

**MINUTES OF THE  
ADVISORY COMMISSION ON  
THE ADMINISTRATION OF JUSTICE**

**OCTOBER 21 2014**

Senator Tick Segerblom, Chair, called the meeting of the Advisory Commission on the Administration of Justice to order on October 21, 2014, at 9:09 a.m. at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, 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)**

Connie Bisbee, State Board of Parole Commissioners  
Larry Digesti, Representative, State Bar of Nevada  
Mark Jackson, Douglas County District Attorney  
Catherine Cortez Masto, Attorney General  
Jorge Pierrott, Sergeant, Division of Parole and Probation, Department of Public Safety  
Richard Siegel, Legislative Chair, Inmate Advocate; ACLU of Nevada,  
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office

**COMMISSION MEMBERS PRESENT (LAS VEGAS):**

Judge David Barker  
Chuck Callaway, Las Vegas Metropolitan Police  
Greg Cox, Director, Nevada Department of Corrections  
Assemblyman Wesley K. Duncan, Assembly District No. 37  
Assemblyman Jason M. Frierson, Assembly District No. 8  
Justice James Hardesty, Vice Chair, Nevada Supreme Court  
Lisa Hibbler, Victims Advocate  
Senator Tick Segerblom, Chair, Senatorial District No. 3

**COMMISSION MEMBERS ABSENT:**

Senator Greg Brower, Senatorial District No. 15  
Phil Kohn, Clark County Public Defender

**STAFF MEMBERS PRESENT:**

Nicolas Anthony, Senior Principal Deputy Legislative Counsel  
Angela Hartzler, Deputy Administrator, Legal Division, Legislative Counsel Bureau  
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

**OTHERS PRESENT:**

John Johnson, Director, Progressive Democrats of Nevada  
Robert Harding, Northern Nevada Hopes  
Edward Bevilacqua, Director of Education, Larsen Training Centers  
Wes Goetz  
Brett George  
Natalie Wood, Nevada Department of Corrections  
Tom Ely, Captain, Tom Ely  
Steve Rickman, Senior Advisor, Office of Justice Programs Diagnostic Center  
Jessica Herbert, Diagnostic Specialist, The Diagnostic Center

Chair Segerblom opened the meeting at 9:09 a.m. and requested a roll call.

Ms. Hartzler called roll and a quorum was present.

Chair Segerblom opened Agenda Item III, Public Comment.

John Johnson, Director, Progressive Democrats of Nevada, said Nevada prisoners were given over 100 extra days in prison sentences for different menial violations. He said the public justice system needed correction. He said offenders needed to be properly educated and trained. He said most crimes were quality of life crimes. He said ex-offenders had a difficult time getting jobs so they returned to crime. He said they needed more money to fund programs to educate the offenders so they would not re-offend. He said he was from California and they had an educational system to rehabilitate the offenders and get them jobs.

Chair Segerblom said everyone wanted more money, rehabilitation, drug courts, and a diversion program.

Robert Harding said he was with Northern Nevada Hopes, a nonprofit clinic in Reno. He requested support for Naloxone legislation. He said there was a large issue with overdose in this state and Naloxone will revive somebody going through opiate overdose. He provided a list of national organizations endorsing the Naloxone legislation, [Exhibit C](#).

Edward Bevilacqua, Director of Education at Larsen Training Centers, said all of the students were on scholarship. He said they helped educate people while they were in prison and worked with sentencing judges.

Wes Goetz discussed segregation. He said he saw people put in segregation because they were working on a court case. He said it was harder to get law books if you were in segregation.

Brett George said he was 2 months out of High Desert State Prison. He was interested in Recommendation No. 1. He said he had a plastic ID card that he received along with a debit card when he expired his sentence. He said the plastic card he had was illegal and made his debit card illegal to use. He said getting a streamlined identification was very important.

Chair Segerblom asked Mr. George if he was unable to get an ID before he got out of prison.

Mr. George replied no, he had his High Desert ID card.

Mr. Cox said everyone had IDs inside the system. He said they did not prohibit them from taking the ID issued in prison. They wanted all of their inmates to have an ID when they were released. They worked with the Department of Motor Vehicles (DMV) for recognition of the IDs. He said he needed to see Mr. George's ID.

Mr. George said he had his debit card, but it was not a state valid license or identification card. When he went into a business, they did not accept the ID with the debit card so he was unable to use his debit card.

Chair Segerblom thought they had fixed that problem. He was sorry he had not received an ID issued by DMV that would be good for cashing checks or utilizing debit cards. He asked for a motion for the minutes.

Assemblyman Frierson moved to approve the minutes.

Justice Hardesty seconded the motion.

The motion passed.

Justice Hardesty opened the discussion on Recommendation No. 1, draft legislation requiring DMV to issue recognizable and useable photo identification for offenders. He said he thought the problem was the prison was doing the best it could, but the ID card was not working for people when they were released from prison. He said it needed further work.

Chair Segerblom said after each recommendation was discussed, they were going to vote on it. He asked if there were any comments regarding Recommendation No. 1.

Mr. Jackson read the recommendation and said he had trouble with the word useable. He said it could be argued the ID was useable, but not valid. He recommended the word valid be used in lieu of useable in the recommendation. He asked about the role of the DMV in issuing a valid ID to those offenders released from prison.

Mr. Cox said the ID provided to the offenders upon release was to be utilized at the DMV and recognized as an ID for obtaining an authorized ID through the DMV. He said the Nevada Department of Corrections (NDOC) did not have the authority to issue a state ID the DMV had that authority.

Chair Segerblom said he thought DMV was issuing the ID. He said he was working with the jails for people coming out of them to have a valid ID. He said with the modification of the word valid and the general concept of DMV issuing it, he called for a vote.

Mr. Frierson said the issue was crucial for dealing with recidivism and making people more productive.

Justice Hardesty added producing the cards was a cost to NDOC. He said it seemed the recommendation should include a request the money committees sort out the expense of the cards between the two agencies. He said the recommendation needed to include the money issue and reconcile the expense and the word valid was necessary.

Mr. Frierson moved to adopt Recommendation No. 1 with the modifications recommended by Justice Hardesty.

Justice Hardesty seconded the motion.

The motion carried.

Justice Hardesty opened discussion on Recommendation No. 2, a policy statement concerning language aspect issues. He said the U.S. Department of Justice (DOJ) sued and entered into consent decrees with a number of states about providing language access to the courts. Justice Hardesty said the main problem was providing access to those in need of support in civil cases. He said criminal cases had already been handled. The DOJ required language access in most administrative proceedings. He said it would be a huge cost to the State. He said Justice Michael Douglas provided the Commission with the Nevada State Court Language Access Plan. The Recommendation supports the Access Plan.

There were two other components needed for the Recommendation. The first was that the Legislature should further address how the State was going to respond to language access needs outside of the court system in the administrative proceedings.

The second item was the qualifications and supervision of interpreters. Justice Hardesty recognized the implementation was a problem. In some consent decrees in other states, an interpreter in a specific language was required at the expense of the court system. He said it was an ongoing problem and that the court system was trying to stay ahead of the issue so Nevada did not become a defendant in a case from DOJ. He said the

Recommendation asked to endorse the Court Access Plan plus two other recommendations. He said he thought there were some areas of unfairness in some of the consent decrees.

Justice Hardesty motioned for approval of the Nevada State Court Language Access Plan as presented by Justice Douglas and secondly called on the Legislature to further study the necessity for language access in civil proceedings including State administrative proceedings.

Mr. Frierson seconded the motion.

The motion carried.

Chair Segerblom said Recommendation No. 2 was approved as amended.

Justice Hardesty said Recommendation No. 3 discussed drafting legislation to establish a uniform pretrial risk assessment tool. He said they received information about the Ohio risk assessments. He said they looked into the status of pretrial risk assessment tools in the State. He said the recommendation was the State require a uniform pretrial risk assessment tool. He suggested the Commission recommend the adoption or requirement that the State have a pretrial risk assessment tool and make it required in all pretrial proceedings. He said the implementation date and the form of the tool were a challenge. The assessment tool could be established by rule of the Nevada Supreme Court, or the Legislature could defer to the courts to adopt it.

Justice Hardesty moved to establish a uniform pretrial risk assessment tool with implementation by the Supreme Court or lower courts to adopt the tool.

Chair Segerblom said he thought a uniform risk assessment tool needed to be used from the beginning to the end.

Chair Hardesty said the primary risk assessment tool being used had not been updated in about 20 years.

Mr. Jackson said that the Ohio Risk Assessment System Pretrial Assessment Tool (ORAS-PAT) under Tab C of [Exhibit D-1](#), [Exhibit D-2](#) said Washoe County's pretrial risk assessment was similar to Ohio's. He said Carson City's document was not a risk assessment form. He asked that no reference be made to the Carson City form. He said issuing letters or recommendations did not address the fiscal impact.

Justice Hardesty asked Mr. Jackson's opinion about the format of the risk assessment tool being the subject of Supreme Court rule as well as its implementation.

Mr. Jackson said he agreed the Supreme Court could do it by order through their administrative docket.

Justice Hardesty said it could also address the fiscal impact. He said everyone was a little uncertain how each rural county handled the risk assessments.

Ms. Bisbee encouraged using the ORAS-PAT or the Nevada version of it because both the NDOC and the Division of Parole and Probation (P&P) did a tremendous amount of work together using those tools. She said Ohio did not cost anything to use and it did go from beginning to end.

Justice Hardesty agreed with Ms. Bisbee.

Mr. Cox said he also agreed with Ms. Bisbee.

Mr. Duncan said having uniformity was important but caution needed to be exercised due to available labor.

Justice Hardesty said look at the risk assessment from the Presentencing Investigation (PSI) standpoint. The PSIs would be a better end product with the uniform risk assessment tools.

Mr. Frierson was concerned about the fiscal impact in a policy committee. He said do not create more work without the funds to pay for it. He said the Legislature would determine if there were resources available.

Chair Segerblom said if Washoe County was doing it, the Commission was doing a disservice to Clark County if they could not do it. They needed to find a way to fund it.

Justice Hardesty motioned that the Legislature require a uniform risk assessment consistent with ORAS-PAT and the court implement the use of the risk assessment tool in the courts throughout the State by rule from the Supreme Court.

Mr. Frierson seconded the motion.

The motion carried.

Justice Hardesty said the motion also took care of Recommendation No. 4. He said Judge Barker requested a pilot program and it was taking place.

Chair Segerblom asked if Judge Barker was talking with the Arnold Foundation.

Judge Barker replied yes.

Justice Hardesty said the next related discussion was Recommendation No. 7 in the Work Session Documents, [Exhibit D-1](#), [Exhibit D-2](#). He said it had to do with P&P's offender assessment overview and the concerns expressed. The concerns had to do with updating the assessment tool used by P&P. The second concern was the issue of restitution. He wanted to separate the two concerns. The first part was the assessment tool that was dated from 1991. He urged legislation requiring the instrument be updated to its current usage. He said whatever the physical impact was, it needed to be done. He added the quality of PSIs suffered from the issue.

Justice Hardesty recommended the State update the offender assessment tool to bring it current.

Mr. Pierrott said they looked into the system to determine whether they were able to make a change. He said they lacked funding to do the needed updates. They wondered if they should update the current tool rather than ORAS-PAT. He opposed making a motion and said it was premature to vote on it.

Justice Hardesty asked if it was premature because of the fiscal impact or premature because they could not decide on which assessment tool to use.

Mr. Pierrott said it was both issues. He said the fiscal impact was large. He said that ORAS-PAT was free to use once you had it, but it took money to implement and required training on the system. He said they were trying to determine whether they should go into that system.

Justice Hardesty said they were operating under an assessment tool that had not been reviewed since 1991 or 1992. He said whether it was ORAS-PAT or another system, he proposed that P&P be required to update their system.

Mr. Frierson said that as a policy consideration it was a good idea to modernize something more than 20 years old. He said they supported the concept of modernizing the way they did things, but also wanted to be able to pay for it.

Mr. Pierrott said they realized they had to look into other systems and see if they should modernize. He said they had to look at their own system to see if it can be modernized.

Chair Segerblom said it was just a proposal to the Legislature. He said if a bill were drafted, the Division of Parole and Probation (P&P) would have a chance to testify. He said the Commission needed to move forward with the concept because the current system was inadequate.

Mr. Jackson discussed the actual words used in the proposal. He wanted to be sure who would conduct the required review of the risk assessment tool. He said the recommendation as written required the review of the risk assessment tool.

Justice Hardesty said his recommendation required the Division to review and update the assessment tools and report to the next interim's Advisory Commission on the Administration of Justice.

Mr. Jackson said the boards he sat on used titles and not supporting material in the body of the proposal.

Justice Hardesty moved the Commission recommend to the Legislature that it require P&P to review and update the assessment tool and report back to the next interim Advisory Commission on the Administration of Justice (ACAJ).

Ms. Masto said she understood P&P also looked at updating its Offender Tracking Information System (OTIS). She asked how ORAS-PAT interacted with the pretrial assessments.

Mr. Pierrott said that was what they were trying to work out. He said they were trying to update and determine if the system was less costly. He said P&P's current Risk and Needs Assessment tool was validated in 2007 and they were doing well with what they had. They needed to determine if they needed to update to fit the needs of ORAS-PAT or if they can create their own system that will communicate with the other agencies.

Ms. Masto said part of what the Commission needed to do was make sure all the agencies were communicating through their technology. She said P&P was going to need monetary support to modernize their IT system. She said what Justice Hardesty was trying to do was ensure that we supported P&P so they can modernize their IT system and communicate with all the other agencies. She said she wanted part of the motion to ensure there was consistency between all the agencies.

Justice Hardesty said Ms. Masto was correct. The inability of the criminal justice system to communicate with each other through a uniform system was part of the frustration policy makers and the court had with the systems. He said it was important for the money committees to be aware of the future economy and efficiency of scale.

Chair Segerblom asked if more language needed to be added to Recommendation 7.

Mr. Jackson said they were going to be dealing with Recommendation No. 10, Drafting a Letter to the Governor requesting additional funding. He said it dealt with staffing, but they could include the modernization of the systems in that recommendation.

Ms. Bisbee said it seemed Recommendations No. 3 and No. 7 could be one recommendation. She said they were talking about different portions of the same thing. She said the first half of Recommendation No. 7 could be combined with No. 3.



Justice Hardesty said he did not disagree. He was targeting this particular tool because the other two used by P&P were validated in 2009. He said the Offender Assessment Tool was the one with which he was concerned.

Ms. Bisbee said her fear was if they did it as two separate issues, one thing could be chosen for pretrial and another chosen for risk assessment.

Justice Hardesty agreed with her and said it could be rolled into assessment tools consistent with Supreme Court adopted rules.

Mr. Jackson said the two risk assessment tools were closely related but not the same. He said the first one specifically targeted whether or not the person was a flight risk. The sentence hearing risk assessment tool from P&P had different factors in addition to the pretrial risk assessment tool. He was supportive of consolidation.

Ms. Bisbee said it was not the same form; it grew with each stage when things were added as the process progressed. She said it was the same system throughout and was not stagnant, but grew throughout the system until the person was reintegrated.

Natalie Wood, NDOC, said Captain Tom Ely was present and may be able to answer some of the questions in regard to OTIS and its future capabilities.

Mr. Ely said yes, they were looking to modernize the system. He said what they intended to do was incorporate whatever risk assessment tool they adopted into the technology so it was automated, easy to use, and accessible to other agencies using the same computer system or information including NDOC and the State Board of Parole Commissioners.

Ms. Masto said they were trying to communicate by modernizing their technology and whatever risk assessment tool used was consistent with the other agencies. She assumed they would look at ORAS-PAT as a system to modernize their technology.

Mr. Ely said they were looking at the risk assessment tool they currently used and validating it as well as ORAS-PAT. He said they were not in a decision mode right now.

Chair Segerblom said if the pretrial was one system, and parole and probation was the same system, putting a different system between the two would be problematic.

Justice Hardesty said the recommendation required a review and updating of the assessment tools and a report back to the ACAJ.

Justice Hardesty motioned to require P&P to review and update the assessment tools and report to the ACAJ and to do that by legislation.

Judge Barker seconded the motion.

The motion carried.

Justice Hardesty said the second part of Recommendation No. 7 focused on the concern existing since 2009 on efforts needed to improve collections on fines, fees, and restitution. He said Recommendation No. 18 was proposed by the Victims of Crime Subcommittee.

Ms. Masto said Recommendation No. 18 involved the affidavit of the renewal of judgment. She said they could not expand upon it. It was specific Bill Draft Request (BDR) language that came out of the Victims of Crime Subcommittee. She said it did not expire.

Justice Hardesty said the Legislature enacted legislation in 2009 with the goal of trying to improve on the collection of the monies. He said P&P was charged with collecting restitution and was not well equipped to handle it. He said P&P was not charged to do anything about the collection of fines and fees. He said it was unclear who ultimately had the responsibility for that. He urged the Legislature to adopt legislation identifying a primary responsible party for the collection of fines, fees and restitution and modify the language about assigning responsibility to the executive branch.

Ms. Masto said that was the second part of Recommendation No. 7. She said the Victims of Crime Subcommittee decided to take on the issue of exploring what was happening with the collection of the monies. They believed they were going uncollected. She said they realized they were dealing with the various courts around the State. She said the courts did not necessarily communicate with one another. The next step was seeking further assistance from the court system in gathering the information.

Justice Hardesty motioned to recommend the Legislature request the Supreme Court obtain the collections process from all of the courts and report back to the next interim ACAJ.

Mr. Frierson seconded the motion.

The motion carried.

Justice Hardesty said they might want to take up the related subject of Recommendation No. 18, legislation relating to the enforcement of restitution. He said it was from the Attorney General's subcommittee. It was a specific legislative change that would be of enormous help to victims of crime.

Ms. Masto said Recommendation No. 18 was very specific legislation. She said when there was a criminal restitution order, existing law required an affidavit of renewal of

judgment be issued to collect on restitution contained in existing criminal judgment once the defendant was delinquent in paying restitution. She said the recommendation was modeled after laws in other states that changed the provision so the criminal restitution order was enforceable as a civil judgment and did not require renewal and the restitution did not expire until it was paid in full. She said it was a benefit to the victim. She said the Attorney General's office had vetted the legislation.

Attorney General Masto motioned to draft legislation relating to the enforcement of restitution in Recommendation No. 18.

Mr. Jackson seconded the motion.

Mr. Siegel asked about the existing law requiring a new order for restitution and said it had relevance for due process. He assumed there was a reason why they required a renewal of the order of restitution.

Ms. Masto said she did not go into the history of *Nevada Revised Statute* (NRS) 17.214 to figure out why it was in statute in the first place.

Justice Hardesty said the existing law specified a restitution order and constituted a civil liability upon the defendants' discharge from probation. The renewal period made that consistent with a civil judgment. He said the legislation eliminated the 6-year renewal requirement in the case of a restitution order entered for a defendant to pay in a criminal judgment. The due process rights were addressed at sentencing when the restitution figure was determined. He said the purpose was to eliminate the 6-year renewal requirement imposed on civil judgments because the concept was different when dealing with restitution for victims in a criminal case. He said district courts in the State started requiring criminal defendants sign civil confessions of judgment. He said the problem was a civil judgment was completely different and aberrant to the criminal statute that made a restitution order a collectable judgment.

Judge Barker said he agreed completely with Justice Hardesty's analysis. He did not see a substantive due process issue.

The motion carried.

Justice Hardesty opened discussion on Recommendation No. 10, additional funding for P&P, NDOC and State Board of Parole Commissioners. He said it was related to the subject matter just discussed. He said he would expand the recommendation to include computer and technical assistance. He said the criminal justice system was underfunded for too long. He urged approval of Recommendation No. 10.

Chair Segerblom asked if it was a letter from the Commission.

Justice Hardesty said it was a recommendation to the Legislature that it do it and a letter to the Governor requesting his follow-through on the recommendation.

Mr. Frierson supported the concept although he had some concerns related to P&P. He said additional funding was a good idea and necessary.

Chair Segerblom said he did not see how they could demand P&P do things without the resources to be able to do them.

Justice Hardesty motioned to approve Recommendation No. 10 with the added recommendation to include funding for computers and technical services.

Mr. Frierson seconded the motion.

The motion carried.

Justice Hardesty opened discussion on Recommendation No. 12, specifically the last item, No. H. He said it referred to a presentation regarding the State of Oregon's public safety reform measures. He said the Pew Charitable Trusts invited Legislators and the court to participate in further discussion about how Pew can assist the State in its examination of the criminal justice system. He said much of what was listed in Recommendation No. 12 needed deferring until after the next Advisory Commission in the next interim, with one exception. The exception concerned the specialty courts. He stressed the importance of specialty courts to the criminal justice system. He said in Clark County there was a 4-month delay before access to the specialty courts. He said Washoe County was going to start cutting off access to specialty courts in January.

Justice Hardesty moved to endorse a budget request made by the Nevada Supreme Court to add \$3 million to the funding of specialty courts in Nevada and allow for expansion of the specialty courts to reach the people who will benefit from the services.

Judge Barker said he was not allowed to send individuals to the drug court program. He said it was no longer a 4-month delay; the door was closed due to lack of staff. He said the minimum opening was in January. He said it was a critical need.

Ms. Hibler echoed the sentiments heard from the others.

Mr. Siegel approved specialty courts from the beginning of the ACAJ. He was concerned they were being asked to set aside the overall support for justice reinvestment initiatives.

Justice Hardesty said his intention was to defer action until after Pew provided further information in the upcoming meetings in November. He said they were scheduled for assistance from Pew in the next year.

Mr. Siegel said he wanted to be sure the justice reinvestment was alive and the ACAJ continued support of it.

Mr. Callaway supported Justice Hardesty. He was not sure everything Oregon put in place for reform was effective. He was concerned about No. 3 under A, Sentence Reductions for Robbery in the Third and Identity Theft Offenses. He supported funding for specialty courts, but not the entire Recommendation.

Chair Segerblom said the concept was for the State to fund up-front money programs that will save millions of dollars. He said the concept was to get the up-front money, spend it, and then save the money down the road.

Justice Hardesty motioned that the ACAJ urge the Legislature to support the Supreme Court budget requesting \$3 million for the specialty courts, Item H in Recommendation No. 12.

Judge Barker seconded the motion.

The motion carried.

Mr. Siegel wanted an opportunity for the ACAJ to endorse the concept of justice reinvestment and indicate to the Legislature how it was working around the country. He said the November 17 meeting could stress that.

Chair Segerblom said the problem was that this was the last meeting of the ACAJ. He said it needed a motion for the ACAJ to express their support.

Mr. Siegel moved that the ACAJ support the concept of justice reinvestment and work with the Legislature to seek cooperation with relevant nonprofit organizations in furthering that agenda.

Mr. Jackson said the problem was the concept. He was not sure what the concept included, but based upon limited presentations there was not enough time to vet the concept. He said he could not support the overall broad concept at this time.

Justice Hardesty said the ACAJ voted to support a request of justice reinvestment and the Pew Charitable Trusts to support Nevada in its examination of criminal justice reforms. He said it did not involve any specific reforms. He suggested the ACAJ reaffirm the request to continue to seek support for justice reinvestment and Pew to assist Nevada in research and gathering data for criminal justice reforms.

Mr. Siegel revised his motion to represent Justice Hardesty's comments.

Mr. Jackson seconded the motion as stated by Justice Hardesty.

The motion carried.

Justice Hardesty suggested they move to Recommendations No. 14, No. 15, No. 16, No. 17 and No. 19. They could then go back to recommendations from prior meetings. He the ones referenced were areas that were statutory referrals by the Legislature to the ACAJ.

Justice Hardesty said No. 14 was the issue about a letter to the State DNA Database (Forensic Science Division of the Washoe County Sheriff's Office) and the Central Repository of Nevada Records of Criminal History, encouraging them to research and review the seven states with automatic expungement for arrestee records.

Justice Hardesty motioned to provide a letter as stated in Recommendation No. 14.

Mr. Frierson seconded the motion.

The motion carried.

Justice Hardesty motioned to support Recommendation No. 15 from the Subcommittee to Review Arrestee DNA regarding budget funding for a statewide computer base to track criminal records and adjudications.

Mr. Frierson seconded the motion.

The motion carried.

Justice Hardesty said Recommendation No. 16 included a policy statement encouraging all stakeholders work together to develop a statewide criminal justice computer database. He said they should adopt a policy statement that all stakeholders make their computer database systems compatible.

Mr. Frierson said he knew there were discussions in the Assembly Committee on Government Affairs requiring IT to coordinate all across the State. He supported the concept.

Justice Hardesty motioned to mandate the stakeholders discuss their computer systems.

Mr. Frierson seconded the motion.

The motion carried.

Ms. Masto moved to adopt Recommendation No. 17, drafting legislation authorizing the NDOC to provide confidential information to the Attorney General's office.

Mr. Cox seconded the motion.

The motion carried.

Ms. Masto motioned to approve Recommendation No. 19, authorizing the Victims of Crime Compensation Fund be used for the reimbursement of counties for the cost of sexual assault examination up to the cap identified in the legislation.

Mr. Duncan seconded the motion.

Mr. Siegel commented he noticed there were many rape kits that had not been examined in Nevada. He asked if this would deal with the major deficit that seems to exist with rape kits not being examined.

Ms. Masto said no, it did not address that issue. The recommendation was after the assault had taken place and referred to the actual cost of the examination the victim was entitled to receive.

Mr. Siegel asked if she was aware of the issue of the unprocessed rape kits.

Ms. Masto replied no, she was not aware of that information.

The motion carried.

Justice Hardesty said the next topic was Recommendation No. 6. He said he was informed by Reno Municipal Court Judge Dorothy Nash Holmes that Mr. Frierson's Interim Committee had taken some action or recommended something about this.

Mr. Frierson said there was a proposal to the Interim Legislative Committee on Child Welfare and Juvenile Justice to amend NRS 125.480 regarding the best interests of the child. The Committee chose not to move forward with the recommendation.

Ms. Masto said she could address items 1 and 2 in Recommendation No. 6 as related to the Naloxone legislation and the Good Samaritan Law. She said a State senator was interested in introducing legislation in respect to item No. 2, the Good Samaritan Law. She was also working with an Assemblyman to incorporate some of the Naloxone laws into a BDR. She said there were products on the market that taught someone how to use the Naloxone pen.

Chair Segerblom asked if the Advisory Commission on the Administration of Justice (ACAJ) supported the concept of the Recommendation. He asked about the other parts of the Recommendation.

Mr. Jackson said he was in favor of No. (1) and No. (2). He did not support No. (3) due to lack of information. No. (4) was pulled by the Subcommittee and No. (5) was a law on the books, but he did not know anybody prosecuting under this section for somebody failing to complete treatment. He said he was not opposed to amending NRS 484C.400. He did not oppose No. (6) being an authorization rather than a requirement.

Justice Hardesty asked Mr. Jackson if he supported a motion recommending to the Legislature No. (1), No. (2), No. (5), and No. (6) of Recommendation No. 6.

Mr. Jackson replied yes.

Mr. Frierson had concerns about both No. (5) and No. (6). He said No. (5) made a failure to complete a separate crime, while at the same time making many trafficking offenses separate civil infractions as opposed to crimes. He was concerned about amending it to create an additional crime.

Justice Hardesty said No. (5) removed it as a crime. He said the proposal was that it no longer be a crime.

Mr. Frierson said with respect to No. (6) a small amount of marijuana required a program of treatment rehabilitation. He was concerned what the alternative was if they did not require treatment in some circumstances.

Justice Hardesty said for a second offense a small amount might not require treatment.

Chair Segerblom said the motion was that the ACAJ support No. (1), No. (2), No. (5) and No. (6) of Recommendation No. 6.

The motion was seconded by Justice Hardesty.

The motion carried.

Justice Hardesty said the next Recommendation was No. 8 and it was proposed by others.

Chair Segerblom opened discussion on Recommendation No. 11, draft legislation to extend sentence credits for category B felonies.

Steve Rickman, Senior Advisor of The Office of Justice Programs Diagnostic Center, said he was present to review and make recommendation on the category B felony offenses. He said they interviewed many members of the Commission, judges, sheriff department personnel and other stakeholders. They highlighted four areas of interest. He said there was some concern about drug trafficking category B statutes. He said there were concerns raised about burglary category B statutes. The third concern was



finding ways to expand the eligibility pool for category B offenders while minimizing any public safety concerns. The fourth consideration was to find a way to provide judges with more discrimination in determining eligibility for good time credits for category B offenses. He said they looked at national trends and best practices to construct their recommendations.

Mr. Callaway asked if the research was complete or still ongoing.

Mr. Rickman said the ongoing research was looking at the potential impact of the recommendations if enacted. He said they wanted to be more precise in their estimates.

Mr. Callaway said the recommendations came from stakeholder meetings, discussions with members of the Commission and other stakeholders, not from research by Dr. James Austin of the JFA Institute.

Mr. Rickman said they took input from the members of the ACAJ and others as well as practices from other states.

Mr. Jackson said there were three recommendations in Recommendation No. 11. He said initially there were different proposals viewed and an email sent to people involved in the process. He said under recommendation I of No. 11, it was a suggestion to move all category B felonies with the 1-to-6 year sentencing range to a category C felony with a 1-to-5 year sentencing range. He said one of the offenses listed was not a crime but an enhancement. He said the remaining six offenses had multiple errors. He said there were three lists from the Diagnostic Center and many things on the list were wrong. He said nobody he knew was involved in the categories being submitted. He said he could provide a different list of category B felonies that might be moved to category C. He said the ACAJ needed to focus on areas where everyone could come together. He said the ACAJ should not extend AB 510 credits to all category B felonies as defined by the Diagnostic Center.

Chair Segerblom asked what category B felonies he recommended for AB 510 credits.

Mr. Jackson said he was still in discussion concerning which categories to include.

Mr. Callaway said he took part in the stakeholder meeting. He said he was open to the idea of potentially giving discretion to the judges based on the total circumstances of the case. He said an issue in the discussion was lack of depth in the data. He said Dr. Austin was studying problem. He did not agree with changing the current trafficking statute. He said there was legislation last session dealing with commercial burglary versus theft for petit larceny. He said there needed to be more research and details as far as the total circumstances of the offenders. He said he was open to discussion on the 1 to 6 year category. He was opposed to Recommendation No.11.

Jessica Herbert, Diagnostic Specialist with the Diagnostic Center, clarified why they distributed a list of three categories in recommendation No. 1 of Recommendation No. 11. She said it was a test of getting feedback in order to clarify.

Mr. Rickman said the actual recommendation they submitted did not include the list of those statutes where physical harm took place. He said the category B offenders, excluding those with physical crime, should be excluded from eligibility for good time credits. He said they suggested judges be allowed to look at individual circumstances of each case and apply their discretion whether or not an offender was eligible for credits. He said it did not guarantee the credits, it only made them eligible.

Justice Hardesty asked Mr. Jackson if the Nevada District Attorney's Association (NDAA) explored the concept of whether judges at sentencing could determine whether a defendant in a category B felony case could say the defendant was eligible for good time credit.

Mr. Jackson replied they discussed all six of the scenarios proposed under No. 5, including allowing judges to evaluate extenuating or mitigating circumstances on a case-by-case basis to apply good time credits to category B offenders. He said it raised questions he could not answer.

Justice Hardesty asked if the NDAA was interested in exploring the concept of a judge having the authority to extend category B defendant eligibility for good time credits. He said the NDAA could identify category B offenses they thought should be shifted to category C. He said the concept of allowing more judicial discretion on eligibility might be worthwhile for the group to explore.

Mr. Jackson said he agreed the concept should be explored. He said it should exclude violent sex offenses and DUI offenses.

Mr. Frierson said the list of potential crimes to be considered was an effort to look at what we already had. He said in recommendation No. I, good time credits were applied to category B felonies that did not fall under NRS 202.876, violent or sexual offenses.

Judge Barker asked about Recommendation No. II. He said he liked being given more discretion. He asked if a judge would ask mitigating circumstances or make a finding of a threat of physical harm or potential for future physical harm. He asked if both would be a component of the recommendation.

Mr. Rickman said the proposal was at a conceptual level. He said extensive criminal history needed exploration.

Judge Barker said Recommendation No. II on drug trafficking suggested scrapping the low, the mid, and have the high remain a category A. He said anything less than 28

grams of a schedule I controlled substance would be a category D offense or category E.

Mr. Rickman said they did a broad scan of the drug trafficking offenses in other jurisdictions and current trends.

Ms. Herbert said she looked at 26 other states that had made some adjustments over the past 5 years to their drug trafficking clauses. All the states adjusted their thresholds to increase the weight volume in order to target the criminal offenders. They defined trafficking as anything over 30 grams.

Judge Barker asked if any states that had a similar situation where there was a non-probation offense for four grams or in that area.

Ms. Herbert said some first time offenders would go through a rehabilitation plan in some states. She said many states had gaps occurring over the amount. She said they changed their weight ranges and adjusted their sentencing ranges to insure the gap did not exist.

Judge Barker asked about the distinction between burglary and theft. He asked about a distinction for a business victimized during off-hours.

Ms. Herbert said it would remain as a burglary if it was a forced entry regardless of the time of day it occurred. She said two or more petit larceny convictions in the past 7 years or a prior felony offense were the exceptions.

Mr. Rickman said they were asked specifically to look at burglary and the drug trafficking laws by ACAJ members. The research showed Nevada's current statutes were more severe than other states. He said they did not find another jurisdiction that treated shoplifting thefts as burglaries.

Mr. Frierson said he was thrilled Assembly Bill (A.B.) 415 was brought up and said it was their first effort at justice reinvestment. He said it attempted to address several things. He mentioned the drug trafficking levels proposed in AB 415 that raised the minimum levels for those crimes. He recommended the ACAJ address nomenclature. He suggested possession of 10-to-20 grams be mid-level drug possession, a category C level. He said possession of 20-to-40 grams would be high level possession. He said 40 or more grams should be considered trafficking.

Mr. Sprately said Recommendation No. 2 specifically called out NRS 453.3385, trafficking in controlled substances and schedule 1 substances except marijuana. He recommended they not accept the Recommendation as it was worded today. He said he did not have a frame of reference as to whether four grams was a huge amount or very little.

Mr. Callaway asked if someone went to other states and asked law enforcement what the impact was on public safety. He wanted to know how long the laws had been in effect. He said it was too soon in some areas to know whether it was a positive or a negative impact. He said he found it ironic that in one recommendation they looked at was a Good Samaritan Law for people who overdosed on controlled substances and another recommendation looked at lifting trafficking laws to a higher level.

Ms. Herbert said she agreed there was concern across the criminal justice agencies regarding changes to laws and how they affected public safety. She said New York and New Jersey made changes in their drug courts and drug thresholds and saw a decrease in crime of 26 percent in the last 5 years. She said they reviewed the research of other states and the nonprofit associations and the majority of research showed there was more money for reinvestment and no negative correlation to crime offenses.

Mr. Jackson commented on the violent and sexual offenses under NRS 202.876. He said they were defined there and it was limited to the duty to report violent and sexual offenses against a child under the age of 12. The statute stated listed 18 category B felonies that were violent offenses. He said it did not apply to all crimes across Nevada.

Chair Segerblom asked Mr. Rickman if his organization was still looking at the costs.

Mr. Rickman replied if they enacted the recommendations, it would create cost avoidance by making a broader part of the population eligible for good time credits and reducing aspects of burglary and drug offenses to category C.

Justice Hardesty said he wanted to follow up on the discussion concerning Recommendation No. 1. He said there needed to be guidance from the ACAJ as to where there might be some potential relief from length of stay in the prison system.

Justice Hardesty motioned the Legislature continue to study use of good time credits for certain category B felonies, allowing the judges to determine eligibility and sentencing.

Mr. Siegel supported Justice Hardesty and said it represented a very low threshold of the kinds of things presented. He said in 2005 it was projected Nevada was facing a \$2 billion bill for new prisons if it continued the way it was going in 2005. He said AB 510 and other measures prevented that from happening. He said the growth of category B felons was threatening to restore the problem from 2005. He said the sentencing structures were done with little consideration. He said it was the ACAJ's responsibility to be responsible for the welfare of the State as a whole. He said resources needed to be shifted away from criminal justice. He asked for some flexibility from law enforcement.

Mr. Frierson seconded the motion.

The motion carried.

Mr. Cox thanked Mr. Rickman and Ms. Herbert for their work. He said the judicial discretion component was something many people agreed with and studied. He said the State and County were growing again. He supported justice reinvestment. He said it was important the State continue to look at the data.

Justice Hardesty thanked Mr. Rickman and Ms. Herbert. He said it was important for the Commission to develop its work product for there to be clarification on their understanding of Nevada's criminal code. He said the differences were significant. He said if the underlying statute was misunderstood, it was problematic. Justice Hardesty recommended discussions with Mr. Jackson and Mr. Kohn for the scope of the statutes.

Chair Segerblom asked if there were recommendations the ACAJ needed to consider beyond the ones already discussed.

Mr. Siegel asked if they were going to consider the medical marijuana issue.

Chair Segerblom said his concern was if there was a lot of objection, it was not worth deliberating over it. He opened discussion on Recommendation No. 13.

Justice Hardesty said there were suggestions from other people. Mr. Witherow of NV Cure proposed a suggestion regarding hepatitis C testing. He said he did not have enough information on it nor was he sure what the situation was concerning the issue.

Chair Segerblom said he promised a hearing on the issue in the Legislature.

Justice Hardesty said the other proposal was Recommendation No. 21, regarding solitary confinement. He said it was a study concerning detention and incarceration. He said he was not entirely clear what the specific recommendations identified. It had to do with solitary confinement and there was a disagreement about whether that existed in Nevada or not.

Chair Segerblom said it was a bill he was working on with Ms. Spinazola. He said he would come up in the Legislature.

Chair Segerblom asked Mr. Jackson if there was anything about Recommendation No. 13 he could support.

Mr. Jackson said he brought up the issue about lack of testimony and none of the information was vetted through the ACAJ. He said it was controversial in respect to law enforcement, prosecutors and victims of crime. He said he wanted to drill down into the information. He said there was a report from Rocky Mountain High-Intensity Drug Trafficking Areas in Colorado discussing the ill effects of recreational use. He said there

was too much to explore that had not been vetted by the ACAJ. He preferred they take no action on the Recommendation.

Chair Segerblom asked if Mr. Siegel wanted to insist on a vote on the issue.

Mr. Siegel replied no, he did not want to do that. He commented on Justice Hardesty's remarks on hepatitis C. He said prisoners were dying from it. He said it was a necessary area for them to cover medically and it was constitutionally protected. He said the ACLU had evidence this was an area that was not adequately covered.

Chair Segerblom said he would save the marijuana issues for the bill he will present in the Legislature. He said another bill they had not discussed was Recommendation No. 5, drafting legislation to establish a Legislative Corrections Ombudsman. He said he would hold the discussion for legislation. Chair Segerblom thanked Mr. Anthony for all of his exceptional work.

Ms. Bisbee asked if the ACAJ was going to address anything on Recommendations No. 8 and No. 9.

Chair Segerblom said there was a bill about making traffic violations a civil infraction rather than a criminal offense. He asked if anyone was opposed to Recommendation No. 9.

Mr. Sprately said he was opposed to discussing the Recommendation at this time.

Chair Segerblom said Recommendation No. 8 was the eyewitness testimony,

Mr. Sprately said the discussions had been held and all the agencies were working with Rebecca Brown from the Innocence Project, on model policies at the agencies. He said they did not need legislation at this point.

Mr. Siegel asked if there was a bill for the ombudsman issue. He said there was evidence it was a trend around the country and was saving states significant amounts in expensive litigation. He said every state had prison legislation as one of its major areas of legislation.

Chair Segerblom replied yes, it would be a bill. He opened the meeting for public comment.

Mr. Johnson said he would read something from one of the students..."the difference between a category C, D, and B felony when referencing to non-violent drug offenses really makes no sense to me. I was convicted of transporting of a controlled substance, less than four grams, and given a category B felony. Now, if I had taken a deal for possession of a controlled substance with intent to sell, it would have been a

category C, I would have been eligible for parole 8 months ago. What is the difference between the two charges other than the language. I think low level non-violent drug offenses should not fall under category B felonies.”

Mr. Johnson said the letter talked about what the ACAJ had just debated. He said the person was using the marijuana for his own use. The writer thanked Director Cox for the programs and Lt. Spratley. Mr. Johnson commented on the cost of prisons. He said stop charging low level offenders with high level crimes and it would save money in incarceration rates.

Chair Segerblom thanked everyone for serving on the ACAJ.

Justice Hardesty moved to extend his thanks to Nick Anthony. He said the ACAJ should convey to LCB that Mr. Anthony was a fine lawyer and staff person. He motioned the Commission commend him for his work.

Chair Segerblom seconded the motion.

The motion carried.

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Chair Segerblom adjourned the meeting of the Advisory Commission on the Administration of Justice at 1:09 p.m.

Respectfully Submitted:

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Olivia Lodato, Interim Secretary

Approved:

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Senator Tick Segerblom, Chair

Date: \_\_\_\_\_



<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
A		Agenda
B		Attendance Roster
C	Robert Harding	National Organizations Endorsing Naloxone
D	Nick Anthony	Work Session Documents <u>Exhibit D-1</u> <u>Exhibit D-2</u>