

(Reprinted with amendments adopted on May 23, 2019)

SECOND REPRINT

EXEMPT

A.B. 80

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.

~

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 Department of Sentencing Policy; providing for the appointment of the Executive Director and the selection of the staff of the Department; establishing the duties of the Executive Director and staff of the Department; revising the membership of the Nevada Sentencing Commission; transferring the responsibility for staffing the Nevada Sentencing Commission to the Department; revising the duties of the Nevada Sentencing Commission to reflect the newly created Department; 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 Department of Sentencing Policy and provides for the appointment of an Executive Director of the Department. **Section 6** of this bill prescribes the duties of the Executive Director, which include, among other duties, overseeing the functions of the Department, serving as the Executive Secretary of the Nevada Sentencing Commission, developing the budget for the Department and assisting the Nevada Sentencing Commission with preparing the biennial report of the Nevada Sentencing Commission. **Section 9** of this bill: (1) revises the membership of the Nevada



* A B 8 0 R 2 *

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 Department.

Section 10 of this bill revises the duties of the Nevada Sentencing Commission to include providing certain recommendations and advice concerning the Department.

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 2.5, 3 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 2.5. *“Department” means the Department of Sentencing Policy created by section 5 of this act.*

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

Sec. 4. (Deleted by amendment.)

Sec. 5. 1. *The Department of Sentencing Policy is hereby created.*

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

3. The Executive Director:

(a) Is in the 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.

4. The Executive Director may, within the limits of money available for this purpose, employ or enter into a contract for the services of such employees or consultants as is necessary to carry out the provisions of NRS 176.0132 to 176.0139, inclusive, and sections 2 to 7, inclusive, of this act.

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

1. Oversee all of the functions of the Department.

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 Department 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 Department.

5. Establish the budget for the Department.

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 preparing and submitting the comprehensive report required to be prepared by the Sentencing Commission pursuant to subsection 11 of NRS 176.0134.

9. 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. (Deleted by amendment.)

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 ~~H~~ *within the Department*. 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~~ 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;

~~(l)~~ (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 of the preceding session for each day's attendance at a meeting of the Sentencing Commission.

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

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

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

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

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

~~[(8)]~~ 9. A majority of the members of the Sentencing Commission constitutes a quorum for the transaction of business, and a majority of those members present at any meeting is sufficient for any official action taken by the Sentencing Commission. A nonvoting alternate designated by a member pursuant to subsection



1 ~~¶7~~ 8 who attends a meeting of the Sentencing Commission for
2 which the alternate is designated shall be deemed to be a member of
3 the Sentencing Commission for the purpose of determining whether
4 a quorum exists.

5 ~~¶9~~ 10. While engaged in the business of the Sentencing
6 Commission, to the extent of legislative appropriation, each member
7 of the Sentencing Commission is entitled to receive the per diem
8 allowance and travel expenses provided for state officers and
9 employees generally.

10 ~~¶10. To the extent of legislative appropriation, the Director of~~
11 ~~the Legislative Counsel Bureau shall provide the Sentencing~~
12 ~~Commission with such staff as is necessary to carry out the duties of~~
13 ~~the Sentencing Commission.]~~

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

15 176.0134 The Sentencing Commission shall:

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

20 2. Evaluate the effectiveness and fiscal impact of various
21 policies and practices regarding sentencing which are employed in
22 this State and other states, including, without limitation, the use of
23 plea bargaining, probation, programs of intensive supervision,
24 programs of regimental discipline, imprisonment, sentencing
25 recommendations, mandatory and minimum sentencing, mandatory
26 sentencing for crimes involving the possession, manufacture and
27 distribution of controlled substances, enhanced penalties for habitual
28 criminals, parole, credits against sentences, residential confinement
29 and alternatives to incarceration.

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

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

37 (b) Offenders who have extensive histories of criminality or
38 who have exhibited a propensity to commit crimes of a predatory or
39 violent nature must receive sentences which reflect the need to
40 ensure the safety and protection of the public and which allow for
41 the imprisonment for life of such offenders.

42 (c) Offenders who have committed offenses that do not include
43 acts of violence and who have limited histories of criminality must
44 receive sentences which reflect the need to conserve scarce



1 economic resources through the use of various alternatives to
2 traditional forms of incarceration.

3 (d) Offenders with similar histories of criminality who are
4 convicted of similar crimes must receive sentences that are generally
5 similar.

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

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

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

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

21 5. Provide training regarding sentencing and related issues,
22 policies and practices, and act as a sentencing policy resource for
23 this State.

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

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

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

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

38 10. *Provide recommendations and advice to the Executive*
39 *Director concerning the administration of the Department,*
40 *including, without limitation:*

41 *(a) Receiving reports from the Executive Director and*
42 *providing advice to the Executive Director concerning measures to*
43 *be taken by the Department to ensure compliance with the duties*
44 *of the Sentencing Commission.*



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

(c) *Requesting 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 regarding the procedures for the identification and collection of data concerning the sentencing of offenders in this State.*

(e) *Advising the Executive Director concerning any required reports and reviewing drafts of such reports.*

(f) *Making recommendations to the Executive Director concerning the budget for the Department, 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 Department*, prepare a comprehensive report including:

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

(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.~~

~~→ The]~~

12. *Submit the* report ~~[must be submitted]~~ *prepared pursuant to subsection 11 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. (Deleted by amendment.)

Sec. 11.5. NRS 218D.216 is hereby repealed.

Sec. 12. 1. This section and section 9 of this act become effective upon passage and approval.

2. Sections 1 to 8, inclusive, 10, 11 and 11.5 of this act become effective:

(a) Upon passage and approval for the purpose of recruiting and selecting the Executive Director and employees of the Department of Sentencing Policy created by section 5 of this act and performing any other preliminary administrative tasks that are necessary to carry out the provisions of this act; and

(b) On October 1, 2019, for all other purposes.



TEXT OF REPEALED SECTION

218D.216 Requests from Nevada Sentencing Commission.

1. For a regular session, the Nevada Sentencing Commission created by NRS 176.0133 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.

③⑩

