolee to participate in and complete the correctional program as a condition of the continuation of his or her parole and in lieu of revoking his or her parole and returning the parolee to confinement.

3. If an offender who has been assigned to the custody of the Division to participate in a correctional program pursuant to NRS 209.4888 is being considered for parole, the Board shall, if the Board grants parole to the offender, require as a condition of parole that the offender continue to participate in and complete the correctional program.

4. In determining whether to order a person to participate in and complete a correctional program pursuant to this section, the Board shall consider:

(a) The criminal history of the person; and

(b) The safety of the public.

5. The Board shall adopt regulations requiring persons who are ordered to participate in and complete a correctional program pursuant to this section to reimburse the Department of Corrections and the Division for the cost of their participation in a correctional program, to the extent of their ability to pay.

6. The Board shall not order a person to participate in a correctional program if the time required to complete the correctional program is longer than the unexpired maximum term ***or the maximum aggregate term, as applicable,*** of the person's original sentence.

Sec. 19. This act becomes effective on July 1, 2012.

7

WILLIAM C. HORNE
ASSEMBLYMAN
District No. 34

MAJORITY WHIP

COMMITTEES:
Chairman
Judiciary
Member
Commerce and Labor
Legislative Operations and Elections

State of Nevada Assembly

Seventy-Sixth Session

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January 7, 2013

The Honorable Brian Sandoval
Nevada State Governor
101 North Carson Street
Carson City, NV 89701

The Honorable Debbie Smith
Nevada State Senate
Chair, Senate Committee on Finance
3270 Wilma Drive
Sparks, NV 89431

The Honorable Maggie Carlton
Nevada State Assembly
Chair, Assembly Committee on
Ways and Means
5540 East Cartwright Avenue
Las Vegas, NV 89110

Dear Governor Sandoval, Senator Smith and Assemblywoman Carlton:

On behalf of the members of the Advisory Commission on the Administration of Justice (NRS 176.0123), I am writing to you today to ask for your continued support of the criminal justice system as you prepare the budget for the next biennium.

As you are probably aware, throughout the 2011-12 interim, the Advisory Commission considered many significant policy concerns affecting Nevada's system of criminal justice. While the Advisory Commission is solely a policy committee, we are aware that the recommendations we make may have a fiscal impact on the State. It is, of course, our hope and our intention that many of the recommendations, while they may have some front-end costs, will save the State money in the long run by reducing the number of offenders in prison.

During a work session held on October 10, 2012, the Advisory Commission approved six recommendations for the drafting of legislation. Of those six recommendations, we are aware that at least four recommendations may have a fiscal impact. As you will note, many of the

Advisory Commission's recommendations relate to what are called "intermediate sanctions" (or "alternatives to incarceration.")

The first recommendation (BDR #740) authorizes a court to order certain persons, who are currently prohibited because they have been convicted of a crime of violence, to attend a program of regimental discipline (boot camp). The second recommendation (BDR #742) brings back a so-called scared straight program, requiring certain felons to be sent to prison for a period of 90 days, and then to be evaluated for either a prison sentence or probation. The third recommendation (BDR #744) seeks to double the number of participants (by 50 persons) and to extend (by 2 years) the pilot diversionary program for offenders with issues relating to alcohol/drug abuse or mental illness.

Finally, our fourth recommendation (BDR #741) relates to providing a statutory time frame for submittal of presentence investigation reports to both prosecution and defense counsel. The Advisory Commission dedicated a great deal of time in reviewing the Nevada Supreme Court case *Stockmeier v. State*, 255 P.3d 209 (2011) and the Federal Rules of Criminal Procedure. Ultimately, the Advisory Commission's recommendation would require such reports to be given to all parties at least 21 days before sentencing. As was indicated in testimony, this requirement may have a fiscal impact, due to current staffing levels, on the Division of Parole and Probation, and thus we would wholeheartedly support greater funding for the Division of Parole and Probation.

Additionally, although the Advisory Commission did not approve a formal bill draft request on two additional issues of importance, the Advisory Commission would like to draw your attention to two additional key policy areas. First, the Advisory Commission was made aware that oftentimes the State Board of Parole Commissioners finds it necessary to request a sentencing report after an individual has been sentenced, but before the individual appears for a parole hearing. Many times such individuals have waived their presentence investigation and report, but the Parole Board finds it would contain necessary information for a parole hearing. The preparation of such reports has created an impact on the staff of the Division of Parole and Probation, and the Advisory Commission fully supports additional funding for the Division for such support as needed.

Second, the Advisory Commission throughout the last several interims has heard testimony related to the issue of indigent defense. Further, the Advisory Commission is aware of the tremendous resources the Indigent Defense Commission has put towards this issue, and thus feels strongly that the Office of the State Public Defender should receive full and adequate funding.

In conclusion, the Advisory Commission urges you to strongly consider funding our state agencies and these critical policy considerations as they may come before you during your budget discussions. As Chair of the Advisory Commission, it is my intention to closely monitor any potential legislation in this area and to continue to work towards any future outcomes which may be beneficial to the State of Nevada.

Thank you again for your consideration of the paramount fiscal issues affecting the criminal justice system in Nevada. If you should have any questions, please do not hesitate to contact me.

Sincerely,

William Horne, Chair
Advisory Commission on the
Administration of Justice

On behalf of members:

Justice James Hardesty, Supreme Court, Vice Chair
Senator Greg Brower
Senator David R. Parks
Assemblyman Richard McArthur
Judge David Barker, Eighth Judicial District Court
Connie Bisbee, Chair, Board of Parole
Chuck Callaway, Police Director, METRO
Catherine Cortez Masto, Attorney General
James "Greg" Cox, Director, NDOC
Larry Digesti, Representative, State Bar of Nevada
Lisa Morris Hibbler, Victims Rights Advocate
Mark Jackson, Douglas County District Attorney
Phil Kohn, Clark County Public Defender
Jorge Pierrott, Sergeant, Parole and Probation
Richard Siegel, ACLU of Nevada
D. Eric Spratley, Lieutenant, WCSO

8

WILLIAM C. HORNE
ASSEMBLYMAN
District No. 34

MAJORITY WHIP

COMMITTEES:
Chairman
Judiciary
Member
Commerce and Labor
Legislative Operations and Elections

State of Nevada Assembly

Seventy-Sixth Session

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January 7, 2013

The Honorable David Parks
Nevada State Senate
Chair, Senate Committee on
Government Affairs
PO Box 71887
Las Vegas, NV 89170

The Honorable Teresa Benitez-Thompson
Nevada State Assembly
Chair, Assembly Committee on
Government Affairs
PO Box 20637
Reno, NV 89515

The Honorable Tick Segerblom
Nevada State Senate
Chair, Senate Committee on Judiciary
700 South Third Street
Las Vegas, NV 89101

The Honorable Jason Frierson
Nevada State Assembly
Chair, Assembly Committee on Judiciary
7925 West Russell Road, #400187
Las Vegas, NV 89113

Dear Senators Parks and Segerblom, and
Assemblymembers Benitez-Thompson and Frierson:

On behalf of the members of the Advisory Commission on the Administration of Justice (NRS 176.0123), I am writing to you today to ask for your support in examining the appropriate location, assignment, funding and delegation of the Office of the State Public Defender.
As you may be aware, throughout the 2011-12 interim, the Advisory Commission considered many significant and vital policy considerations impacting Nevada's system of criminal justice. Throughout the last several interims, a tremendous amount of testimony has focused on the issue of providing representation for indigent persons. While indigent defense is not solely funded from the State, we believe that the Office of the State Public Defender should be adequately supported and funded. Further, the Advisory Commission supports investigation into whether the Office of the Public Defender should be moved from its current location within the Department of Health and Human Services. The Advisory Commission would support further study during the 2013 Legislative Session as to whether the Office should be placed within another executive agency or should serve as a direct report to the Office of the Governor.

In conclusion, the Advisory Commission urges you to strongly consider possible legislation relating to the Office of the State Public Defender. As Chair of the Advisory Commission, it is my intention to closely monitor any potential legislation in this area and to continue to work towards any future outcomes which may be beneficial to the State of Nevada.

Thank you again for your consideration of this critical issue affecting the criminal justice system in Nevada. If you should have any questions, please do not hesitate to contact me.

Sincerely,

William Horne, Chair
Advisory Commission on the
Administration of Justice

On behalf of members:

Justice James Hardesty, Supreme Court, Vice Chair
Senator Greg Brower
Senator David R. Parks
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