The meeting of the Advisory Commission on the Administration of Justice was called to order by Justice James W. Hardesty, Chair, at 9:04 a.m. on August 18, 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.

COMMISSION MEMBERS PRESENT (CARSON CITY):

Justice James W. Hardesty, Nevada Supreme Court, Chair
Assemblyman John C. Carpenter, Assembly District No. 33
Bernard W. Curtis, Chief, Division of Parole and Probation
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims’ Rights Advocate
Senator Steven A. Horsford, Clark County District No. 4
Phil Kohn, Clark County Public Defender
Arthur Mallory, Churchill County District Attorney
James Miller, Sheriff, Storey County
Catherine Cortez Masto, Attorney General
Assemblyman David Parks, Clark District 41
Dorla M. Salling, Chair, State Board of Parole Commissioners
Richard Siegel, President, ACLU of Nevada, Inmate Advocate
Howard Skolnik, Director, Department of Corrections

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Raymond Flynn, Assistant Sheriff, Las Vegas METRO
Douglas Herndon, Judge, Eighth Judicial District Court

COMMISSION MEMBERS ABSENT:

Senator Mark Amodei, Capital Senatorial District

STAFF MEMBERS PRESENT:

Janet Traut, Senior Deputy Attorney General
Commissioner Hardesty opened with remarks about the meetings the Commission had conducted. He said time and effort went into reviewing material presented to the Commission in the past year. Many topics were presented to the Commission and now they needed to vet some of the recommendations and suggestions offered to them. He reviewed the Agenda. He thanked the Legislative Counsel Bureau, particularly Risa Lang and Angela Clark, for their efforts for the meetings. He offered an overview of the materials in the binders the Commissioners received. He said Assembly Bill (A.B.) 510, (Exhibit C) Senate Bill 471 (Exhibit C-1) and Senate Bill 4, (Exhibit C-2) were also included in the folders. He also provided information from previous meetings. There were several new items received since the last meeting. He said Agenda Item XVI, Biological Evidence, had a memorandum from Brett Kandt, information on that topic, and a Bill Draft Request, (Exhibit T). Chair Hardesty mentioned he scheduled two meetings in order to conclude the work listed on the Agenda. He said A.B. 508 required the Commission to report its findings and recommendation by September 1, 2008. However, he received information the Commission’s report should be submitted to the Legislature in a single report. He suggested submitting a letter to Mr. Malkiewich on behalf of the Commission reporting on the actions taken today and on August
25, 2008, and further actions expected this fall. He said the final report would be submitted in November as a single, bound report. He said BDRs proposed this week and the following week needed to be in motion before the end of the month. In addition, later suggestions might become the subject of committee BDRs.

Chair Hardesty asked for corrections or modifications of the minutes of July 7, 2008. Commissioner Siegel asked Commissioner Flynn to review his comments on page 25. He said he doubted the statement was entirely accurate. Commissioner Flynn said he recalled saying he felt the Commission needed to focus on felonies and gross misdemeanors and the Sheriff and Chiefs Association was fine with traffic laws as currently written.

Commissioner Mallory moved approval of the minutes. Commissioner Curtis seconded the motion. The minutes were unanimously approved.

Chair Hardesty requested Dr. Austin include his presentation under Item V of the Agenda with his monthly report. Chair Hardesty said information the “Truth in Sentencing” Subcommittee had received was included in Item V.

James F. Austin, Council of State Governments, President, JFA Institute opened his discussion with a PowerPoint presentation, “Nevada Truth in Sentencing and Criminal Justice Trends Report,” (Exhibit D). Dr. Austin said he worked as a team with members from the University. He said he was transitioning his responsibilities to the University of Nevada. He opened his discussion with the key criminal trends in Nevada. He said it was difficult to get basic data from the key criminal justice agencies. The information was there, but people are not in the habit of routinely sending information to an outside entity. The information was vital in order to avoid problems. He said he had less complete information this month. He showed the Commissioners the flow chart he had been showing them month after month and things remained fairly stable. He said the parole population had a slight decline and the probation population was increasing. He said based on the demographics of Nevada growth was expected. He showed a chart from Washoe County Jail. He said the chart showed the bookings for the past three years and their daily population was below what it was a year ago. He said Clark County Jail’s population was also included. He said their jail population was also lower than what it was a year ago. He said the chart should have reported crimes, arrests and court filings.

Commissioner Hardesty said in the Washoe County Jail the daily population was those in custody and did not reflect the number of individuals on house arrest or other form of alternatives to incarceration. He said there were approximately 600 to 800 more defendants. He asked Dr. Austin if that number was also stable. Commissioner Hardesty asked Commissioner Flynn if Clark County Jail had alternative supervision in place.
Commissioner Flynn stated they did and he reported to the Commission it was approximately 200 to 300 on alternative sentencing. The numbers were stable. Commissioner Hardesty said a discussion was needed to determine why there was such a substantial difference between the numbers in Clark and in Washoe. Commissioner Flynn asked if he meant why Washoe County had a larger number of people on alternative sentencing than Las Vegas. Commissioner Flynn said when they studied the differences in jail populations, they found Washoe County had a much higher population of sentenced inmates. He said the majority of inmates in jail in Clark County were presentence. Dr. Austin said approximately 1,000 inmates in Washoe were sentenced to the jail. He said approximately 1,000 of the 3,400 in Clark County were sentenced, which meant two thirds were pretrial. Commissioner Flynn said Clark County figured approximately one third. Dr. Austin said there were 236 that were home detention or day-reporting.

Dr. Austin said they had data from Washoe and Clark County. He said it was a matter of getting the information submitted in a timely manner to the University of Nevada. He said the larger police agencies were still missing reported crime numbers and arrest numbers. Commissioner Hardesty said court filings were also missing. Dr. Austin showed the prison population had trended down to the budgeted line, Exhibit D. Commissioner Hardesty asked Commissioner Skolnik if he knew what the July 31st prison numbers were.

Commissioner Skolnik said he had the August 14, 2008 number which was 13,022 institutional, 13,072 in-house and 13,512 in total.

Dr. Austin showed the next graph in his PowerPoint showing the probation population trends from January. He said minor changes looked large due to the scale of the graph. He said the population was stable. The parole population trended downward as shown in his graph, Exhibit D. He said it was a slight drop in August. The total parole and probation categories by offenses A through E were shown on the next graph. Category B was the largest category supervised under Parole and Probation services.

Dr. Austin said he had a ranking of 40 states, provided to him by the Virginia Sentencing Commission, of three year recidivism rates, Exhibit D. He said Nevada ranked in a tie for the tenth lowest rate. He said it did not measure rearrest or reconviction. Nevada was below 30 percent in recidivism rates. He referred to the next chart showing prisoners released in 1999. Of the 5,375 people released, 27.1% came back to prison. Approximately one half of those returned for a new felony conviction. The other 14% were returned for technical parole violations. Dr. Austin said the length of stay measured in increments of six months, showed a high rate for short-termers, but after that it remained the same. He said those returning most often, 35%, were coming back for a technical violation. Criminologists’ said longer stays had little change on recidivism rates. Dr. Austin next referred to a three year analysis done by the Department of Justice looking at three year rearrest rates. He said the length of imprisonment
had little effect on recidivism. He said background, attributes, participation and completion of programs did affect the rates.

Commissioner Carpenter said in Nevada prisoners staying only twelve months returned, but over twelve months not so many of them returned. Dr. Austin said the 35% was made up of technical violations and the other was for a new felony conviction. He said people with short sentences tended to be a different type of person than those with longer lengths of stay. Commissioner Carpenter asked what the technical violations were that returned them to prison. Dr. Austin said he did not know the violations. He said in a previous study he did, multiple violations occurred which centered on absconding, drug testing and failure to obey employment or treatment. He said multiple things triggered the violation. Commissioner Carpenter asked if there were any studies of those returned to prison for another year or two and whether it changed their behavior. Dr. Austin said there were several studies. He said a “short hit” of reincarceration, 30, 60 or 90 days, seemed a current trend. He said the “short hit” was very effective. He said legislation needed to be considered. Commissioner Carpenter asked if they were returned to the general prison population or were there special camps. Dr. Austin said in some places they went to designated facilities and in other places space was leased in the local jails. He some other places built facilities designed for this purpose.

Commissioner Horsford asked about the technical violators who violated because of failure to participate in employment, substance abuse or counseling programs. He asked if they were mandated to participate, were they able to access it. Dr. Austin said he did not know.

Commissioner Salling said the Board worked with Dr. Austin on an Intermediate Sanction Grid and with the Division. She said they can give them the short hit, but the problem was the prison had to have someplace short-term to segregate them. She said it was a labor intensive effort for Parole and Probation. She said funding was needed for success.

Chair Hardesty said a challenge for the Commission was the “short-hit” issue and whether the Commission believed it was a reasonable approach. The second issue had to do with the length of stay issue; did the length of stay impact the recidivism and return rates. He said the numbers showed length of stay did not and it added cost to the State. He said the question was what an appropriate length of stay was when conduct was criminalized under the current criminal codes. To the extent length of stay was not affecting recidivism rate, it might be worthwhile for the Legislature to look at that subject. He said it might also be important for the Legislature to look at the sentence lengths it adopts when it criminalizes behavior.

Commissioner Mallory said length of stay was a factor as far public safety was concerned. He said the chart showing states with low recidivism rates might have prisons where people do not want to go back to the prison. He said public safety, victims’ rights and protecting people who are not committing crimes should always be in the forefront of discussions.
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Dr. Austin said he agreed. He said the correctional system had people who were very high risk to other people if not supervised or incarcerated. The “trick” was minimizing the intervention with the low-risk people and spending more money on the high-risk people. He said Nevada had risk instruments at both probation and parole which helped identify the high-risk people. He said the statistics showed Arizona with the lowest recidivism rate. He said that was an artifact of their sentencing structure which requires 85% of their sentences in Arizona. He said California’s higher recidivism rates were due to them being very tough on parolees. He said they had the highest parole violation rate in the world. Dr. Austin said they would shift to the Truth in Sentencing study, (Exhibit D).

There were three objectives to the study for the Legislature, Exhibit D. He said one was looking at the impact of 1995 legislation on correctional populations, evaluating current sentencing practices and third making recommendations for the Legislature to consider in the next session. Dr. Austin said one of the major objectives of the 1995 truth in sentencing bill was setting minimum sentences that would not be reduced by good time credits. He said the minimum could not exceed 40% of the maximum sentence. The maximum drives the sentencing now. There could not be a minimum below the 40% threshold; on a ten year sentence the minimum cannot be lower than 4 years. He said sentencing was anchored by the maximum; then worked back to the 40% minimum. In the 1970’s people were able to get to the Parole Board sooner. He said it was to eliminate prison as a sanction for the Class E and then moved offenses around in various classes. Dr. Austin referred to the language from the 1995 legislation. He said most of the action was in Category B. Dr. Austin said there were very different sentence ranges for similarly situated offenders. He summarized the impact from “truth in sentencing.” He said it was designed to lengthen the stay in prison. He said the prison population grew, but parole and probation populations had not grown. Dr. Austin expounded on the objectives and summary listed in his Power Point presentation, Exhibit D.

Dr. Austin said there were two types of sentencing disparity. He said one was called disposition and the other form of disparity was duration.

Matthew C. Leone, Ph.D., Grant Sawyer Center for Justice Studies, UNR, said the goals of the presentation were comparing felony disposition rates, sentence lengths imposed, compare range of sentences imposed and examine sentences received by type of crimes and category of felonies, Exhibit E. Dr. Leone said different results were correct from the last meeting, but the interpretation of the results was incorrect. Dr. Leone referred to the process of acquisition of data used in the study. He said there were different ways of looking at the Nevada Revised Statutes code. He said using the proper NRS category was imperative. He offered an example from one of the 10,800 cases they examined. He said the crime was listed as tampering with an electronic devise on the court record. They were unable to find that listed as a crime, but under the NRS it was a probation violation.
Dr. Leone said the variable creation was broken down into six categories; time served, minimum sentence, maximum sentence, suspended sentence, jail or prison and how much time on probation. They analyzed crime by specific crime and crime type.

Dr. Leone said earlier studies for the U.S. Sentencing Commission looked at sentencing disparities. He said it was important to go beyond the idea disparity represented a violation of the ideas of justice. He said a disparate sentence may actually enhance the quality of justice because it may be what the judge saw as appropriate giving the factors the judge saw while on the bench. He said disparity did not necessarily indicate someone was receiving excessive punishment. He said it indicated a difference as far as statute was concerned. He referenced the Nevada Court Disposition Summary in his presentation. He said Nevada tended to underuse the jails as a punishment. He said low-level offenders not sent to jail were sent to other options. Dr. Austin said the chart shown combined nonincarceration and other. He said in Nevada the major choice was probation.

Dr. Leone referred to the next chart in his presentation referring to actual sentences by offense class. Exhibit E. He said a point in the 1995 change in statute was keeping Category E offenders out of prison. He said a number of Category Es did still go to prison. As previously mentioned Category B was the largest category. He said there was an interesting split in Category B between those going to probation and those going to prison.

Commissioner Horsford asked what the “missing” column was in Exhibit E. Dr. Austin said there was no designation under Categories, A, B, C, D, or E. Dr. Leone said they had a column within the data set which indicated the category of offense. Commissioner Horsford said in the column labeled probation there was over 1,000 under the missing column. He asked if the Probation Department did not properly classify those. He said data was collected from different sources and was probation the source that did not classify that category of offense. Dr. Leone said it was possible the information was not in the paperwork Parole and Probation received. He said he did not know provenance of the data and could not speak to it. He was unable to state where the lack of information originated.

Commissioner Horsford asked Dr. Austin who had the data, collected it and managed it. He said there were over 1,600 instances where proper classification did not occur. Commissioner Horsford said it created a variance on the whole. He asked what more can occur in the collection of the data to ensure it was properly analyzed so the Commission can make informed decisions.

Commissioner Curtis said he had been informed the numbers in the missing column were gross misdemeanors.
Chair Hardesty said one of the points the Truth in Sentencing Subcommittee voted unanimously to support was a recommendation to the Commission and the Legislature to deal with data collection and computer problems. He said it was an area Dr. Austin, the University and all the agencies shared as a concern. It affected everybody’s ability to make good judgments.

Dr. Leone said Commissioner Curtis was probably correct and the missing numbers were gross misdemeanors. Chair Hardesty said he did not think 65 gross misdemeanors would go to prison.

Dr. Austin wanted to discuss the next chart as it was one he assembled. He said it was an example of looking at disparity in the disposition. He said he was looking for disproportionate representation of a person’s attributes or offender characteristics that were associated with a particular disposition. The first example was the issue of race. He said the table showed the largest population was white, Exhibit E. He said Hispanic was not being recorded and was an issue that needed to be resolved. He said data systems needed reengineering so ethnicity was recorded and reported. He said the prison system was recording it. Dr. Austin said in order for him to get that information, he would have to get the prison data and walk it over to the probation data and that was part of the problem.

Commissioner Kohn said he was troubled by the statistics. He asked Dr. Austin where he was getting his statistics. He said the Clark County Detention Center kept statistics very well. He said he was looking at a report from August 4, 2008, that listed white at 39.7%, black at 35.6%, Hispanic at 22.2%, Asian at 2.1% and others at .4%. He said they have the numbers and he said he thought all three detention centers in Clark County had the numbers. Dr. Austin said the data came from the Department of Parole and Probation. He said it was all the people disposed of statewide, not just Clark County. He said when the rural areas and other areas of Nevada were factored into the equation; the racial proportions Mr. Kohn cited may be changing. He said what Mr. Kohn was suggesting was that Parole and Probation was entering false racial data. Mr. Kohn said “no”, he was suggesting they were not getting the data. Commissioner Kohn said he suspected every booking agency in Nevada kept that information. Dr. Austin said it was not booking. He said arrest data and booking were very different populations. Commissioner Kohn said the booking data was kept, but it was not moved forward and that was the problem. Dr. Austin said the people in his chart were people disposed of largely for felonies. Commissioner Kohn asked why there were no other numbers kept for Hispanics past the booking stage. Dr. Austin reiterated the prison system had it; Parole and Probation did not have the numbers. Commissioner Kohn said Dr. Austin was using Parole and Probation. Dr. Austin said that was the only information they had. He said they worked with Clark County courts to get the information. He said Clark County was unable to get their electronic data files to Dr. Austin. He said researchers can only look at the data agencies give them. He said Parole and Probation was the only reason they had any
information today. He said the Department of Prisons had difficulty with their information system; the courts did not have systematic data collection that can “talk” to each other and download the data to researchers.

Commissioner Kohn said he realized the courts could not speak to anybody else through their electronic means, but he asked if the courts could not retain the information. Dr. Austin said Clark County proposed sending him a screenshot. He called them last week and told them he did not want a screenshot, he wanted an electronic file. He said they were waiting for the file.

Dr. Leone said they went through Carson City and Elko Counties and they provided screenshot form, but the numbers were small enough they could hand code them. He said linking those court records to parole and probation data set was challenging. He said for the two smaller counties they were able to link the data together to show ethnicity and race as well as what they were charged with and compared that with the eventual conviction. He said the problem was thousands of pages of screenshots were much more challenging. They did not have the time to hand code Clark County.

Dr. Richardson said it had been very frustrating trying to gather the data. He did not blame any individual. He said there was a very serious system problem where various systems were not designed to talk to each other and now we want them to talk to each other. He said they thought they would be able to give the answers wanted in terms of ethnicity; that was not the case. He said people did not have enough resources and their budgets had been cut. He recommended giving consideration concerning compatibility of data sets and systems and access to the data.

Dr. Austin said Clark County’s percentage of African-American was 32%, which was higher than shown in the statewide chart. He said the point of the table was if there was disparity on race. He said 21.8% get jail, 17.1% get other, 25.2% prison and 22.4% get probation. He said there was not a big difference in terms of categories of black and white. He said looking at gender showed a big disposition between prison and probation. A greater proportion of women were on probation than in prison. He said there were also differences in prior jail sentences and incarcerations. He said approximately half of the people going to prison had no prior state imprisonment.

Chair Hardesty asked Dr. Austin to drill into the numbers and break-out the numbers. He said he was referring to the last line on the chart in Exhibit E. He said the Commission received a similar chart on convictions about two months ago. He asked for an allocation of the 48% going to prison showing the source; were they mandatory sentences; or probation violations.

Commissioner Skolnik said if the recidivism rate in Nevada was low, then the number of people going to prison for the first time would be significantly higher. Dr. Austin said that
was correct. He said most prisoners do not go back to prison again. He said roughly 65% do not reappear in prison.

Dr. Austin said 85% of the people who received the probation disposition had no prior incarceration. He said the courts clearly looked at prior incarceration as a factor in terms of their decision to impose a prison term. He next referred to Prison Disposition Rates by district and county. He said he did not know the abbreviations of the counties in the chart. The chart was actually two separate charts that showed there were differences in the districts and counties. The final chart he discussed was disposition rates by judges. He said they only included judges who handled at least 50 cases in the year. He said they were at different levels in the prison disposition rates. He said there were some differences in the rates.

Commissioner Kohn asked if the higher numbers were disposition on the first sentence or were they probation violations. Dr. Austin said they could look at the cases and tell the Commission whatever they wanted to know. They can analyze the types of offenders and the crimes. Commissioner Kohn referred to Judge “D” he was curious about the anomaly. He wondered if the people who went to prison went the first time they were sentenced or were they probation violations. He asked if there was a policy the Commission could review. Dr. Austin said they could review the cases that were handled by that judge. Commissioner Kohn said he wanted to know.

Chair Hardesty said it would be worthwhile to look at that information with respect to any of the judges above 33%. Chair Hardesty said 33% was the base rate for incarceration in the State. He said the question was what precipitated the higher rates. He said the chart did not cover the full number of judges on criminal civil cases. He said the baseline of 50 cases or more eliminated a number of judges who sentenced criminal cases, but sentenced less than 50 cases. Dr. Austin said there were about 20 judges not on the list.

Commissioner Horsford asked about prioritizing the amount of time Dr. Austin and the team spent researching items. He said there were so many different things they were not able to tackle, they needed the two or three that had the most impact. He said the issue of the data needed to be fixed. Beyond the recommendation to have a system that coordinates, were there examples of systems in other places that can be recommended. He said it was an issue from the efficiency of government standpoint that they needed the recommendation now in order to be able to prepare a proposal for the 2009 Session. He said it could help with the budget issue, the data question and coordination of agencies working within the system. He said the other areas were important but they may not be able to do anything on the judge’s discretion, for example. He hoped the recommendations would identify the specific priorities where the team spent the majority of their time. Chair Hardesty said it was a good point and they would address prioritization of tasks at the conclusion of the presentation.
Dr. Leone told Commissioner Kohn he suggested looking at the top and bottom five prison disposition rates of judges and compare the number of technical violations and the number of repeat offenders they had before them.

Dr. Leone referred to the next chart in Exhibit E, Recommended Disposition by Actual Disposition. He said it referred to the Parole and Probation Presentence Investigation Report (PSI) suggestions for the individual going before the court. He said the nonshaded cells in the chart represented sentences outside of the recommendation of the PSI. He said 81% of the time the recommendations were followed. He said it was a testimony that Parole and Probation did a complete job on their PSI. Dr. Austin said where there was a disagreement, it was the recommended to prison where the court was giving probation. There were 1,147 cases where the Probation Department recommended prison but the court sentenced the person to probation. He said if the court followed the recommendation, there would be a much higher prison population.

Chair Hardesty said an issue had developed concerning the instrument used by the Division of Parole and Probation for their sentencing recommendations. A study was currently underway to update and improve that instrument. He said a relationship needed developing between the risk instrument used by Parole and Probation and the risk instrument used by the Parole Board. He said what went into the instrument was critical. He said there were a number of factors that needed evaluation. They were being assessed by the National Center for Crime and Delinquency, (NCCD). Dr. Leone said Dennis Wagner from NCCD was doing the evaluation of the instrument, he believed the instrument was in good shape and did not need an entire revamping.

Commissioner Mallory said imposing some type of computerized matrix on the sentencing procedure as far as judges were concerned needed to be approached very carefully. He said judges were selected to use their discretion in making proper decisions. He said judges function in a different way than Parole and Probation in making reports. He said if the correlation was close, the report was an instrument of guidance and not an absolute requirement.

Chair Hardesty said his only concern was it was not until November 2007, prosecutors and defense lawyers had the scoring mechanism used for determining the recommendation. He was also concerned nobody ever tested whether the scoring was correctly added. He said it could make a big difference. He said it was important the instrument was correct and also important it was public. He said for years the court operated under a system where the underlying basis for the recommendation was not known by the prosecutor or the defense lawyer. He said if there were mistakes or errors in the guidelines or the calculation that leads to the recommendation the mistake was compounded. He said the whole system needed evaluation.
Dr. Richardson said Parole and Probation volunteered and gave them the forms. A training session was scheduled for all the graduate students working on the project to learn it. He said a group of people would be trained within a few days.

Commissioner Herndon had a question on the statistics in Exhibit E on pages 30 and 31. He asked where the 10,000 plus cases came from that comprised the recommended disposition by actual disposition. He asked if all mandatory sentences were eliminated from those numbers. He said the true value of looking at whether the courts were following the sentences needed to eliminate mandatory sentences and only include the discretionary sentences.

Chair Hardesty said it was all the cases so it included mandatory probation and prison time.

Commissioner Herndon asked if those cases could be eliminated in order to have a truer view of the recommendations in the discretionary sentencing cases. He said whether a judge followed mandatory recommendations was meaningless; they had to follow the recommendation.

Dr. Austin said they had the NRS statute number. He said they did not have a specific reference stating whether it was mandatory. If all the statutes the Commission believed were mandatory, then they could eliminate them.

Chair Hardesty said when they discussed prioritizing tasks it would be discussed.

Commissioner Herndon said the parties often stipulated to certain sentences. He said the court agreed to follow the stipulated recommendation. He said the stipulations may go against the recommendations of Parole and Probation. He said that eliminated discretion by the courts. He was concerned about relying on the numbers shown in the presentation.

Dr. Austin said they could take a random sample of cases and ask Parole and Probation if they were stipulated or not.

Commissioner Herndon said it would be in all the public records whether it was a stipulated sentence. Dr. Austin said they could draw a random sample and inquire about further information.

Commissioner Salling said the information was on the front page of the PSI. She said any of the plea negotiations were available.

Dr. Leone said they did not have access to the PSI. He said they would have to rely on Parole and Probation for the information. Dr. Leone reiterated disparity did not necessarily indicate injustice.
Dr. Leone continued the Power Point presentation, factors most likely to create a following or not of the recommendation. The recommendations were outlined on page 31 of Exhibit E. He next discussed page 32 concerning probation recommendations, Exhibit E.

Dr. Austin commented on the offense against a person. He said a situational assault of some kind could be seen as an isolated event and probation was sufficient rather than prison.

Dr. Leone next discussed the slide on page 33, of Exhibit E. He said all the factors deemed appropriate were fed into the statistical regression analysis. He said sentences were compared with one factor, age, race or any other important element was fed into the multiple regression equation. The bars going left to right indicated less or more likely to affect the recommendation. He said what was important to note were the things that were not there. He said those were an indication of factors that fell out during the regression analysis. He said the longest bars indicated the biggest impact. The bars going left versus right indicated the direction of the impact and the absent bars indicated they fell out which meant they had no impact on the sentence. He said some of the missing items, including race and gender, tended to disappear. He said two identical individuals except for race, were sentenced in a statistically nonsignificantly different manner. Race tended to fallout when all the factors are calculated into the equation.

Dr. Austin said the biggest disagreements were in the prison recommendations. He said the things on the left side of the chart in Exhibit E were the major reasons why the court did not follow the recommendation. He said it might also be because of the mandatory issue. He said he would raise a question about the degree of honesty and the extent to which it can be measured. He said the court can go either way on a simple possession charge.

Dr. Leone opened discussion of Question 2 of Exhibit E. The question considered sentence length imposed as compared to range allowed by statute. He said they utilized several different ways of determining the proper statute. He said they had parole and probation data compared to what the research group determined the NRS was, based upon the label of the crime given. He said in most cases the NRS they arrived at agreed with the NRS in Parole and Probation.

Dr. Austin said he assembled the chart of the minimum and maximum sentences imposed. He said the prison and jail information was fairly accurate, but he was not so sure about probation. He said the data he received gave the minimum and maximum sentences. He said he was unsure of the probation sentence. He said the chart represented the ranges of time sentenced.

Chair Hardesty said part of the issue on length of probation time was directly related to the collection of restitution. The Commission will discuss whether it was productive having
people on probation and paying the Division of Parole and Probation supervision fees while attempting to pay restitution. He said the system needed correction. He said it made no sense having them pay supervision fees and not pay the money to the victim.

Dr. Leone next referenced Sentence Length Disparity, page 37, Exhibit E. He said they looked at the NRS in the Parole and Probation data set. He said Category B increased slightly using that reference, but basically the information was similar to the week before. He said 225 people were sentenced out of range in Category A, 502 in Category B, 392 in Category C, 227 in Category D and 18 in Category E. The next chart showed where the sentences went up and down. He said Category C and D had upward sentences.

Commissioner Mallory asked if out of range meant the sentence was not in compliance with the NRS statute as to what the sentencing should be for that crime.

Dr. Leone said if there was a statute. They did not look at mandatory sentences or remove them from the data. He said the offense may have a broad range as opposed to a set mandatory sentence.

Commissioner Mallory said NRS had a minimum and maximum amount of years allowed in the sentence for felonies. The sentences on the chart represented sentences outside of the requirement.

Dr. Leone said they found people sentenced for category offenses where the sentence was one to five years and the maximum sentence given by the judge exceeded five years.

Commissioner Mallory said it seemed that would be subject to appeal and reversal.

Dr. Austin said they were uncertain as to what was occurring.

Commissioner Kohn said consecutive sentences were involved, more than one category C or B offense. He said if his office was not appealing the out-of-range sentences there was a very serious problem.

Commissioner Herndon said he had problems with the numbers represented in the charts. He said he found it totally unbelievable that 12% of the sentences were outside the legally mandated sentences judges can impose. He said some of the sentences might involve consecutive sentences that were not accounted for. A number of crimes before the court involved various levels of crime. He said there were three levels for trafficking in a controlled substance, 1 to 6, 2 to 15 and life minimum 10. He asked if they accounted for habitual criminal allegations being the sentencing reason by the court. He said someone
could be convicted of a 1 to 10 burglary but get sentenced as a habitual criminal which carried a 5 to 20 year sentence.

Commissioner Herndon said without everything accounted for the numbers were terribly vague and were dangerously recorded numbers that were unrepresentative of what was actually happening.

Dr. Austin said he did not disagree with the judge. He said they needed guidance from the judicial scholars on the Commission to look at the cases. He said they had about 12 cases that were samples. He said they were not comfortable with the numbers.

Chair Hardesty said the data needed further evaluation. He said Commissioners Herndon, Kohn, Mallory and himself were available to look at specific cases and the judgments of convictions and make assessments.

Dr. Leone said it was a great idea. He said the numbers were not a result of shoddy workmanship. Chair Hardesty said he sat on cases where it was noted the sentence was out of range. He said it happened but the question was whether it happened to the degree the numbers presented indicated. He said the way a habitual criminal was sentenced could lead to misinterpretation of the data. He said in order to make assessments the attorneys and judges on the Commission needed to look at the data being evaluated.

Dr. Leone gave a quick overview of Question 3, page 41, Exhibit E. The question was designed to examine sentences received by types of crimes and category of felony. He said they utilized a bi-variate analysis last time but this time they looked at the ones most powerful. They fed them into a regression equation to determine which factors were accounting for the largest amount of the variants in terms of the sentence received. He mentioned the next page concerning gender differences. He said males received significantly higher minimum and maximum sentence than females. However, using regression and comparing the control variables, males had more pending felonies, prior incarcerations, a history of violence and various other factors which directly related to longer minimum and maximum sentences. He said gender played very little part in the sentences received. Race had no impact on the eventual sentence received with the exception of the category DUI. In DUI cases there was a slight impact of race on the minimum sentence received.

Chair Hardesty said he was directing the Commission’s attention to Item 5 on the Agenda. He said Item 5 was a report by the Subcommittee on Truth in Sentencing. He said the Subcommittee voted to address two issues. The first was the need for Nevada to resolve the issue concerning data collection. He said there had been a problem with respect to data collection and there was a variety of sources for the problem. He said the consultants referred to data collection from agencies that had all the criminal history and statistics. He said part of
the problem was resources. Most of the statistical data came from Parole and Probation. He said that staff had been cut and lacked the manpower necessary to continue to deliver much of the data needed from that division. A similar problem existed with the Nevada Department of Corrections. He said staffing and computer system limitations had occurred. The courts response to data requests was disappointing. He said all the files were in the courts. He said the recommendation of the Subcommittee was that the Legislature take the appropriate steps to ensure data collection was a high priority among all the agencies. He said it was difficult to be smart about crime if information was lacking. Chair Hardesty said there was data in multiple areas. The collection and coordination of the data and information seemed to be missing. He said perhaps data collection should be a separate state agency.

The second recommendation of the Subcommittee dealt with computer systems and the coordination of the systems. He was surprised how far behind the State was in its ability to coordinate, technologically, among various departments and agencies. He offered an example of an individual arrested in Washoe County. He said the Court Services Department began preparing the data collection dealing with that defendant. The data was not extended to the Division of Parole and Probation, so they start anew. He said the PSI begins its own assessment. The court and law enforcement computers do not relate to other computers. The technological systems should be required to communicate with one another. He said criminal agencies should not bring on-line systems unable to communicate with others in the criminal justice system.

Chair Hardesty said another issue raised in the Subcommittee concerned a general recommendation that when decisions were made establishing criminal behavior, the Legislature takes into consideration the length and effect of the sentence on resources. He said that had been missing in prior decisions setting sentence lengths. It should be part of the debate in the Legislature, particularly the judiciary committees. He asked how the requests of the consultants should be prioritized. He opened the discussion for comments from the members.

Commissioner Skolnik pointed out they were still in the process of debugging a system that cost the State over $12 million. He doubted significant changes would be funded by the Legislature.

Chair Hardesty asked if the system could communicate with the Division of Parole and Probation and the Parole Board. Commissioner Skolnik said it could communicate with the Parole Board but he did not know about Parole and Probation or with the courts.

Commissioner Kohn said he understood the problems with finances this session, but a long term fix needed to be considered. He said the Public Defender’s Office needed to be able to communicate with the DOC. He said Clark County Detention Center had a new system that
the public defenders could not utilize. He said documentation needed to be reviewed to be sure the methodology was correct.

Chair Hardesty said the Legislature may not have funds to fix the problems in 2009, but there comes a point when some things have to be prioritized.

Commissioner Masto agreed with Commissioner Kohn. She said the information provided by the consultants was only as good as the data they could collect. She said it was very difficult to get the data. She said the Legislature, the State and the Executive Branch needed to look at making it a priority to collect the data. Long term strategies were required. She said the law enforcement agencies needed to agree on systems that were compatible and able to communicate with each other. It needed to be a priority for the State.

Commissioner Siegel said he agreed. He said a resolution or some other legislation that made it a public policy of Nevada was required. He said if there was a use of state funds the Legislature could require that compatibility of computers and data systems be mandated as part of the use of the funds.

Commissioner Mallory said the Administrative Office of the Courts (AOC) had a pilot project concerning computerizing district attorney’s and other offices so they could communicate with local law enforcement. He said it was very successful in Churchill County.

Dr. Austin said systems that do not talk to each other, but record information in the same way would be a big advancement. He offered the example of NRS 453.3385 with a range from 1 to 6 years, 2 to 15 years or a 25 to life term. He said that was one offense but because it was not recorded at level 1, 2 or 3 they could not tell the amount of time. He said they needed a standardized way of recording the crime. He said that was simply changing the field that exists in all the data systems and making it more precise. He said the Commission could set forth the standard that the NRS codes needed to be reformed and recorded in a standardized manner.

Commissioner Horsford said immediate short-term steps needed to be taken that led to a long-term plan for collecting and analyzing information. The interim committee on Health Care ultimately recommended the creation of a department of data and analysis within the Department of Health and Human Services. He asked what the scope of Dr. Austin and the UNR team was and what their capability was between now and June of 2009.

Dr. Austin said their funded scope was to provide research assistance to the Commission. He said it was to work with existing data systems.
Commissioner Horsford asked Dr. Austin if there was a definitive date. Dr. Austin said there was a date, but the money would run out at a certain point. He said his contract ended in April 2009. He said he had a proposal that would institutionalize this process going forward. It would create an analytical capability within the University to do this kind of work on an ongoing basis. He said it had not been funded. He said he anticipated it was something that would be recommended by the Commission to the Legislature for funding.

Commissioner Horsford suggested the Legislative Counsel Bureau needed to be involved in helping collect the data in a manner that was useful. He said through the Legislative Counsel Bureau they had certain authority to request information from departments in very specific ways. He said the Commission may need that leverage in order to properly receive the information. He said in support of the efforts with the Legislative Counsel Bureau, it would help them analyze the information in such a way that it was useful within the priorities needed in the short-term. He said he would not support just the University without understanding how all the systems report. He said it was not an easy task.

Dr. Richardson said it was a worthwhile suggestion. He said they had the capability of becoming a repository within the State if funding was available.

Chair Hardesty said exercising pressure on agencies unwilling to give data was one problem, but an agency willing to give data without the staff to provide it was the real problem. He said the practical problem was the DOC was willing to help and provide data, Parole and Probation was also willing to provide data. He said P&P was the sole source providing the data, but they no longer had the staff to be able to furnish the data. He said in terms of priority he was talking about having the adequate staff and resources to be able to furnish existing data. He said the real question was what could be done immediately to improve the capability of the agencies that have the data to give the Commission the information necessary to make choices. He said another question was what kind of systems they should have for data collection. He said the immediate problem was having resources in the agencies to respond to the requests.

Commissioner Horsford was concerned about how agencies, required to have certain basic information to do what they do, cannot provide that information. He said it was about making divisions and departments work more effectively on behalf of this system. He asked if there were resources available to take the information and supply it in a format more useful in the current project.

Commissioner Skolnik said the primary problem was not the provision of data or the amount of data, but the consistency and definition between agencies from the beginning of the criminal justice system to the end. He said a definition of recidivism had only been agreed upon in the last year. He said it did not matter what information was provided if the
definitions were different than the other agencies it was not useful. He said they received demands on a daily basis for information. He said the budget system was driven by data in this State. The resources were damaged by the passage of such things as A.B. 510 two weeks after the new system went live and changed all the sentencing laws in the State. He said 18 months were devoted to building the initial system; they had no time to modify it. He said the primary responsibility of the DOC was to keep inmates off the street.

Chair Hardesty asked what was needed in the short term for the collection of data and what agencies can provide the data. He said if there were resource needs perhaps the Commission needed to recommend that to IFC.

Commissioner Horsford said when the State was not experiencing budget cuts the data was not being collected or analyzed. He said the option left was to arrive at a specific proposal on how to collect the information, report it and analyze it separate from the entities. He said they were at the same place as earlier. He said if it was a matter of funding, describe what it was that needed funding.

Commissioner Skolnik said consistency and definitions were needed regarding all that was being done in the system.

Dr. Leone said it was a challenge for the State. He said the advantage of having the Sawyer Center involved was the graduate students. He said they collected data from the smaller counties and coded and entered it. He said they were on the cusp of creating a data set that would answer many of the questions. He said they needed data that went backwards to law enforcement. He said there was no point in collecting the same data three or four times. He said they had law enforcement data ready to include in the current data and will answer questions for policy decisions. He said they needed something more global. He said a tremendous amount of cooperation was required.

Chair Hardesty said there were several approaches. He wanted to prioritize. He said it seemed they needed to give the Legislature what kind of data collection system the State should have from a definitional standpoint, resource standpoint and a computer standpoint. He said the Commission should consider a recommendation to that effect. He said they could appoint a subcommittee. He said people outside of the Commission who were directly involved with the system should be put on the subcommittee. He said in terms of prioritizing, he would like Dr. Austin and the University team to help the Commission develop the best systems plan to present to the Legislature rather than crunching numbers. Chair Hardesty qualified his statement concerning some of the data. He said if in fact it was true 48% or 49% of first time offenders were sent to prison, it was important to discover the basis for the number. He said it needed to be determined how that number was determined.
Commissioner Horsford made a motion creating a subcommittee to determine specific recommendations concerning data collection and the systems necessary for collection. Commissioner Skolnik seconded the motion.

Commissioner Masto requested further discussion. She asked if Dr. Austin and the University teams were being asked to work with the local jurisdictions to arrive at a compatible, coordinated system that works for computers. She also asked if they would address the codes and definitions used for the compatible computer system. She said it would be a computer network across the State.

Dr. Austin said each agency had its own data collection system. He said each system had to capture the data the same way. The NRS code was his first priority. He said the biggest problem was lack of information in a standardized form. Once the core information was recorded exactly the same then communication could start occurring.

Commissioner Masto said it meant coordinating at the state agency level, but the information had to come from the beginning of law enforcement to the state agency. In order to do that coordination with the local jurisdictions was required. She asked if that was Dr. Austin’s task.

Dr. Austin said that was very difficult. He said it was easy to mandate state agencies. He said he did not know any place in the country or the world where all the systems were set-up to talk to each other. He said all arrest data could go to a central location.

Chair Hardesty said the tasking was to the subcommittee. The consultants would work with the subcommittee. He envisioned the subcommittee would include state agencies, local law enforcement, public defenders and prosecutors. He said the task to the subcommittee was to identify all the various issues, impediments to resolving the issues, cooperation or not and why they weren’t cooperating. He said it was an evaluation and a plan going forward.

The motion carried.

Chair Hardesty said they will create a subcommittee. He said the past appointments were made by the Chair. He asked if anybody wanted to change that. He asked if anyone on the Commission would like to chair the subcommittee.

Commissioner Parks volunteered to chair the subcommittee. He asked Commissioners Skolnik, Curtis and Salling to provide him with names of people for the subcommittee. He asked for a report from the subcommittee within the next sixty days.
Chair Hardesty said funding was needed to address short-term data collection. He said the State should consider it and make the funds available to the departments in order to accomplish the objective. He asked if there was any interest in making that recommendation to IFC.

Commissioner Parks said a contingency fund was established when the budget was approved in the last session. He said the fund still had a balance and they might be able to put a recommendation together for funding to the IFC.

Chair Hardesty suggested the Nevada Department of Corrections, Parole and Probation and the Parole Board identify resources needed for specific data collection.

Commissioner Masto said the Executive Branch needed inclusion in the recommendations. She said it needed to be brought to the Governor’s Office.

Commissioner Horsford asked if there was another way to identify what information was needed.

Chair Hardesty asked the Commission to identify what information they wanted the consultants to provide them. He said they were unable to make any other recommendations dealing with “truth in sentencing” without further information on the mandatory sentencing issue. He said there were requests made about Hispanic reporting and the data was potentially available in the DOC files. He asked if that information would be helpful now and suggested it was not necessary. He said an interim sanction plan was discussed. He said there were many issues surrounding that plan. He said the focal point of the consultants work should be identifying data collections systems in coordination and look into the percentage of “first timers” going to prison. He said there would be no added cost.

Chair Hardesty asked Dr. Austin to get information on the breakdown of the mandatory sentencing data for the Commission.

Dr. Austin requested a precise list of mandatory sentences and NRS codes from the Commission. Chair Hardesty said he gave a list of those in his presentation to the subcommittee. Commissioner Mallory had compared the codes and would get them to Chair Hardesty. He said Dr. Richardson would offer a proposal to the Commission next month.

Chair Hardesty requested a roll call of the members. Commissioner Amodei was absent. Chair Hardesty said a reduction in the scope of the consultants’ work eliminated resource problems at this time. He opened discussion on Agenda Item 4, the Steering Committee report. He said they met and organized the items on the current agenda. He said two points
needed to be discussed by the Commission. He said the statute A.B. 508 required the Commission issue a report by September 1, 2008. He said the Legislative Counsel Bureau suggested the Commission issue a letter from the Chair to Mr. Malkiewich providing them with a status of the study and listing any recommendations. Chair Hardesty said the suggestion included issuing a full report in November. He asked if the Commission supported that approach.

Commissioner Masto moved to issue a letter to Legislative Counsel Bureau with a full report in November 2008. Commissioner Carpenter seconded the motion. One member opposed the motion.

Chair Hardesty said he wanted to identify areas developed and vetted by the Commission. He began the discussion with the report from the Victims’ Rights Subcommittee. He said they had three BDR proposals. Chair Hardesty said it was Agenda Item 12.

Commissioner Masto said there were three suggestions for BDRs. She said they had a few more to discuss and vote on. She said the first BDR provided that all funds collected for the Victim of Crime Program be paid to the program or deposited in a reserve account if the proceeds exceed the budget authority in any particular fiscal year, (Exhibit F). She said the revenue from the program frequently exceeded the budget authority and the excess revenue was deposited in the State’s general fund.

Chair Hardesty said during the presentation it was mentioned the issue was the same as one the courts had concerning excessive funds.

Commissioner Curtis moved approval for the Bill Draft Request. Commissioner Kohn seconded the motion. The motion passed unanimously.

Commissioner Masto said the second recommendation for a BDR, (Exhibit F-1), amended NRS 217.110 to extend a victim of crime applicant’s time to appeal a compensation officer’s denial of the victim’s claim for compensation from 15 days to 60 days. She said the 15 days was too short.

Commissioner Carpenter moved to approve the Bill Draft Request. Mr. Curtis seconded the motion. The motion passed unanimously.

Commissioner Masto said the third BDR, (Exhibit F-2), authorized a victim of sexual assault to obtain a protection order against his/her perpetrator, even if there was not a dating relationship between the individuals. She said currently Nevada does not allow victims of sexual assault to seek a protection order unless they have been in a dating or intimate
relationship with their assailant. Commissioner Masto said she was very surprised to learn these victims did not have access to protection orders.

Commissioner Curtis moved to approve the Bill Draft Request. Commissioner Skolnik seconded the motion. The motion carried unanimously.

Commissioner Curtis commented he was a board member on the Family Support Counsel in Douglas County and the matter of the protection order had been a problem.

Commissioner Masto said the subcommittee prioritized the BDRs and the lack of protection orders surprised them and was their first priority for a BDR.

Commissioner Siegel said he read a story in a Las Vegas newspaper concerning contributory behavior in sexual crimes. He said personally, and the ACLU as an organization, wanted the fund paying money to victims of crime to eliminate contributory behavior in the context of sexual violence. He asked Commissioner Masto if the subcommittee had considered making that recommendation.

Commissioner Masto said they were planning a discussion on that issue at their next meeting. She told the subcommittee a unanimous agreement was needed before a BDR was forwarded to the full Commission. It was an important topic and if the Commission wished to discuss it she would bring the issue forward. Commissioner Masto said the contributory conduct was a policy that had to come before the Board of Examiners to address and make any changes.

Chair Hardesty preferred the subject be presented to the Commission if there was a dissent on the subcommittee. He said it was a subject of significant importance to the entire Commission.

Commissioner Masto agreed with Chair Hardesty. She said the final BDR dealt with changing the title of statutory sexual seduction to unlawful sexual conduct with a minor. She said there were concerns with respect to the title. She said there was confusion about what the title meant and clarifying it would help. She said the subcommittee planned further discussion of the topic at their next meeting.

Chair Hardesty opened the discussion of Agenda Item X. He requested Commissioner Horsford review the recommendations for juvenile justice.

Commissioner Horsford thanked the Commission for agreeing to establish the subcommittee on Juvenile Justice. He said there was a summary of the meetings of the Subcommittee in their materials. The Subcommittee identified nine specific recommendations requiring BDRs, resolutions or letters from the Commission. The first recommendation requested an Interim
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Study Bill for the 2010 Interim to consider specific issues related to the juvenile justice system including certifying juveniles as adults, blended sentencing, jurisdiction of juvenile courts, programs available to juveniles and juveniles in the adult criminal justice system, (Exhibit G.) He said the Subcommittee did not agree on any specific recommendations.

Chair Hardesty asked Commissioner Horsford about the permanent subcommittee for juvenile justice. He asked if the Subcommittee could continue the discussion proposed under Item 2 without an interim study committee of the Legislature. Commissioner Horsford said adopting a permanent subcommittee authorized the continued work in that area. He said now the Chair could create subcommittees but without authorization from the Legislature, the work could not continue.

Chair Hardesty said if the Commission adopted the creation of a permanent ongoing Subcommittee on Juvenile Justice, then creating an interim study committee would not be necessary.

Commissioner Siegel supported the continuation of the Subcommittee. He said the Legislature may approve numerous interim studies but had funding for only a few. He said there was a strict limit on the number of interim studies.

Commissioner Horsford said last session only two interim committees were authorized by the Legislature. He said recommendation number 1 created a permanent ongoing Subcommittee. The Subcommittee could be directed to study the issues under recommendation number 2, Exhibit G.

Commissioner Siegel moved to approve recommendation number 1, proposing a BDR creating a permanent ongoing Subcommittee on Juvenile Justice. Commissioner Farley seconded the motion. The motion passed.

Commissioner Horsford opened discussion of number 3 in Exhibit G. He said the third recommendation was to provide support in the final report of the BDR being submitted by the Legislative Committee on Health Care to create a standing committee on issues related to child welfare and juvenile justice. He said the recommendation had been made by the standing committee on Health Care. He requested approval from the Commission in the final report supporting that recommendation.

Commissioner Carpenter asked if a conflict would occur with the permanent subcommittee created in recommendation number 1.

Commissioner Horsford said it would be a Legislative Committee on Child Welfare and Juvenile Justice. He said it would be a standing committee in the Legislature.
Commissioner Siegel said standing committees were given a permanent ongoing emphasis in a particular area.

Commissioner Skolnik moved to approve adoption of recommendation number 3 in Exhibit G. Commissioner Parks seconded the motion. The motion passed.

Commissioner Horsford said recommendation number 4 proposed a resolution from the Commission encouraging reform in the juvenile justice system. He said it included adoption of Juvenile Detention Alternatives Initiative, (JDAI), and support for the Office of Juvenile Justice and Delinquency Prevention Model Program Guild, (OJJDP). He said currently there was no state policy on best practices for juvenile justice. He said the Resolution would be presented at the next legislative session.

Commissioner Siegel asked if the goal of number 4 was a Senate or Assembly Joint Resolution? Commissioner Horsford said it would be a formal resolution referred to a committee for hearing, discussion and ultimate approval.

Commissioner Siegel moved to adopt recommendation number 4 of Exhibit G. Commissioner Kohn seconded the motion. The motion passed.

Commissioner Horsford said recommendation number 5 of Exhibit G proposed a BDR addressing the jurisdiction of a person who committed a crime while under the age of 21, but not apprehended until after the person reaches 21 years of age. He said the courts have no jurisdiction over these individuals. He said the Subcommittee recommended continuing to work on the specific language, but for the purpose of the time frame the BDR needed to be moved forward.

Commissioner Flynn asked if a person 18 years of age went to district court rather than juvenile court. Commissioner Hardesty said the resolution should state a person under the age of 18 rather than age 21. He said the age needed to be clarified.

Ben Graham, Nevada District Attorney Association of Clark County, said they were talking about young people age 15, 16 or 17. He urged the Commission to adopt the conceptual BDR and work out the jurisdiction issue and language in subcommittee.

Commission Kohn said he was concerned about the age 18 issue.

Chair Hardesty said it appeared there was a hole if someone absconded and would not be prosecuted.
Commissioner Herndon said the juvenile court had jurisdiction up until the age of 21. The person may have reached the age of majority but the court has jurisdiction to deal with them up until the age of 21. The fear was if they were beyond the age of 21, but committed the crime as a minor, who had jurisdiction at that point.

Chair Hardesty asked if they committed a crime under the age of 18 but were not apprehended until after age 21, who had jurisdiction. He said recommendation number 5 was intended to close a loophole about prosecuting these types of offenders.

Commissioner Curtis moved approval in concept of number 5, Exhibit G. Commissioner Mallory seconded the motion.

Commissioner Horsford said he received an email from Legislative Counsel clarifying it was a crime committed under the age of 18 but apprehended after age 21.

Commissioner Kohn asked who was receiving jurisdiction. Commissioner Horsford said that would be agreed upon as the BDR was developed. He said this motion just allowed for the recommendation to go forward.

Chair Hardesty asked if there was a preference as to who should have jurisdiction.

Commissioner Herndon said the individual should be put in adult court if they were adults with a clear mechanism for a defense attorney to petition it back to juvenile court if necessary. He said placing older adult offenders into juvenile court should not occur.

Chair Hardesty said his preference was the district court had jurisdiction with a remand down. He said he was concerned about deferring jurisdiction. He said he preferred to debate and resolve the question or defer it until next week.

Commissioner Curtis said he would amend his initial motion to add district court with the ability to remand down. Commissioner Mallory agreed with the second.

Commissioner Horsford asked the recommendation be held. He said the Subcommittee did not have consensus about who should have jurisdiction.

Chair Hardesty said he would hold the action on the recommendation until next week.

Janet Traut, Senior Deputy Attorney General, said there was a motion pending with two amendments.
Chair Hardesty suggested the maker of the motion and the amendments withdraw their motion. Commissioners Curtis and Mallory withdrew their motions and seconds. Chair Hardesty said further discussion would be held next week.

Commissioner Horsford said the next recommendation, number 6 of Exhibit G, would be a letter to the Executive Branch and the Legislature recommending a reallocation of funding designated for unused secured detention into programs for juveniles. He said an alternative funding formula would be developed to present to the Legislature. Commissioner Horsford said his subcommittee heard there were under resourced programs within youth parole, regional juvenile justice, community based programs and programs to address mental health issues. The concept was if there was any money unused by the Division, that money was earmarked for reallocation to the four areas.

Cherlyn K. Townsend, Director, Juvenile Justice Services, Clark County, said the recommendation was made to address the many needs presented to the Subcommittee. She said they were able to identify funding allocated for some types of programs. Ms. Townsend said rather than requesting additional funding for identified needs they tried to recommend reallocation of current funding.

Commissioner Siegel asked if the Subcommittee had input from the State Division and what were their comments.

Commissioner Horsford said a member of the Subcommittee was from the State. He said reallocation of funding was a unanimously approved recommendation by the Subcommittee.

Commissioner Siegel moved to approve the motion. Commissioner Kohn seconded the motion. The motion carried. Commissioner Curtis voted no.

Commissioner Horsford said number 7 of Exhibit G recommended the Executive Branch increase the budget for the juvenile justice system in proportion to any increase in the budget for the adult justice system, including corrections, and any amount in which the DOC budget is reduced due to fewer offenders. Commissioner Horsford said there was a basic funding formula for the adult system, but not for the juvenile system. The idea was whenever there was an increase in one, there would be an investment in the juvenile system. If there was a decrease in the adult system, that money would also be invested in the juvenile system to decrease and deter criminal activity.

Commissioner Mallory asked if the recommendation took the form of a letter, or was it a BDR request. He also said he was concerned about any absolute rule. He said there was a time delay factor involving juvenile crime as opposed to adult crime. There were different
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needs at different times because of deterioration of physical assets. Many factors were involved that made the two systems different.

Commissioner Horsford said the recommendation was a letter. They recognized the Executive Branch had the authority but it would help encourage budget planning for the juvenile system.

Commissioner Mallory suggested coming up with a formula for the juvenile system but not attach it to the adult system. It would give more flexibility to the Legislature and the different departments.

Commissioner Curtis said his concern was it created a nexus between two budget items which disallowed flexibility. An increase in juvenile crime might need funding at a higher level than adult crime.

Chair Hardesty asked if the Subcommittee would be favorable to a recommendation asking the Executive Branch and the Legislature to establish an independent budget system for the juvenile justice system.

Commissioner Horsford said Ms. Townsend needed consulting.

Ms. Townsend said the foundation for the recommendation was based on two things. Since 1996 the Legislature had invested in the Community Corrections Partnership Block Grant. During that time until present the State’s investment in the funding for juvenile justice had decreased at the same time the juvenile population increased by over 34 percent.

Chair Hardesty suggested the item be referred back to the Subcommittee with a suggestion it be modified to call for the Executive Branch and the Legislature to establish a funding formula for juvenile justice which had its own independent basis.

Ms. Townsend said there was currently a funding formula through the Community Partnership Block Grant. There had not been a recommended investment according to the formula.

Chair Hardesty said the funding would be tied to the block grant and correct any deficiencies separately.

Commissioner Horsford said they would take the recommendation back to the Subcommittee under advisement. He said it was important the record reflect the adult system’s formula was based on projected incarceration rates. The same formula does not exist for the juvenile system. There had been efforts in prior legislative sessions to increase the level of investment
in juvenile justice based on the existing block grant, but it had not occurred. He said the juvenile system was under-resourced and under-funded.

Chair Hardesty said he wanted a recommendation from the Subcommittee on a new independent funding formula that took into account the subjects discussed but did not tie into the adult incarceration rate. He said it was an independent issue and the funds would be used for something other than incarceration.

Commissioner Skolnik suggested contacting Dr. Austin to see if there was a formula for projection for juveniles which would be different than for adults.

Chair Hardesty asked if the Subcommittee could reconvene on this subject. Commissioner Horsford agreed.

Commissioner Horsford said item number 8 of Exhibit G proposed a BDR creating an interdisciplinary committee of various stakeholders in the juvenile justice system to address issues related to juveniles including items (a) through (g) in Exhibit G. He said it would help to build a better system. The interdisciplinary committee would not receive funding and would not have any legislators on the committee. The other thing certain federal and/or state mandated functions could be rolled into the committee reducing the need for duplicative committees.

Commissioner Kohn moved to approve the creation of an interdisciplinary committee. Commissioner Curtis seconded the motion.

Commissioner Siegel said he wanted stakeholders to include the University, including the law school and other entities involved in the committee.

Commissioner Horsford said once the BDR was drafted he could work with members of the Commission insuring certain stakeholders were included.

Chair Hardesty recalled the motion. The motion carried unanimously.

Commissioner Horsford said the final recommendation, item number 9 of Exhibit G, supported the Attorney General in developing a BDR related to the registration and notification of juvenile offenders in Nevada. The Subcommittee had a hearing on the Adam Walsh Act and certain provisions had unanticipated and undesirable consequences. He said the subcommittee wanted their report to show support for the BDR.
Chair Hardesty recused himself from the discussion as there were several court cases pending in the Nevada judicial system. He asked Commissioner Carpenter to chair the discussion on this item.

Commissioner Herndon recused himself as he had a state court matter pending on the same issue.

Commissioner Carpenter asked for further discussion.

Commissioner Masto said key stakeholders had been contacted concerning this issue. She asked anyone interested in participating contact the Attorney General’s Office. She said the intent of the Committee was to have the discussion and flesh out the issues with respect to juveniles.

Commissioner Mallory asked if any proposals would be consistent with any court opinions issued so as to prevent problems or conflicts in the future.

Commissioner Masto said he was correct. She said there were a number of court cases in the State and one federal case. She said they all dealt with the adult side of the issue. She said one case dealt with the juvenile side and it would be monitored by the Committee.

Commissioner Siegel strongly supported the proposal.

Commissioner Carpenter asked for a motion of approval. Commissioner Parks moved to approve and the motion was seconded. The motion carried. Chair Hardesty and Commissioner Herndon did not vote.

Chair Hardesty opened the discussion on Agenda Item XIII. He asked Commissioner Herndon to provide an overview and discussion of the Subcommittee dealing with mandatory drug sentencing and substantial assistance statutes.

Commissioner Herndon said the Subcommittee looked at controlled substance laws. He referred to Nevada’s Primary Narcotics Statutes and Sentencing Guidelines, (Exhibit H). He said second offense sales of controlled substances and trafficking of controlled substances required mandatory prison time. He said not all the narcotic offenses were listed. While second offense sales of controlled substances were mandatory prison sentences, statistically it was insignificant. He said it did not appear anyone was convicted in that fashion. He said trafficking in a controlled substance was the main discussion. He said the Subcommittee looked at legislative history from the 1980s. He said they had discussion about the mandatory nature of trafficking, courts and prison statistics, the weight designations for trafficking offenses and the substantial assistance statutes.
Commissioner Herndon said he wanted court statistics from Clark County as the biggest producer of inmates. He also wanted statistics from the rural counties and Washoe County. He did not get any statistics from Washoe County. Clark County produced 65% of the total in-house population of the prisons, and 51% of the total in-house drug offender population.

Commissioner Herndon referred to the 2007 Clark Country Trafficking in Controlled Substances Charges, ([Exhibit I](#)). He said the total number of cases filed in district courts in Clark County for 2007 were not on the chart. He said 10,069 cases were the total of which 950 involved trafficking in controlled substances. He said 11% of the cases were resolved with a trafficking in a controlled substance conviction. He said the highest number of cases resolved, 41%, were dismissed. Commissioner Herndon said page 2 of [Exhibit I](#) examined sentences given in all 65 cases in which a sentence was given. He said the average minimum sentence was 19 months and the average maximum sentence was 54.9 months.

Commissioner Herndon said prison statistics showed there were higher sentences than the average minimum and maximum sentences in Clark County. He said the amount of cases from various courts was not substantially different. He said smaller communities had a larger portion of their cases resulting in trafficking convictions than in Clark County.

Commissioner Herndon said Mr. Smith and Mr. Reed with the NDOC were very helpful in assembling the information. He looked specifically at trafficking offenders. He wanted to look at people with only one offense code which involved a trafficking offense. He referred to page 2 of [Exhibit J](#) which listed the total prison population. He said 13 percent of the populations were drug offenders and 3.9 percent of the total population had trafficking as one of their offenses. Commissioner Herndon next referred to page 17 of [Exhibit J](#). He said the column labeled NOC referred to the Nevada Offense Code. He said in the column the number 1 represented one offense code. The one offense code individuals could be sorted out as solely in prison for trafficking offenses. He said the statistics also looked at “mules” or people doing life sentences in Nevada for transporting narcotics. He said there were only six people out of the total prison population there for a life sentence. He did not know if habitual criminal led them to life sentences. He referred to page 6 which reflected prison statistics on the average sentence for trafficking offenders and total drug offenders. He said the average sentence was approximately 42 months on the low-end and 115 months on the high-end. Commissioner Herndon referred to offender releases. The sentences for trafficking charges were going down. He said 426 people were released from prison and approximately 150 were sentenced to prison on trafficking charges last year. He said sentences for that offense were going down.

Commissioner Herndon said in the 1980s when the drug sentences were formulated it was clear the intent was to target the people lower in the trafficking offenses. He said the ultimate goal was to get people higher-up a distribution network and sentenced to prison. He said the substantial assistance statute addressed some of the concerns surrounding the trafficking
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charges. He said his Subcommittee proposed making changes in the substantial assistance statute. Commissioner Herndon said it was important to remember public expectations for what the Subcommittee was doing. He said the law abiding public favored the mandatory minimum sentencing in trafficking offenses. Everybody agreed drugs were a huge problem in our society. He said the Subcommittee had some disagreements concerning weights. He recommended further discussion of weights. He said weights did not necessarily relate to each drug. He said there had been a change in the methamphetamine problem but that gave rise to new problems with marijuana and heroin. Some of the narcotics had different dosage levels among personal users. He recommended looking at the weight issue and designations in terms of all the variety of narcotics. He said he had concerns earlier that traffickers were incarcerated who were simply transporters. He said that was not true. Most statistics of people convicted of trafficking charges were facing multiple charges usually involving the sale of narcotics and ultimately trafficking in narcotics. He said the trafficking statutes were utilized the way they should be utilized.

Commissioner Herndon said another problem which arose was the trafficking and substantial assistance statutes were being followed in the letter of the law and the spirit of the law. He said it appeared Clark County followed the spirit of the law and Washoe County followed the letter of the law. He said it resulted in vastly different ways of pursuing these cases. It appeared the law enforcement perspective in Clark County considered the time to talk to them about providing substantial assistance was at the moment of arrest. They were of less value to law enforcement after being arrested, charged and convicted. He said a lot of cases were never filed even though there were arrests or were filed on a reduced charge. He said in Washoe County it appeared the practice was to arrest, charge and convict for trafficking and then get the substantial assistance to be able to receive probation. He said the spirit of the law in substantial assistance was in some instances to avoid the conviction.

Commissioner Herndon said the Subcommittee had no recommendations concerning changing the weight issues for narcotic possession. He said they recommended further studies. He said there was a fiscal impact on law enforcement’s ability to be proactive in their drug enforcement efforts. He said if the weight levels went up it would cost more to have proactive undercover police work.

Commissioner Herndon referred to the current version of the substantial assistance statute, (Exhibit K). He said this version was enacted in 1983 and had no significant changes since that time. He said in subsection 2 of NRS 453.3405 there were flaws. The Subcommittee agreed it was somewhat vague as to how substantial assistance was decided by a court. He said arrest and conviction was completely out of the hands of the offender. The offender can give information but he cannot determine whether the police will arrest or a jury will convict someone of an offense. He said subsection 2 as it currently stands does not give an offender adequate notice of what was expected of them in terms of supplying substantial assistance.
He said there were a wide variety of interpretations in the State. He said the Subcommittee was in complete agreement concerning amendments to substantial assistance statute.

Commissioner Herndon said he recommended completely rewriting subsection 2 of NRS 453.3405. He said he took the federal sentencing guideline 5K1.1 which dealt with substantial assistance and rewrote it to comply with state court proceedings. He submitted the ideas as Proposal #1, (Exhibit L). He said the proposal gave the court things to look at and the defense knowledge of what was being looked at. He said it applied to any kind of offense committed. Commissioner Herndon recommended Proposal #1 as a Bill Draft Request.

Commissioner Herndon said Proposal #2, Exhibit L, provided a way to not have to adhere to the minimum sentencing guidelines if certain things were present. He said if trafficking statutes were mandatory prison sentences, there was no reason to have a good cause exception. He said there was concern about people being arrested and convicted for trafficking who did not have the ability to provide any substantial assistance. He referred to the commentary attached to Proposal #2. He said there was not a consensus in the Subcommittee on the proposal.

Commissioner Herndon said the subcommittee also discussed and recommended seeking some sort of legislative change that allowed a mandatory specialty court fee be included in drug offenses. He said trafficking offenses carried mandatory fines as well as prison sentences. They discussed turning the mandatory fine to a mandatory specialty court fee. He said some assessment for a specialty court fee would be a wise thing. He did not recommend having the fine set at a specific amount. He recommended a sliding scale for the fee.

Chair Hardesty said he wanted the report discussed in sections. The first item was the Subcommittee made no recommendations concerning any modifications to the mandatory drug trafficking statutes.

Commissioner Digesti commented he was troubled with the level one trafficking in terms of how it was currently written. He said the quantity that carried a mandatory term of imprisonment was troubling. He said there was a lot of territory between NRS 453.336, first offense with a term of 1 to 4 years and a first time trafficking case which carried a 4 to 14 and a mandatory term in prison of 1 to 6 years. He said the first offense in Category E had mandatory probation and on the other hand was mandatory prison. He said he had a difficult time distinguishing between the two cases. He said the only difference was the quantity of a particular substance. He said the Subcommittee did not appear to have any interest in changing the quantity. He asked if there was discussion about adding an essential element on the trafficking charge with intent to distribute. Commissioner Digesti asked if there had been any discussion to give the sentencing court discretion or a grant of probation as opposed to a 1 to 6 year term in the state prison. He asked if they had considered eliminating the first level
of trafficking so there would only be two levels. He said a dichotomy existed in Nevada concerning the substantial assistance statute. He said there was no consistency in the application of the statute.

Commissioner Herndon said there was discussion on a variety of things. The Subcommittee had multiple ideas without consensus on many items. He said sales of narcotics were often in small amounts. He said there was no discussion of eliminating level one and going immediately to level two.

Commissioner Digesti asked about a third alternative of leaving level one trafficking where it was and not including an additional element of intent to distribute, but giving the court the discretion to grant probation.

Commissioner Herndon said eliminating the mandatory nature of low-level trafficking, it becomes possession or possession with intent to sell. He said that eliminated low-level trafficking. He said the weights were too low, but they had to be set somewhere.

Chair Hardesty said one issue dealt with proportionality. He said the schedule in Exhibit H showed the sentencing ranges for each of the various offenses. He said a second offense of possession of a controlled substance with intent to sell was discretionary and a third offense was also discretionary. He said level one trafficking carried a mandatory prison sentence of 4 to 14 years, 1 to 6 years, but a third offense on possession of a controlled substance with intent to sell was 1 to 5 years.

Commissioner Herndon said they had discussions about the various offenses leading up to trafficking and what it was they punished. He said trafficking seeks to punish for possessing an amount which inferred engaging in distribution. He said there were reasons why the increasing scales going up to trafficking were appropriate. He said discerning trafficking from simple possession with intent to sell was also appropriate. He said he understood the argument that the levels started too low, but the argument is no matter where it started it would be too low.

Chair Hardesty said one of the recommendations was the Commission continue to look at weights, in particular controlled substances. He said that evaluation might impact where the trafficking weights started.

Commissioner Herndon did not think anybody would recommend going less than four grams, but the level of narcotics for personal use for certain drugs might lead to different weights.

Commissioner Horsford referred to slide 2 of Exhibit J indicating 13.1 percent of those incarcerated were drug offenders versus trafficking offenders. He said the sentencing
guidelines indicated for first and second time possession that those individuals were on mandatory probation. He asked if the Subcommittee looked at the habitual possession offenders.

Commissioner Herndon said the NDOC statistics were based upon people in the prison. The people may be coming into prison on probation or parole violations or any number of other things. He said the 13.1 percent of drug offenders making up the prison population could have been mandatory probationers in the beginning. He said the Commission needed to find alternatives to parole and probation revocations as a manner to reduce the prison population. Commissioner Herndon said the courts were reluctant to send a mandatory probation drug offender to prison on technical violations. He said he hoped there was something more substantive than a parole violation sending people to prison.

Chair Hardesty said an area the Commission needed to investigate was the breakdown of the prison population in the statistics provided by Dr. Austin. The statistics indicated 1,700 Category D and approximately 500 to 600 Category E prisoners. He said the Category E population was mainly mandatory probation that ended up in prison.

Commissioner Herndon referred to page 18 of Exhibit J. He said the first graph showing a total population of 1,857 was the number of people incarcerated on drug offenses. He said the last three columns, labeled Total Drug Offenders, showed 475 Category E drug offenders were in prison. He said almost one third of the in-house population was on a mandatory probation at some point and ended up in prison.

Chair Hardesty said that was a relatively large number of people going to prison who began with a mandatory probation sentence. He said the question was why those people ended up in prison as opposed to taking advantage of the mandatory probation. He said he did not recall any stipulated prison time for Category E.

Commissioner Herndon said they cannot stipulate around the statute. There may be occasions when people stipulate to county jail time as a condition of probation. A person cannot be sent to prison on a mandatory probation offense. He surmised of the 475 people in prison on drug offenses the majority had another offense code in their sentence.

Chair Hardesty asked if Dr. Reed of the NDOC could determine what circumstances brought the 475 people to prison. He wondered if the numbers represented additional offenses and parole violators.

Commissioner Herndon said he would ask if the numbers could be broken-down any further.
Commissioner Skolnik said they may be able to provide further information which would reflect violators or other offenses included in that group.

Commissioner Mallory said in his jurisdiction every trafficking case was someone who was part of an ongoing drug investigation. He said it was someone involved in the distribution of drugs on a wider scale. He said he had seen a slight reduction in methamphetamine with people going to heroin. He said that was a direct result of vigorous law enforcement and prosecution efforts. Commissioner Mallory said if a child becomes addicted to drugs the parent does not care where the drugs came from, they just want the drug removed. He said they had seen mandatory sentences seeming to work.

Commissioner Kohn said from 1983 to now there had been a methamphetamine epidemic. He asked how the mandatory sentences were working on this situation. He said he needed evidence that the sentences were working.

Chair Hardesty asked if there were further questions about the Commissioner’s position to not make any changes to the trafficking statutes.

Commissioner Siegel asked why Washoe County data was not available. He asked about the significance of that data.

Commissioner Herndon said he did not know if the data was critical, but it was frustrating to not receive it. He said Washoe County accounted for about 30% of the inmates in the prisons and Clark County accounted for 50%. He said it seemed there was a different approach in Washoe County. He said in Clark County one person of the 72 resolved trafficking cases received probation for substantial assistance. He said in Clark County people were not charged with trafficking when they were utilized for substantial assistance. Mr. Freeman said more people were convicted of trafficking and on probation because of substantial assistance because they pled to a trafficking charge initially before they were allowed to provide substantial assistance. He said it reflected the “letter of the law versus spirit of the law.”

Commissioner Herndon referred to page 15 of Exhibit J titled County of Commit Statistics. He said drug offenders in Clark County accounted for 51.37% of all the in-house population and Washoe County accounted for 30.16%.

Commissioner Siegel stated he believed Clark County had five times the population of Washoe County. He said the differences in the percentages were very dramatic in terms of the final result of how drug offenses were handled.

Chair Hardesty said there was a significant difference in the source of incarceration.
Commissioner Herndon said there was a highly increased movement in law enforcement on possession of stolen vehicles and grand larceny auto cases in southern Nevada. He said we cannot legislate how a certain law enforcement group decides to prioritize crimes within their community. He said in Churchill County there were a higher number of charged trafficking offenses that resulted in convictions.

Chair Hardesty asked if there were questions about the substantial assistance proposed amendments. He said the Subcommittee recommended Proposal #1, Amendments to Substantial Assistance Statute, NRS 453.3405, sub-section 2, (Exhibit K).

Commissioner Herndon said the Subcommittee unanimously recommended Proposal #1. He said the Subcommittee could further discuss Proposal #2 which added a subsection 3, a safety valve exception to the mandatory nature of the trafficking offense.

Chair Hardesty said in subparagraph (c), upon good cause shown, the motion may be heard in camera, he said he would add the words “and the transcript sealed.”

Commissioner Horsford asked about the language in sub-section 2 of proposal #1 that said the court may reduce or suspend the sentence. He asked when a suspension of a sentence would occur.

Commissioner Herndon said that occurred when the person was placed on probation. He said a low-level trafficking offense with 1 to 6 years could be suspended by the judge and the person would be put on probation. He said the language used meant they were eligible for probation.

Commissioner Kohn asked what effect going back to the Subcommittee would have on paragraph 3 of Proposal #2 of (Exhibit L). He asked if the Commission should now discuss the subject of a safety valve.

Commissioner Herndon discussed the question originally as to whether there should be a “good cause exception.” He asked Mr. Freeman to write a proposal in line with the federal guidelines in 5C1.2. He said the Subcommittee did not unanimously agree.

Commissioner Kohn said sub-section 3 of Proposal #2 addressed his and Commissioner Digesti concerns. He said he wanted the courts to have more discretion.

Chair Hardesty said under sub-section 3 (a), it allowed the court to determine whether the defendant was offered meaningful opportunity to perform. He said he had cases where parties litigate that question. Chair Hardesty said the more frequent the problem was in subsection (a), section (3) in Proposal #2, where the defendant lacked the capability to perform
substantial assistance. He said the defendant lacked sufficient knowledge or was in custody and could not offer substantial assistance.

Chair Hardesty asked for a motion referring the subject of weights back to the Subcommittee with a request they receive input from professionals about the weight issue. He requested the Subcommittee evaluate the draft of sub-section 3, Proposal #2 and adopt the amendment in Proposal #1 of sub-section 2.

Commissioner Skolnik so moved and Commissioner Kohn seconded the Chair’s suggestion.

Commissioner Mallory asked if the motion included Proposal #1.

Chair Hardesty said they would be adopting Proposal #1, Exhibit K; referring the draft of section 3 to the statute in Proposal #2, Exhibit L, back to the Subcommittee as outlined; and referring back to the Subcommittee the recommendation on the subject of weights after consultation with experts.

Commissioner Mallory said they would be adopting Proposal #1 which was unanimously approved by the Subcommittee.

Commissioner Herndon said another recommendation the Subcommittee had was to recommend a legislative change to allow for specialty court fees to be imposed on all felony cases.

Chair Hardesty wanted that suggestion included in the discussion in Agenda Item XI dealing with the recommendations by the specialty court judges.

Commissioner Carpenter asked what would be entailed in looking at the weights in drug cases.

Commissioner Herndon said weights in general for trafficking charges and specifically receive input from substance abuse professionals about various narcotics. He said they needed to discuss whether the weights were good for all Schedule 1 substances or did they need adjustment.

Chair Hardesty said on the issue of weights it was uncertain in the statute what was being weighed. He said the question asked was if they weighed the pure drug or the cut drug.

Commissioner Herndon asked if the discussion needed to include statutory changes to more clearly identify what constituted the weight for the weight designation.
Ms. Clark took a roll call vote of Commission members. The motion passed unanimously.

Chair Hardesty opened discussion on Agenda Item XVII, Public Comment.

Constance Kosuda said she was advised by the Chief Justice’s staff to appear in person. She requested a future agenda item. She requested Judith Stanley be designated to speak to the Commission concerning the benefits of compliance with existing law on the treatment of the mentally ill in prisons and jails of Nevada. She said Nevada was out of compliance with existing national standards. She said Ms. Stanley had written two books endorsed by the National Commission of Correctional Health Care.

Chair Hardesty asked Ms. Kosuda to have Ms. Stanley contact his office in order to make arrangements and schedule her presentation.

Florence Jones spoke about Casa Grande several months ago. She said Casa Grande was not being used as a transitional facility.

Chair Hardesty said the State Prison Board asked this Commission to undertake an evaluation of the prison budget including issues related to Casa Grande and Jean. He said the Casa Grande questions would be scheduled for September and October.

Ms. Jones said the issue regarding an oversight on parole and the entire system was needed. She asked if a civil grand jury was possible for Nevada.

Mercedes Maharis had three questions. She asked how many health violations the Nevada Health Department had cited since 1995 against Nevada prisons that the Board of Prison Commissioners had ordered to be corrected as ordered in NRS.

Chair Hardesty said he did not have the answer. He requested she direct her question to the staff of the Board of Prisons and the Governor’s Office, in particular. He said the Board of Prisons consisted of the Governor, the Secretary of State and the Attorney General.

Ms. Maharis went to a great deal of work to submit a large study to the Board of Commissioners in 2002. She said they never received a reply concerning any of the issues. She said they did not know why the report was being ignored.

Chair Hardesty said if she encountered further issues in that regard come back to the Commission in September with public comment.

Ms. Maharis said Mr. Hinton collected those reports six months later unopened.
Commissioner Herndon asked Ms. Maharis if he came in and asked to have them returned.

Ms. Maharis asked why there were no ombudsmen at each of the prisons.

Commissioner Skolnik said they were not funded for ombudsman.

Chair Hardesty said the Director of the NDOC stated it was a lack of funding. The Legislature has not approved ombudsmen positions.

Ms. Maharis asked why camps were being closed.

Chair Hardesty said the subject of the prison’s budget, camps and Casa Grande would be discussed in September and October.

Ms. Maharis said there were laws about health violations in prison. She asked what could happen to the Board of Prison Commissioner members if they are violating the laws.

Chair Hardesty suggested she resubmit the packets with updated information to give the current Board of Prison Commissioners an opportunity to respond.

Constance Kosuda said she volunteered to be an ombudsman in the prison.

Michelle Ravell asked if 50% of the prison population from Clark County was drug offenses.

Commissioner Herndon replied 50% of the drug offenders in the prison system come out of Clark County. Drug offenders do not make up 50% of the prison population; they make up 13% of the prison population. Of the 13%, 50% percent of those people were from Clark County.

Ms. Ravell said there was a disparity between what it cost to treat these people and what it costs to incarcerate them. She said she preferred drug treatment programs.

Tonja Brown had concerns regarding the minutes from July. She submitted a proposed bill on the DNA and she wanted it applied to next week’s agenda. She said she discussed enhancements on deadly weapons. She said she had a statement she needed to put on the record from retired Chaplain Jane Foraker-Thompson, (Exhibit M). She read parts of the letter. Ms. Brown provided a copy of a grievance also. She said she was in favor of an oversight committee. Ms. Brown requested they consider her bill for DNA.

Elaine Voigt, My Journey Home, gave an update on her organization. She joined the Sparks Chamber of Commerce. She established a working relationship with the Veterans Administration. She partnered with the Nevada Child Protective Services, JOINED, Nevada
AIDS Foundation and the Work Force Development Coalition. She said they received SAPTA, Substance Abuse Prevention and Treatment Agency, certification for prevention. She talked to employers about hiring ex-felons. She said she had 105 prisoners communicating with her prerelease looking for information and resources. She said out of the people she saw in her office, 91% of them are still working today. She does not refer anyone for day labor.

Chair Hardesty thanked Ms. Voigt for the update on her organization.

Teresa Werner submitted information in writing, (Exhibit N). She commented about inaccurate records in the NDOC and the Parole Board. She said the records needed to be accurate. She said there was a total of 27 inaccuracies in the PSI report in her example, Exhibit N. She said the PSI report was used to determine eligibility by the Parole Board.

Pat Hines expressed appreciation for the work the Commission had undertaken. She said she was pleased with their priorities. She asked for support on Agenda Item VIII-D, which discussed S.B. 471. She said the Adam Walsh Act did not have to be activated until July 2009. She said the bill was passed the last week of May. She requested the Commission support the elimination of A.B. 579. Ms. Hines offered suggestions and comments for a decision to present to the 2009 Legislature, (Exhibit O). Ms. Hines other concern dealt with the Parole and Probation Board. She said perhaps the Parole Board and the Pardons Board should be combined into a Clemency Board similar to Arizona.

Chair Hardesty said there was a typographical error under Item VIII-J in the Agenda which excluded the phrase “for the Pardons Board.” He said the item would be on next week’s agenda.

Ms. Hines mentioned ways to reduce prison population. She suggested releasing older inmates. Their recidivism rate was very low.

Chair Hardesty asked Ms. Hines if she favored a resolution by the Legislature amending the Constitution and removing the Supreme Court from the Pardon Board and creating a Clemency Board of independent people.

Ms. Hines said it was an offer of a consideration for Nevada.

Chair Hardesty said there might be more frequent meetings if members of the Pardons Board did not consist of the Governor, Attorney General and the Supreme Court.

Ms. Hines said in most states they were not the only ones on the Pardons Board.
Kathi Testa Smith said she was the mother of a murder victim. She commented on discretion by judges on mandatory sentencing. She said some sentences are not given to eventually restore someone back to society. She said certain degrees of offenses, such as murder, should never be returned to society. It was important some people not be restored back to society. A victim’s survivor wants the comfort of knowing a sentence from a judge was going to be carried out. She agreed the most critical element in the release of prisoners was that they had a place to go. She said for public safety the State needed to provide resources for prisoners as they were released.

Chair Hardesty said next week’s meeting would first focus on amendments to A.B. 510, and then prison reentry and issues related to potential intermediate sanction plans. He said then they would address proposals relating to the Parole Board and the Division of Parole and Probation. Discussion of recommendations relating to the prison was the final topic.

Ms. Maria Calzada entered a paper called Recidivism, (Exhibit P). She said her belief was lawmakers allowed fear, (False Expectations Appearing Real) to guide their decision-making process when managing people who violated a law and are now incarcerated.

Exhibit Q, Exhibit R, Exhibit S were submitted for the record but not spoken to during the meeting.

Chair Hardesty asked for a motion to continue the meeting until 9:00 a.m. August 25, 2008, under the existing Agenda. He said he would notice a continued meeting and post it under the Open Meeting Law and include a link to the previous Agenda for reference.

Commissioner Skolnik so moved. Commissioner Carpenter seconded a continuation of the meeting. The meeting adjourned at 4:47 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Interim Secretary

APPROVED BY:

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

Date: August 18, 2008  
Time of Meeting: 9:00 a.m.

#### EXHIBITS

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