MINUTES OF THE
ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE

November 21, 2008

The meeting of the Advisory Commission on the Administration of Justice was called to order by Justice James W. Hardesty, Chair, at 9:10 a.m. on November 21, 2008, at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The Agenda is included as Exhibit A and the Attendance Roster is included as Exhibit B. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (CARSON CITY):

Justice James W. Hardesty, Nevada Supreme Court, Chair
Assemblyman John C. Carpenter, Assembly District No. 33
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims' Rights Advocate
Donald L. Helling, Deputy Director, Department of Corrections
Arthur Mallory, Churchill County District Attorney
Catherine Cortez Masto, Attorney General
Senator David Parks, Clark District 41
Dorla M. Salling, Chair, State Board of Parole Commissioners
Richard Siegel, President, ACLU of Nevada, Inmate Advocate
Mark Woods, Deputy Chief, Division of Parole and Probation

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Judge Douglas Herndon, Eighth Judicial District Court
Senator Steven A. Horsford, Clark County District No. 4
Phil Kohn, Clark County Public Defender

COMMISSION MEMBERS ABSENT:

Senator Mark Amodei, Capital Senatorial District
Raymond Flynn, Assistant Sheriff, Las Vegas METRO
James Miller, Sheriff, Storey County

STAFF MEMBERS PRESENT:
Janet Traut, Senior Deputy Attorney General
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary

OTHERS PRESENT:

James T. Richardson, J.D., Ph.D., Director, Grant Sawyer Center for Justice Studies, UNR
James F. Austin, Council of State Governments, President, JFA Institute
Matthew C. Leone, Ph.D., Grant Sawyer Center for Justice Studies, UNR
Larry Struve, RAIN
Steve Burt, Ridge House
Nancy Hart, President, NV Coalition Against the Death Penalty
Terrance P. Hubert, Vietnam Veterans of America, Veterans Incarcerated Committee
Michael Nolan, Ridge House
Flo Jones
Pat Hines
Tonja Brown

Chair Hardesty opened the meeting of the Advisory Commission on the Administration of Justice at 9:12 a.m. He requested Ms. Clark call the roll of members present.

Ms. Angela Clark called the roll. Commissioners Amodei, Miller and Flynn were absent. Mr. Mark Woods was present for Commissioner Curtis and Mr. Donald L. Helling was present for Commissioner Skolnik.

Chair Hardesty requested approval of the minutes of October 20, 2008. Commissioner Carpenter moved to approve the minutes and Commissioner Mallory seconded the motion. The motion passed.

Chair Hardesty opened the discussion on Agenda Item IV. It was a discussion by the Grant Sawyer Center for Justice Studies to monitor and evaluate the Nevada Criminal Justice System through June 30, 2009. He said a copy of the proposal was distributed to all the members Exhibit C. The Commission and the State of Nevada had the assistance of the Council of State Governments providing monthly updates following the progress of the prison systems population and other statistics every month. He said the financial commitment with the Council of State Governments expired at the end of August and he said if the Commission wanted to continue to receive the information they had received earlier they needed to find another source to provide the information. The money in the proposal needed for the work exceeded the amount in the budget. He said approximately $15,000 remained in the budget which he expected to use in preparing the report to the Legislature. Chair Hardesty said the question was whether the Commission wanted to make a recommendation on the proposal and did they think it was necessary to continue the tracking. He said it would be necessary to make a request to the Interim Finance Committee (IFC) for additional funding to the Commission.

Dr. James T. Richardson, J.D., Ph.D., Director, Grant Sawyer Center for Justice Studies, UNR, said they were approached by Dr. Austin and some Commission members to become involved in the study. He said they used funding obtained through the PEW Foundation by Dr. Austin. He said they were very interested in continuing the work and they prepared a budget Exhibit C. He said the contract with Dr. Austin expired on August 30, 2008, but they continued to work because they were interested in the subject. He said the proposal paid the Grant Sawyer Center to do the monthly reports and related activities beginning December 1, 2008 through June 30, 2009. He said it was a minimal proposal with very little flexibility due to the University budget and the proposal listed six specific items the Center would be responsible to provide Exhibit C. He said he revised the budget proposal and realized he was $3,000 short to meet the regulations and rules of the University. He said the actual amount needed was $68,416. Exhibit C.

Commissioner Carpenter asked if Dr. Austin was included in the proposal.

Dr. Richardson said there was a consulting fee that included Dr. Austin.

Commissioner Siegel asked who received the information through June 30, 2009: the Commission or legislative committees or would both be receiving the information?

Chair Hardesty said he requested the information be provided to the Commission and the Legislature. He said Dr. Richardson said they were available to supply data and evaluations to the Legislature.

Dr. Richardson said he was available to provide any information the Commission wanted for the Legislature.

Dr. James F. Austin, Council of State Governments, President, JFA Institute, said he would appear as necessary and it was a very important service in which to invest. He said having this capacity would save tens of millions of dollars in the future and provided a more cost effective criminal justice system.

Senator Parks said there was an IFC meeting yesterday, and the next meeting was sometime in January. He said there would be a time lag of at least two months. He asked if they were requesting a portion of the contingency fund set up by the Legislature as a source of funding.

Chair Hardesty said he believed that was correct. He said the IFC needed to make two decisions: (1) was it a matter of priority given the financial limitations that exist: and (2) with all the effort addressing the shortfall in the budget, IFC needed to decide if they could fund this proposal. He asked Attorney General Masto if it was a matter that had to go to the Board of Examiners.

Attorney General Masto said it needed to appear before the Board of Examiners. She said they met monthly and she would supply Chair Hardesty with the date of the next meeting.

Chair Hardesty suggested the study begin January 1, 2009, rather than December 1, 2008 as there was no assurance the proposal would be approved.

Dr. Richardson said he was aware of the problems, and was interested in trying to help deal with them. He said they would continue to receive information and prepare reports in the hope that funding was obtained.

Chair Hardesty suggested deferring the monthly tracking for December. He said he would entertain a motion to start the contract on January 1, 2009, with the first reports not due until February. He said they could make a motion to authorize the Commission Chair to make a request to the Board of Examiners and the IFC to approve the contract.

Commissioner Masto said the next meeting of the Board of Examiners was Tuesday, December 9, 2008.

Commissioner Parks moved to approve the application and forward the request to the Board of Examiners and to the IFC with the amendments of a start date in January and the first reports due in February.

Commissioner Carpenter seconded the motion. The motion was approved.

Commissioner Siegel asked if there were limits in voting conflicts of interest. He asked if a prison director could vote for prison dollars. He said he had a $5,000 contract with the University and asked if it limited his voting ability.

Janet Traut, Senior Deputy Attorney General, said conflict only arose if there were personal benefits issuing from the vote.

Mr. Woods asked if there was no contract, was Parole and Probation still able to let the Grant Sawyer Center access their data.

Commissioner Masto asked what the termination date was on the existing contract.

Dr. Richardson said the original contract ran through August 30, 2008, but they asked Dr. Austin for a no-cost extension to the end of the year. He said the request was approved so

they were actually still under a subcontract with Dr. Austin. He said if they started January 1, 2009, they would be okay.

Chair Hardesty opened the discussion on Agenda Item III, a presentation of the monthly tracking. He said a presentation of Agenda Item V would also be discussed, the initial draft report of the consultant's views regarding the Truth in Sentencing Subcommittee's work.

Dr. Austin said Dr. Leone would go through the key indicators concerning the monthly prison population. He said then they would transition into a summary of the major findings pertinent for the Commission and recommendations for reforms for the State to consider. He said there was a Commission report due to the Legislature on December 15, 2008, and he would be drafting the information with Chair Hardesty and his staff. He said the final document summarized all the Commission had done and the information examined.

Matthew C. Leone, Ph.D., Grant Sawyer Center for Justice Studies, UNR, referenced his Power Point presentation Exhibit D. He said the prison population was decreasing, probation population, revocations and releases all showed a slight decrease. He said they had no information on the backlog of people waiting for approval for parole. The second slide in Exhibit D, showed court filings trending in a very stable manner through June, 2008.

Dr. Austin said the budget number for the prison population was reached. He said many of the things needing to be accomplished through Assembly Bill (A.B.) 510 had occurred. He said overall the prison population was under control and continued to drift down for the third consecutive month.

Dr. Leone referred to the next slide in Exhibit D which showed the budgeted prison population slightly above the real population. He said it was a promising trend. He said the parole releases increased in the past month. The probation slide showed relatively flat trends Exhibit D. Fewer people were on probation than last month. The revocation rates showed more people going onto parole with a three percent drop in revocation and a two percent drop in probation Exhibit D. He said the trend showed more people on parole and out of the prison system. Dr. Leone said trends were flat through the category of offenses Exhibit D. He said year to date court filings showed no disturbing trends in any of the districts. The trends for program completions were positive with slight increases in GEDs. The vocational programs and substance abuse programs were all positive Exhibit D.

Dr. Austin discussed the major findings of the reports. He referred to the first chart in Exhibit D referencing demographic and crime trends. He said the growth in Nevada population made it unique as it was the fastest growing state in the Union for the past 20 years. He said in the future it was important to note that the "at-risk" population, males between the ages of 20 and 29, was not going to grow at the rate it had in the past. He said

Nevada was a growth state but an aging state. The crime trends in Nevada had dropped significantly since 1994 and Nevada was a much safer state today than it was in 1994. He said the last time the crime rate was lower was in 1968. The overall crime rate had dropped 50 percent. Dr. Austin stated the violent crime rate remained higher than other states. He said the two components were robbery and aggravated assault. The homicide rate was 40 percent less than 25 years ago. The juvenile arrest rate was below the United States' rates and had declined. He said there were dramatic reductions in the crime rate in the State. He said the violent crime rate was limited to Clark County and limited to certain areas within Clark County. There were pockets in Las Vegas that were dangerous, but the majority of the State was safe.

Commissioner Masto asked about the philosophy with respect to economic downturns and the impact it had on crime rates.

Dr. Austin said the big concern was that the gains realized in crime would be reversed. He said generally there was a relationship between economic indicators such as poverty and unemployment. They were referred to as "lag" defects. He said if the economic downturn lasted for several years, it increased the likelihood of crime increasing. He said the downturn produced stress, tension and financial pressures on people.

Commissioner Masto asked if the type of crime could be distinguished. She said was domestic violence and alcoholism versus homicides the types of crimes expected.

Dr. Austin said there was no way to distinguish between the various crimes. He said many homicides were situational in nature, domestic related or family or peer relationships. He said the economic downturn would have an affect on all types of crime.

Commissioner Masto asked if there were studies indicating what Dr. Austin had said. He replied there were several studies which looked at United States' crime rates. He said he would send articles to her for the Commission.

Dr. Leone said some studies from the Midwest during the Rust Belt years noted gang formation increased dramatically with income downturns. He said the juvenile population should also be considered because gang formation, crime by gang members, and drug dealing by gang members all increased during the Rust Belt years.

Dr. Austin referenced the next slide in Exhibit D which looked at the impact of the 1995 Truth in Sentencing legislation. He said it did not have much impact. The legislation was designed to increase the amount of time prisoners served for certain types of offenses. He said inmates had to serve the full minimum. There was an increase in the overall length of stay. The prisoners did about 15 percent more time than they used to do. The reason the

overall impact was not so great was because of the Parole Board. Prior to 1995 the parole grant rate was in the 25 to 30 percent range. He said the parole rate has almost doubled under Dorla Salling. He said that expedited people out of prison and onto parole. He said Truth in Sentencing did increase the length of stays but the Parole Board adopted new risk-based guidelines and increased its grant rate. There were changes in certain sentences with mandatory sentencing provisions added. He said each year approximately 11,000 felons were sentenced by the courts and about one-third of those resulted in a prison sentence. He said that was a typical disposition rate, neither high nor low. The Class B group needed focusing on by the Commission. They represented 60 percent of the prison population. He said they occupied the most beds and there was a diversity of crime within the Class B group.

Dr. Austin said parole and probation had a scoring mechanism which generated the recommendation for probation, prison or borderline rating which was given to the courts. He said Parole and Probation gave recommendations, which were higher numbers of prison recommendation sentences than actually occurred. He said about 1,000 more were recommended for prison terms by P&P and the courts disagreed and put the person on probation. He said the scoring mechanism produced a disconnect with the courts. If the courts followed the P&P recommendations, there would be a much higher prison population today. He said they looked at minimum and maximum sentences imposed by the courts. He said for prison dispositions Class A received a higher sentence. The Class B minimum sentence was typically 24 months and the maximum was 60 months. A.B. 510 restricted the Class B eligibility and was locked into the 24 months. He said A.B. 510 allowed Class C, D and E to have their minimums moved, but the Class B did not move. He said the minimum sentence for Class C, D and E was almost always 12 months.

Dr. Leone said there was a wide range of offenses in the Class B category. He said the problem was there were attempted offenses of the same type that were both in the B category. He said if some were moved into the Class C category it would allow the offender a different range of minimum sentences and possibly receive their release sooner. He said the person could qualify for a hearing with the Parole Board sooner and, if the person were denied parole, he might still be below where he would be if he were a Class B.

Commissioner Siegel said he interpreted Dr. Austin's overview of the 1995 Truth in Sentencing legislation differently. He said it led to a 2000 inmate increase of approximately 15 percent. The Parole Board mitigated that in part with the adjustments made in 2007. The legislation did have a 15 percent increase in inmate population.

Dr. Austin said the legislation adopted in 1995 did not show any immediate impact. He said the prison population did not grow but remained basically flat. The big problem in Nevada was the big surge from Clark County and the other problem was sentencing creep. He said

that meant the minimum and maximum sentences were moving upward each year. He said it created an increase in the prison population among Class B inmates.

Commissioner Siegel said there was a goal of trying to interpret the Truth in Sentencing law. He asked if the jump which came later was facilitated or enabled by the Truth in Sentencing changes of 1995.

Dr. Austin said he did not think that was the case; for a number of years there was not much growth. He said they tried to set the minimums to current practices. He said Truth in Sentencing required inmates to serve a certain portion of their sentence. He said the effects being seen now were not related to that legislation.

Commissioner Kohn asked about the 1,099 persons recommended for prison terms but received probation terms Exhibit D. He said the next bullet point in the presentation talked about 1,500 to 2,000 more people sentenced than it is now. He asked how many other states had the Department of Parole and Probation as a law enforcement agency, part of Public Safety. He disagreed with Dr. Siegel and saw differences when there were changes in P&P.

Dr. Austin said Nevada was the only state where Parole and Probation were part of a traditional law enforcement agency.

Commissioner Digesti commented about Category B and attempted crimes. He said some Category B felons received the benefit of a plea bargain down from a Category A felony. He used the example of sexual assault where a plea bargain brought the charge down to attempted sexual assault. Under the sentencing scheme, it was now a Category B felony. He said Category A was a more substantial term of confinement, often a life sentence with or without possibility of parole.

Dr. Austin said the State did not have the capacity to easily mimic that progression. He said P&P had the best database and almost all the convictions had been plea bargained. He said if the State could fund the study, they would be able to tell by next summer what the earlier charges were.

Dr. Leone said they can tell if there was a plea bargain, but the prior charge was not available.

Dr. Austin added the Parole Board had excellent ideas of things that needed changing. He recommended the Commission listen to the Board. He said there was a lot of work needing to be done to change some of the problems. He used drug trafficking as an example. He said other states built their cases on how much was trafficked. He said penalties needed specifying by the amount and type of drugs involved.

Dr. Leone added one other point about the structure of Parole and Probation. There were 14 states with separate parole and probation offices. He said 35 states do parole or probation the way Nevada does it, but Nevada was the only one who headquartered P&P in a law enforcement agency.

Dr. Austin said the most common term for probation was "not to exceed 36 months." He said the Probation Department can discharge them more quickly. He said there was preliminary evidence some judges made the 36-month term in reaction to A.B. 510. He said technical probation violators entering prison numbered approximately 1,300. They had not been arrested for a new felony. He said they occupied about 2,500 prison beds. He urged the Commission to look at a way to reduce this time.

Dr. Austin said the factors judges used were all appropriate. They were all legal factors. The factors that arose were prior records, nature of the offense, or drug and alcohol abuse. He said women received less severe sentences and were more likely to receive probation. In general, the decision-making process by the courts was appropriate.

The impact of A.B. 510 helped lower the prison population and kept it from growing. He said there was insufficient evidence at this time to determine if the impacted cases had higher or lower returns to prison. He said Exhibit D showed the impact of A.B. 510 through November 2008. He said 13 percent of the people released were returned to prison. Dr. Austin said the discharged group and paroled group seldom returned to prison.

Dr. Austin discussed suggested recommendations. He said the State needed to study the sentencing structure. He said Parole and Probation received significant budget cuts. Dr. Austin said if P&P did not add any more staff, it cannot supervise the number of people assigned to them. He said some states mandate if the person was low risk, they were not supervised. High risk was properly supervised and moderate risk was handled as best as they could. He said the system needed to be designed on the resources available. He said victimless crime needed to be looked at as well as the Class E and attributes of crimes such as trafficking amounts. He asked why the dollar amount for a felony theft was set at $1,000 He said the P&P sentencing criteria needed to be fixed or eliminated. He said it was a healthy report and the judges liked it, but it needed fixing. He said the Class E felons who violated probation were returned to prison for 18 to 21 months. He said they refused treatment and failed to pay their fines. He recommended banning them completely from prison. He said probation violators should have a maximum time they spend in prison. He said if the time was brought down to 12 months it would free up 1,200 beds at the prison and represented a $25 million in savings. He wanted Parole and Probation to receive that money.

Chair Hardesty asked Commissioners Herndon, Kohn and Digesti to comment on Class E felons who were revoked. He asked if the revocation was on the existing sentence or were they modifying the sentence at the time of revocation.

Commissioner Herndon said on Class E felonies it was rare to give more than a 12-month minimum when imposing a suspended sentence. The majority of Class E felons had original sentences of 12 to 36 months. He said the ability to modify was very limited. He said in situations where there were longer suspended sentences, there were some modifications downward if they were revoked. He said most technical violations on Class E felonies were not sent to prison if there was another option.

Commissioner Kohn said that happened in Judge Herndon's courtroom, but in others someone would be revoked and get exactly what they had been sentenced. He said he testified last year about a Class E felony that bothered him a great deal. He said some departments used intermediate sanctions and others had a policy of going to prison if you violated parole.

Commissioner Digesti commented on the ability to capture accurate statistics. He said there were certain circumstances where someone committed a Class E felony but went to prison because they recommitted another Class E felony. He said it made the person ineligible for mandatory probation. He asked how many Class E felons were in prison and how many were on a probation violation as opposed to reoffending.

Dr. Austin said there were about 200 Class E felons in prison and they were all probation violations.

Commissioner Digesti asked what a definition of a technical violation was.

Dr. Austin said failure to report, absconding, or failure to appear for treatment were included in technical violations. They did not adhere to the rules. He said the question was whether they should be in the prison system. He said Class E felons were almost all drug offenders.

Commissioner Digesti asked how many Class E felons went back to prison on technical violations as opposed to a violation where they actually reoffended. He said if they reoffend it did not fall into the definition of a technical probation violation.

Dr. Austin said they usually did something that brought them to the attention of law enforcement, such as driving with a suspended license or loitering. He said they generally were not reoffending or committing any felony.

Commissioner Digesti said if they were sent to jail it was passing the problem on to someone else. He said the problem went from the state prison to the county and the jails. He said the jails had significant issues with costs and population.

Dr. Austin said there were no easy solutions to many of the problems he presented. He said he understood part of the objective was keeping the prison population from growing. He said the local level picked up the added expense.

Commissioner Digesti asked if, instead of putting the responsibility on the local level, was there a plan or scheme where people were reinstated on probation but without an additional incarceration. He meant something in terms of community service, house arrest or other alternative sentencing. He said that would also assist the county facility in dealing with their population.

Dr. Austin said the sanctions could be customized.

Commissioner Kohn said there was one other choice. He said a treatment program, locked or otherwise, needed consideration. He said the Class E felons had drug problems and needed behavioral changes.

Commissioner Herndon said a concept of administrative case-load with the Department of Parole and Probation meant people who were candidates for probation had issues such as alcoholism, drug abuse or family issues. He said probation was designed to help people improve their lives. The administrative case-load concept put people on probation but did not require any oversight. He said the prison population was a young male population. Commissioner Herndon preferred to send probation violators to boot camp. He said boot camp was the one thing that helped straighten people out and kept them out of the justice system.

Dr. Leone said other states were trending toward training programs and treatment programs within jails. He said short-term treatment programs within jails seemed to be working and they also appeared to be cost effective. He said they were not boot camps, but treatment programs within a locked facility.

Chair Hardesty said the Commission had been identifying and discussing problems. He said the problems were well identified. He proposed one solution for consideration by the Commission. He said he had conversations with people from Parole and Probation and finance. A major factor in developing alternatives was a lack of resources. Chair Hardesty said in many cases fines and fees were imposed at the time a judgment of conviction was entered. He said an administrative assessment fee, a public defender fee, a fine and psycho-sexual evaluation fees were all imposed. He said people placed on probation paid supervision

fees and frequently paid restitution fees. He said there was no assigned responsibility for the collection of fees and fines other than the fees Parole and Probation charged for supervision and for restitution. He said there was a statute, NRS 176.064, empowering a State or local government to assign out for collection of fees and fines. He said they did not have any assigned responsibility to do so. He said there was a significant level of uncollected fines and fees in the criminal justice system. He said fines under Article 11, Section 3 of the Constitution were payable to the State Permanent School Fund. An analysis of the fund showed the total amount of fines paid to the Fund was $632,000. He said during 2007 there were approximately 280 DUIs in the State and that should have produced over $560,000 in mandatory DUI fines. He said there was a significant underpayment of fines being collected. He said the Commission and Legislature needed to focus their attention on quantifying the amount of uncollected fees and fines and assigning responsibility for the collection of fines. He said the Commission had discussed restitution and acknowledged the collection of restitution was not completely successful. He said there was one other component involved. The amount of money that went to the State Permanent School Fund was the amount of the fine portion of the fee imposed at the time of judgment of conviction. He said there was no reason for the Legislature not to reconsider the amount of fine set forth in the penal codes. He recommended adjusting the fine from $2,000 for a DUI to $1,000 for DUI and altering that different amount as a fee used to support areas identified by the Commission such as the lack of treatment money, available treatment resources, or consideration of a HOPE court for parole violators. He recommended a reentry plan with funding and mechanisms to start providing a level of support for discharged inmates and a reentry system that can be used for funding. He said it started with a concept in which the Commission proposed and the Legislature imposed a $20 reentry fee on every criminal conviction. He said the fee would be assigned to a specific fund for reentry programs. He said it was time for the Commission to identify some solutions and find mechanisms to solve the problems. He said most solutions required a funding source. He made a recommendation concerning the centralization of a collection of fees and fines and restitution. He recommended considering altering some of the fines from fines captured under Article 11, Section 3, and directed to the State Permanent School Fund and redirect some of those funds to the treatment needs in the criminal justice system. He recommended considering imposing and providing seed funding for a reentry program. He added if there was a level of uncollected public defender funds, those funds could be used to meet the significant needs of the Indigent Defense Commission. He said at this point no collection mechanism was identified for any of the fines and fees.

Commissioner Kohn said Sacramento had a county agency titled Revenue Reimbursement. He said the entire function of the agency was to obtain judgments against people with traffic fines, other fines and assessment fees. He said a model existed in Sacramento County and Nevada should use their example rather than starting from scratch.

Dr. Austin continued his recommendations Exhibit D. He said a limit needed to be placed on how much time someone could serve in prison for a technical probation or parole violation. He said Class A and B offenses should be permitted to have their parole eligibility advanced similar to the other classes but with a different formula. He said Parole and Probation must add a Hispanic code in the data system.

Mark Woods said Parole and Probation followed national standards and it was not considered a national standard. He said it was more appropriate at the prison level.

Dr. Austin said currently it was not possible to document how many Hispanics were on probation. He said the prison system code did have it. Dr. Austin recommended expanding the data systems and recording that information. He recommended a standard sentencing form filled out by the courts reflecting what happened with each case from the point of arrest.

Dr. Austin recommended the State reorganize all the correctional agencies under one centralized department. He said probation, parole, prisons and the parole board should be under the same information system. He said it would improve information for all the entities. A seamless case management plan could be developed which followed the offender. He also said Parole and Probation needed more staff or the mission of P&P needed redefining. Dr. Austin's last recommendation was maintaining the initial effort to develop a centralized monitoring capability to evaluate and monitor how the system was functioning. It would also have the capability to look at and vet all proposals and estimate the impact of new proposals Exhibit D.

Commissioner Siegel asked if the study committee could translate the suggestions of Dr. Austin for votes of the Commission.

Chair Hardesty said that was one of the questions he had for the Commission. How would they like to proceed with the recommendations that were given to them? He said the recommendations could be referred to the Truth in Sentencing Subcommittee for review of each of the different recommendations and suggestions made to the Commission as to what should be adopted.

Dr. Austin said there were other suggestions that needed inclusion. He supported sending the recommendations to the Subcommittee for further study.

Chair Hardesty said he intended to refer the recommendations to the Truth in Sentencing Subcommittee for their further review and comments.

Commissioner Mallory requested the names of the people on the Subcommittee.

Chair Hardesty said Mr. Lalli and Mr. Helzer were on the Subcommittee as well as several members of the Commission. The other members included Chair Hardesty, Senator Parks, Mr. Curtis, Judge Herndon, Mr. Kohn, Mr. Siegel and Mr. Skolnik.

Commissioner Horsford commended Dr. Austin for his work and his substantive recommendations. He asked the time frame for the Subcommittee to evaluate these considerations and report back to the Commission. He said some of the suggestions required action by the upcoming Legislature.

Dr. Austin said he would attempt to put cost estimates on the recommendations that had cost implications.

Chair Hardesty said his goal was to call a meeting of the Truth in Sentencing Subcommittee within the next 10 days to act on these suggestions and others for the next Commission meeting. He also intended to have a presentation from Mark Woods' staff on some of the areas Dr. Austin discussed. He said he also wanted to discuss the report of the Commission while Dr. Austin was present.

Commissioner Horsford asked Dr. Austin to compare the cost of the recommendations versus the cost of the current approach. He said a "compare and contrast" approach was needed. He said it shifted expenses within the system. He added Assemblyman William Horne was present in Las Vegas. He would be Vice Chair on the Committee on Judiciary in the Assembly with specific emphasis on some of the topic areas.

Chair Hardesty said Assemblyman Bernie Anderson was present in Carson City and was present at many of the Commission meetings.

Chair Hardesty said Dr. Austin had prepared an initial draft of approximately 110 pages, that focused on Truth in Sentencing. He said he worked with the staff of the Legislative Counsel Bureau preparing an outline of every issue the Commission had studied, along with every BDR request and recommendation the Commission had made. The outline was 21 pages. He said he asked Dr. Austin to assist in drafting the report for the Commission utilizing the outline. He said he also asked the Attorney General for any resources, lawyers, who might assist him in writing the report. He made the same request to the Public Defender's office for attorneys to assist in drafting some portions of the report. He said the drafting and editing process was a monumental undertaking for the next three weeks. He said some of it had already been drafted. He said Risa Lang and Angela Clark had done a tremendous job. Ms. Clark summarized every single exhibit the Commission had introduced since July 2007. He said the work had been developed and additional recommendations needed to made and captured in the report.

Commissioner Kohn said he would ask Howard Brooks from his staff to assist as he had worked on legislation before.

Commissioner Masto said Brett Kandt, the Executive Director of the Office for the District Attorney's Association and a deputy attorney in her office agreed to participate in writing the reports.

Commissioner Herndon asked Dr. Austin some questions in regard to the recommendations. He said the recommendation concerning revising Parole and Probation's criteria to be more in line with criteria used by the courts would be very difficult. He said one of the reasons less people were going to prison than were recommended was the criteria for the court to exercise its discretion. He asked if the recommendation for a maximum limit on incarceration should be imposed for probationers whose terms had been revoked meant regardless of the original sentence, Dr. Austin recommended an arbitrary time on the revocation. Commissioner Herndon said to him that eviscerated the original sentence.

Dr. Austin said they were people sentenced to any range of probation and failed the terms of their probation for technical reasons only. He said the largest punishment for someone on probation who failed for technical reasons would be 12 months.

Commissioner Herndon asked if that recommendation was specifically tailored only to technical violations.

Dr. Austin that was correct. He said some states had gradations to limit moves based on the severity of the original offense. He said for example Class C could be limited to 90 days. He said Louisiana had a limit on technical parole and probation violators that cannot exceed 90 days. Dr. Austin said the current time sentenced for a technical violation was 21 months.

Commissioner Herndon asked about the use of the word "revoked". He said when they were revoked off probation completely they could receive only a certain amount of time, as opposed to coming in on a technical violation and receiving a short sentence but then continuing on probation.

Chair Hardesty said there was a statute in place where judges had the option to send someone to prison for 60 to 90 days. He said he would study the statute further and report to the Commission. Chair Hardesty asked Dr. Austin if he had observations about the funding proposals and suggestions Chair Hardesty had made.

Dr. Austin said there were people coming to prison who could go into a well structured program. He said the HOPE program would work and there were other similar models

available. He said he thought the money was in the prison budget and needed to be transferred away from the prison and given to Parole and Probation.

Chair Hardesty asked Mr. Woods to comment on Agenda Item VI-A concerning information about fees and fines.

Mr. Woods said currently there were a myriad of fines and fees the offender was required to pay. He said the typical offender had a low-paying job or was unemployed. The problem was trying to prioritize the fees. He said their budget depended on the supervision fees. The fines, public defender fees, the administrative assessment fees and the drug analysis fees were all important to various agencies to keep their budgets whole. There was no single entity whose sole job was to get the money. He said the typical probation officer tried to help the offender and it was difficult to collect the supervision fees. One of the biggest problems was the lack of an entity to collect money. Mr. Woods said such an entity would enable collection of the money more easily.

Chair Hardesty said in addition to centralizing the collection of all the funds and utilizing the authority that already existed for collection agencies to collect the fees, the period of probation needed additional time. He said the maximum length of probation was five years. The time on probation needed doubling in order to collect the fines and fees. He said if there was an Administrative Probation where the person paying supervision fees to Parole and Probation continued to pay the fees after being released from probation, it will increase collections. The fees would be applied toward their fees and fines. He said a funding source was needed for these problems. He said there was an assumption among Legislators that a significant effort was made to effectuate the collection of fees and fines; there was no such effort. He said Parole and Probation focused on supervision fees and restitution as was their responsibility by statute. He said there was also an assumption the courts collected fees and fines. The courts imposed judgments of conviction and set fees and fines but did not collect them. The courts did not have a statutory responsibility to collect fines. At the county level, they had collection agencies but they were not focused on the collection of the fees and fines. Chair Hardesty recommended to the Justices on the Court another auditor be added to the Court's staff for the purpose of identifying and quantifying the amount of uncollected fees and fines. He said it was critical to recommend to the Legislature the centralization of the collection efforts. He said the Commission and Legislature needed to consider altering some current fines and diverting them to support the issues affecting the criminal justice system. He introduced Larry Struve and Steve Burt to the Commission. He said they would discuss a reentry plan under Agenda Item XIII.

Larry Struve, RAIN, said he was introducing the concept previously discussed by the RAIN Board, Chair Hardesty and Steve Burt. He referred to the exhibit for the proposal addressing the need for a reentry program in the 2009-2011 biennium Exhibit E. He said the document

was approved by the RAIN Board. He said the second part of the document was a list of disincentives or barriers faith-based organizations encountered when they tried to establish transitional housing units. Mr. Struve said the Commission had accepted the recommendations RAIN had made and the Commission was on record saying one of the purposes of a criminal justice system was providing rehabilitation. He said currently there were no reentry programs in Nevada. He said the Commission accepted RAIN's suggestions to develop programs to better identify, coordinate, support and train faith-based and other community groups to help in the reentry of inmates back into society. He said between 3,000 and 5,000 prisoners were released each year with a check they may not be able to cash without identification, a bus ticket and some denim clothes. They often lacked a support system or a place to stay. The RAIN Board proposed a concept set forth in Exhibit E. He said there were five or six pieces to the proposed concept. He said the Legislature would be asked to establish an account specifically earmarked for providing reentry funds covering the necessary expenses of newly release prisoners that could not be covered from any other sources. The funds could not come from the State General Fund. The revenues for the account would come from earnings, payments or fees provided by the prisoners. The fund should be set up so it could receive contributions. If the contributions were tax deductable individuals, organizations or coalitions or private and nonprofit programs interested in supporting reentry programs would benefit. The fund should be established so it can receive grants. Lastly, Mr. Struve said the fund should be set up so, when the State was fiscally able it could provide funds from the State General Fund. He referred to a fund established in 1995 in Exhibit E in the Department of Business and Industry to receive monies. He said the fund would have to be placed with an official or agency of State Government independent of any department or agency that incarcerated people. He said the members of the RAIN Board wanted the account to be independent and targeted specifically on the problem identified. He said the other precedent passed in the 2005 Legislative Session concerned the difficulty homeless people had getting identification Exhibit E. He referred to the program established with the Department of Motor Vehicles to help a homeless person receive an ID or duplicate driver's license. If they were unable to pay the fee, a fund was established to pay the vendor. He said Senator Valerie Wiener donated $500 to start the fund. The fund looked to people outside of government to help solve significant problems. Mr. Struve referred to Rev. Bonnie Polly's list of disincentives and barriers her organization faced in Southern Nevada Exhibit E. He said the document showed there were many disincentives. Mr. Struve said his presentation was conceptual and Mr. Burt worked in the field and had practical recommendations.

Steve Burt, Director, The Ridge House, said he developed a statewide prisoner reentry coalition. He said he had 13 partners currently in the North and the South. He said it was an innovative process. The word "innovative" was important because it allowed them to leverage what they were doing currently to acquire new money. He said there was going to be Second Chance Act funding from the Federal Government. He said the money would be

run through the office of Criminal Justice Assistance which is a division of the Department of Public Safety. He said he had a conversation with the Director of the division and they did not know how the Second Chance Act money could be contributed in a tax deductible manner. He said it might be necessary to legislate a change allowing for the money in a tax deductable manner. He said the money could also be through The Ridge House. One of the concerns was the 90 to 120 day stabilization period in a residential setting for people coming out of prison. He said it was absolutely necessary, but there were only 27 beds in the State and they were all at The Ridge House. He said the rest of the residential settings were half-way houses. He said money is needed to provide more beds that provide a treatment program for the purposes of reentry.

Chair Hardesty said earlier he indicated that as seed money for the program, the Commission considers the imposition of a new fee called a reentry fee in every criminal, felony and gross misdemeanor case. He said it would provide the seed funding for this effort. The funds would be directed toward the fund Mr. Struve and Mr. Burt were discussing.

Mr. Helling said he and Deputy Director Bagwell were tasked with the reentry program for the Department. They met with The Ridge House personnel. He requested the Department put on a brief presentation on reentry. There was a concern everybody was acting independently and coordination was needed for the most beneficial use of the funds.

Commissioner Salling said the suggestions were an inspired solution to the problems indentified. The Parole Board would be more comfortable releasing borderline people if there were treatments available when they were released.

Commissioner Siegel commended the proposal. He said the private foundation world in Nevada had not been mentioned. He said better structure and financial accountability was required by the private foundations.

Chair Hardesty said he liked the idea of prisoners paying for their own responsibility and reentry. He said people who agreed to participate agreed to pay the fund back. He said it was similar to the model for drug court and mental health court.

Commissioner Salling said the officers were not trained to collect fees. She said an actual agency collecting fines and fees would benefit officers.

Mr. Woods said it was difficult collecting fees. He said the reentry program needed to include the rurals.

Mr. Burt said the rurals were not included at this time. He said there were no approved providers in the rurals so people were paroled to Washoe and Clark County.

Mr. Woods asked if the plan was to open something in Elko, for example. He said there were people who did not belong in Las Vegas or Reno but were almost forced to be there or remain in prison.

Mr. Burt said they had partners in Elko and providers all over the State.

Chair Hardesty said when all the proponents of reentry programs were brought together with a direction and focus it would benefit the entire State. He said one of the out-growths of this effort would be benefitting the rural communities who struggled with the lack of resources.

Mr. Helling said they were currently assisting inmates pending parole with resident transitional money because many did not have a residence which was a key component for reentry. He asked Mr. Burt to comment on the recent basketball tournament put on the by The Ridge House.

Mr. Burt said the fundraiser was put on by a former successful client. The fundraiser netted $5,000. A second fundraiser was already planned. He said the opposing team was a group of police officers. The event was called Cops and Robbers.

Dr. Austin said it was a promising concept. He urged performance standards be established in a way that the organization was financially rewarded for exceeding the performance standards. He said it was an incentive that worked in other places and he urged the Commission to do the same.

Chair Hardesty said the Commission should consider endorsing the need for photo identification for inmates being released from the prison system. He referred to Mr. Struve's letter in Exhibit E referring to homeless people and identification. He proposed the Commission adopt the same legislation for providing identification certificates through the DMV.

Commissioner Siegel moved to endorse the proposal. Commissioner Mallory seconded the motion. The motion carried.

Chair Hardesty asked Mr. Struve and Mr. Burt to be present for the December meeting. He asked the Commission if they wanted a written recommendation for the Legislature.

Commissioner Horsford said they were in agreement and he wanted to work with Chair Hardesty in any way he could. He had additional ideas about what could be added to the concept in the system prior to release.

Chair Hardesty asked if it were possible to call upon Assemblymen Horne and Anderson to assist them in the effort. He said it was a major policy issue that implicated both people.

Commissioner Farley requested she attend the committee or panel.

Chair Hardesty said Ms. Hart would make a presentation on Agenda Item XIV, a proposal seeking support for a study of the cost of the death penalty in Nevada.

Nancy Hart, President, NV Coalition Against the Death Penalty, said her proposal was a direct follow-up to testimony heard in July from Richard Dieter of The Death Penalty Information Center. She said Mr. Dieter testified about the enormous costs of the death penalty as shown in numerous studies. Ms. Hart said at least 10 states had undertaken relatively in-depth studies of the death penalty. She reminded the Commission Mr. Dieter pointed out that the cost of capital punishment had grown. Individual expenses of the death penalty resulted in substantial net cost to the tax payer. She said relatively few cases resulted in an execution. Even for a state like Texas which executed 33 percent of the people sentenced to death, the cost per case was $2.3 million. Ms. Hart said the most comprehensive study on the death penalty was done at Duke University and it concluded the state spent $2.2 million per execution over the cost of a non-death penalty sentence of life in prison. The third study Mr. Dieter referred to was a study by the *Miami Herald* in Florida which concluded the cost was $3.2 million per execution in that state.

Ms. Hart stated the Commission members were asked by the Prison Board to examine budget cuts and alternatives for the Board to consider. She said an in-depth study of the costs of Nevada's death penalty was warranted. Mr. Dieter's testimony about the collective results of other states' studies recommended this action. She said the costs for Nevada were far higher for death penalty prosecutions than for non-death penalty homicide prosecutions. She said their proposal was the Commission support the concept of a death penalty cost study, not conduct the actual study.

Ms. Hart said Nevada had executed 12 inmates since 1977. She said 11 of the 12 were executed without having exhausted all of their available appeals. They volunteered to be executed. She said it was a very expensive program for a small return, and a very small number of violent offenders were affected by the death penalty. The NV Coalition and the ACLU of Nevada recommended the Commission support conducting an in-depth study of the costs. She said an in-depth study might cost $75,000 to $100,000. She said they were not asking the Commission to find or recommend government funding for the study. A study endorsed by the Commission would help ensure the cooperation of district attorneys and the Attorney General and it would facilitate funding requests. She suggested money saved could be better spent on assisting survivors in the difficult process of healing from violent crime.

Ms. Hart said her primary professional work was in the area of assisting victims of domestic violence and victims of sexual assault and stalking. She said her experience advocating for crime victims was they needed more resources devoted to assisting victims. She said public safety was not necessarily served when large amounts of money was spent seeking the death penalty while failing to adequately fund programs that helped all survivors of violence heal. She said, in a world of limited resources, choices must be made and the cause of public safety may be better served by directing resources to victims' assistance programs and violence prevention programs.

Ms. Hart said New Jersey eliminated the death penalty last year. She read information from a New Jersey Commission Report. One of the findings from the Commission said sufficient funds should be dedicated to ensure adequate services for the families of murder victims. She said survivors failed to address their or their family's needs until after the trial. She said the criminal justice system focused on the rights of the accused, not the survivor. She said financial constraints made it impossible to assist all the survivors who needed counseling. Ms. Hart said a study to determine the cost of the death penalty could be diverted to public safety concerns and victims of homicides. Finally, Ms. Hart reminded the Commission in 2001 the Legislature passed a resolution, ACR 3 in the Special Session, calling for a study of various aspects of Nevada's death penalty. She said the legislative subcommittee unanimously voted to send a letter to the Nevada Supreme Court requesting the AOC seek a grant to study the costs of processing murder in capital cases. She said a study had yet to be commissioned. She suggested now was the time to support conducting a comprehensive study of the costs of Nevada's death penalty.

Commissioner Farley asked how many appeals were available to offenders receiving the death penalty.

Ms. Hart said every person convicted of first degree homicide and eligible for the death penalty had an automatic appeal to the Nevada Supreme Court which cannot be waived. She said that was the only required appeal. There were postconviction petitions that can be filed in Nevada State Court and they are not necessarily limited in number. After the State appeals are exhausted, the claims may be raised in federal court. She said it was difficult to quantify the specific number of appeals.

Commissioner Farley said the reason it was so expensive was because of all the appeals. She said it did put the victims into another scenario. She said the death penalty should have a limit on appeals, not matter what type of appeal it was.

Ms. Hart said one of the things the cost study would evaluate was whether the appeals were the cause of the high costs. She said other states concluded that was not the bulk of the cost

of the death penalty. She said there were enormous costs at the trial level that were cost differences from a non-death penalty case.

Commissioner Farley acknowledged and thanked Ms. Hart for recognizing the post traumatic stress syndrome that survivors go through.

Commissioner Digesti asked if a motion from the Commission to support the concept of an in-depth study into the death penalty and the cost factors involved was appropriate at this time.

Chair Hardesty said Commissioner Digesti made a motion.

Commissioner Parks seconded the motion.

Chair Hardesty called for discussion from the Commission.

Commissioner Mallory said in the past he agreed with Ms. Farley and all the issues she championed. He specifically disagreed with her on this issue. He said he had tried 10 death penalty cases; the majority of the cost appeared to be based on the defense costs and numerous appeal processes. He said the numbers do not seem to justify the expenditure of funds. He said it was outside the scope of the Commission to be discussing the death penalty. He said the Commission was not charged by the Legislature to consider it. He said they were charged with considering the legislation that was passed. He was opposed to the motion.

Commissioner Siegel said 12 people were executed, but 80 people were on death row. He said more people died in prison in Nevada than had been executed during that time. He said two-thirds of all death penalties imposed were overturned by state or federal courts. He said when they were retried less than 20 percent resulted in a death penalty. He said state data was consistent at the level of $2 to $3 million per capital charged cases.

Commissioner Digesti said his motion was just to support the concept of the study and was not intended to express any philosophical opinion on the death penalty itself.

Chair Hardesty said he understood Ms. Hart was seeking the Commission's support of a study on the fiscal impact of the death penalty as a sentence structure in Nevada. He asked Commissioner Digesti if that was his motion. Commissioner Digesti replied that was correct. Chair Hardesty asked for a roll call of the votes.

Ms. Clark called the roll. Ten members voted in favor of the motion. Commissioners Mallory, Masto and Carpenter voted no. Mr. Helling abstained. Commissioners Amodei, Flynn and Miller were absent for the vote. The motion carried.

Chair Hardesty reopened the discussion on the collection process for fines and fees. He asked if it was a subject the Commission wanted to discuss and make recommendations on today. He asked if more data or fact information was needed.

Commissioner Masto asked for information on the actual fiscal impacts. She stated she supported the concept, but needed more information about the State Permanent School Fund and the impact if the fee structure was changed. She inquired if there was any impact to local government. She supported the concept of a uniform collection agency for the State. She said there was money not being collected that would help the State.

Mr. Helling said the Department had procedures to collect fines, fees and other restitution. He said it could be part of the presentation at the next meeting. He said they collected fines and fees ordered by the courts of people incarcerated.

Commissioner Herndon asked if Chair Hardesty's idea included people collecting fees and fines as part of ongoing cases or as a separate entity similar to a civil component outside the criminal case.

Chair Hardesty said his view was it was outside the criminal case. He suggested an increase in the amount of time a judge could impose a period of probation. He said it would be in the nature of an administrative probation period that increased the ability of the criminal justice system to retain the person for the purpose of collecting fees, fines and restitution. He said restitution imposed a significant amount of money and could never be paid in five years. He said five years was the maximum period of probation. The probationer often stated he paid supervision fees to the Division of Parole and Probation. Chair Hardesty said he did not see a negative impact to local government because they would receive an increase in the collection of money. He said shifting to a longer probation period increased the ability to collect fees and fines.

Commissioner Herndon agreed with Chair Hardesty in terms of the issues related to restitution and the collection of fees. He wanted to confirm a civil component trying to collect the monies.

Chair Hardesty said the State had no money to hire people to make collections, but the State had statutory capabilities to put in place collection agencies. He said the problem was it still needed coordination and assurance it was effective and efficient.

Commissioner Herndon said it did not seem much different than the way the bad check unit was run in the district attorney's office in that it was a self-funding unit. The money collected helped pay for its personnel.

Chair Hardesty said it could be a self-funded office especially if it were transferred to some form of administrative supervision. He said he would further research the topic and provide more information at the December meeting.

Commissioner Masto addressed the issue of the Subcommittee. She said they had not met as a group but will be meeting in December.

Chair Hardesty wanted to know if the Commission was interested in discussing Agenda Item VII. He said it was the subject of Hawaii's Opportunity Probation Enforcement Court, HOPE. He asked if the Commission was interested in endorsing the parole violator's court.

Commissioner Siegel asked if Chair Hardesty was looking for support of the concept independent of funding. Chair Hardesty replied yes he was. Commissioner Siegel made a motion to support the model of the parole violator's court in concept.

Commissioner Siegel moved and Commissioner Parks seconded endorsing the parole violator's court concept.

Commissioner Salling said it was a good idea, but it had zero tolerance. People were returned to jails that did not have any room. She said she disagreed with the concept of total zero tolerance. She said HOPE seemed very labor intensive also.

Mr. Woods said the concept in Hawaii was focused on the probationer not the parolee. He said it was very labor intensive and with the current budget issues the Division would have difficulty getting the program started.

Chair Hardesty asked if there were any other comments on this suggestion. He said proposing the concept without a fiscal impact may not make sense.

Commissioner Siegel withdrew his motion. Commissioner Parks agreed to withdraw his second. The motion was withdrawn.

Chair Hardesty reconvened the Commission. He opened discussion on Agenda Item X. He said the item was deferred from the last meeting. It was a Bill Draft Request (BDR) allowing the State Board of Pardons Commissioners to restore civil rights without holding a meeting. He asked Commissioner Salling to explain the suggested BDR.

Commissioner Salling said the Parole Board Officers were the administrative office of the Pardons Board. She said they dealt with people who wanted the restoration of their civil rights and their right to bear arms. She said the Legislature enacted a process where

restoration of civil rights was possible after a number of years. However, only the Pardons Board restores the right to bear arms. The Board only met twice a year. As a result, the citizens had extreme difficulty being heard by the Board. She said they received thousands of applications and each agenda, meeting twice a year, might schedule 25 people. She said her office staff proposed a BDR allowing the Pardons Board to administratively sit in panels or pass the requests among themselves rather than having a formal meeting of the Pardons Board.

Chair Hardesty said the staff of the Parole Board spent an enormous amount of time assembling the files for a community case. He said it took an entire day to look at the community cases. He said 95 percent of the cases were approved without any contest. He said frequently the prosecutor did not respond and he did not remember a single victim appearing to challenge a community case. It would improve efficiency to hear the cases in a consent agenda rather than sitting as the full panel. He said it was unfortunate for the people making the requests because there were so few cases heard.

Commissioner Mallory asked if it would provide for notice to all parties.

Commissioner Salling said the process would be the same. She said everyone would be noticed and the action would take place if there were no objections.

Commissioner Carpenter moved to approve the BDR and recommend it to the Legislature.

Commissioner Parks seconded the motion.

Mr. Woods asked if the pardons investigation was still required. He said Parole and Probation did the investigation for the pardons. He said the average pardons investigation took 24 hours. He said if the investigations remained the same, more staff was required.

Commissioner Salling said it was at the discretion of the Pardons Board. She suggested a criminal history be run and everyone notified but further information was not required for the restoration of civil rights. She said if a criminal history showed they had not committed any crimes and no one objected, further investigation was unnecessary.

Chair Hardesty said he had no idea the amount of time being spent on investigations. He said on any case in which the applicant was not seeking restoration of the right to bear arms, he did not want Parole and Probation spending so much time on the investigations. He said he was only interested in the investigations where the person sought the right to bear arms. He wanted to know what they had been doing for the past 10 or 15 years in relation to their utilization of firearms.

Mr. Woods said the proposal as stated by Chair Hardesty could easily be accomplished. He said currently the department had to look into their community service, club membership, and numerous other areas.

Chair Hardesty said he was concerned about the amount of time spent researching the applicants. He said even for the restoration of firearms, there was only a limited amount of specific things needed. He said perhaps the BDR could be rewritten to eliminate some of the work Parole and Probation was required to do. He said the Pardons Board could always request a special investigation if they had a concern from someone.

Commissioner Salling said the BDR did not address the extent to which the Division prepared the investigation. She said the investigation was developed over the years when the State was smaller. She said a pardons investigation was considered very important when she worked for the Parole and Probation.

Chair Hardesty said he was discussing what the Pardon's Board called community cases. He said it was an individual who wanted the restoration of their civil rights and in some instances the right to bear arms. He said these people had been out of prison for a long time. It was different than a pardon. He said the pardon cases needed extensive review. The Pardons Board only heard 15 cases the last time they met. Community cases did not need extensive review. He suggested amending the BDR and withdrawing the motion for now.

Commissioners Carpenter and Parks agreed to withdraw the motion.

Chair Hardesty asked Commission Salling to add the alteration to the proposed BDR. He requested Mr. Woods review the BDR also.

Chair Hardesty asked Commissioner Herndon if he had further information to report on the Sentencing Subcommittee. Commissioner Herndon replied he had no new information.

Chair Hardesty requested Commissioner Herndon schedule a meeting of the Subcommittee to be held several days after the Truth in Sentencing Subcommittee meeting. He said some of Dr. Austin's recommendations and comments from the Division of Parole and Probation related to the mandatory drug sentencing statutes. Due to the short time frame, Chair Hardesty requested the information be reviewed by Commissioner Herndon's Subcommittee as soon as possible.

Chair Hardesty opened discussion on Agenda Item VIII, habitual criminal statutes. He said discussion concerning a further draft modification to the habitual criminal statute had been deferred to today's meeting. He said Mr. Kandt said the subject was still under discussion and the draft would be presented at the December meeting. Commissioner Kohn replied he

was correct. Chair Hardesty asked if that were also the case with the draft concerning biological evidence. Commission Kohn said it was true. He said one more month would be useful. He said it was the matter of one sentence and perhaps another month would be helpful.

Chair Hardesty proposed a telephone conference between Commissioner Kohn and Mr. Kandt on both the habitual criminal statute and the biological evidence draft.

Chair Hardesty introduced Agenda Item XIII a presentation regarding the creation of a veterans' court in Nevada.

Mr. Terrance P. Hubert, Veterans Incarcerated Committee, stated he had a PowerPoint presentation for the Commission. He opened his discussion with a quick statement concerning his organization, The Vietnam Veterans of America, Inc. (VVA), Exhibit F. He said he was the Chairman of the Veterans Incarcerated Committee and he was also the President of the Board of Directors for the Ridge House. He said he represented the National Board of Directors for the VVA. He read his letter dated November 21, 2008, to the Commission Exhibit F. He referred to H.R. 7149 which sought to provide grants to establish veteran treatment courts Exhibit G. He said Nevada had one of the fastest growing veteran populations in the nation. He said his PowerPoint presentation was to encourage the interim legislative committee to request a BDR creating a Veterans Specialty Court in Nevada.

Mr. Hubert presented his PowerPoint presentation entitled Buffalo City Court Veterans' Project Exhibit H. He said 11 million people pass through American jails each year. He said the response to people was to put them in prison Exhibit H. Mr. Hubert said 95 percent relapse into substance abuse in 3 years. He said the number of drug courts had increased dramatically over the past few years and had a much higher percentage of success Exhibit H. He said a trend for specialty courts was growing. The promise of Veterans Specialty Court was a high level of accountability for the offender while in the community Exhibit H. Mr. Hubert said the Buffalo Veterans' Court Diversion Project was a judicially driven collaborative effort between the police department, the Veterans' Administration and the criminal courts and drug and mental health treatment courts Exhibit H. He outlined the project's purpose in his PowerPoint presentation Exhibit H. He discussed the 10 key components needed for a successful program Exhibit H. Mr. Hubert showed examples of the cost benefit of drug courts Exhibit H.

Chair Hardesty said the essential difference between a proposed veteran court and drug court was a veteran in drug court received some additional support due to their veteran status.

Mr. Hubert said veterans' court was another specialized court modeled on the success across the county on drug courts. He said there were more resources available for veterans than

nonveterans. He said the Veterans' Administration was available to provide a collaborative approach. He said the goal was to reach out and identify the veterans as quickly as possible. He referred to the Orlando Police Department which had a specialized program trained to recognize veterans with problems. He said drug courts helped see there was follow-through with treatment plans and mentoring programs.

Chair Hardesty asked Mr. Hubert if he spoke to any of the drug court judges in Nevada. Mr. Hubert said he had not done so. Chair Hardesty asked him to ask the drug court judges to canvas their population and determine how many veterans were currently in the existing drug courts. He asked him to contact Judges Breen, Blake, Glass, and Jennifer Elliot in Clark County. He also asked Mr. Hubert to inquire if the judges were amendable to working with veteran support groups and veteran hospitals to expand services and tracking for those veterans currently in drug court. He said the infrastructure was present, but certain needs and services could be tailored for support from the veterans' hospitals.

Commissioner Siegel asked if Mr. Hubert knew about some federal money associated with the veterans' court. He said the Commission would benefit by being aware of the extent of federal money that could be brought into mental health and drug courts in Nevada.

Mr. Hubert said the intent of H.R. 7149 was to address the funding. He said the funds were administered through the office of the Drug Czar in the Department of Justice. He referred to the copy of H.R. 7149 distributed to the members Exhibit G.

Commissioner Siegel asked if the bill passed in both houses. Mr. Hubert said it was introduced in October but had not yet been discussed.

Michial Nolan, Project Coordinator, LZ Ridge Project, said the Landing Zone Ridge Project was a V.A. grant-funded substance abuse treatment and reentry program serving incarcerated and released veterans. He said it was the first program of its type in northern Nevada. The mission of the LZ Ridge Project was to provide ex-offending veterans with an opportunity to build stable, productive lives Exhibit I. Mr. Nolan's PowerPoint presentation said the project had a specific set of problems, including release from prison, reentry, homelessness, unemployment, substance abuse and co-occurring disorders Exhibit I. Mr. Nolan outlined the five program objectives Exhibit I. He said LZ Ridge accessed all the programs and services available for the client. He further discussed who was eligible for the program including male and female veteran ex-offenders with substance abuse issues Exhibit I. He said Ridge House policy did not accept sex offenders. He said the program had 6 beds available but they had determined there were approximately 1,243 veterans within the Ridge House service area, Exhibit I. He said they were a pilot program and if they were successful they would expand the program.

Commissioner Digesti asked Mr. Nolan if he was coordinating with the Department of Parole and Probation, and if the veterans were being released with some kind of plan for their integration back into society.

Mr. Nolan said that was being processed and developed at this time. He said they worked with Parole and Probation with their clients. He said the parole officer received a substance abuse evaluation with diagnosis and prognosis and they also received monthly progress reports. He said they had clearance to speak directly with Parole and Probation if issues arose.

Commissioner Digesti asked where they were physically located. Mr. Nolan replied it was with Ridge House at 57 Vine Street. Commissioner Digesti asked if the program was available to individuals who were not yet in prison, but were in need of some type of counseling.

Mr. Nolan said the program could accept them before they were incarcerated. They could receive referrals directly from the V.A. or from local courts if there was a veteran's court available.

Commissioner Digesti asked if referrals from private lawyers were accepted. Mr. Nolan said it would be considered case-by-case.

Mr. Hubert said their Executive Director stated they would accept referrals from private attorneys. Commissioner Digesti said he was glad to know about the program. He said prior to the presentation he was totally unaware something like the LZ Ridge Program was available. Mr. Nolan invited Commissioner Digesti to visit the Ridge House.

Chair Hardesty asked Mr. Hubert to respond to the Commission after he talked to the judges of the Specialty Courts. He volunteered his help if Mr. Hubert needed it.

Chair Hardesty asked Commissioner Horsford if he had information to report concerning the Juvenile Justice Subcommittee. Commissioner Horsford stated they had not met and would have a meeting in December. Chair Hardesty asked if there were people in Las Vegas wishing to make public comment.

Flo Jones opened with comments about the preservation of biological evidence. She was concerned it started with conviction. She said serious concern needed to occur from the time a crime scene existed. All biological evidence needed preservation. She supported information from Tonja Brown regarding the bill draft for DNA. She supported all that Ms. Brown had proposed. Ms. Jones said she heard Justice Hardesty apologize to Ms. Brown for not having taken care of the evidence or not doing his job as a judge with the evidence. She

said they were discussing the DNA evidence in Ms. Brown's brother's case. Ms. Jones said there had to be more than just information that protected the State. She said Nevada needed to stop being one of three states that did not allow someone to pay for their own DNA testing to exonerate themselves. She requested the DNA draft be inclusive and take into consideration all that Ms. Brown discussed with the Commission.

Chair Hardesty contested and disputed the suggestion he apologized to Ms. Brown or anyone else over his supervision of DNA evidence. He said he had no conversations with her about that subject nor was he ever a trial judge in any case involving any matter she ever discussed with him involving the supervision of DNA evidence. He said Ms. Brown made contentions here that other judges who supervised cases involving her brother had issues regarding the handling of evidence. He said he was never a judge in those cases.

Ms. Jones apologized. She said she was present at a conversation in the hallway of the 2007 Legislative session when she heard him apologize to her.

Chair Hardesty said he apologized for not returning Ms. Brown's telephone call.

Ms. Jones asked the Commission to consider Ms. Hines quasi-judicial language in the 2007 Legislative bills. She said it was a judicial term and she questioned under the Nevada Supreme Court case if the language quasi-judicial needed removal from the Legislature or if the Parole Board needed direction in order for that to be followed. She was discussing cases now being held in absentia to be part of those activities.

Pat Hines had five areas she hoped the Commission would investigate further. The first issue concerned the NDOC. She said it was grossly underfunded and the inmates were in a state of disarray and frustrated due to lack of jobs and education. She said there needed to be more money in NDOC and more staff training. She said Parole and Probation needed more money also. She said she was very pleased with the PSI. She requested more money for interim sanctions. She stated the Commission needed to go to Arizona and see what they had done with neighborhoods with the highest crime levels. She said money needed investing in education and prevention. She said a compatible computer system between all the different parts of the criminal justice system was needed. She said her biggest concern was on sexual offender issues. She said it was not a popular issue and the State was going to have to decide if it was going to comply with the Adam Walsh Act. Ms. Hines provided two handouts for the Commission, The Justice Policy Institute, and The National Center on Institution and Alternatives, Inc. (NCIA) Exhibit J. She said the NCIA article was titled "Towards More Effective Sex Offense Legislation." She recommended further research concerning the recidivism rates among sex offenders.

Tonja Brown stated for the record that Ms. Jones was correct and there was documentation that was given to Justice Hardesty, or Judge Hardesty, some years ago and she could present a copy to the Commission. She said he was aware of the problem. She continued her discussion on the biological evidence. She said there were members of the Advisory Commission who were not privy to the current chain of events of her proposed recommendations for the draft for the preservation of biological evidence. Ms. Brown said on September 22, 2008, in a press conference Washoe County District Attorney Dick Gammick said he opened DNA kits and tested the DNA evidence. She said no results were ever turned over to her. Ms. Brown referenced the material she gave the Commission Exhibit K. She said there had been problems with evidence as far back as Mills Lane. She said the recommendation she was giving was a chance for everybody, inmates, to have DNA testing whether the courts decide yes or no. She said in November it appeared a case had gone to the Supreme Court to decide whether postconviction DNA testing was a Constitutional right. Ms. Brown said her recommendations were very good recommendations. The recommendations were to secure the index tracking cards. She said in Washoe County the index tracking cards indicated when and who took evidence, when it was checked out, and by whom. She referenced a letter from the law office of Hager & Hearne Exhibit L. She said there were innocent people wanting DNA testing conducted.

Ms. Brown stated bad acts were committed by the judicial system and the judicial system was covering up their bad acts at the expense of innocent people. She said her bill would stop or prevent those acts. She said it would not cost the State or county any money if the inmate paid for their own DNA testing. Ms. Brown said she had a suggestion for Parole and Probation on how to save some money. She suggested P&P cut 10 percent of the parole officers they had, open a swing shift from 1:00 p.m. to 9:00 p.m. or 3:00 p.m. to 11:00 p.m., and have the parolees come into the office at that time. She asked what the shift for parole officers was.

Mr. Woods said the shift was from 8:00 a.m. to 10:00 p.m.

Ms. Brown said “skip” her suggestion. She asked the Commission to look at her recommendations.

Ms. Brown said Chandler Laughlin was arrested for drug trafficking his own medical marijuana. She said it was a weight issue and he was caught with two medical permits which were approximately 6 pounds of marijuana. She said there was not anything in the statute stating how much a plant was supposed to weigh. She said the Commission needed to study the weight of a healthy plant Exhibit K.

Chair Hardesty asked if there was any further public comment. He proposed the next meeting of the Commission for December 17, 2008. Several exhibits were distributed to the

Commissioners, but were not discussed at the meeting. The exhibits included a Draft of the Proposed Evidence Preservation Statute from Brett Kandt Exhibit M; Parole and Pardons Denials Exhibit N from Teresa Werner; a letter Exhibit O from Donald Hinton; a letter Exhibit P from Constance Kosuda; and a multiple page submission concerning Nevada prison medical and inmate deaths Exhibit Q from Mercedes Maharis.

Commissioner Carpenter moved to adjourn the meeting. Commissioner Digesti seconded the motion. The Commission adjourned at 2:38 p.m.

RESPECTFULLY SUBMITTED:

_____
Olivia Lodato, Interim Secretary

APPROVED BY:

_____
Justice James W. Hardesty, Chair
Advisory Commission on the Administration of Justice

DATE:_____

EXHIBITS

Committee Name: ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

Date: November 21, 2008 Time of Meeting: 9:00 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Dr. James Richardson	Proposed Budget for Studies
	D	Dr. Matthew Leone and Dr. James Austin	Power Point November Update
	E	Larry Struve	RAIN Presentation
	F	Terrance P. Hubert	Veterans Incarcerated Committee
	G	Terrance P. Hubert	H.R. 7149
	H	Terrance P. Hubert	Power Point Buffalo City Court Veterans Project
	I	Michial Nolan	The LZ Ridge Project
	J	Pat Hines	Justice Policy Institute and NCIA
	K	Tonja Brown	Letters on Agenda Item XVI-E
	L	Tonja Brown	Letter from Hager & Hearne
	M	Brett Kandt	Proposed Evidence Preservation Statute
	N	Teresa Werner	Parole & Pardon Denials
	O	Donald Hinton	Letter Re: Agenda Item IX
	P	Constance Kosuda	Letter
	Q	Mercedes Maharis	NV Prison Medical and Inmate Deaths