MINUTES OF THE
ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE’S
SUBCOMMITTEE TO CONSIDER ISSUES
RELATED TO A STUDY OF "TRUTH IN SENTENCING"

March 24, 2008

The meeting of the Advisory Commission on the Administration of Justice’s Subcommittee to Consider Issues Related to a Study of “Truth in Sentencing” was called to order by Justice James W. Hardesty, Chairman, at 12:00 p.m. on Monday, March 24, 2008, in Room 3137 of the Legislative Building, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Justice James W. Hardesty, Nevada Supreme Court, Chair
Assemblyman David Parks, Clark District 41
John Allan Gonska, Chief, Division of Parole and Probation
John Helzer, Assistant District Attorney, Washoe County Criminal Division
Phil Kohn, Clark County Public Defender
Christopher Lalli, Assistant District Attorney, Clark County
Richard Siegel, President, ACLU of Nevada, Inmate Advocate
Howard Skolnik, Director, Department of Corrections

SUBCOMMITTEE MEMBERS ABSENT:

Jeremy Bosler, Washoe County Public Defender
Douglas Herndon, Judge, Eighth Judicial District Court

STAFF PRESENT:

Angela Clark, Secretary
Lynn Hendricks, Interim Secretary

OTHERS PRESENT:

Arthur Mallory, Churchill County District Attorney
CHAIR HARDESTY:
To begin the meeting, is there anyone in Las Vegas or Carson City that would like to make public comment? Seeing none, we will proceed with the rest of the meeting. Since our last meeting, I have had a number of phone conversations with Latoya McBean of the Council of State Governments regarding the funding of a study concerning "Truth in Sentencing." Ms. McBean has been in contact with the Pew Institute. Some of you are no doubt familiar with the recent study completed by the Pew Institute regarding incarceration throughout the United States. I will have a phone conference with Adam Gelb of the Pew Institute, which is willing to entertain financial support for this study. Dr. James Austin has provided an estimate of the cost of the study of $100,000, which includes the cost of including participants from the University of Nevada, Reno (UNR) and University of Nevada, Las Vegas (UNLV). I have also had phone conversations with Mr. Siegel, Dr. Austin, and three of the university people, including Dr. Richardson of the Grant Sawyer Center for Judicial Studies. Dr. Richardson has indicated the availability of research professors and assistants to help gather data for the study. I have also met with Ron Titus and Robin Sweet of the Administrative Office of the Courts, and they are initiating various background data on sentencing statistics throughout the State, filings, dispositions, and other details that will be used in connection with the study.

The principal purpose of today's meeting is to discuss the appointment of a consultant to conduct the study. At the last meeting of the subcommittee on March 17, we initially considered Dr. Austin in this regard. I understand some of you have spoken to him and obtained additional material regarding his background.

MR. HELZER:
I appreciate the fact that you gave us another week to look into Dr. Austin's record. I realize now that he has been involved with the Legislature for a long time on a variety of projects. I feel a little more comfortable now that I am more familiar with Dr. Austin. I certainly mean no disrespect, but I still have concerns as a prosecutor that he seems to be more focused on the defendants than on the victims. I do not have another consultant to offer, though I believe there is one candidate up now. Regardless of who is selected, I have always come to the table when we have a collaborative effort with an open mind and with the intention of trying to come to consensus.

MR. LALLI:
Thank you for giving me the opportunity to look a little deeper into Dr. Austin's qualifications. I believe he is very well credentialed and has been doing this for many years. I had the opportunity to speak with him last week and have read some of his materials. I do not believe he comes to the table with an agenda, but he certainly has one way of approaching the problem. Like Mr. Helzer, I think this is the prosecutor in me speaking, but I would bet there are other people who would approach the problem from a different starting point. I also agree that it is important for all the participants in this subcommittee to approach the problem in good faith, and I want to pledge to do that. If
Dr. Austin is selected, I will approach him and his study with good faith. But I do have reservations about using him.

MR. SKOLNICK:
I had some concerns during the 74th Legislative Session regarding the past projections from the JFA Institute and what I perceived at the time as their bias. I have rethought that based on a number of factors and our interaction with JFA and Dr. Austin over the last year. He is now more directed toward helping us deal with reality rather than trying to force an agenda. Some of the homework I have done indicates that much of his former agenda in Nevada was directed by previous directors of the Department of Corrections.

MR. KOHN MOVED TO CONTRACT WITH DR. AUSTIN TO COMPLETE A STUDY OF "TRUTH IN SENTENCING."

ASSEMBLYMAN PARKS SECONDED THE MOTION.

THE MOTION CARRIED. (MR. BOSLER AND MR. LALLI VOTED NO.)

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CHAIR HARDESTY:
The next item on the agenda is discussion and approval of cost and financing. I have described some of my communications with the Pew Institute and the Council of State Governments. I expect to have more information tomorrow regarding the willingness of the Pew Institute to participate in the study financially. I expect to be able to present a financial package to the Subcommittee in the next week to ten days. I am optimistic that there will be a significant contribution from the Pew Institute for this endeavor, based on the conversations I have had with Latoya McBean and the Council of State Governments.

The factors the Council apparently considers are these: Is the study intended to make a realistic evaluation of sentencing practices in the State? Is the study likely to provide guidance to the Legislature on public policy? Is the study likely to inform the Legislature about costs in its corrections and parole & probation departments, as well as in the criminal justice system? Is it likely that the study will be received well by the legislature? Does this Commission have the support of the Legislature in its research and work? Is the Governor likely to entertain the results of the study in making both budget and public policy recommendations? How committed are the Commission members to a permanent commission in overseeing the results of its recommendations? I have provided a number of answers to these questions through the Council and will have a direct communication with Mr. Gilt tomorrow on those points. It may be that he will want to interview others on this subject before they further their consideration of this support.
The Pew Institute has quite a bit of credibility in doing these studies, and their financial support of this project would be an enormous boost. They were also interested in the extent to which the State will share in the cost of the study. I had requested that the Legislature augment the Commission’s budget by $50,000 for this purpose, so we have that available as matching funds. I am hoping we can use less of our money and more of theirs, but we will see how that works out. I will request Dr. Austin and JFA Institute to put together a formal agreement for the study.

I will ask JFA to give the Subcommittee regular status reports on the progress of the study. The first phase of the study is supposed to be completed by May 1; the next Commission meeting is on April 14 in southern Nevada, so I will probably schedule a Subcommittee meeting for April 15 or 16 to get our first status report.

Dr. Austin will meet with the Grant Sawyer Center representatives at UNR at 2 p.m. on March 31 to work out the allocation of responsibilities.

ASSEMBLYMAN PARKS:
Regarding funding, there was an allocation of funds approved last year. Is this the $50,000 you were planning to use, or were you considering asking the Interim Finance Committee for an allocation from the Contingency Fund?

CHAIR HARDESTY:
When the Legislature reconstituted the Commission as part of Assembly Bill (A.B.) No. 508, it included an appropriation of $50,000. Those were the funds I would expect to draw from as the State’s contribution to this study. I do not intend to make a request of the Interim Finance Committee unless it became absolutely necessary. My hope is that the Pew Institute will contribute $50,000 or more to the study. This would leave the Commission with some funds, which we will need for work on other topics.

Is there any further business to come before the Steering Committee? Hearing none, I will adjourn the meeting at 4:02 p.m.

RESPECTFULLY SUBMITTED:

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Lynn S. Hendricks
Committee Secretary

APPROVED BY:

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Justice James W. Hardesty, Chair

DATE: ________________________________