

SENATE BILL NO. 451—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE)

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to criminal justice.
(BDR 14-1007)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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

AN ACT relating to criminal justice; creating the Nevada Sentencing Commission; prescribing the membership and duties of the Sentencing Commission; enacting various provisions relating to the Sentencing Commission; authorizing the Sentencing Commission to issue subpoenas; revising certain provisions governing the Advisory Commission on the Administration of Justice; authorizing the Sentencing Commission to request the drafting of not more than 1 legislative measure for each regular session of the Legislature; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Advisory Commission on the Administration of Justice and directs the Advisory Commission, among other duties, to identify and study the elements of this State's system of criminal justice, including certain issues relating to the sentencing of persons convicted of felonies and gross misdemeanors. (NRS 176.0123, 176.0125) **Section 5** of this bill creates the Nevada Sentencing Commission and provides for the membership of the Sentencing Commission. **Section 6** of this bill prescribes the duties of the Sentencing Commission, and includes, among other duties related to the sentencing of offenders convicted of a crime, a duty to make recommendations concerning the adoption of sentencing guidelines. **Section 12** of this bill repeals certain duties of the Advisory Commission on the Administration of Justice under existing law, as those duties are reenacted and replaced in **section 6**.



Existing law prescribes the number of legislative measures which may be requested by various departments, agencies and other entities of this State for each regular session of the Legislature. (NRS 218D.100-218D.220) **Section 17** of this bill authorizes the Nevada Sentencing Commission to request for each regular session of the Legislature the drafting of not more than 1 legislative measure which relates to matters within the scope of the Sentencing Commission.

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

Section 1. Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 11, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. *The Legislature hereby finds, and declares to be the public policy of this State, that:*

1. Sentencing and corrections policies should embody fairness, consistency, proportionality and opportunity.

2. The laws of this State should convey a clear and purposeful rationale regarding sentencing and corrections. The statutes governing criminal justice should articulate the purpose of sentencing, and related policies and practices should be logical, understandable and transparent to stakeholders and the public.

3. A continuum of sentencing and corrections options should be available, with imprisonment reserved for the most serious offenders and adequate community programs for diversion and supervision of other offenders.

4. Sentencing and corrections policies should be resource sensitive as those policies may impact costs, inmate populations and public safety. Criminal justice agencies should strive to effectively measure costs and benefits.

5. Criminal justice information should be a foundation for effective data driven sentencing and corrections policies.

6. Sentencing and corrections policies should reflect current circumstances and needs.

7. Strategies to reduce crime and victimization should involve prevention, treatment, health and labor and must endeavor to utilize all available federal, academic and private resources and expertise.

Sec. 4. *As used in sections 4 to 11, inclusive, of this act, "Sentencing Commission" means the Nevada Sentencing Commission created by section 5 of this act.*

Sec. 5. *1. The Nevada Sentencing Commission is hereby created. The Sentencing Commission consists of:*

(a) One member appointed by the Governor;



1 (b) One member who is a justice of the Supreme Court of
2 Nevada or a retired justice of the Supreme Court of Nevada,
3 appointed by the Chief Justice of the Supreme Court of Nevada;

4 (c) Two members who are judges appointed by the Chief
5 Justice of the Supreme Court of Nevada;

6 (d) One member who is a representative of the Administrative
7 Office of the Courts appointed by the Chief Justice of the Supreme
8 Court of Nevada;

9 (e) The Director of the Department of Corrections;

10 (f) The Attorney General;

11 (g) One member who is a representative of the Office of the
12 Attorney General, appointed by the Attorney General;

13 (h) One member who is a district attorney, appointed by the
14 governing body of the Nevada District Attorneys Association;

15 (i) One member who is a representative of an office of public
16 defender, appointed by the governing body of the State Bar of
17 Nevada;

18 (j) One member who is an attorney in private practice,
19 experienced in defending criminal actions, appointed by the
20 governing body of the State Bar of Nevada;

21 (k) One member who has been a victim of a crime or is a
22 representative of an organization supporting the rights of victims
23 of crime, appointed by the Governor;

24 (l) One member who is a member of the State Board of Parole
25 Commissioners, appointed by the State Board of Parole
26 Commissioners;

27 (m) One member who is a representative of the Division of
28 Parole and Probation of the Department of Public Safety,
29 appointed by the Governor;

30 (n) One member who is a representative of the Nevada
31 Sheriffs' and Chiefs' Association, appointed by the Nevada
32 Sheriffs' and Chiefs' Association;

33 (o) One member who is a representative of the Las Vegas
34 Metropolitan Police Department, appointed by the Sheriff of Clark
35 County;

36 (p) One member who is a representative of the Division of
37 Public and Behavioral Health of the Department of Health and
38 Human Services;

39 (q) One member who is a representative of an organization
40 that advocates on behalf of inmates, appointed by the Governor;

41 (r) Two members who are Senators, one of whom is appointed
42 by the Majority Leader of the Senate and one of whom is
43 appointed by the Minority Leader of the Senate; and



1 (s) Two members who are members of the Assembly, one of
2 whom is appointed by the Speaker of the Assembly and one of
3 whom is appointed by the Minority Leader of the Assembly.

4 2. If any organization listed in subsection 1 ceases to exist,
5 the appointment required pursuant to that subsection must be
6 made by the association's successor in interest, or, if there is no
7 successor in interest, by the Governor.

8 3. Each appointed member serves a term of 2 years. Members
9 may be reappointed for additional terms of 2 years in the same
10 manner as the original appointments. Any vacancy occurring in
11 the membership of the Sentencing Commission must be filled in
12 the same manner as the original appointment not later than 30
13 days after the vacancy occurs.

14 4. The Legislators who are members of the Sentencing
15 Commission are entitled to receive the salary provided for a
16 majority of the members of the Legislature during the first 60 days
17 of the preceding session for each day's attendance at a meeting of
18 the Sentencing Commission.

19 5. At the first regular meeting of each odd-numbered year,
20 the members of the Sentencing Commission shall elect a Chair by
21 majority vote who shall serve until the next Chair is elected.

22 6. The Sentencing Commission shall meet at least once every
23 3 months and may meet at such further times as deemed necessary
24 by the Chair.

25 7. A majority of the members of the Sentencing Commission
26 constitutes a quorum for the transaction of business, and a
27 majority of those members present at any meeting is sufficient for
28 any official action taken by the Sentencing Commission.

29 8. While engaged in the business of the Sentencing
30 Commission, to the extent of legislative appropriation, each
31 member of the Sentencing Commission is entitled to receive the
32 per diem allowance and travel expenses provided for state officers
33 and employees generally.

34 9. To the extent of legislative appropriation, the Director of
35 the Legislative Counsel Bureau shall provide the Sentencing
36 Commission with such staff as is necessary to carry out the duties
37 of the Sentencing Commission.

38 **Sec. 6. The Sentencing Commission shall:**

39 1. Advise the Legislature on proposed legislation and make
40 recommendations with respect to all matters relating to the
41 elements of this State's system of criminal justice which affect the
42 sentences imposed for felonies and gross misdemeanors.

43 2. Evaluate the effectiveness and fiscal impact of various
44 policies and practices regarding sentencing which are employed in
45 this State and other states, including, without limitation, the use of



1 *plea bargaining, probation, programs of intensive supervision,*
2 *programs of regimental discipline, imprisonment, sentencing*
3 *recommendations, mandatory and minimum sentencing,*
4 *mandatory sentencing for crimes involving the possession,*
5 *manufacture and distribution of controlled substances, enhanced*
6 *penalties for habitual criminals, parole, credits against sentences,*
7 *residential confinement and alternatives to incarceration.*

8 3. *Recommend changes in the structure of sentencing in this*
9 *State which, to the extent practicable and with consideration for*
10 *their fiscal impact, incorporate general objectives and goals for*
11 *sentencing, including, without limitation, the following:*

12 (a) *Offenders must receive sentences that increase in direct*
13 *proportion to the severity of their crimes and their histories of*
14 *criminality.*

15 (b) *Offenders who have extensive histories of criminality or*
16 *who have exhibited a propensity to commit crimes of a predatory*
17 *or violent nature must receive sentences which reflect the need to*
18 *ensure the safety and protection of the public and which allow for*
19 *the imprisonment for life of such offenders.*

20 (c) *Offenders who have committed offenses that do not include*
21 *acts of violence and who have limited histories of criminality must*
22 *receive sentences which reflect the need to conserve scarce*
23 *economic resources through the use of various alternatives to*
24 *traditional forms of incarceration.*

25 (d) *Offenders with similar histories of criminality who are*
26 *convicted of similar crimes must receive sentences that are*
27 *generally similar.*

28 (e) *Offenders sentenced to imprisonment must receive*
29 *sentences which do not confuse or mislead the public as to the*
30 *actual time those offenders must serve while incarcerated or*
31 *before being released from confinement or supervision.*

32 (f) *Offenders must not receive disparate sentences based upon*
33 *factors such as race, gender or economic status.*

34 (g) *Offenders must receive sentences which are based upon the*
35 *specific circumstances and facts of their offenses, including the*
36 *nature of the offense and any aggravating factors, the savagery of*
37 *the offense, as evidenced by the extent of any injury to the victim,*
38 *and the degree of criminal sophistication demonstrated by the*
39 *offender's acts before, during and after commission of the offense.*

40 4. *Facilitate the development and maintenance of a statewide*
41 *sentencing database in collaboration with state and local agencies,*
42 *using existing databases or resources where appropriate.*

43 5. *Provide training regarding sentencing and related issues,*
44 *policies and practices, and act as a sentencing policy resource for*
45 *this State.*



6. Evaluate the impact of pretrial, sentencing diversion, incarceration and postrelease supervision programs.

7. Identify potential areas of sentencing disparity related to race, gender and economic status.

8. Propose and recommend statutory sentencing guidelines, based on reasonable offense and offender characteristics which aim to preserve judicial discretion and provide for individualized sentencing, for the use of the district courts. If such guidelines are enacted by the Legislature, the Sentencing Commission shall review and propose any recommended changes.

9. Evaluate whether sentencing guidelines recommended pursuant to subsection 8 should be mandatory and if judicial findings should be required for any departures from the sentencing guidelines.

10. For each regular session of the Legislature, prepare a comprehensive report including:

(a) The Sentencing Commission's recommended changes pertaining to sentencing;

(b) The Sentencing Commission's findings and any recommendations for proposed legislation; and

(c) A reference to any legislative measure requested pursuant to section 17 of this act.

↪ The report must be submitted to the Director of the Legislative Counsel Bureau for distribution to the Legislature not later than January 1 of each odd-numbered year.

Sec. 7. 1. The Chair of the Sentencing Commission may apply for and accept any available grants and may accept any bequests, devises, donations or gifts from any public or private source to carry out the provisions of sections 4 to 11, inclusive, of this act.

2. Any money received pursuant to this section must be deposited in the Special Account for the Support of the Nevada Sentencing Commission, which is hereby created in the State General Fund. Interest and income earned on money in the Account must be credited to the Account. Money in the Account may only be used for the support of the Sentencing Commission and its activities pursuant to sections 4 to 11, inclusive, of this act.

Sec. 8. 1. To carry out its powers and duties pursuant to sections 4 to 11, inclusive, of this act, the Sentencing Commission, or any member thereof acting on behalf of the Sentencing Commission with a concurrence of a majority of the members of the Sentencing Commission, may issue subpoenas to compel the attendance of witnesses and the production of books, records, documents or other papers and testimony.



2. If any person fails to comply with a subpoena issued by the Sentencing Commission or any member thereof pursuant to this section within 20 days after the date of service of the subpoena, the Sentencing Commission may petition the district court for an order of the court compelling compliance with the subpoena.

3. Upon such a petition, the court shall enter an order directing the person subpoenaed to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 20 days after the date of service of the order, and show cause why the person has not complied with the subpoena. A certified copy of the order must be served upon the person subpoenaed.

4. If it appears to the court that the subpoena was regularly issued by the Sentencing Commission or a member thereof pursuant to this section, the court shall enter an order compelling compliance with the subpoena, and upon failure to obey the order the person shall be dealt with as for contempt of court.

Sec. 9. 1. The Department of Corrections shall:

(a) Provide the Sentencing Commission with any available statistical information or research requested by the Sentencing Commission and assist the Sentencing Commission in the compilation and development of information requested by the Sentencing Commission, including, but not limited to, information or research concerning the facilities and institutions of the Department of Corrections, the offenders who are or were within those facilities or institutions, rates of recidivism, the effectiveness of educational and vocational programs and the sentences which are being served or were served by those offenders;

(b) If requested by the Sentencing Commission, make available to the Sentencing Commission the use of the computers and programs which are owned by the Department of Corrections; and

(c) Provide the independent contractor retained by the Department of Administration pursuant to NRS 176.0129 with any available statistical information requested by the independent contractor for the purpose of performing the projections required by NRS 176.0129.

2. The Division shall:

(a) Provide the Sentencing Commission with any available statistical information or research requested by the Sentencing Commission and assist the Sentencing Commission in the compilation and development of information concerning sentencing, probation, parole and any offenders who are or were subject to supervision by the Division;



(b) If requested by the Sentencing Commission, make available to the Sentencing Commission the use of the computers and programs which are owned by the Division; and

(c) Provide the independent contractor retained by the Department of Administration pursuant to NRS 176.0129 with any available statistical information requested by the independent contractor for the purpose of performing the projections required by NRS 176.0129.

Sec. 10. The Central Repository for Nevada Records of Criminal History shall provide the Sentencing Commission with any statistical data and information required to be collected pursuant to NRS 176.0128, as requested by the Sentencing Commission.

Sec. 11. The Department of Administration shall provide the Sentencing Commission with any projections on persons imprisoned, on probation, on parole and serving a term of residential confinement required pursuant to NRS 176.0129, as requested by the Sentencing Commission.

Sec. 12. NRS 176.0125 is hereby amended to read as follows:
176.0125 The Commission shall:

1. ~~Identify~~ Except as otherwise provided pursuant to section 6 of this act, evaluate 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, including, but not limited to, the use of plea bargaining, probation, programs of intensive supervision, programs of regimental discipline, imprisonment, sentencing recommendations, mandatory and minimum sentencing, mandatory sentencing for crimes involving the possession, manufacture and distribution of controlled substances, structured or tiered sentencing, enhanced penalties for habitual criminals, parole, credits against sentences, residential confinement and alternatives to incarceration.~~

~~3. Recommend changes in the structure of sentencing in this State which, to the extent practicable and with consideration for their fiscal impact, incorporate general objectives and goals for sentencing, including, but not limited to, the following:~~

~~(a) Offenders must receive sentences that increase in direct proportion to the severity of their crimes and their histories of criminality.~~

~~(b) Offenders who have extensive histories of criminality or who have exhibited a propensity to commit crimes of a predatory or violent nature must receive sentences which reflect the need to~~



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1 ensure the safety and protection of the public and which allow for
2 the imprisonment for life of such offenders.

3 ~~—(c) Offenders who have committed offenses that do not include~~
4 ~~acts of violence and who have limited histories of criminality must~~
5 ~~receive sentences which reflect the need to conserve scarce~~
6 ~~economic resources through the use of various alternatives to~~
7 ~~traditional forms of incarceration.~~

8 ~~—(d) Offenders with similar histories of criminality who are~~
9 ~~convicted of similar crimes must receive sentences that are generally~~
10 ~~similar.~~

11 ~~—(e) Offenders sentenced to imprisonment must receive sentences~~
12 ~~which do not confuse or mislead the public as to the actual time~~
13 ~~those offenders must serve while incarcerated or before being~~
14 ~~released from confinement or supervision.~~

15 ~~—(f) Offenders must not receive disparate sentences based upon~~
16 ~~factors such as race, gender or economic status.~~

17 ~~—(g) Offenders must receive sentences which are based upon the~~
18 ~~specific circumstances and facts of their offenses, including the~~
19 ~~nature of the offense and any aggravating factors, the savagery of~~
20 ~~the offense, as evidenced by the extent of any injury to the victim,~~
21 ~~and the degree of criminal sophistication demonstrated by the~~
22 ~~offender's acts before, during and after commission of the offense.~~

23 ~~—4.1~~ 2. Evaluate the effectiveness and efficiency of the
24 Department of Corrections and the State Board of Parole
25 Commissioners with consideration as to whether it is feasible and
26 advisable to establish an oversight or advisory board to perform
27 various functions and make recommendations concerning:

28 (a) Policies relating to parole;

29 (b) Regulatory procedures and policies of the State Board of
30 Parole Commissioners;

31 (c) Policies for the operation of the Department of Corrections;

32 (d) Budgetary issues; and

33 (e) Other related matters.

34 ~~15.1~~ 3. Evaluate the effectiveness of specialty court programs
35 in this State with consideration as to whether such programs have
36 the effect of limiting or precluding reentry of offenders and parolees
37 into the community.

38 ~~16.1~~ 4. Evaluate the policies and practices concerning
39 presentence investigations and reports made by the Division of
40 Parole and Probation of the Department of Public Safety, including,
41 without limitation, the resources relied on in preparing such
42 investigations and reports and the extent to which judges in this
43 State rely on and follow the recommendations contained in such
44 presentence investigations and reports.



~~17-~~ 5. Evaluate, review and comment upon issues relating to juvenile justice in this State, including, but not limited to:

(a) The need for the establishment and implementation of evidence-based programs and a continuum of sanctions for children who are subject to the jurisdiction of the juvenile court; and

(b) The impact on the criminal justice system of the policies and programs of the juvenile justice system.

~~18- Compile and develop statistical information concerning sentencing in this State.~~

~~9-~~ 6. 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-~~ 7. Identify and study issues relating to the operation of the Department of Corrections, including, without limitation, the system for allowing credits against the sentences of offenders, the accounting of such credits and any other policies and procedures of the Department which pertain to the operation of the Department.

~~11-~~ 8. Evaluate the policies and practices relating to the involuntary civil commitment of sexually dangerous persons.

~~12-~~ 9. Identify and study the impacts and effects of collateral consequences of convictions in this State. Such identification and study:

(a) Must cause to be identified any provision in the Nevada Constitution, the Nevada Revised Statutes and the Nevada Administrative Code which imposes a collateral sanction or authorizes the imposition of a disqualification, and any provision of law that may afford relief from a collateral consequence;

(b) May rely on the study of this State's collateral sanctions, disqualifications and relief provisions prepared by the National Institute of Justice described in section 510 of the Court Security Improvement Act of 2007, Public Law 110-177; and

(c) Must include the posting of a hyperlink on the Commission's website to any study of this State's collateral sanctions, disqualifications and relief provisions prepared by the National Institute of Justice described in section 510 of the Court Security Improvement Act of 2007, Public Law 110-177.

~~13-~~ 10. 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 report must be submitted to the Director of the Legislative Counsel Bureau for distribution to



the Legislature not later than September 1 of each even-numbered year.

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. Chapter 218D of NRS is hereby amended by adding thereto a new section to read as follows:

1. For a regular session, the Nevada Sentencing Commission created by section 5 of this act may request the drafting of not more than 1 legislative measure which relates to matters within the scope of the Commission. The request must be submitted to the Legislative Counsel on or before September 1 preceding the regular session.

2. A request made pursuant to this section must be on a form prescribed by the Legislative Counsel. A legislative measure requested pursuant to this section must be prefiled on or before the third Wednesday in November preceding the regular session. A legislative measure that is not prefiled on or before that day shall be deemed withdrawn.

3. The Legislative Counsel shall not assign a number to a request for the drafting of a legislative measure submitted pursuant to this section to establish the priority of the request until sufficient detail has been received to allow complete drafting of the legislative measure.

Sec. 18. NRS 218D.100 is hereby amended to read as follows:

218D.100 1. The provisions of NRS 218D.100 to 218D.220, inclusive, *and section 17 of this act* apply to requests for the drafting of legislative measures for a regular session.

2. Except as otherwise provided by a specific statute, joint rule or concurrent resolution, the Legislative Counsel shall not honor a request for the drafting of a legislative measure if the request:

(a) Exceeds the number of requests authorized by NRS 218D.100 to 218D.220, inclusive, *and section 17 of this act* for the requester; or

(b) Is submitted by an authorized nonlegislative requester pursuant to NRS 218D.175 to 218D.220, inclusive, *and section 17 of this act* but is not in a subject related to the function of the requester.

3. The Legislative Counsel shall not:

(a) Assign a number to a request for the drafting of a legislative measure to establish the priority of the request until sufficient detail has been received to allow complete drafting of the legislative measure.



(b) Honor a request to change the subject matter of a request for the drafting of a legislative measure after it has been submitted for drafting.

(c) Honor a request for the drafting of a legislative measure which has been combined in violation of Section 17 of Article 4 of the Nevada Constitution.

Sec. 18.5. 1. There is hereby appropriated from the State General Fund to the Legislative Fund the sum of \$8,336 for the operating and other costs relating to the participation of the legislative members of the Nevada Sentencing Commission created by section 5 of this act.

2. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2019, by the entity to which the appropriation is made or any entity to which money from the appropriation is granted or otherwise transferred in any manner, and any portion of the appropriated money remaining must not be spent for any purpose after September 20, 2019, by either the entity to which the money was appropriated or the entity to which the money was subsequently granted or transferred, and must be reverted to the State General Fund on or before September 20, 2019.

Sec. 19. The provisions of subsection 1 of NRS 218D.380 do not apply to any provision of this act which adds or revises a requirement to submit a report to the Legislature.

Sec. 20. This act becomes effective on July 1, 2017.

