

ASSEMBLY BILL NO. 80—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SENTENCING COMMISSION)

PREFILED NOVEMBER 20, 2018

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the Nevada Sentencing Commission. (BDR 14-469)

FISCAL NOTE: Effect on Local Government: No.
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 Office of the Nevada Sentencing Commission within the Office of the Governor; providing for the appointment of the Executive Director and the selection of the staff of the Office; establishing the duties of the Executive Director and staff of the Office; revising the membership of the Nevada Sentencing Commission; transferring the responsibility for staffing the Nevada Sentencing Commission to the Office; revising the duties of the Nevada Sentencing Commission to reflect the newly created Office; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Nevada Sentencing Commission consisting of 25 voting members appointed by the Governor, the Legislature and various other agencies and organizations related to criminal justice. The Nevada Sentencing Commission is charged with, among other duties, identifying and studying the sentencing of offenders convicted of a crime in this State and making recommendations concerning the adoption of sentencing guidelines. (NRS 176.0131-176.0139) **Section 5** of this bill creates the Office of the Nevada Sentencing Commission within the Office of the Governor and provides for the appointment of an Executive Director of the Office. **Section 6** of this bill prescribes the duties of the Executive Director, which include, among other duties, overseeing the functions of the Office, serving as the Executive Secretary of the Nevada Sentencing Commission, developing the budget for the Office and assisting the Nevada Sentencing Commission with preparing the biennial report of the Nevada Sentencing Commission. **Section 7** of this bill requires the Executive Director to



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select at least one research analyst and two secretaries for the Office and provides for the duties of those positions. **Section 9** of this bill: (1) revises the membership of the Nevada Sentencing Commission to remove the Attorney General and the State Public Defender; (2) revises the membership of the Nevada Sentencing Commission to add a member from the Office of the Clark County Public Defender and the Office of the Washoe County Public Defender; and (3) requires the Nevada Sentencing Commission to hold its first meeting on or before September 1 of each odd-numbered year.

Existing law requires the Nevada Sentencing Commission to be provided with such staff as is necessary, to the extent of legislative appropriation, by the Director of the Legislative Counsel Bureau. (NRS 176.0133) **Section 9** designates the Executive Director as the Executive Secretary of the Nevada Sentencing Commission and transfers the staffing of the Nevada Sentencing Commission to the newly established Office.

Section 10 of this bill revises the duties of the Nevada Sentencing Commission to: (1) include the oversight of the Executive Director; and (2) provide certain recommendations and advice concerning the Office.

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 7, inclusive, of this act.

Sec. 2. *As used in NRS 176.0132 to 176.0139, inclusive, and sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in NRS 176.0132 and sections 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Executive Director” means the Executive Director of the Office.*

Sec. 4. *“Office” means the Office of the Nevada Sentencing Commission created by section 5 of this act.*

Sec. 5. 1. *The Office of the Nevada Sentencing Commission is hereby created within the Office of the Governor.*

2. *The Executive Director of the Office must be appointed by the Governor from a list of three persons recommended by the Sentencing Commission.*

3. *The Executive Director:*

- (a) Is not in the classified or unclassified service of this State;*
 - (b) Serves at the pleasure of the Sentencing Commission, except that the Executive Director may only be removed upon a finding by the Sentencing Commission that his or her performance is unsatisfactory;*
 - (c) Must be an attorney licensed to practice law in this State;*
- and*



(d) Shall devote his or her entire time and attention to the duties of his or her office and shall not engage in any other gainful employment or occupation.

Sec. 6. The Executive Director appointed pursuant to section 5 of this act shall:

1. Oversee all of the functions of the Office.

2. Serve as Executive Secretary of the Sentencing Commission without additional compensation.

3. Report to the Sentencing Commission on sentencing and related issues regarding the functions of the Office and provide such information to the Sentencing Commission as requested.

4. Assist the Sentencing Commission in determining necessary and appropriate recommendations to assist in carrying out the responsibilities of the Office.

5. Establish the budget for the Office.

6. Facilitate the collection and aggregation of data from the courts, Department of Corrections, Division of Parole and Probation of the Department of Public Safety and any other agency of criminal justice.

7. Identify variables or sets of data concerning criminal justice that are not currently collected or shared across agencies of criminal justice within this State.

8. Assist in the development, presentation and submittal of any legislative measure requested by the Sentencing Commission pursuant to NRS 218D.216.

9. Assist in preparing the comprehensive report required to be prepared by the Sentencing Commission pursuant to subsection 11 of NRS 176.0134 and submit the report pursuant to subsection 12 of that section.

10. Take any other actions necessary to carry out the powers and duties of the Sentencing Commission pursuant to NRS 176.0132 to 176.0139, inclusive, and sections 2 to 7, inclusive, of this act.

Sec. 7. 1. In addition to the Executive Director, the Office must include not less than one research analyst and two secretaries, each of whom must be selected by the Executive Director and serve at the pleasure of the Executive Director.

2. The research analyst:

(a) May be an attorney licensed to practice law in this State;

(b) Is not in the classified or unclassified service of this State;

(c) Must be proficient in the use, collection and analysis of statistics and data; and

(d) Shall devote his or her entire time and attention to his or her duties as specified by the Executive Director and shall not engage in any other gainful employment or occupation.



3. *The secretaries selected pursuant to subsection 1:*

(a) *Are not in the classified or unclassified service of this State;*

(b) *Must include not less than one secretary who is proficient in transcribing minutes; and*

(c) *Shall be responsible for preparing and posting agendas, transcribing minutes and performing any other duties assigned by the Executive Director.*

Sec. 8. NRS 176.0132 is hereby amended to read as follows:

176.0132 ~~[As used in NRS 176.0132 to 176.0139, inclusive,]~~
“Sentencing Commission” means the Nevada Sentencing Commission created by NRS 176.0133.

Sec. 9. NRS 176.0133 is hereby amended to read as follows:

176.0133 1. The Nevada Sentencing Commission is hereby created. The Sentencing Commission consists of:

(a) One member appointed by the Governor;

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

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

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

(e) The Director of the Department of Corrections;

(f) ~~[The Attorney General;~~

~~—(g)]~~ One member who is a representative of the Office of the Attorney General, appointed by the Attorney General;

~~[(h)]~~ (g) One member who is a district attorney, appointed by the governing body of the Nevada District Attorneys Association;

~~[(i)]~~ ~~The State Public Defender;~~

(h) One member who is a representative of the Office of the Clark County Public Defender, appointed by the head of the Office of the Clark County Public Defender;

~~[(i)]~~ (i) One member who is a representative of the ~~[office]~~ Office of ~~[a county public defender,]~~ *the Washoe County Public Defender,* appointed by the ~~[governing body of the State Bar]~~ head of ~~[Nevada,]~~ *the Office of the Washoe County Public Defender;*

~~[(k)]~~ (j) One member who is an attorney in private practice, experienced in defending criminal actions, appointed by the governing body of the State Bar of Nevada;

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



~~[(m)]~~ (l) One member who is a member of the State Board of Parole Commissioners, appointed by the State Board of Parole Commissioners;

~~[(n)]~~ (m) One member who is a representative of the Division of Parole and Probation of the Department of Public Safety, appointed by the Governor;

~~[(o)]~~ (n) One member who is a representative of the Nevada Sheriffs' and Chiefs' Association, appointed by the Nevada Sheriffs' and Chiefs' Association;

~~[(p)]~~ (o) One member who is a representative of the Las Vegas Metropolitan Police Department, appointed by the Sheriff of Clark County;

~~[(q)]~~ (p) One member who is a representative of the Division of Public and Behavioral Health of the Department of Health and Human Services;

~~[(r)]~~ (q) One member who is a representative of an organization that advocates on behalf of inmates, appointed by the Governor;

~~[(s)]~~ (r) Two members who are Senators, one of whom is appointed by the Majority Leader of the Senate and one of whom is appointed by the Minority Leader of the Senate;

~~[(t)]~~ (s) Two members who are members of the Assembly, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Minority Leader of the Assembly;

~~[(u)]~~ (t) The Director of the Department of Employment, Training and Rehabilitation; and

~~[(v)]~~ (u) One member who is a representative of an organization that works with offenders upon release from incarceration to assist in reentry into the community appointed by the Chair of the Legislative Commission.

2. *The Executive Director shall serve as the Executive Secretary of the Sentencing Commission.*

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

~~[3]~~ 4. Each appointed member serves a term of 2 years. Members may be reappointed for additional terms of 2 years in the same manner as the original appointments. Any vacancy occurring in the membership of the Sentencing Commission must be filled in the same manner as the original appointment not later than 30 days after the vacancy occurs.

~~[4]~~ 5. The Legislators who are members of the Sentencing Commission are entitled to receive the salary provided for a majority of the members of the Legislature during the first 60 days



1 of the preceding session for each day's attendance at a meeting of
2 the Sentencing Commission.

3 ~~[5-]~~ 6. At the first regular meeting of each odd-numbered year,
4 the members of the Sentencing Commission shall elect a Chair by
5 majority vote who shall serve until the next Chair is elected.

6 ~~[6-]~~ 7. The Sentencing Commission shall ~~[meet]~~ :

7 (a) *Hold its first meeting on or before September 1 of each*
8 *odd-numbered year; and*

9 (b) *Meet* at least once every 3 months and may meet at such
10 further times as deemed necessary by the Chair.

11 ~~[7-]~~ 8. A member of the Sentencing Commission may
12 designate a nonvoting alternate to attend a meeting in his or her
13 place.

14 ~~[8-]~~ 9. A majority of the members of the Sentencing
15 Commission constitutes a quorum for the transaction of business,
16 and a majority of those members present at any meeting is sufficient
17 for any official action taken by the Sentencing Commission. A
18 nonvoting alternate designated by a member pursuant to subsection
19 ~~[7]~~ 8 who attends a meeting of the Sentencing Commission for
20 which the alternate is designated shall be deemed to be a member of
21 the Sentencing Commission for the purpose of determining whether
22 a quorum exists.

23 ~~[9-]~~ 10. While engaged in the business of the Sentencing
24 Commission, to the extent of legislative appropriation, each member
25 of the Sentencing Commission is entitled to receive the per diem
26 allowance and travel expenses provided for state officers and
27 employees generally.

28 ~~[10.—To the extent of legislative appropriation, the Director of~~
29 ~~the Legislative Counsel Bureau]~~

30 11. *The Office* shall provide the Sentencing Commission with
31 such staff as ~~[is necessary]~~ *prescribed in sections 5, 6 and 7 of this*
32 *act* to carry out the duties of the Sentencing Commission.

33 **Sec. 10.** NRS 176.0134 is hereby amended to read as follows:

34 176.0134 The Sentencing Commission shall:

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

39 2. Evaluate the effectiveness and fiscal impact of various
40 policies and practices regarding sentencing which are employed in
41 this State and other states, including, without limitation, the use of
42 plea bargaining, probation, programs of intensive supervision,
43 programs of regimental discipline, imprisonment, sentencing
44 recommendations, mandatory and minimum sentencing, mandatory
45 sentencing for crimes involving the possession, manufacture and



1 distribution of controlled substances, enhanced penalties for habitual
2 criminals, parole, credits against sentences, residential confinement
3 and alternatives to incarceration.

4 3. Recommend changes in the structure of sentencing in this
5 State which, to the extent practicable and with consideration for
6 their fiscal impact, incorporate general objectives and goals for
7 sentencing, including, without limitation, the following:

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

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

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

21 (d) Offenders with similar histories of criminality who are
22 convicted of similar crimes must receive sentences that are generally
23 similar.

24 (e) Offenders sentenced to imprisonment must receive sentences
25 which do not confuse or mislead the public as to the actual time
26 those offenders must serve while incarcerated or before being
27 released from confinement or supervision.

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

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

36 4. Facilitate the development and maintenance of a statewide
37 sentencing database in collaboration with state and local agencies,
38 using existing databases or resources where appropriate.

39 5. Provide training regarding sentencing and related issues,
40 policies and practices, and act as a sentencing policy resource for
41 this State.

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

44 7. Identify potential areas of sentencing disparity related to
45 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. *Oversee the Executive Director and provide recommendations and advice concerning the administration of the Office, including, without limitation:*

(a) Receiving reports from the Executive Director and providing direction to the Executive Director concerning measures to be taken by the Office to ensure compliance with the duties of the Sentencing Commission.

(b) Reviewing information from the Office regarding sentencing of offenders in this State.

(c) Directing the Executive Director to conduct any audit, investigation or review the Sentencing Commission deems necessary to carry out the duties of the Sentencing Commission.

(d) Coordinating with the Executive Director to develop procedures for the identification and collection of data concerning the sentencing of offenders in this State.

(e) Providing direction to the Executive Director concerning any required reports and reviewing drafts of such reports.

(f) Reviewing recommendations of the Executive Director concerning the budget for the Office, improvements to the criminal justice system and legislation related to the duties of the Sentencing Commission.

(g) Providing advice and recommendations to the Executive Director on any other matter.

11. For each regular session of the Legislature, *with the assistance of the Office*, 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 NRS 218D.216.



12. The report *prepared pursuant to subsection 11* must be submitted to ~~the~~:

(a) The Office of the Governor; and



(b) The Director of the Legislative Counsel Bureau for distribution to the Legislature not later than January 1 of each odd-numbered year.

Sec. 11. NRS 284.140 is hereby amended to read as follows:

284.140 The unclassified service of the State consists of the following state officers or employees in the Executive Department of the State Government who receive annual salaries for their services:

1. Members of boards and commissions, and heads of departments, agencies and institutions required by law to be appointed.

2. Except as otherwise provided in NRS 223.085, 223.600 and 232.461 *and section 5 of this act* all persons required by law to be appointed by the Governor or heads of departments or agencies appointed by the Governor or by boards.

3. All employees other than clerical in the Office of the Attorney General and the State Public Defender required by law to be appointed by the Attorney General or the State Public Defender.

4. Except as otherwise provided by the Board of Regents of the University of Nevada pursuant to NRS 396.251, officers and members of the teaching staff and the staffs of the Agricultural Extension Department and Experiment Station of the Nevada System of Higher Education, or any other state institution of learning, and student employees of these institutions. Custodial, clerical or maintenance employees of these institutions are in the classified service. The Board of Regents of the University of Nevada shall assist the Administrator in carrying out the provisions of this chapter applicable to the Nevada System of Higher Education.

5. All other officers and employees authorized by law to be employed in the unclassified service.

Sec. 12. This act becomes effective:

1. Upon passage and approval for the purpose of establishing the Office of the Nevada Sentencing Commission created by section 5 of this act, including appointing the Executive Director of the Office, and performing any other preliminary administrative tasks that are necessary to carry out the provisions of this act; and

2. On July 1, 2019, for all other purposes.

