MINUTES OF THE
ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE

August 25, 2008

The meeting of the Advisory Commission on the Administration of Justice was called to order by Justice James W. Hardesty, Chair, at 9:09 a.m. on August 25, 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
Bernard W. Curtis, Chief, Division of Parole and Probation
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims’ Rights Advocate
Phil Kohn, Clark County Public Defender
Arthur Mallory, Churchill County District Attorney
James Miller, Sheriff, Storey County
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
Assemblyman David Parks, Clark District 41

COMMISSION MEMBERS ABSENT:

Senator Mark Amodei, Capital Senatorial District
Assemblyman John C. Carpenter, Assembly District No. 33
Catherine Cortez Masto, Attorney General
Senator Steven A. Horsford, Clark County District No. 4

STAFF MEMBERS PRESENT:

Janet Traut, Senior Deputy Attorney General
Chair Hardesty opened the continuation of the meeting of August 18, 2008. The Agenda from last week was continued.

Ms. Clark called the roll. Commissioners Amodei, Carpenter, Horsford and Masto were absent.

Chair Hardesty opened the discussion of Agenda Item III, Dr. Austin’s presentation. He said as part of the presentation one of the items identified was a concern that the data reflected sentencing out of range in approximately twelve point five of the cases. He said it was about 1,300 cases. Commissioner Herndon and Commissioner Kohn questioned the results of that information. Chair Hardesty discussed the matter with various people in the judicial system and with Dr. Richardson and Dr. Austin. He said there were on-going concerns about the accuracy and interpretation of the data. He said the representatives from the Grant Sawyer Center looked at the data more carefully with input from members of the Commission. Chair Hardesty said approximately 400 cases from the original list had been removed. He asked the public defenders offices in Washoe and Clark Counties to review the other 900 cases to determine if there are sentences out of range. When the information was completed, the Commission will be advised. He cautioned the Commission, the public and the media that until the data had been thoroughly evaluated, conclusions should not be drawn from the preliminary reports provided through the research consultants.

Commissioner Hardesty next mentioned Item XIII of the Agenda. Commissioner Herndon reported the results of the subcommittee studying mandatory drug sentencing statutes. Commissioner Herndon and the Grant Sawyer Center advised him they had not received data from the Second Judicial District Court. He said that issue was rectified and data supplied from the Court to the Grant Sawyer Center. A detailed report was supplied to Commissioner Herndon on the drug sentencing in Department One, which was the test department, of the Second Judicial District Court. As a result of the information, Commissioner Herndon requested the entire district’s information. He said the drug sentencing on mandatory drug
sentencing statutes for that department show significantly different results than the Eighth Judicial Court. He said there was a dramatic difference in approach in prosecution and sentencing from the Eighth Judicial District in mandatory drug sentencing. Commissioner Herndon has reopened the questions. The actions taken on the substantial assistance statute remain, but there may be additional information that warrants further study. He said the mandatory drug sentencing may require further recommendations from the subcommittee. The Second Judicial District accounted for a disproportionate level of sentencing on mandatory drug crimes versus the proportions of sentences developed from defendants across the State. The Eighth Judicial District accounted for approximately 70 percent of sentencing. The Eighth Judicial District would have their statistical data available this week for the Grant Sawyer Center and Commissioner Herndon’s subcommittee.

Chair Hardesty opened discussion on Agenda Item VII which concerned recommendations or suggestions about Assembly Bill (A.B.) 510, Senate Bills (S.B.) 471, and S.B. 4. He said the statutes were in the packet. He said the Commission received input during the hearings from various agencies concerning the impact of the bills. Chair Hardesty asked Commissioner Salling to present an overview of S.B. 4 and what it did or modified in S.B. 471.

Commissioner Salling said S.B. 471 impacted the Board of Parole Commissioners when it went into effect October 2, 2007. It provided rights for inmates they previously had not had and required the Parole Commission to conduct hearings in a different manner. It allowed inmates to bring representatives of their choice to provide testimony. It also required the Board give inmates a notice of rights. She said the Board had to wait for a ruling from the Attorney General’s office as to what the term “reasonable” meant. She said it required the Board change forms and give notice again. It also required hearings in a face-to-face manner if parole was going to be denied. She said earlier suggestions were to hold hearings only for inmates denied parole. She said they did not know who was denied before the hearings. It kept the Board from seeing cases in absentia. S.B. 471 required the Parole Commission give inmates representation and required the Board give hearings if denied parole. That increased the case load and the length of the hearings which then created a backlog.

Commissioner Salling said when the Special Session of the Legislature met in June, 2008, they passed S.B. 4. The bill provided the Board with the opportunity to clear up the backlog. S.B. 4 suspended the requirements of S.B. 471 until July, 2009. She said it was everyone’s intention to resume face-to-face hearings. She said the Board had 1800 parole hearings in absentia from July, 2008 to August 31, 2008. She said the Board sat in hearings in panels. They anticipated the backlog will be finished by the end of September. She said the Board utilized S.B. 4 to get caught up and will then return to all the requirements of S.B. 471.

Chair Hardesty addressed several procedural aspects related to A.B. 510 and the Senate bill. He asked if it was necessary for the Board to effectuate notice in cases where it was apparent
the individual was going to receive parole. He said it was costing the Board and State money and time. He asked for examples of cases that were heard in absentia and not necessary to go through the notice provisions.

Commissioner Salling said the way the Board conducted business prior to S.B. 471 seemed to work well on 305 cases, which were the DUI cases, and 317 cases. She said both of those groups were in the community with electronic monitoring. The other groups were inmates who failed the “psych” panel. She said the Board was not allowed to grant parole to someone who did not pass the panel. The other groups being seen in absentia prior to S.B. 471 were cases in the camps. She said the philosophy was if the inmate was safe enough to be in the camp, they posed very little threat and were generally paroled. She said they saw those groups in absentia and it was very cost effective. She reminded everyone the Nevada Parole Board had one of the highest grant rates and lowest recidivism rates in the nation.

Commissioner Skolnik said there was a significant decline in the minimum security population as a consequence of A.B. 510. He said they requested Dr. Austin look at their classification process to determine whether they can expand the group selected for the camps. He said they had the ability to videoconference.

Chair Hardesty asked Commissioner Salling if in order to accomplish the maximum efficiency possible and get inmates released from prison and into supervision, could a certain category of cases be heard by the Board without notice or in absentia. If the Board was inclined to deny parole, that individual would receive a hearing.

Commissioner Salling said that was a good idea. The problem with doing that before was if they were denied, there had to be two hearings: the hearing in absentia and the scheduled hearings.

Chair Hardesty said the vast majority of cases they heard resulted in a parole grant.

Commissioner Salling said they hoped so; however they had seen a hardening of the population. She said it was doable now; whether it was a year from now was unknown.

Chair Hardesty said if an individual was rejected because of a hardening of the population could the Board identify areas of concern and give notice to the defendant so the inmate could address those areas to the Board.

Commissioner Salling said it was another aspect S.B. 471 required of the Board. They were required to give inmates a reason for denial in writing and suggestions for ways to improve.
Chair Hardesty wanted recommendations by the Commission on this subject. He said it seemed the Commission should recommend to the Legislature that there were categories of cases where it was unnecessary to give notice provisions because of the high probability of parole grant. He said it was also unnecessary to hold parole hearings where the inmate cannot satisfy the legal requirements necessary for parole. Chair Hardesty added that in areas where the Board had concerns about granting parole they would give notice to the inmate to address those concerns.

Commissioner Salling agreed with Chair Hardesty. It gave the Board some relief and allowed more time for the serious cases. She said there was little point in seeing the people they knew were going to be paroled. The Commission members enjoyed the in-depth interviews. The letters of complaint had diminished significantly.

Chair Hardesty said the Board was meeting in panels currently. He asked if under the statute it was necessary for all seven members to approve a parole grant.

Commissioner Salling said it was necessary for a majority of the Board to concur. She said the Board had always sat in panels. She said the reason for seven commissioners was it allowed for a tie-breaker if they reached a stalemate. She did not suggest changing the number on the Board. She said with the provisions of S.B. 4 made the job manageable now. She said the opportunity to see some cases in absentia would be a benefit to the Board and eliminate the need to add people to the Board.

Chair Hardesty asked if she thought the Parole Board should be expanded to nine members. Commissioner Salling did not think it should be expanded. She said the Board would have to hire two more members and it was unnecessary.

Chair Hardesty said he preferred the Board spend more time on the riskier cases rather than the cases not entitled to parole at all or going to receive parole anyway.

Commissioner Mallory said the way the legislation is currently written, if parole was being denied, it was mandatory that it be done in front of the panel with the prisoner present.

Commissioner Salling said the Board did not give an answer immediately. The law allowed them to deliberate in private. The inmate was entitled to the face-to-face hearing. The Board had ten days after the final decision to give a reason for denial and reasons for improvement.

Commissioner Mallory said the appearance of the prisoner in front of the Board was mandatory. He asked if there were negative connotations by giving the prisoner an option to appear before the entire panel.
Commissioner Salling said the Board had a waiver form for inmates not wanting to appear before the panel. She said it was a burden for the NDOC staff. She said it was quicker to have the hearing.

Chair Hardesty said with videoconferencing it was not as difficult to have the inmate present.

Commissioner Salling said the Board and the Attorney General’s Office were concerned about the waiver issue, that it could result in litigation.

Chair Hardesty asked if there were provisions in the Attorney General’s opinions over the last year where S.B. 471 and S.B. 4 needed clarification to avoid legal issues.

Commissioner Salling said there were issues regarding the Open Meeting Law and whether the Board was quasi-judicial. She said the Supreme Court said the Board was quasi-judicial.

Chair Hardesty asked the Commission to consider a motion identifying a category of cases most likely to lead to parole and allow the Board to hear those cases in absentia. To the extent the Board might tentatively determine that parole would be denied; then a mandatory hearing with the inmate would be required. Furthermore, to the extent the inmate was unable to legally satisfy the conditions for parole, the Parole Board would not be required to hear them, such as the sexual offender who cannot satisfy the prerequisite requirement of the psych panel. He recommended including in the statue that an inmate could waive a hearing. Chair Hardesty opened the discussion for comment.

Commissioner Siegel made the motion as stated by Chair Hardesty. Commissioner Skolnik seconded the motion.

Commissioner Siegel said what the Chair had articulated satisfied the individual rights suggested by S.B. 471. He said the issue of individual rights was problematic in the context of a parole hearing. He asked about the legal restraints against parole in the context of the psych hearing. He asked for clarification. He said if somebody was being denied parole because they were bi-polar or schizophrenic it was very problematic in constitutional terms. How were people screened out by a psych hearing and who was being screened out.

Chair Hardesty clarified the meaning of psych panel. He said it was a psycho-sexual evaluation, not psychiatric or mental health issues. He said there was a huge difference. He said she was referring to a specific statutory section that limited the right of a sex offender to seek parole eligibility without obtaining a satisfactory psycho-sexual evaluation in which the opinion of the psycho-sexual panel of three concluded the individual was not at a high risk to re-offend. Chair Hardesty said without the recommendation the prerequisite necessary for parole eligibility was not satisfied.
Commissioner Salling said the panel was conducted by the NDOC. The Parole Board had nothing to do with the psych panel. The inmates were certified as to whether they were a high risk to re-offend and a danger to the public or they were not. That information was given to the Parole Board and if they were certified not a danger they could receive parole.

Chair Hardesty said there could be mental health issues they identified that show up in those evaluations but the focus was on predisposition and risk to reoffend.

Commissioner Skolnik said the department also had the ability for individuals with mental health issues to be referred immediately upon release to the Department of Health and Human Services, Mental Health.

Commissioner Parks offered background information on S.B. 471. He said last year the Legislators received a large volume of correspondence from inmates who thought their civil rights were denied when they were not given the opportunity to appear in front of the panel. He said some inmates sat for months after a parole hearing waiting for their finding. The bigger issue was the inmate was dumped for no apparent reason. He said that was the motivation behind the legislation. Commissioner Parks said the complaints fell off after the bill was enacted.

Chair Hardesty asked if the suggestion in the motion was necessary to have the full panoply of rights under S.B. 471 where the Board was granting parole or they were not legally entitled to parole.

Commissioner Parks agreed with the Chair. He said processing individuals through much faster was beneficial. He said parole hearings needed to be for inmates facing final release.

Commissioner Skolnik said concerning the psych panel issue, the statute referred to it as a psych panel and not a psycho-sexual panel. He said the statute was not very clear in the area. It did not distinguish between the NDOC and Health and Human Services responsibilities. The Open Meeting Law and publishing of the minutes might be problematic due to HIPAA laws and other things.

Chair Hardesty said the wording of the statute left a number of other subjects open. The Commission needed to consider the implications of the Open Meeting Law on psycho-sexual evaluation panels. A Supreme Court decision made those panels subject to the Open Meeting Law. He said it was questionable whether it was wise to have the Open Meeting Law applicable in a psycho-sexual evaluation panel where significant private information was being vetted. He said the inmate needed the opportunity to fully vet the recommendations from the panel. However, it was potentially counter-productive to have the full account of their mental health and sexual conduct vetted in an open meeting law. He said it was an area
the Commission should hear the various competing issues on and consider making recommendations to the Legislature to exempt that panel from the Open Meeting Law and correct some of the language concerning the scope of the panel’s works.

Chair Hardesty requested Commissioner Salling provide a memo to the Commission identifying a category of cases where the Board could consider cases in absentia and list those cases. He wanted another category of cases where the inmate cannot qualify to come before the Board legally without satisfying the provision of the statute and finally the waiver of a hearing.

Commissioner Siegel asked if they assumed the inmate who waived the hearing had the literacy or other competence to make a judgment.

Commissioner Salling said they were already using such a form. They had been told an inmate always had a right to waive a hearing. She said she had no concerns at this time.

Commissioner Siegel said the prison population had an exceptionally low over-all education level. He said they had literacy issues and asked if it created any red-flags.

Chair Hardesty said the issue was competency and it could be raised in front of the Parole Board at future proceedings.

Commissioner Salling said the waiver required a witness.

Commissioner Mallory suggested adding statutory language using the term “knowingly and intelligently waive” in order to satisfy any legal requirements.

Chair Hardesty asked Ms. Clark to call the roll on the motion. All the members present voted yes and the motion passed.

Chair Hardesty opened the discussion on Assembly Bill (A.B.) 510. He asked Commissioner Curtis, Commissioner Skolnik and Mr. Woods to present an overview of the bill, how it worked within the divisions and recommendations received from various people about changes and improvements to sections of A.B. 510.

Commissioner Skolnik said A.B. 510 applied the changes in time credits to inmates, whose crimes occurred after July, 1997. Categories C, D, and E offenders received additional credits off the front and back of their sentence. He offered the example of a 12 to 30 month sentence becoming a 5 to 15 month sentence for good behavior. He said Categories A and B received additional credits on the backend of their sentence only. A 4 to 10 year sentence could become a 4 to 5 year sentence. All sentences regardless of category were eligible for
additional meritorious credit off the backend of a sentence. A 4 to 5 year sentence can be adjusted so that the 5 year end of the sentence can discharge before the inmate goes to the first parole hearing on his four years. He said some inmates were opting to waive parole hearings because they knew they were going to be discharged before they received the parole approval. He said that was an unintended consequence, that inmates discharged rather than accepting a parole. Category B felons were no longer eligible for the 317 residential confinement. He said these offenses could include DUI, possession of controlled substance, vehicle theft and burglary. He said this was another unanticipated consequence of the bill.

Chair Hardesty said Commissioner Skolnik indicated two unintended consequences. He said the second referred to the lack of the department’s ability to place certain people in category B on residential confinement.

Commissioner Skolnik said prior to A.B. 510 certain category B offenders could be placed in residential confinement. They were no longer eligible because Category B had been excluded. The other unintended consequence was the time credits could result in the maximum sentence being reached before the minimum sentence. He said a four to five year sentence could result in the sentence being served for two and a half years.

Chair Hardesty asked Commissioner Skolnik about an unintended consequence discussed in Brett Kandt’s letter to the Commission, (Exhibit C). He said A.B. 510 credits were extended on the minimum side of the C, D, and E categories for time spent by the individual in the county jail. He said when they were ultimately sentenced to prison, that individual may spend very little time in the prison before becoming parole eligible. It addressed concerns about prison overcrowding, but did not address concerns or issues about public safety or making an impression on the defendant about sending them to prison. He said one of the unintended consequences of the application of A.B. 510 credits was granting credits to individuals serving most of their time in pretrial confinement jails. He believed A.B. 510 needed modifying so the credits on the minimum side only applied in instances in which the individual was serving prison time and not county jail time.

Commissioner Skolnik said time served at the county level had always been considered time served and applied to the sentence. He said there was nothing in A.B. 510 to differentiate between time served at the county and time served inside the prison. Commissioner Skolnik said they had to do whatever the law said they had to do.

Commissioner Salling said the Board notified victims when an inmate became eligible for parole. She said they received considerable testimony from victims upset that someone was eligible for parole so quickly.
Commissioner Skolnik said it was beyond the jail time served. There were requirements regarding victim notification and those requirements can be met on a parole issue. The time served and time credits applied meant when an individual had to be discharged the NDOC was caught between notifying the victim and releasing the offender. He said the language ought to stipulate the individual will serve adequate time to afford adequate notification to the witness per the law.

Chair Hardesty said the other underlying reason for good time credit on the minimum side was to afford some level of management for the prisons and assure the population’s cooperation with corrective measures and supervision. He said those objectives were not addressed if they received credits on county time. He said it was an issue the Commission needed to comment about to the Legislature.

Commissioner Curtis said serving time in the county jail was not easy. He said time served was “time served.” He said the inmate was isolated from familiar surroundings. He said time served in county jails was just as hard as time served in state prisons.

Chair Hardesty asked about the other issues on A.B. 510. He said he wanted to review for the Commission the various suggestions made regarding A.B. 510 separately.

Mark Woods, Division of Parole and Probation said when A.B. 510 took effect it gave a felony probationer an opportunity to earn time off of their supervision for good behavior. The law was effective July 1, 2007, and was retroactive to July, 2006. He said in July 2007, the Division realized 2,000 discharges of felony probationers. He was involved with Assemblyman Parks while working on A.B. 510. He said it followed the philosophy of offering probationers a “carrot” instead of just a “stick.” He said as a result, there were three areas of concern that affected them. When the law was put into effective the gross misdemeanants were not included. He said in discussions they referred to probation, but when the law went into effect it was felony probation. He said in Nevada, gross misdemeanants comprised twenty to twenty five percent of their case loads. Another area of concern referred to the felony probationer receiving good time credits if they do not commit a serious infraction. The definition of serious infraction opened up many problems. He said two areas of concern were the specialty courts and restitution owed. They suggested a change to the BDR that would fix the problem, (Exhibit D). He said parolees always earned credits while on parole in two areas. One area was being current with fiscal responsibilities and the other was if they were in a program or working. He said the Division recommended anybody under supervision receive credit in those two areas alone.

Chair Hardesty recapped Mr. Wood’s statement. The Commission should consider extending A.B. 510 to gross misdemeanants. Secondly, the absence of a definition of serious infraction raised an issue about an individual in specialty court who had not completed court or
someone obligated to pay restitution but had not completed it, and was eligible for the credits. Chair Hardesty said it actually went beyond specialty courts and restitution. The courts identified, as conditions of probation, any number of obligations imposed on the defendant. His concern was if any provisions of probation were not satisfied it ran contrary to the court’s judgment of conviction to allow someone to be discharged based on good time. He said, as a fundamental rule, the conditions of probation needed satisfying before someone was discharged.

Mr. Woods agreed but the reality of the situation was someone on supervision may be in counseling for years, long after they were off supervision. He said because they were not cured they did not earn any good time credits.

Chair Hardesty said it was also the group that may need further supervision. He said Dr. Austin mentioned the State needed to focus on more serious offenders. Chair Hardesty said those with drug problems tended to create additional problems in the system. He was also concerned about limiting probation periods to five years. He said probation may need extending at the discretion of a trial judge. He said this was particularly true in cases where restitution was a substantial sum. Chair Hardesty was concerned victims did not receive full payment of their restitution and the system lost any supervision of the individual. He said restitution had to be a separate discussion for the Commission. However, a fundamental defect was the inability to assure that as much victim compensation was paid as possible. He suggested making a list of items needing discussion by the Commission.

Commissioner Kohn said in terms of credit for time served in county jails it was critical to receive the credit while in jail. He said gross misdemeanors also needed credit for time served and it was an oversight last year that needed correction.

Commissioner Hardesty asked if there were other suggestions or recommendations for A.B. 510.

Commissioner Mallory commented on Mr. Kant’s letter of August 4th, (Exhibit C). He said the public expected truth in sentencing and all the ramifications of A.B. 510 needed explanation. He said if a sentence was reduced it should be made public. Commissioner Mallory said he dealt with Parole and Probation every week. Parole and Probation must have some type of carrot and stick to offer people to get them to comply with the terms of probation. He said probation was a privilege, not a benefit. He said there was a difference between time served before sentencing and after sentencing. The original detention part in county jail was limited, by law, as to how long a person was held. He said that type of credit was worrisome for most prosecutors. After a person was sentenced, then all time served could be given appropriate credit. He requested the Commission refer to Mr. Kant’s letter, (Exhibit C), which incorporated the opinions of the prosecutors in the State.
Commissioner Digesti asked for clarification on credit for time served in the county jail. He said the inmate received credit for time served toward the underlying sentence when he was sentenced in District Court. He understood Justice Hardesty’s comment that they should not receive good time credit for that time. He asked if that was correct.

Chair Hardesty replied no. He said A.B. 510 extended credit for good time on the minimum side. He said there was always credit for time served on the maximum side. He was talking about the minimum credit which did not exist before A.B. 510. He said currently when the calculations were made under A.B. 510 for good time credit, those calculations on the minimum side included time the defendant spent in the county jail. He said that misled the victims in cases and also was not part of the legislative intent as a prison over-crowding measure. He said it was a completely separate question than the concept of gross misdemeanor issues. He said gross misdemeanor was a category of crime that was overlooked. He said Commissioner Kohn made a good point that individuals were sitting in jail and not transported to prison and questions arose about the impact on their credit for time served. He said on the maximum side inmates should get the credit for time served. He said his point was A.B. 510 extended good time credit on the minimum side, but because there was no differentiation in the statute between credit for time served and good time credit it had the effect of causing an acceleration of credit on the minimum side for jail time. He said he thought that was an unintended consequence. An individual who spent a substantial amount of time in jail for pre-trial or pre-sentence confinement arrived at the NDOC and spent minimal time and was released before they were even processed. If they were not released, they were parole eligible. Chair Hardesty said that was a surprise for a victim. He said the parole board was receiving complaints in that area and the prison was faced with management issues. The purpose of A.B. 510 was not to extend credit for time served on the minimum sentence in all cases. It was to extend good time credit on the minimum side to assist with prison overcrowding. He said his point was contrary to the purpose of the statute. He said in terms of the comments from Commissioner Curtis it depended on which county you served jail time in. He said the State always extended credit for time served on the maximum side of the sentence. However, A.B. 510 was a new concept dealing specifically with prison overcrowding.

Commissioner Digesti said he understood there would be no good time credit presentence. He said once sentencing had occurred if a person languished in the county jail for an extended time something could be worked out.

Chair Hardesty said they get credit on the maximum side for all time served.

Commissioner Digesti asked about good time credits post sentence for people in county jail for an extended period of time.
Chair Hardesty said if they were in the county jail post sentence they received good time credits.

Commissioner Skolnik reiterated the prison received inmates who had expired their sentence prior to coming into the institution or were about to expire their sentence. He said the DOC’s biggest concern was those individuals must be released, even in some cases prior to victim notification. He said that needed to be clarified in the Legislative Session.

Commissioner Siegel asked Chair Hardesty about the issue of a judge not having a prison sentence carried out. He asked if it were a temporary problem of a new law where the judges were not as fully aware of the implications of A.B. 510. He asked if the trial judge could adjust the sentence if he believed it was necessary for someone to spend some time in prison.

Chair Hardesty said that was possible to a degree. He said there was always a concern in fashioning a sentence that involved restitution. He said when A.B. 510 was first enacted judges were concerned about the impact because judgments of conviction had been entered with an individual being placed on probation with the condition of either Specialty Court or restitution. He said with the credits on the minimum side they were discharged from probation in the middle of their Specialty Court service. He said currently you cannot sentence around that problem. He was concerned that other conditions of probation might not have to be satisfied because the good time credits applied and an early discharge occurred. He said currently a sentence cannot be fashioned around the way it was calculated.

Commissioner Herndon asked what Commissioner Siegel meant by adjusting a sentence. He said once a sentence was given it cannot be altered.

Commissioner Siegel said he was referring to the original sentence. He said he was asking whether the trial judge could make a longer sentence and not change the statute.

Commissioner Herndon said when A.B. 510 eliminated stipulated probation time there was no longer a fixed term of probation. He said there were many factors a judge might consider.

Chair Hardesty said another problem was judges sentencing to the maximum probation period of five years in order to get around some perceived problem. He said clarification in this area would help resolve the problems.

Commissioner Herndon agreed. He said the worry was more from people outside who were concerned judges would sentence to the maximum five years as a means of getting around A.B. 510.
Chair Hardesty said there were a number of judgments of conviction where the person was placed on probation and specialty court was ordered as a condition of probation. The good time credits allowed defendants in those courts to walk away because they were discharged.

Commissioner Herndon said that was accomplished due to accrued good time credits. He said the court routinely received requests for discharge from parole and probation that had many conditions that were not met.

Mr. Woods said one of the biggest problems with a serious infraction was it being retroactive for a year. He said on July 1, a lot of people got off automatically and that was an issue.

Chair Hardesty said he wanted to take each item separately. He asked whether the Commission recommended extending A.B. 510 to gross misdemeanants.

Commissioner Kohn so moved. Commissioner Skolnik seconded the motion. The motion passed. Commissioner Mallory voted no.

Chair Hardesty said the next motion involved the issue of the effect raised about A.B. 510 as to whether good time credits extended to the category of Specialty Courts or restitution and conditions of probation had been satisfied.

Commissioner Farley asked Chair Hardesty for clarification of the motion.

Chair Hardesty referred to a memo from Parole and Probation, (Exhibit D). The memo suggested the criteria for receiving credits was limited to two areas: (a) current on payments of supervision fees and restitution, and (b) involved in employment or a program. He said the memo suggested Specialty Court participants would only get credit for the fiscal portion. Chair Hardesty added the phrase extending the category to include satisfying conditions of probation.

Commissioner Mallory moved to recommend an amendment to A.B. 510 consistent with the recommendations of Parole and Probation. Commissioner Miller seconded the motion.

Commissioner Digesti said restitution was tied in as a condition of probation. He asked how individuals under a restitution order who cannot financially satisfy that condition of probation would be handled. He was concerned the probationer’s inability to pay restitution or fees would not allow him to receive the good times credits.

Chair Hardesty proposed restitution was a separate subject. He hoped the Commission would make recommendation on restitution. He suggested defendants who only had to pay restitution were still required to pay supervision fees. He said it was counterintuitive for an
individual to pay supervision fees to the Division of Parole and Probation rather than paying restitution fees to the victim. Mr. Woods said supervision fees were $30 a month. Chair Hardesty recommended a change in that approach. If restitution was the only thing left to satisfy, he suggested creating a Restitution Center through the State’s collection division. He recommended allowing the collection to extend beyond the period of remaining supervision. He said confessions of judgment extended beyond any period of probation. He said confessions of judgment were signed in almost all cases of restitution.

Commissioner Herndon said a signed confession of judgment was often a condition of probation.

Chair Hardesty suggested connecting confessions of judgment with a collection department and remove people from the rolls of parole and probation and stop having them pay supervision fees.

Commissioner Digesti said his main concern was a model probationer not being able to receive good time credit due to an inability to pay restitution.

Chair Hardesty said a separate collection division recovering restitution eliminated the need for supervision fees.

Commissioner Curtis said it would clarify the issue of restitution and keep the Division of Parole and Probation out of court on contempt proceedings.

Chair Hardesty asked Commissioner Herndon for his opinion on the proposal.

Commissioner Herndon said when probation expired or an honorable or dishonorable discharge occurred, a confession of judgment was there and the victims were left with trying to collect restitution that was not paid during the term of probation. He said an avenue through the State Treasure’s office to pursue restitution at the end of probation was helpful for victims.

Chair Hardesty said restitution would remain in the proposal from Parole and Probation, but might be removed with an amendment at a later date if the Commission agreed to modify the restitution.

Commissioner Mallory requested the Chair restate the motion.

Chair Hardesty said the motion adopted the proposal made by the Division of Parole and Probation contained in a memo labeled Exhibit D. The motion allowed the A.B. 510 credits for those on supervision to be limited to two areas; current on payments set by the Division
and actively involved in employment or a program. In regard to specialty courts they would get credit for the fiscal portion but not the remaining period of supervision to complete specialty courts and diversion.

The motion carried unanimously.

Chair Hardesty next discussed one of the unintended consequences identified by the NDOC. He said that was the time credits on the maximum sentence.

Commissioner Skolnik said it was in regard to Category B felons. He said they had Category B felons entering the prison with time credits applied to the maximum sentence that could result in the maximum coming to fruition before the minimum did so the individual was discharged without a parole hearing.

Chair Hardesty asked if there was a recommendation for clarifying the issue.

Commissioner Parks said when the issue was considered in the last Session, it was thought there would be enough room between the minimum and maximum sentences that the situation would not occur. Commissioner Parks asked how often the situation occurred.

Chair Hardesty said it may not occur often, but to the extent that it occurs at all was disturbing. He suggested removal of the doubling credits on the maximum side on the A and B categories.

Commissioner Skolnik pointed out that the largest category of offenders were the B offenders. He said the issue of offenders receiving early releases happened occasionally and the prison was faced with notifying victims the offender was already discharged.

Chair Hardesty said the solution was to not double the credits on the maximum side of A and B offenders. He said another benefit was to extend the period of time for parole supervision.

Commissioner Salling said the Parole Board was seeing the mandatory eligibility coming before the minimum eligibility.

Chair Hardesty said eliminating the doubling of credits on the maximum side and returning it to where it was before A.B. 510 would resolve the problem. He also mentioned the other unintended consequence of extending to the NDOC Director the discretion to grant A.B. 510 credits for Category B offenses for residential confinement eligibility. He said as long as public safety protection was in place it was a way to reduce prison overcrowding.
Commissioner Skolnik said prior to A.B. 510 individuals were eligible for residential confinement. He said they were not creating a new group of eligible offenders; rather they were restoring a group that was eligible before. He said as Director he never forgot the issue of public safety.

Commissioner Curtis said residential confinement was an intensive supervision level and had a significant fiscal note. He said it was a 30 to 1 ratio at that level.

Chair Hardesty said it extended to the Director the same discretion he had before A.B. 510 went into effect.

Chair Hardesty offered a motion that the time credits on the maximum side for Categories A and B return to the level they were before A.B. 510 was approved.

Commissioner Mallory moved the motion. Commissioner Flynn seconded the motion.

Commissioner Siegel asked what the impact on the prison population would be if enacted.

Commissioner Skolnik said they did not know the impact. He was also concerned about the impact. He wanted to defer the vote on this subject until they had further information from Dr. Austin regarding potential impact.

Commissioner Skolnik moved to delay the vote. Commissioner Digesti seconded the motion. The motion to continue action on this item to the next meeting and after reports from Dr. Austin and the NDOC staff was approved.

Chair Hardesty offered a motion that would restore the discretion of the Director to provide residential confinement eligibility for Category B offenders. It was a provision existing in law before A.B. 510.

Commissioner Kohn moved the motion. Commissioner Salling seconded the motion.

Commissioner Mallory asked for discussion on the motion. He requested the motion include a provision for a specific written finding as to consideration of public safety.

Commissioner Kohn accepted Commissioner Mallory’s suggestion as a friendly amendment. Commissioner Salling seconded the motion.

The motion passed unanimously.
Chair Hardesty’s next item concerned disclosure at the time of sentencing of the consequences of A.B. 510. Chair Hardesty said Commissioner Mallory’s suggestion was in cases where there were victims. He asked if it was possible to include in a PSI a description of what that might be in a given case.

Mr. Woods said they would have to work with the Department of Corrections. There were so many variables and different ways a person earned credits.

Chair Hardesty said it seemed it might get complicated. He asked Commissioner Mallory if his goal was disclosure at sentencing that A.B. 510 existed and all parties involved needed to be aware there was an opportunity to earn credit to reduce the minimum and maximum side of the sentence.

Commissioner Mallory said it was more complicated. He said the purpose of truth in sentencing was to let the victims know what the sentence was going to be. He wanted a specific statement that said when the person could be released. He said victims had a right to know when the person was going to get out of prison.

Commissioner Skolnik said the problem was time credits could be earned in multiple ways. He said an actual firm number was very difficult to achieve with any accuracy.

Chair Hardesty said in concept it was easy to say but difficult to determine the actual time served.

Commissioner Flynn said his concern with A.B. 510 was it was easy to let the defendant as well as the victim know the potential maximum sentence. However, A.B. 510 was so complicated it was impossible to know what the potential minimum sentence was.

Commissioner Farley asked if there was a way to do an example.

Chair Hardesty said disclosure that calculated to the day when a person was released was difficult. The categories that allow them to qualify were clear.

Commissioner Herndon agreed with Commissioner Flynn it was confusing. He said a sentencing judge looked at the crime, the PSI and prior record to determine the appropriate sentence.

Chair Hardesty asked what would occur if a disclosure was made and then the Legislature changed the law.

Commissioner Herndon said judges had to work with what was currently available to them.
Commissioner Skolnik said the truth in sentencing laws passed during the mid ‘90s came about as a result of federal legislation that required at least 85% of a minimum sentence be served if the State wanted to continue receiving federal funds. He said that was due to pressure from victim advocates.

Commissioner Mallory said transparency in sentencing was one of the goals. He said reasonable information to the victims concerning the possible release of an inmate was necessary. He said if it was too complex to give the information to victims, then a change in the law was required.

Chair Hardesty said his point of view was it was dependent upon variables in the hands of the inmate not in the sentencing structure. He said it was about not being able to say an individual would do all things necessary to qualify him for certain credits and thus be able to state when he would be released from prison. He said various good time credits statutes can be listed to all parties involved. He said it was also subject to being granted parole. He said a sentencing judge was unable to tell everybody in the process when an individual was going to be released.

Commissioner Farley said she understood what he said, but there still had to be a way to do an example. She said victims were worried about retribution and needed the release information.

Commissioner Herndon clarified previous statements. He said his comment about it being too difficult referred to the complexity of a sentencing judge attempting to take everything into consideration and “guesstimate” a sentence that accounted for all the possibilities that can occur. He said he was not necessarily speaking in terms of advising victims or defendants about how much time they may spend in prison. He said it was incumbent upon a public or private defense attorney for the defendant and the district attorney on behalf of victims to explain how the system worked.

Chair Hardesty asked about DUI’s. He asked how many people in Nevada believed a third time DUI required a minimum of one year in prison. The reality was very few, if any, spend a full year in prison. He said a variety of programs inside the prison or outside treatment programs was the reason the Legislature adopted a DUI offender program that kept third time DUI offenders out of prison and placed them in a program. He said it resulted in an unfunded mandate on most of the counties, except Clark County. He said discussion of transparency needed as much disclosure as reasonably possible. He said earning good time credits on the minimum side of a sentence was new, but to actually calculate it was almost impossible.
Commissioner Mallory said his point was victims needed to be advised about the way the system currently worked. He said hopefully the Commission could request it be done in a way the victims understood.

Commissioner Farley said many people did not realize the new laws had been passed. She said the public needed to be educated. She said A.B. 510 caused changes she did not believe were good for the State.

Chair Hardesty asked if there was a motion on the topic. The motion concerned the disclosure of the consequences of good time credits on the minimum side of sentencing.

Commissioner Mallory moved to the extent possible, that information be included in the PSI and the sentencing judge disclose to the best of his knowledge and ability the parameters of A.B. 510.

Commissioner Farley seconded the motion.

Commissioner Curtis said he preferred the district attorney write the report in the PSI. He said the legal intent was clear and they would include the report in the PSI.

Commissioner Herndon said if the intent of the motion was to inform the public, the PSI which was a confidential document, would not inform anyone. The PSI went to the defendant, the attorneys and the court, not to the public or victims. He disagreed it was the job of the courts to inform everybody at the time of sentencing how A.B. 510 was affecting somebody. He said once someone became a victim it was the job of the prosecutor to inform them about the process and answer questions.

Commissioner Skolnik said his Department could assemble a sheet on the types of credits given, how they were earned and provide that information to the victim advocate groups. He said they could then explain the potential actual sentence based on time credits. He hoped the judges knew enough about the laws to determine what sentences were appropriate given the time credit available.

Commissioner Mallory accepted Commissioner Skolnik’s suggestion as an amendment to his motion.

Chair Hardesty said he was unclear what the amendment was. Commissioner Mallory said the Department of Corrections would provide a fact sheet outlining the circumstances of good time credits and how their sentence might be reduced and the information made available to those in the process.
Commissioner Siegel supported the amendment. He said Commissioner Mallory’s thought that people having better information on the meaning of a sentence was the in interest of the criminal and the prosecuting sides.

Chair Hardesty restated the motion. He said the Commission recommended the Nevada Department of Corrections provide a fact sheet explaining various methods for good time credits on minimum and maximum portions of the sentence and give those fact sheets to prosecutors, public defenders and victims’ rights advocates.

The motion carried unanimously.

Chair Hardesty opened the discussion on whether an individual should be afforded good time credits on the minimum side under A.B. 510 for time served presentence. He asked for a motion on the topic.

Commissioner Kohn moved people were eligible for credit under A.B. 510 for pretrial detention, excluding felonies.

Chair Hardesty said good time credits for pretrial detention were currently being given.

Commissioner Kohn withdrew the motion.

Chair Hardesty said all the items on A.B. 510 were covered with the exception of one other item he wished to discuss.

Mr. Woods said as the law was presently, and with the recommended amendments, it affected a person on probation. He said when a judge sentenced a person to probation then suspended the sentence and put the offender on probation for two years, their expiration date was two years from the date of sentencing. He said every month successfully served on probation reduced the sentence by twenty days. He said a person on one year probation could earn 120 days credit. He suggested giving the court the authority, as an intermediate sanction, to take away earned credits rather than revoking the offender in cases of violations. He said the Parole Board had that capability on some credits for parolees.

Commissioner Salling said the Parole Board had the authority in revocation cases. She said it was not prior to revocation as an intermediate sanction.

Chair Hardesty asked if the Parole Board should have intermediate sanction. Commissioner Salling said she needed to talk to the rest of the Board, but she thought it was a good idea. She said inmates automatically lost their good time credits if they came back with a new felony conviction.
Chair Hardesty asked Commissioner Herndon his opinion of using an intermediate sanction and extending authority to the judiciary to revoke good time credits.

Commissioner Herndon said he was in favor of intermediate sanctions. He said sanctions short of revocation were a good tool for further options.

Commissioner Skolnik said the NDOC took no position on the proposal. He said a judge had revoked good time credits on a parolee without returning the individual to the Department. He said under current statutes only the Director had the authority to do that.

Chair Hardesty entertained a motion permitting revocation as an intermediate sanction by the judge or parole board of good time credits earned under A.B. 510.

Commissioner Curtis moved the motion. Commissioner Salling seconded the motion.

Commissioner Siegel said an entire set of intermediate sanctions was needed. He asked if there were other intermediate sanctions for discussion. Chair Hardesty said the subject was on the agenda for discussion.

The motion passed. Commissioner Miller was absent for the vote.

Commissioner Farley asked about the weapons enhancement on A.B. 510. She asked Chair Hardesty to put the topic on the agenda for September.

Chair Hardesty addressed the issue of restitution. He said one area which troubled him was the lack of doing as much as possible to collect restitution for victims. He said when he was on the bench confessions of judgment were put in as part of the judgment of conviction. He said that created the ability for a victim to collect money through a civil judgment and extended the time for collection. Chair Hardesty said there was a competing problem where people were paying supervision fees. He recommended the Commission urge the Legislature and State Treasurer to develop a uniform collection policy where the judgments could be turned over when the individual’s supervision ended. He said he had been told by defense lawyers that defendants were often concerned about their credit report. He said he preferred the Division not be involved in restitution.

Commissioner Curtis said it was a problem where restitution was not fully satisfied yet the probationary period was expiring. He said a resolution toward a collection agency would be beneficial.

Commissioner Salling agreed with Commissioner Curtis. She said trying to get restitution from people who did not have the money was difficult. She said victims may have lost
hundreds of thousands of dollars and they were very frustrated. Civil judgments were
difficult for victims to enact. She would like Parole and Probation to be out of collections.

Commissioner Flynn asked when a person was under the supervision of Parole and Probation
and required to pay supervision, how was it insured the restitution was paid. He asked if it
was a garnishment or a voluntary payment.

Mr. Woods said currently all offenders had fiscal responsibilities; supervision fees, fines due
to sentencing jurisdiction and restitution. The Division took into account their income and
determined how much they paid. He said they did not have the authority for garnishment.

Commissioner Farley asked if there was a way to have garnishment done like child support.
She asked if that was a possibility for restitution.

Chair Hardesty said the idea for a collection division was to have a collection agency set up
the garnishment.

Commissioner Flynn asked what was allowed. He said there was a flaw in the system when a
person goes off probation or parole and stops making payments. He asked if the
recommendation to the Legislature included creation of a system where it went out for
collections to a private agency.

Chair Hardesty said he was recommending to both the Legislature and State Treasurer’s
office to contract out a collection of the restitution judgments.

Commissioner Digesti made the motion. Commissioner Salling seconded it. The motion
carried unanimously.

Chair Hardesty opened discussion on Agenda Item VIII. He said items A through D had been
discussed. He opened with E through J. He said Commissioner Salling made a
recommendation to clarify mandatory parole release under NRS 213.215.

Commissioner Salling said current state law said when someone who was eligible for
mandatory release then the Board must release them unless they posed a threat to public
safety. She said the law did not actually state that. She said the law required a parole hearing.
She said if the Legislative intent was for parolees to automatically receive parole at
mandatory eligibility, then that needed to be clarified and stated as the intent.

Commissioner Parks said he did not recall anything in particular concerning mandatory
parole.
Chair Hardesty said the Parole Board wanted clarification from the Legislature of their intent.

Commissioner Farley said parole was a privilege and not a right.

Commissioner Mallory said he wanted discretion to remain.

Chair Hardesty asked Commissioner Mallory if his intent was the Legislature clarify the definition of mandatory parole release and modify the word mandatory. It needed to be made clear it was subject to the Parole Board’s discretion to grant or reject the release.

Commissioner Mallory asked if the criterion for not granting parole was listed in the statute.

Commissioner Salling said the statute, in essence, said unless the Board perceived them to be a threat to public safety, parole was granted. She said if parole was denied they were required to give the reasons to the Legislature and to the inmate stating why parole was denied.

Chair Hardesty said that created the ambiguity in the statute. He said it was characterized as mandatory parole release, but there were findings that needed to be made that could preclude release.

Commissioner Mallory suggested the phrase “mandatory consideration” rather than mandatory parole.

Commissioner Skolnik said there were individuals refusing parole and efforts were made to try to force them to take parole. He said they continued to have people refuse parole. If inmates did not submit any parole plans, they were not released on parole.

Commissioner Salling moved that the statute remain as written with the wording changed to mandatory consideration in order to clarify the ambiguity in the statute that it does not require the Parole Board to grant parole.

Commissioner Curtis seconded the motion.

Commissioner Parks said for clarification there was an inaccurate NRS citation in Agenda Item VIII letter E. He said NRS 213.215 dealt with interstate compacts.

Chair Hardesty said the statute under discussion was the one called mandatory parole release.

The motion passed unanimously.
Chair Hardesty said the next item discussed clarifying the use of interpreters at parole hearings under NRS 213.055 and 213.128.

Commissioner Salling said the Board’s intention was they often required interpreters for non-English speakers. The statute was vague on that issue.

Chair Hardesty said the purpose was to clarify the statute to make interpreters available for persons with disabilities or those who do not speak the English language.

Commissioner Skolnik said he believed a federal court case stipulated that requirement.

Commissioner Skolnik made the motion. Commissioner Farley seconded the motion.

Commissioner Digesti asked if there was a requirement that the interpreters be certified.

Commissioner Salling said certified interpreters were very difficult to locate for the hearing impaired.

The motion carried unanimously.

Chair Hardesty requested Commissioner Salling outline the issue in Item G.

Commissioner Salling said the idea discussed was aggregating the minimum and the maximum sentences together for offenders with consecutive sentences. She said the idea was rather than make an individual appear for the minimum sentence, everything was lumped together resulting in fewer parole hearings.

Chair Hardesty said someone with nine consecutive sentences, each sentence had to be dealt with and then the inmate began the next sentence. He said it was a waste of time and effort.

Commissioner Salling said there were a lot of noticing requirements. Chair Hardesty added there was an advantage to the inmate. He said if the maximum minimums were aggregated they avoided the entire problem. They served the full minimum time and then they were eligible and done with that sentence and on to their next sentence.

Chair Hardesty said the Commission heard an overview of Item VIII G from Commissioner Salling. He said an inmate sentenced to consecutive terms would have the minimum and maximum aggregated for purposes of parole eligibility consideration. He said the first time the inmate met with the Board was when the aggregated minimum sentences were served. Commissioner Salling said at that point the Board would be seeing them for final release to the street.
Commissioner Digesti asked if it happened frequently that someone serving consecutive sentences was not paroled to the next consecutive sentence.

Commissioner Salling said it occurred very often.

Commissioner Digesti said he understood it was nearly automatic that someone was paroled to their second consecutive term. He asked what advantage there was for the inmate besides saving time for the Parole Board.

Commissioner Salling said it was not a big advantage for the Parole Board. It kept the inmate from returning to the Parole Board multiple times. It would save cost to the State, the notification and also to the victims.

Chair Hardesty said there was a conservation of the Parole Board’s resources. The Board was able to spend more time on the more difficult cases. Commissioner Salling replied the inmates were not leaving; it was just to the next consecutive sentence.

Commissioner Digesti asked about individuals serving consecutive life terms with the possibility of parole. He asked if it would also apply to them.

Commissioner Farley said she thought it was a great idea. She said the victim had to come to every parole hearing or appeal. She said it affected the victims’ lives.

Commissioner Mallory agreed with Commissioner Farley. He said by considering aggregating minimum and maximum they were not saying the person would automatically get minimum sentence on every offense. He said at the end of all the minimum sentences, every single case would be looked at to determine eligibility for parole.

Commissioner Salling said the original thought was the hearing for parole eligibility occurred after aggregating the sentences.

Chair Hardesty stated that was the reason the maximum was aggregated. He said two things could occur: you could dump them or put them on parole. When you put them on parole there was an extended period of supervision by the aggregated maximum. It improved the State’s position either way. He said it extended the length of supervision when they were ultimately placed on parole.

Commissioner Farley asked what “dumping them” meant. Commissioner Salling said it meant denying parole. She said if an inmate still had time left on their sentence they could be denied for three to five years.
Commissioner Parks said this was an issue he had studied over time and there were big advantages to be gained. He offered a motion to recommend a BDR on this issue.

Commissioner Herndon said he disagreed on behalf of victims on what Commissioner Salling was saying. He said he knew victims who wanted to go before the Parole Board because they wanted an inmate to serve as much time as possible on one sentence before they got to another sentence. He asked how the amendment would affect commutations of sentences. He said if someone had two consecutive sentences of five to twenty years, they would appear once after ten years.

Chair Hardesty said the proposal dealt with parole eligibility not pardon considerations.

Commissioner Herndon said if the inmate was brought up once at ten years it essentially said he received his parole on the first sentence for five years. He said the parole board might not have released him at five years. He had concerns about the implementation of the amendment.

Chair Hardesty said under the normal way it worked if parole was granted on the first sentence, then the second sentence starts. The maximum was over on the first sentence; they were paroled.

Commissioner Herndon said he understood the aggregate would become 40 years on the maximum end with a minimum of ten years. He said it was more likely the person was paroled rather than serving the maximum of their sentence.

Commissioner Salling said victims on consecutive cases were often concerned about having to come back for the parole hearings. She said there were definitely two sides to the argument.

Commissioner Herndon said there was a difference in aggregating the number of years when dealing with an enhancement versus dealing with separate counts being run separately.

Commissioner Farley asked what the difference was between a weapons enhancement and a consecutive sentence.

Chair Hardesty said where there was an enhancement, if it was a weapon, the enhancement was one to twenty following the original sentence as distinguished from a separate criminal conviction. The current proposal does not make that distinction. Commissioner Herndon said he understood the wisdom of the proposal. He said it was more palatable when discussing aggregating the minimum and maximum of a crime and its enhancement in determining parole eligibility.
Commissioner Farley asked if the proposal could be applied only to C, D, and E crimes.

Chair Hardesty said it could be fashioned however the Commission wished. The current proposal applied to all categories of offenses. Chair Hardesty said if one of the objectives was saving the Parole Board from wasting their time, it would be applied to A and B people. He said they were people who were not going to get paroled with lengthy consecutive sentences.

Chair Hardesty asked if the Commission wished to table the motion. Commissioner Parks withdrew the motion and the second agreed.

Chair Hardesty opened discussion on Item H from Agenda Item VIII.

Commissioner Salling said one of the problems the Parole Board saw were parole violators returned because of alcohol and drug abuse. She said the suggestion did not have anything specific, but was interested in some type of alternative to incarceration. She said many states had residential treatment programs. She said treatment or incentive to stay out of prison was needed. The problem now was once they violated they had no other option. She said putting the money into treatment seemed a better option.

Commissioner Skolnik said a parole violator was put through regular intake and the prison estimated the overall intake costs were approximately $8,000 per inmate.

Chair Hardesty suggested it had been pointed out that the Commission should identify a program that saved money for the prison and redirected those costs to intermediate sanctions or alternatives to incarceration.

Commissioner Skolnik said before money was diverted from the Department of Corrections it needed to be recognized that the DOC had been underfunded for years. He preferred seeing any savings redirected to the Department allowing them to increase the safe surroundings for staff and inmates.

Chair Hardesty said the NDOC had increased responsibilities and added costs due to the lack of resources to handle alternatives to incarceration in the form of intermediate sanctions or other alternatives. Chair Hardesty asked what types of intermediate sanctions or alternatives were available for a plan. He also asked what the Legislature’s commitment to funding it was in lieu of incarcerating the same people. He said the default position for the Parole Board was revocation. He suggested a Subcommittee, whose purpose was to look at alternatives in other states, including intermediate sanctions. The Subcommittee would make recommendations to the Commission to formulate a plan. He said if it cost money, the Governor and Legislature needed to recognize it was a public safety question.
Commissioner Siegel supported Chair Hardesty’s suggestions. He said states as varying as Pennsylvania and Texas have moved in this area. He said they needed to find out how it was working in various states. He mentioned he would like support from JFA or PEW.

Commissioner Skolnik said one state had been successful in funding the counties. They took the average number of individuals sent to prison from a given county and anything that county did to reduce the number of people sent to prison, was funded back to the county for other programs. He said it had favorably impacted the prison populations.

Commissioner Salling said she had information on the intermediate sanction programs from Pennsylvania and Texas. She said the National Institute of Corrections funded studies in five states. There was a lot of data available for the Subcommittee. She said Texas built treatment and restitution centers. She said the counties received money for treatment.

Commissioner Mallory said the services would be a benefit to rural Nevada to a greater extent than just the inmates going or not going to prison. He said the services were lacking throughout rural Nevada. He said it would benefit the rural population.

Chair Hardesty said the Commission needed to create a subcommittee to formulate plans for alternatives to incarceration and intermediate sanctions. The subcommittee would develop information from other jurisdictions and alternative programs for recommendation to the Legislature.

Commissioner Salling said the Division and Parole Board had an ongoing grant with Dr. Austin for the development of an intermediate sanction matrix and alternatives to incarceration. She said she would determine how much money remained on the grant.

Commissioner Skolnik moved to accept Chair Hardesty’s motion. Commissioner Curtis seconded the motion. The motion passed unanimously.

Chair Hardesty appointed Commissioner Salling chair of the Subcommittee. Commissioners Skolnik and Curtis will also serve on the Subcommittee. Chair Hardesty asked Commissioner Herndon to ask the District Judge’s Association to appoint a judge to serve on the Subcommittee. He asked Commissioners Flynn and Miller to ask the Sheriff’s and Chief’s Association to appoint people from the North and South. He asked Commissioner Kohn to have people from the Defense Attorneys organization from the North and South appointed to the Subcommittee. Chair Hardesty requested Commissioner Mallory do the same for two prosecutors.

Chair Hardesty opened discussion on Item I of Agenda Item VIII. He said it dealt with the length of probation served by an offender. He said currently the length was five years. He
discussed the possibility of extending probation for a variety of reasons. The main reason was to improve the capability of the State to supervise some offenders placed on parole.

Commissioner Salling said the idea came from the need for a longer period of supervision either to pay restitution or oversee treatment.

Commissioner Curtis said there was a significant fiscal impact on his division.

Chair Hardesty asked if there was any interest in extending the discretion in sentencing probation for a period longer than five years.

Commissioner Farley said she thought probation should be extended.

Commissioner Parks agreed.

Commissioner Mallory asked if in conjunction with alternatives to incarceration, was restitution included in those types of programs?

Chair Hardesty asked if the Commission wanted to add this item to the Subcommittee’s review rather than debating and resolving it today. Chair Hardesty referred the item to the Subcommittee.

Chair Hardesty said the last item on the Agenda, VIII, J, dealt with restoring rights and was directed to the Pardons Board. He said as a member of the Pardons Board he had three suggestions. First, consider requesting the Legislature amend the Constitution to change the make-up of the Pardons Board from the Governor, Attorney General and the seven members of the Nevada Supreme Court to an independent clemency board. Secondly, he suggested the Commission urge the Pardons Board to increase the frequency of its meetings for the consideration of pardons applications. He said the Pardons Board received 200 to 300 requests for pardon consideration.

Chair Hardesty said other than community restoration cases, the Pardons Board heard one session a year with between seventeen and twenty one cases. He said there were huge numbers of potential applicants who might be considered, but cannot because of the large numbers. The make up of the Pardons Board itself placed serious constraints on their time to look at these cases. He said he had five or six boxes of applicants in his office he was still trying to read. Chair Hardesty said the Pardons Board was designed to consider a separate form of clemency. He said the Pardons Board was rarely a factor in the criminal justice
system. He said it was designed and intended to be a part of the justice system. The current make-up of the Board was a constraint, the lack of frequency of meetings was a constraint and it did not serve the citizens well. His suggestion required an amendment to the Constitution.

Commissioner Mallory said in many states the governor was the sole arbiter of whether someone receives a pardon. He assumed in Nevada the Board granted pardons and the Governor did not have a veto.

Chair Hardesty said the Governor had to vote with the majority for a pardon to be granted.

Commissioner Mallory said it appeared that members of the Supreme Court had a conflict being on the Pardons Board.

Chair Hardesty said many Supreme Court members had reservations about serving in the capacity of the Pardons Board as well as on the Supreme Court.

Commissioner Siegel made a motion supporting Chair Hardesty’s suggestions. Commissioner Mallory seconded the motion. Commissioner Siegel said pardons had declined as part of the “harsh justice movement” since about 1960. He said there was a problem with public support for the overall clemency process.

Commissioner Herndon asked if the proposal was to eliminate not only the members of the Supreme Court but the Governor and the Attorney General as well. If so, did he have ideas of how the independent members of the Board would be assembled?

Chair Hardesty said he suggested a clemency board which could be appointed through a combination of appointments. It could be appointed by the Governor, much the same way as the Parole Board was appointed.

Commissioner Herndon asked if that involved the Governor remaining on the Board and appointing other members or the Governor being off the Board.

Chair Hardesty said it would be appointing the members. The Governor and Attorney General would be off the Board. He said Attorney General Masto agreed she would like to be off the Pardons Board.

Commissioner Herndon said he agreed with the proposal from the Chair.

Chair Hardesty said the proposal was two-fold: first calling for a constitutional amendment changing the current makeup of the Pardons Board to a Clemency Board appointed by the
Governor; secondly increasing the number of meetings for consideration of pardons applicants.

The motion carried unanimously.

Chair Hardesty said the Commission had been requested by the Prison Board to discuss in detail the prison budget and budget cuts and possible future budget cuts. He suggested September 22, 2008 for the next meeting.

Chair Hardesty opened discussion on Agenda Item XV. He said it was a discussion of recommendations and BDRs made by the Clark and Washoe County Public Defender’s Offices. He said the Commission received a response from the District Attorneys Association and the prosecutors. He listed four items remaining for discussion. The items dealt with the burglary statutes, habitual criminal statutes, policies concerning photo identification and the preservation of biological evidence. He had asked for a proposed BDR and language for the preservation of DNA and biological evidence. He said Mr. Kandt supplied summaries of codes from other jurisdictions, (Exhibit E). Chair Hardesty asked if the BDR for biological evidence had been reviewed. He asked for comment on the suggested item.

Commissioner Mallory asked for time to study the proposal and see what impact it would have on the local jurisdictions.

Commissioner Flynn said he was concerned about the impact on the rural police agencies. He asked Commissioner Miller to check with his peers about the effect on their agencies.

Chair Hardesty said the discussion on the BDR concerning biological evidence would be continued until the September meeting. He asked Commissioners Mallory and Miller to investigate the impacts associated with that BDR.

Commissioner Kohn suggested all four items be held for discussion in September.

Chair Hardesty said he met a specialist in the Department of Justice. He said a policy had existed for many years regarding photo identification. He said recently an attempt was made in Illinois to try to verify it. As a result, there were mixed results. The Justice Department has initiated a separate, independent program to try to vary the results of the policy announced by the Department in 1999. He said there were concerns whether the policy was appropriately verified and tested.

Commissioner Kohn said he was familiar with the Illinois experience.
Chair Hardesty appointed a subcommittee consisting of Commissioners Kohn, Miller, Digesti and Mallory to discuss alternatives on these topics.

Commissioner Kohn asked what the discussions entailed.

Chair Hardesty said the discussions included alternatives to the burglary statute. There was discussion whether there should be a difference between the penalties imposed for home invasion type burglary versus a commercial burglary. He said other alternatives were also discussed regarding habitual criminal. He said a subcommittee could vet those discussions.

Chair Hardesty opened discussion on specialty courts, Agenda Item XI, (Exhibit F). He requested consideration of recommendations and BDRs made by district court judges concerning specialty courts. The Commission received a proposal regarding specialty courts programs in the State. The proposed legislation clarified responsibility for determining eligibility by the judges. To induce people to complete specialty court, the judge could dismiss a criminal charge and seal the file. He said there were other bills which amended certain statutes. He asked if there was a motion to adopt the plan as presented.

Commissioner Herndon moved to adopt the plan as presented. Commissioner Siegel seconded the motion.

Commissioner Mallory said specialty courts in his jurisdiction were extremely successful, especially the juvenile drug court. He said prosecutors preferred to have input as to who entered specialty court.

Chair Hardesty said Dr. Austin indicated specialty courts did not actually divert away from prison. He said Dr. Austin would be at the September meeting. Chair Hardesty said subject to anything Dr. Austin might mention, the Commission could vote on the motion.

The motion carried. Commissioner Mallory voted no and Commissioner Skolnik voted yes with conditions depending on Dr. Austin’s input.

Commissioner Herndon asked about making a recommendation to the Legislature regarding including a specialty court fee in all felony or misdemeanor convictions.

Chair Hardesty asked for a review of the recommendation from the Subcommittee. Commissioner Herndon said the Subcommittee discussed funding issues for the specialty courts. He said within the drug sentencing subcommittee, drug trafficking was a crime viewed as people higher up in the drug subculture and profiting off selling narcotics to people at the street level. He said the suggestion was they should be paying in some fashion for the havoc they caused. He said instituting a fee that helped pay for the diversion and drug
court programs related to drug addictions. The subcommittee agreed to have a specialty court fee become an associated part of sentences in felony and gross misdemeanor cases. They discussed various fees assessed by statute and ultimately agreed to have the fee on a sliding scale in order for the court to have discretion as to the amount. He said that would allow change without having to rewrite statutes.

Chair Hardesty said the Supreme Court had a Specialty Court Funding Committee. The committee was chaired by Justice Douglas and Chief Justice Gibbons. The committee considered BDR proposals from Judiciary and the Supreme Court that dealt with this area. He wanted to refer the suggestion made by Commissioner Herndon and the Subcommittee to the Specialty Court Funding group and ask them for specific suggestions.

Chair Hardesty asked Commissioner Herndon to confer with the Subcommittee, ask if they could meet before September and report back to the Commission with any proposals they might make.

Chair Hardesty opened discussion of Agenda Item VI, concerning recommendations and BDRs included in the presentation by the Religious Alliance in Nevada, (RAIN). He said the handout, (Exhibit G), contained a series of bolded recommendations submitted by the RAIN Board. He referenced items and a summary of the points discussed. Chair Hardesty said RAIN supported the NDOC Director’s initiative and the beliefs of the Advisory Commission on the Administration of Justice. He said there was a suggestion that a comprehensive list of disincentives and barriers which currently frustrate groups in their efforts to help prisoners in reentry be compiled. He said they mentioned the lack of identification, lack of housing, providing job and employment training and preparation for reentry and lack of coordination of community networks for support services.

Chair Hardesty took up the issue of reentry. He said Nevada had no reentry plan. Inmates who were transitioning into society and had expired their terms, reenter with a limited amount of preparation. He said the mission of the criminal justice system was attempting to find methods for reducing recidivism and addressing issues of public safety. He said RAIN’s suggestions focus on those points.

Commissioner Skolnik said the NDOC received a grant from the Federal Government to develop a program for serious and violent offenders for reentry. He said the program was operated out of the Southern Desert Correctional Center. They were funded for, and had constructed, a reentry center in Las Vegas, Casa Grande, and also one in Reno that was not in operation. The restrictions on who entered the programs often eliminated the people who most need the help. He said sex offenders and violent offenders may not be placed in the housing. He said they worked with the Department of Motor Vehicles and Social Security to obtain identification for offenders before they are released. Reentry was not a new concept...
but funds for creating new programs were limited. He said funds for reentry were frozen due to budget constraints. The top priorities in the Department were reentry programs, staff training and development.

Commissioner Skolnik submitted a motion that supported the recommendations of RAIN. Commissioner Curtis seconded the motion.

Commissioner Mallory said everyone was in favor of improving reentry programs. However, he disagreed with some statements made by RAIN. He agreed with bolstering the reentry program.

Chair Hardesty asked Commissioner Skolnik to list the recommendations identified in his motion.

Commissioner Skolnik said the motion specifically referred to those identified under Section VI of the Agenda: adoption of a statement of public policy; development of programs to help in reentry; identifying a list of disincentives and barriers to reentry; and developing a plan. He agreed with the ideas but not all the subcategories.

Commissioner Mallory disagreed on behalf of victims of crimes with Agenda Item VI A. He said society had a right to be able to expect retribution. He agreed with the other items.

Commissioner Herndon said he had a discussion with a judge who presided over the calendar for a reentry program. He said many of the inmates directed to that program upon release were 25 years or less in age and violent offenders. He said there was some success as long as there were a lower number of people.

Chair Hardesty said his intent was to appoint a subcommittee chaired by a Commission member and comprised of nonmembers with a broad based population. He said the subcommittee would identify the various issues the policies raised.

Commissioner Skolnik separated the motion. He recommended taking a separate vote on item number 1, and combining items 2, 3 and 4. Commissioner Curtis agreed.

Chair Hardesty said he was treating the motion as amended. There were two motions. One motion to support the first recommendation from RAIN and a separate motion supporting 2, 3 and 4.

Ms. Clark called the roll on the first motion. Commissioners Digest, Curtis, Kohn, Siegel, Skolnik and Parks voted yes. Commissioners Farley, Flynn, Herndon, Mallory, Miller, Salling and Chair Hardesty voted no. The motion failed.
Commissioner Siegel said that one of the purposes of the criminal justice system was rehabilitative and we should act constructively towards that end.

Commissioner Mallory asked to amend the second motion to include the phrase “that one of the purposes of the criminal justice system was rehabilitative.” He said it fit in with items 2, 3 and 4 in the second motion.

Chair Hardesty said there was a motion to amend the motion to approve the second, third and fourth recommendations of RAIN. Commissioner Skolnik seconded the amendment.

Commissioner Flynn asked for a restatement of the amendment.

Chair Hardesty said the amendment was to state one of the purposes of the criminal justice system was rehabilitative and we should take constructive action toward that end.

Chair Hardesty asked Ms. Clark to roll call the vote on the amendment. The amendment was unanimously approved.

Chair Hardesty called for a vote on the original motion as amended which adopted the three recommendations identified in the Agenda plus the amendment.

The motion passed unanimously.

Chair Hardesty said he wished to appoint a subcommittee to identify specifics contained in items 2, 3 and 4 of the motion passed. He would appoint a chair of the subcommittee. Commissioner Parks volunteered to sit on the subcommittee.

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

Assemblyman Bernard (Bernie) Anderson, Washoe County District No. 31, referred to BDR 204, which made various changes concerning excise tax on liquor. He said it had a bearing on the work of the Commission. He said as the Chair dealing with recidivism problems in 1995, which established the drug courts, one recommendation from that Committee was an increase in the excise tax for drug treatment programs in the State. He said there were two issues needing solutions. One was treatment programs for the continuation of the drug treatment programs and the other major problem was the need for DNA testing. He resubmitted the 1995 legislation to try again to use the funds from those programs to go to specific programs. He said one of the criticisms of the last session was mandating felons have DNA testing but there was no provision for funding it. He said by looking at the BDR list, it was not possible to realize it contained a method to fund DNA testing.
Chair Hardesty asked Commissioner Herndon to take the BDR to the Specialty Court Funding Subcommittee and apprise them of it. He recommended endorsing the BDR by the Subcommittee and well as the Commission.

Ben Graham, Clark County District Attorney’s Office, said the issue of certification was discussed briefly last session. He was referring to individuals who committed serious crimes when they were sixteen to eighteen years of age, fled the jurisdiction and returned after their twenty first birthday. He said it appeared there was a gap as to any ability to retain jurisdiction over those people.

Chair Hardesty said the Commission voted to approve a BDR allowing for the ages to be substituted by the Public Defender and Prosecutor who were working on the bill. He said they were waiting for the ages from them.

Commissioner Herndon said last week there was public comment from Mercedes Maharis. He said she asked questions concerning health code violations and whether they were investigated. He said the Commission directed her to re-serve the prisons board with the information. He said he asked her to FAX information to him and he would present it to the Commission. He wanted the record to reflect he had received an executive summary of some sort. He said it was five pages and he would send it to the Carson City Office.

Teresa Werner commented on waivers by the Parole Board. She said inmates knew they were going to be denied parole and so did not appear in front of the Board. She said in regard to A.B. 510 and credits applied to the backend of the sentence, there was no backend for people serving life sentences. She suggested a cap on life sentences. She said credits rely on programs which were cut due to budget cuts. She agreed about informing the public about early release. In regard to mandatory parole release, as a safety issue a buffer was necessary for public safety. She asked to talk to victims with Commissioner Farley regarding aggregate sentences. She said aggregating sentences had to apply to A and B felons. She suggested a maximum limit on aggregating sentences. She supported the clemency board.

Tonja Brown said she presented information concerning DNA testing that should be looked at prior to the next hearing, (Exhibit H).

Chair Hardesty said the material had been distributed to all the members.

Ms. Brown said index tracking cards were very crucial. She said her documents spoke for themselves. She provided a copy of a proposed DNA bill, Exhibit H. She said the bill only applied to death penalty cases. There was no cost to the county or the State for the DNA testing. Ms. Brown said the psych panel required a confession of guilt in order to pass the panel. She said if an inmate did not do the crime, he cannot confess. She said in A.B. 510 she proposed the amendment that passed which said the Parole Board can no longer ask about
inmate’s appeals. She said Ms. Salling said the majority of the Parole Board Commissioners pass the inmate at their hearing. She said she had heard if three votes passed and one vote denied, parole was denied. She said that was not a majority. She asked if that was correct.

Chair Hardesty said he did not know the basis for Ms. Brown’s information, but he did not believe that was the case.

Commissioner Salling said it was not the case. If the Board had a split, it continued to go from Commissioner to Commissioner until there was a majority. All votes were recorded on the order and a record was maintained.

Ms. Brown asked for a clarification on the weapons enhancement being retroactive. She said according to the minutes it was to be retroactive. She said that had not been discussed by the Commission.

Exhibit I was submitted for the record but not spoken to in the meeting.

Chair Hardesty scheduled a conference call with Commissioners Parks and Flynn. He asked if there was any further business. As there was none, Commissioner Mallory moved to adjourn. Commissioner Digesti seconded the motion. The meeting adjourned at 3:00 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Interim Secretary

APPROVED BY:

Justice James W. Hardesty, Chair
Advisory Commission on the Administration of Justice
DATE: ___________________________________________

**EXHIBITS**

**Committee Name:** ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

**Date:** August 25, 2008

**Time of Meeting:** 9:00 a.m.

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