

**MINUTES OF THE JOINT MEETING OF THE
SENATE COMMITTEE ON JUDICIARY
AND THE ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-sixth Session
February 18, 2011**

The joint meeting of the Senate Committee on Judiciary and the Assembly Committee on Judiciary was called to order by Chair Valerie Wiener at 8:11 a.m. on Friday, February 18, 2011, in Room 4100 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SENATE COMMITTEE MEMBERS PRESENT:

Senator Valerie Wiener, Chair
Senator Allison Copening, Vice Chair
Senator Shirley A. Breeden
Senator Ruben J. Kihuen
Senator Mike McGinness
Senator Don Gustavson
Senator Michael Roberson

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chair
Assemblyman James Ohrenschall, Vice Chair
Assemblyman Steven Brooks
Assemblyman Richard Carrillo
Assemblyman Richard (Skip) Daly
Assemblywoman Olivia Diaz
Assemblywoman Marilyn Dondero Loop
Assemblyman Jason Frierson
Assemblyman Scott Hammond
Assemblyman Ira Hansen
Assemblyman Kelly Kite
Assemblyman Richard McArthur
Assemblyman Tick Segerblom

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COMMITTEE MEMBERS ABSENT:

Assemblyman Mark Sherwood (Excused)

STAFF MEMBERS PRESENT:

Nick Anthony, Assembly Counsel
Linda J. Eissmann, Senate Policy Analyst
Michael Smith, Committee Assistant
Bradley A. Wilkinson, Senate Counsel
Dave Ziegler, Assembly Policy Analyst
Lynn Hendricks, Committee Secretary

CHAIR WIENER:

Assemblyman Horne is going to present information on the Advisory Commission on the Administration of Justice as its chair.

ASSEMBLYMAN WILLIAM C. HORNE (Assembly District No. 34):

This morning, I will be giving you a summary of the work done by the Commission during the interim. Each of you has a copy of the Commission's Final Report ([Exhibit C](#), original is on file in the Research Library). This report is also available through the Nevada Electronic Legislative Information System at < [https://nelis.leg.state.nv.us/App#/ Meeting/199/Exhibit/573](https://nelis.leg.state.nv.us/App#/Meeting/199/Exhibit/573) > .

I will start with an overview of the history of the Commission. The Commission was established by A.B. No. 508 of the 74th Session, which renamed and reconstituted the existing Advisory Commission on Sentencing (ACS). The ACS was enacted after truth-in-sentencing (TIS) legislation in the mid-1990s. The new Commission was created in 2007 in an effort to broaden its scope to include the entire criminal justice system.

Members of the Commission are appointed each interim and serve for a two-year term between the sessions of the Nevada Legislature. The 17 members who comprise the 2009-2010 Commission are listed on page 5 of [Exhibit C](#). They represent all three branches of government, both sides of the bar, law enforcement and corrections, as well as advocates for victims and inmates. I would like to thank each of those members for their hard work this past interim. They serve voluntarily and without compensation for their time.

Under *Nevada Revised Statutes* (NRS) 176.0125, the Commission is statutorily required to study Nevada's entire criminal justice system and make recommendations in a final report, which must be submitted to the Legislature. [Exhibit C](#) is that final report.

Due to the dire economic times facing our State, the Commission was extremely limited in time and resources. In fact, the Commission existed and functioned without a budget or any legislative appropriations. As such, at the prerogative of the chair, we consolidated our time and focused our efforts. This interim, the Commission only held three subcommittees: the Steering Committee, which met once and set the agenda for the interim; the Victims of Crime Committee, chaired by Attorney General Catherine Cortez Masto; and the Reclassification of Crimes Committee, chaired by Phil Kohn, Clark County Public Defender. In addition, throughout the interim and during the course of four substantive meetings, the Commission considered a multitude of issues: corrections, prison populations, offender management, crimes, sex offenders, prisoner reentry, alternative sanctions, victims' rights, criminal defense, parole board, parole and probation functions, courts, evidence, and sentencing, including classification of felonies.

Near the end of the interim, the Commission held two work sessions at which we passed 12 final recommendations. Summaries of those recommendations are on pages 2 and 3 of [Exhibit C](#), with full explanations of those recommendations beginning on page 22. The Commission recommended that the final report include two statements, one letter to the chairs of the two Judiciary Committees, and nine bill draft requests (BDRs). I will review the statements and the letter, then focus on the BDRs.

The first statement has to do with the issue of indigent defense. Funding for indigent defense was raised in A.B. No. 45 of the 75th Session. This measure did not pass due in part to the large fiscal note. The Commission felt we should include a statement recognizing the importance and constitutional considerations of a proper defense. A bill from the Nevada Association of Counties, Assembly Bill (A.B.) 49, is being considered this year to raise taxes for indigent defense.

ASSEMBLY BILL 49: Revises provisions relating to public defenders. (BDR 14-279).

CHAIR HORNE:

I would also like to point out that the Nevada Supreme Court has convened an Indigent Defense Commission, chaired by Justice Michael A. Cherry. This group has been looking at performance standards, caseload caps and the continued need to fully fund indigent defense.

The second statement recognizes the need to investigate and support further study of Nevada's criminal justice system. In the past, the Commission has worked hard with Dr. James Austin at JFA Associates, the Pew Charitable Trusts, and the Nevada System of Higher Education to forge working partnerships to more fully understand and study our vast criminal justice system. The Commission felt an affirmative statement is warranted to continue the Commission, as well as to continue working partnerships in further study of the criminal justice issues.

The letter to the chairs of the two committees urges them to consider reclassifying certain Category B felonies, including all Category B felonies with a penalty of one to six years and/or certain nonviolent Category B felonies. The Commission and its subcommittee on reclassification spent a tremendous amount of time looking at the issue of reclassifying certain Category B felonies. Although the Commission did not vote for legislation to reclassify crimes specifically, they were interested in continuing to review Category B felonies. In fact, Dr. Austin has been commissioned by the Pew Charitable Trusts to conduct an in-depth review of Category B felonies in Nevada. In addition, the Commission recommended legislation to make certain Category B felonies eligible for good time credits.

With regard to the BDRs, I have a one-page handout describing the nine bills requested by the Commission for this Legislative Session ([Exhibit D](#)). These are the same bills listed on pages 2 and 3 of [Exhibit C](#). The Commission is not allotted any BDRs; these bills have been picked up by individual Legislators and standing committees. These BDRs are as follows:

- [BDR 14-311](#): Connie Bisbee, chair of the State Board of Parole Commissioners, brought this recommendation to aggregate consecutive prison sentences into one sentence for purposes of parole eligibility. This would improve efficiency and reduce the number of parole hearings, while providing the victim and the

offender with a clear expectation of what may happen at a parole hearing in lieu of being paroled from one sentence to another sentence.

SENATE BILL 265: Revises provisions governing sentencing of criminal offenders and determining eligibility of prisoners for parole. (BDR 14-311)

•**BDR 18-557**: Justice James W. Hardesty brought up the issue of collecting past due amounts from convicted persons, as was previously raised in A.B. No. 271 of the 75th Session and endorsed by the Commission in the preceding interim. However, that bill—which would have required the Office of the Court Administrator to collect past due fines, administrative assessment fees and restitution—did not pass. As an alternative to A.B. No. 271 of the 75th Session, this BDR would provide for centralized collections of such amounts by the Office of the State Controller.

ASSEMBLY BILL 196: Revises provisions governing the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 18-557)

•**BDR 4-558**: This bill came out of the Victims of Crimes Subcommittee, chaired by the Attorney General. It prohibits the court from ordering a victim or a witness to an alleged sexual offense to submit to a psychological or psychiatric examination. The bill also authorizes a court to exclude testimony concerning a previous psychological or psychiatric examination of a victim or witness to an alleged sexual offense.

ASSEMBLY BILL 96: Revises provisions governing the admissibility of psychological or psychiatric evidence. (BDR 4-558)

•**BDR 16-597**: This is a redraft of A.B. No. 114 of the 75th Session, which was requested by the Commission in 2009. The bill seeks to provide that any remaining money in the Fund for the Compensation of Victims of Crime at the end of the fiscal year must remain within the Fund and not revert back to the General Fund.

ASSEMBLY BILL 355: Revises provisions relating to the Fund for the Compensation of Victims of Crime. (BDR 16-597)

•BDR 40-598: This bill is a redraft of A.B. No. 252 of the 75th Session, another request from the Commission in 2009. It would provide a waiver of driver's license and birth certificate fees for persons who are released from prison within the preceding six months. Assembly Bill 92 has already been heard in the Assembly Judiciary Committee and is slated for a work session soon.

ASSEMBLY BILL 92: Provides for the waiver of fees for the issuance of certain forms of identifying information for certain persons released from prison. (BDR 40-598)

•BDR 15-599: This bill seeks to raise the threshold for grand larceny from the current level of \$250. Grand larceny is further broken down as a Category C felony if the value of the property involved is less than \$2,500 and as a Category B felony if the value is \$2,500 or more. It appears that the threshold of \$250 was last revised in 1989, and the \$2,500 level was set in 1997. This recommendation seeks to increase the threshold for larceny and theft to 2010 levels adjusted for inflation based on the Consumer Price Index.

ASSEMBLY BILL 142: Makes various changes governing crimes against property. (BDR 15-599)

•BDR 16-634: This bill provides that an offender convicted of certain Category B felonies also qualifies to have certain credits, known as good time or A.B. 510 credits, named after A.B. No. 510 of the 74th Session. As noted in existing law, Category B felons convicted of driving under the influence (DUI), violence or sexual assault would not be eligible for such credits.

ASSEMBLY BILL 136: Revises provisions governing credits for offenders sentenced for certain crimes. (BDR 16-634)

•BDR 16-640: Chair Bisbee brought this bill seeking to revise the current sex offender psychological review panel, which you will find under NRS 213.1214. The bill would make the panel an advisory function in lieu of certification, allow a sex offender to be evaluated by the panel during any sentence, clarify the immunity of the panel, allow the panel and the board to adopt regulations and provide that panel meetings are not subject to the Open Meeting Law.

SENATE BILL 187: Revises provisions governing parole. (BDR 16-640)

•BDR 18-641: This bill moves the Office of the State Public Defender from the Department of Health and Human Services to the Office of the Governor. The Commission felt the State Public Defender would be more appropriately housed in the Office of the Governor as a matter of efficiency and responsiveness.

SENATE BILL 123: Revises provisions governing the Office of State Public Defender. (BDR 18-641)

ASSEMBLYMAN HANSEN:

When we discussed A.B. 92 in the Assembly Judiciary Committee, Assemblywoman Lucy Flores mentioned that the bill on this subject passed in the last Session, but it was not implemented because it had a fiscal note attached and there was no money for it. Has the cost issue been reviewed? I would assume there will still be the same concern about costs. Will it end up not going anywhere because of the fiscal issue?

CHAIR HORNE:

It did pass out of committee, but it failed on the Assembly Floor because of the cost and the financial condition of the State. The Commission believes the issue is still of importance. As you heard in the Committee hearing, a number of inmates have been released without being able to get these important documents that enable them to get jobs and housing. Groups such as the Religious Alliance in Nevada also said they would continue their efforts in seeking money to help in this matter, and we will reevaluate the fiscal note placed on the bill last Session. I have some doubts about the accuracy of the fiscal note used in 2009.

ASSEMBLYMAN HANSEN:

Did the Commission consider reducing some crimes from felonies to gross misdemeanors? I understand there is a large difference in the costs for incarceration and so forth between those two categories.

CHAIR HORNE:

The largest part of the conversation dealt with the great number of Category B felonies. We are trying to identify crimes that can be downgraded to a Category C felony, which would make them eligible for good time credits. Alternately, we might leave them as Category B felonies but identify them as eligible for good time credits. That would reduce the time those offenders spend in a correctional

facility and thus reduce our costs. Category B felons make up the largest group in our prison population. Category E felons are mostly mandatory probation violation. Category C and D felons spend a relatively small amount of time in prison. Category A and B felons are not eligible for good time credits. They might have consecutive sentences, for example. Category B crimes range from violent assaults to simple burglaries like shoplifting.

CHAIR WIENER:

Were there issues the Commission would have liked to cover that you did not have the opportunity to address?

CHAIR HORNE:

The biggest issue was Category B felonies. I wish there had been more time to vet that issue. We brought in Dr. Austin and the Pew Charitable Trusts to look at prison housing and population. If we had had more time to flesh that out, there might have been some consensus on reclassifying certain Category B felonies. Without it, we did not get there. The Commission was divided.

CHAIR WIENER:

Did you discuss the number of Category B felonies added to Nevada statute since TIS was engaged in 1995?

CHAIR HORNE:

I do not recall having that discussion. Dr. Austin either has that information or can get it, since that is his area of research. Since 2007, there has been concern across the Nation about the cost of TIS. All the states are revisiting it and seeing if TIS is the most efficient way to penalize offenders. You have all heard the extreme examples of someone stealing a pizza and getting a life sentence. Some states that have locked themselves into these high sentences have found that they can have financial repercussions.

CHAIR WIENER:

There are two pieces to that. First, a minimum sentence is a minimum sentence and should be honored. The other part is the part you brought us today: revisiting what level of felony we assign to different types of crimes to ensure that the level matches the crime. There are a broad range of Category B felonies, and there is diversity in the crimes to which they are assigned.

CHAIR HORNE:

That is correct. Nevada has already started taking steps in that regard. That was the basic goal of A.B. No. 510 of the 74th Session. We gave good time credits to some offenders, but we excluded those convicted of DUI, sexual offenses and violent crimes. The desire of the Commission going forward was to continue excluding those three categories from good time credits. For those serious crimes, we said that the minimum was the minimum. As you know, there was a problem recently with some felony DUI offenders who were released early and had to be returned to prison to complete the minimum sentence they had received. I believe Senate Bill (S.B.) 72 was introduced to clarify that practice.

SENATE BILL 72: Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)

ASSEMBLYMAN HAMMOND:

When we talk about the birth certificates and identification ex-offenders will be getting after they get out and how important it is for them to get back into civil society, I wonder if A.B. 92 goes far enough. Why do we not issue birth certificates while they are still in prison? Are we going to revisit this two years from now and ask why we do not give them their identification before they get out?

CHAIR HORNE:

I do not believe one is exclusive of the other. It would be a great practice for the Department of Corrections (DOC) to begin the process of getting the documentation inmates will need upon release the minute they come in. I also recognize that it does not always happen for a variety of reasons. Assembly Bill 92 is properly narrow enough to address the population we are trying to target, which is those who were born in Nevada, since we do not have the jurisdiction or the money to get birth certificates from other places, and those who had Nevada driver's licenses which have expired. I do not know the cost of taking the driver's test again; it may be limited to proof of identification. If they are still eligible or can pass the examination, we can reissue driver's licenses for that narrow population: those who were born here and those who previously had Nevada driver's licenses or identification cards. Those steps together will close that loop, and we will not have people who get out of prison without identification.

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ASSEMBLYMAN FRIERSON:

We have been talking with the DOC about diversion. Did the Commission visit that issue? Will they do so in the future?

CHAIR HORNE:

We did not have the time to delve into that area. It could certainly be an area the Commission considers in the future. The Commission serves an important function and should continue because more issues need to be explored.

ASSEMBLYMAN FRIERSON:

Did you look at Nevada's entire sentencing scheme? In some cases, the punishment seems inconsistent with a crime that was created 20 years ago. Would the Commission be willing to look at all of our sentencing across the board to make sure sentences are consistent with the level of the offense?

CHAIR HORNE:

A previous Commission did bring up the possibility of creating something like the U.S. Federal Sentencing Guidelines. However, it did not get much traction. That has been explored by the Legislature as well since I have been here. There is a moving scale between giving judges discretion in sentencing and fixing finite sentences for specific crimes. In my time, no one has had the appetite to go down that road.

ASSEMBLYMAN OHRENSCHALL:

I am proud to be carrying a bill for the Commission. Those of us who have been in the Assembly for a while realize we cannot jail our way out of our criminal justice problem in Nevada. We do not have the resources, and it will not solve the problem.

I have talked to some judges who bring up the issue of flexibility. They would like to have more flexibility in sentencing and are worried about some of the mandatory minimum sentences imposed. Do you think the Commission might look at that in the future?

CHAIR HORNE:

I do not see any reason why not. The Commission is diverse: law enforcement, public defenders, victim's rights advocates, inmate's rights advocates and more, and there is wide diversity of opinion. We come together to try to figure out

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what is best for the State and what we can agree on. The Commission has been known to put issues like this on the table to flesh them out and see if there is an appetite for them.

CHAIR WIENER:

Is there any public comment or any further business to come before the Committees? Hearing none, I will adjourn this meeting at 8:47 a.m.

RESPECTFULLY SUBMITTED:

Lynn Hendricks,
Committee Secretary

APPROVED BY:

Senator Valerie Wiener, Chair

DATE: _____

Assemblyman William C. Horne, Chair

DATE: _____

<u>EXHIBITS</u>			
Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Assemblyman William C. Horne	<i>Advisory Commission on the Administration of Justice: Final Report</i>
	D	Assemblyman C. William Horne	"2011 Advisory Commission Bills"