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

December 3, 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, Chair, at 9:07 a.m. on December 3, 2008, at the Legislative Building, Room 3137, 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. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. 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
Jeremy Bosler, Public Defender, Washoe County
Bernard W. Curtis, Chief, Parole and Probation, Department of Public Safety
John Helzer, Assistant District Attorney, Washoe County Criminal Division
Douglas Herndon, Judge, Eighth Judicial District Court
Phil Kohn, Public Defender, Clark County
Christopher Lalli, Assistant District Attorney, Clark County
David R. Parks, Assemblyman, Clark District 41
Richard Siegel, President, American Civil Liberties Union of Nevada, Inmate Advocate

SUBCOMMITTEE MEMBERS ABSENT:

Howard Skolnik, Director, Department of Corrections

STAFF MEMBERS PRESENT:

Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Sandra K. Small, Interim Secretary

OTHERS PRESENT:

James Austin, President, JFA Institute
Major Mark E. Woods, Parole and Probation, Department of Public Safety
CHAIR HARDESTY:
Are there any corrections or additions to the minutes for the Subcommittee’s meeting on August 11, 2008?

MR. CURTIS MOVED TO APPROVE THE MINUTES OF THE AUGUST 11, 2008, MEETING.

MR. SIEGEL SECONDED THE MOTION.

THE MOTION CARRIED. (MR. SKOLNIK WAS ABSENT FOR THE VOTE.)

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CHAIR HARDESTY:
We are going to start with Item VI on the Agenda (Exhibit A), public comment. There being no public comment in Las Vegas or Carson City, we will close the public comment section of this meeting.

The purpose of today’s meeting is to address the final phase of the work initiated by Dr. James Austin of the JFA Institute on the truth in sentencing statutes adopted in 1995 and to evaluate the statutes’ effect. The Subcommittee will consider a series of recommendations made by the consultants as a consequence of their work. I will also ask the Subcommittee to entertain some findings derived from the consultants’ work which would be included as part of our approval process and pass those to the Commission for its meeting on December 17. The Subcommittee has a copy of “Nevada Truth in Sentencing Commission: November Update”, Exhibit C. Some of the recommendations to be proposed by the Subcommittee for action by the Commission would result in bill draft requests (BDRs). We have reserved some BDRs with Legislators in anticipation of work being done by the Subcommittees and the Commission. It is important to identify the recommendations the Subcommittee may approve which may result in BDRs so they can be reserved before December 15, 2008. The Subcommittee has received two documents. One is a copy of a Power Point presentation (Exhibit C) by Dr. Austin to the Advisory Commission at its last meeting. The presentation contains Dr. Austin’s recommendations which he will go over today. You have also received a copy of an e-mail dated November 24, 2008, provided by Mr. David M. Smith, Executive Secretary, Board of Pardons. Mr. Smith is not making these suggestions on behalf of the Board. I want to go over his suggestions with the Subcommittee. Dr. Austin is on the phone and is available for two hours.
JAMES AUSTIN (President, JFA Institute):
I am going to focus on the recommendations included in Exhibit C.

CHAIR HARDESTY:
It would be helpful if you begin with “Major Findings.” The Subcommittee needs to act on these findings. The Subcommittee has had an opportunity to review the findings. Do any Subcommittee members have questions regarding the Demographic Trends findings?

JEREMY BOSLER (Public Defender, Washoe County):
The third finding listed under Crime Trends states Clark County had a higher crime rate compared to the rest of the State. Is that due to police presence, the number of officers per citizen or any other factor?

DR. AUSTIN:
The table in the report we have assembled compares Las Vegas to other neighboring cities such as Albuquerque and Phoenix. The Las Vegas crime rate is comparable to those cities. It is a function of being a large city. Nevada is a big, wide-open state which is largely urbanized because most of the population lives in an urban setting, primarily Las Vegas. Washoe, Reno and Carson City have significantly lower crime rates than Las Vegas. Looking at the so-called crime problem in Nevada, it is primarily focused in Las Vegas and within certain geographic locations in Las Vegas.

CHAIR HARDESTY:
There has been a concentration of law enforcement effort in Las Vegas which should be recognized as part of this Subcommittee’s findings. How does everyone feel about that?

DR. AUSTIN:
Law enforcement agencies are making a concerted effort to combat the hot-spot areas in Las Vegas and attack them aggressively. That seems to be paying off, as we are not seeing any uptick in crime rates. We are not seeing an increase in arrests. The jail population is not swelling in Las Vegas. Recently it looks as though they are being successful in controlling that situation. That should be reflected in the report, as Justice Hardesty suggests.

CHRISTOPHER LALLI (Assistant District Attorney, Clark County):
I agree with the suggestion. I just looked at the August 2008 Uniform Crime Reporting (UCR) index prepared by the Las Vegas Metropolitan Police Department. It indicates during the current period, murder and non-negligent manslaughter is down 33 percent; robbery is down 2 percent; burglary is down 10 percent; theft and larceny are down 28 percent; auto theft is down 33 percent. We have gone up in aggravated felonies and rape, but the overall crime reduction in Clark County is 19 percent. There has been a 24 percent increase in
population from 2003 to the present. I endorse having those types of statistics included in the findings.

DR. AUSTIN:
Could you forward that information to me? I have the information through 2007. We could include the most current information in the report.

MR. LALLI:
Yes, I will provide the information.

CHAIR HARDESTY:
I would like to include that information in the report. I am going to assume there is concurrence on this unless there are objections from any of the members. Does anyone have further comments?

It is important to recognize the efforts generated by the Las Vegas Metropolitan Police Department in their hot spots.

DR. AUSTIN:
The extent to which Las Vegas in particular and the State can reduce its crime rate, which is higher than other states, rather just incarcerating people, will have a huge long-term impact on the prison population. Mr. Smith feels there should be some type of incentive system so counties are rewarded for dealing with these problems before they escalate to become a burden on the State. The State and the county should work together to maximize their efforts.

CHAIR HARDESTY:
We will add the UCR graph and these comments to the findings.

MR. LALLI:
What data was relied on in making the statement that Nevada has a significantly higher crime rate than other states?

DR. AUSTIN:
The information comes from the Federal Bureau of Investigation’s (FBI) Uniform Crime Reports which receives reports from police agencies. In 2006, Nevada’s violent crime rate was 751 per 100,000 in population. The national average was 467 per 100,000. The property crime rate was also high, 4,100 per 100,000; the national average was 3,200 per 100,000. Arizona, California, Colorado, New Mexico, and Utah have rates significantly below Nevada. We will update using the 2007 information, which just came out. That information is in the report I am drafting with Justice Hardesty.
MR. LALLI:
Is the information in your presentation?

DR. AUSTIN:
No, it is not. I can provide it.

CHAIR HARDESTY:
The report should indicate the source of information for the findings. Does anyone have comments on the findings on page 14 of Exhibit C?

JOHN HELZER (Assistant District Attorney, Washoe County Criminal Division):
One of the Major Sentencing Findings states “the vast majority have had their sentence positively impacted by plea bargaining.” What effort resulted in that statement? Was there a study about plea negotiations in Nevada by jurisdiction?

DR. AUSTIN:
This finding comes from the Division of Parole and Probation’s database for all felony and gross misdemeanors disposed of during calendar year 2007. They have an indicator for plea bargaining which is used if the disposition, prison versus probation or the sentence length, is lowered in a plea bargain process. They look at the charges; it will say per a plea agreement which charges are being dropped or reduced. It occurs in over 90 percent of the cases. This is not unusual in any jurisdiction. In our country, 90 percent of felony cases are disposed of via a plea bargain.

MR. HELZER:
I wanted to be sure the statement meant “lowered”. This finding recognizes in the vast majority of cases a benefit has been received by the defendant.

CHAIR HARDESTY:
Is there any problem with substituting the word “lowered” for “positively”?

DR. AUSTIN:
I just made that change.

MR. HELZER:
The “Significant numbers have not been previously placed….“ statement under Major Sentencing Findings brings me to a recurring request. The August 11, 2008, minutes, page 27, indicate we requested again a breakdown of the 48 percent going to prison on their first felony. Has the information been provided to say how many of those people not previously
incarcerated are there because their probation was revoked, based on mandatory sentencing, etc.?

DR. AUSTIN:
The information was presented; I will provide you with the analysis. We looked at people in their first state prison term. Rarely do you see someone going to prison who has not had prior convictions, particularly a significant number of prior misdemeanor convictions. The more you look at the profile the more you see a pattern of people with difficulties, but the system is punishing them on lesser charges; then they fail probation and their terms are revoked, which is the basis for them going to prison. Or, they get arrested on a felony and often have four to nine prior misdemeanor convictions. It gives you a different picture of people. It is their first time in prison, but they have been incarcerated locally or been arrested and convicted of misdemeanors. Many have prior probations. We have tables on this information and will provide it to you.

MR. HELZER:
This is relevant to other discussions, particularly trafficking, to see how many of those people are in there because they were originally sentenced to prison versus they had a probation opportunity revoked. It makes it difficult to analyze why people are in prison if we do not know who has been revoked.

DR. AUSTIN:
The vast majority of people going to prison have had the benefit of probation and have a prior record.

MR. HELZER:
That is not the question. The question is how many were on probation and revoked into prison. In this finding, we are asserting they are there on their first felony charge. We want to focus on the people who are in prison on their first felony offense. To say they have had probation opportunities is not the question.

DR. AUSTIN:
I will get that information to you. Very few are in prison on their first felony offense.

CHAIR HARDESTY:
In August or September, schedules were provided to the Advisory Commission which broke down the 48 percent of those going to prison for the first time. The vast majority were probation violators. In every instance there was a substantial level of either prior misdemeanor convictions with no supervision or a probation violation. They had prior felony convictions for which they were on probation.
MR. LALLI:
Those are important findings. If we are going to adopt major sentencing findings, those things you just discussed should be included. For example, the first finding under Major Sentencing Findings indicates “…nearly 11,000 criminal…the population is largely a young….” I am uncomfortable with words such as “largely”. There has been a lot of analysis. We should include the numbers rather than use subjective wording: nearly, largely, significantly.

CHAIR HARDESTY:
The finding should reflect the schedule the Commission received which analyzes 48 percent of the 11,000 people studied. We will circulate the schedule. The schedule shows that 48 percent are going to prison who had not served a prison sentence before and breaks down that group as to who they are and the source of the information. We also have a schedule which calculates the exact percentage rather than using the word “largely”.

MR. BOSLER:
Regarding the Major Sentencing Findings’ first statement regarding “drug use/abuse”, do you know how many also reported mental health issues, treated or untreated?

DR. AUSTIN:
We do not have that information. It is one of the data problems we have. The CFG spent a lot of time and effort with their lead psychiatrist trying to get that number.

MR. BOSLER:
Do you have a sense from other jurisdictions the number of people who suffer from significant mental illness, treated or untreated?

DR. AUSTIN:
California estimates 20 percent of their prisoner population has either a severe or significant psychiatric problem. A larger number of people with mental health problems are being treated through therapy or more likely through medication. They can function, but not without medication. It is probably 15-20 percent in prison systems.

MR. BOSLER:
We need to collect data to determine if mental health opportunities or programming are available other than prison.
CHAIR HARDESTY:
A statement in the findings that weaknesses in the data collection system has prevented an exact calculation of those having mental health backgrounds, treated or untreated, would underscore the point that the data collection system needs to be improved.

MR. BOSLER:
I agree.

RICHARD SIEGEL (President, American Civil Liberties Union of Nevada, Inmate Advocate):
It is relevant to use national data as well as asking for better data from Nevada. Nevada’s percentages are likely to be in the ballpark of the national data. The first finding under Major Sentencing Findings states the largest component to be young white males. I would like a rate of incarceration for at least males, white, black and Latino. The prisons do have that information. That information makes the point that while the largest group may be young white males, the rates will certainly be high for young African-American males.

CHAIR HARDESTY:
That information was on the schedule which broke down the race ethnicity of the prison population. It omitted Hispanics.

DR. AUSTIN:
We could indicate everything except Hispanic.

MR. SIEGEL:
The Department of Corrections (DOC) can give us an Hispanic number.

DR. AUSTIN:
You may be right.

CHAIR HARDESTY:
One thing missing from page 14 is a statement Dr. Austin made to the Advisory Commission at its last meeting that the truth in sentencing legislation generally accomplished what it was intended to accomplish and that it was the population increase rather than the truth in sentencing, sentencing structure that drove the prison population. We have always had this as an unanswered question. We need to include it in the findings.

DR. AUSTIN:
I will do that.
CHAIR HARDESTY:
Are there any comments regarding the findings on page 15?

DR. AUSTIN:
I will edit the terms such as “vast” and indicate the actual percentages.

CHAIR HARDESTY:
The first “vast” on page 15 is alright since the percentages are there.

MR. LALLI:
I agree.

The finding referring to Class C, D and E cases with a median sentence length of 12 months will be affected by Assembly Bill (AB) 510. I am uncomfortable with this type of finding in light of legislation which will actually change it. I would like to see more data before endorsing this type of finding.

DR. AUSTIN:
Do you think it will be below; what is your sense of AB 510?

MR. LALLI:
In light of AB 510, if that number is not already lower, it will be lower.

CHAIR HARDESTY:
Assembly Bill 510 is referenced later in these findings. Would it work to say “without calculation for AB 510 credits” the median average is 12 months? When the analysis was done by the Grant Sawyer Center, they determined the court-ordered minimum sentence was most often the median sentence of 12 months.

DR. AUSTIN:
The median is the typical sentence.

MR. LALLI:
That is significantly different from what is written here; there needs to be some specificity.

DOUGLAS HERNDON (Judge, Eighth Judicial District Court):
The language was intended to indicate what the court sentences were. Semantics are important. The finding needs to state, irrespective of the amount of time served, the court-ordered sentences have a median sentence length of 12 months. I do not disagree with that
finding. Most all of the time when C, D or E felonies come before my court or any other court, you are usually giving the mandatory minimum of 12 months irrespective of what you give as the maximum. The finding leaves the impression that people may be serving 12 months on every one of those sentences.

CHAIR HARDESTY:
Did Dr. Austin get the suggested change?

DR. AUSTIN:
Yes, use the phrase “court-ordered minimum sentence”.

CHAIR HARDESTY:
I agree if the finding is rephrased, it is correct.

BERNARD W. CURTIS (Chief, Parole and Probation, Department of Public Safety):
With reference to the fourth and fifth findings on page 15 referencing Parole and Probation (P&P), if P&P recommends 1,099 people go to prison and the recommendation is not followed by the judges or justices, it makes no sense to state the population would be 1,500-2,000 higher unless you cumulatively go back two or three years.

DR. AUSTIN:
Those findings look at the average minimum and maximum sentences for those 11,000 people. Some of those are B, C or D. They have an average length of stay in the neighborhood of 1.5 years. We do not have data beyond 2007. This is not a recent phenomenon. This has been an issue raised in other studies. If this has been occurring for some time, the prison population would be higher now than what it is right now by about 1,500-2,000.

CHAIR HARDESTY:
Mr. Curtis is trying to reconcile the different numbers in these findings. One finding states 1,099 probation recommendations by P&P, and the next finding refers to a 1,500-2000 increase.

DR. AUSTIN:
The 1,099 would have an average length of stay of 1.5 years which would produce a prison population of 1,500-2,000. If the 1,099 people had gone to prison and received the typical prison term, they would produce an additional prison population of 1,500-2,000. If that has been going on, the population would be higher. The numbers are not supposed to match because one is looking at daily population and the 1,099 refers to prison admissions.
MR. CURTIS:
I would agree if you could quantify the number of years it would take to reach the 1,500-2,000.

CHAIR HARDESTY:
The numbers need to be better explained.

MR. LALLI:
Could the same qualifying language suggested by Judge Herndon be added to the finding pertaining to B felonies, Exhibit C, page 15?

DR. AUSTIN:
Yes.

MR. BOSLER:
That same finding pertaining to B felonies creates the impression people are receiving a 12-month prison sentence when we are really referencing a minimum-maximum, part of a range, not an actual determinative sentence. The finding needs to make clear we are talking about the minimum range of the sentence because there will be at least 30 months at the top of the range.

DR. AUSTIN:
That is right. I am trying to emphasize there is a big range in the minimums and the maximums for all offenses. Class B, where most of the action is in the prison system, has the biggest range and the highest minimums and maximums. This finding shows the extreme importance of the Parole Board. The Parole Board has a lot of influence on how long people actually stay in prison.

CHAIR HARDESTY:
Are there any comments or suggestions for the findings on page 16?

MR. LALLI:
Is the second finding, regarding Class A crimes, an accurate statement? That cannot possibly be correct.

DR. AUSTIN:
It should say “virtually” all receive a 36-month term as indicated by the P&P database.
MR. LALLI:
Is that the time ordered by the court? Some courts order five years probation; some as little as one year. Is this the average time served?

DR. AUSTIN:
This is the imposed probation term.

CHAIR HARDESTY:
The phrase used is: Not to exceed 36 months. Mr. Curtis and Major Woods are indicating some question about this statement. We might want to check the data on this point.

DR. AUSTIN:
I will check the data again, but it is almost a uniform number.

JUDGE HERNDON:
In my court, there is absolutely no way this number is correct. On any given day, I give people as low as 18 months’ probation or as high as five years. There is no way there is a uniform 36-month probation term with the sole exception of Class A crimes.

MR. HELZER:
We are also looking at giving opportunities and having people avoid being incarcerated. I do not know what the practice is in Clark County, but often in our specialty courts (I handle almost all of the requests for removal from drug court or people in drug court for diversion cases) we extend probation to allow people to try to complete programs and avoid going to prison. The impression should not be given that it is “make it or break it”; there is flexibility.

CHAIR HARDESTY:
The third finding on page 16 says “Approximately 1,300 technical probation violators enter prison each year.” We continue to have this debate about what is a technical violation. Some view that word as a minimal or inconsequential or not substantial violation. Others view this word, in the context you have used it, as a probation violation that did not necessarily result in a new crime. It is important to clarify what we mean by technical violation in this finding. How did Dr. Austin intend to use it?

DR. AUSTIN:
This data is coming from the DOC data system. The DOC designates people into two categories: probation technical violator; probation violator with a new sentence. There could be a lot of things embedded in there. Legally, the person was put on probation, failed probation, and the judge is revoking probation and re-imposing the prison term.
CHAIR HARDESTY:
I suggest we define “technical” the way the database does. We need to clarify how the DOC characterizes it and state what “technical” includes.

DR. AUSTIN:
OK.

JUDGE HERNDON:
It sounds as though the DOC uses “technical” as anything not involving a new offense. Could we change the language to say “Approximately 1,300 probation violators who have not committed a new offense are ordered to prison each year”? We could specify everything that is a non-new offense violation, but that is a laundry list of what the prison considers technical. A lot of judges consider things that are non-new offenses to nonetheless be pretty substantive in terms of violation of probation.

CHAIR HARDESTY:
I would like to list them in order to highlight the various offenses being considered that result in revocations. It is part of an education process. You could say anything other than new offenses, but that does not make the point of the number of things which give rise to the revocation which puts you in prison. There may be an assumption that everybody going to prison on a parole violation that is technical did not pay an administrative assessment fee, which is not the case.

JUDGE HERNDON:
I would like to make sure the language reflects that revocation is an accumulation of things, if there was not a substantive offense committed.

CHAIR HARDESTY:
The revocation is probably the result of some or all of those listed areas.

MR. BOSLER:
We have not talked about specialty or diversion courts. There is an argument to be made for the expansion of diversion courts in both Clark and Washoe Counties. National studies show the reduced recidivism of people involved in those courts have an impact on prison and jail populations. Does the Subcommittee want to express a comment in our report about specialty courts and their benefit to the community?

CHAIR HARDESTY:
The focus of this Subcommittee is the effect of the truth in sentencing statutes. The Commission has made separate findings and recommendations regarding specialty courts.

MR. SIEGEL:
Back to the prison population issue we discussed earlier, would others appreciate a mention of the rate of female incarceration, which appears to be growing faster than male incarceration since 1995? It would be good to include something about the female gender.

DR. AUSTIN:
OK.

CHAIR HARDESTY:
That is a good suggestion. There was an interesting dynamic concerning the rate of incarceration of male versus female. The rate of incarceration for males is higher.

MR. SIEGEL:
It is not a significant finding that the rate for males is higher. It would be interesting to know if the ratio is different in Nevada and if it is changing in the context of truth in sentencing.

DR. AUSTIN:
I would have to look at that.

CHAIR HARDESTY:
Unless there is an objection, we will add gender to that previous finding regarding ethnicity.

MR. LALLI:
Is the trend referred to in the finding regarding Class B, page 16, significant?

DR. AUSTIN:
It started a few years ago.

MR. SIEGEL:
Regarding the recidivism rate finding, recidivism rate changes are primarily related to good time credits. Is that worth referencing? One of the major findings presented to the Commission is how the good time credits have shortened the time on probation and parole and reduced the risk of technical revocation.

CHAIR HARDESTY:
The table on page 17 of Exhibit C is not recidivism under the recidivism definition. It represents those who have returned to prison for a parole violation. The recidivism rate,
under the recidivism definition, is three years out. That cannot be answered yet because we are not three years into the mission. The last line in the table, “Paroled”, is not affected by AB 510. Are there any comments or questions regarding the table on page 17? Are there any other findings you would like to add to those listed?

MR. LALLI:
Is there a way to determine how many times a probationer comes up for revocation before he is actually revoked? P&P files revocation packets multiple times before a person is actually revoked. Is there a way to quantify that?

MAJOR MARK E. WOODS (Parole and Probation, Department of Public Safety):
The P&P data system has that information; however, we are lacking staff. The University of Nevada Reno (UNR) still has a contract and has access to our system. They could have their students get that data for you.

CHAIR HARDESTY:
I will make the request for the data reflecting prior probation violations leading up to revocation.

MR. LALLI:
Exactly.

JUDGE HERNDON:
Does the data reflect only the number of times P&P files a violation report or does it reflect the number of times the person is brought before the court? The numbers will not be the same.

MAJOR WOODS:
The Crystal Report will identify all the revocation hearings. The UNR students have the capability of going through the chronological entries case by case.

CHAIR HARDESTY:
Major Woods is saying the students can drill down into the data. Mr. Lalli wants to know, for an individual who is revoked, how many prior probation violations have they been cited for.

MR. LALLI:
Not all those violations come before a court. I am interested in knowing how many requests for violations were prepared by P&P.

JUDGE HERNDON:
I would like to see both. The former will give an idea of how much discretion is used before they actually bring somebody before the court, even though they may be in violation; thereafter, you will see the amount of discretion used by the courts in terms of how many times they allow somebody to be reinstated before revoking them. There are some judges who will revoke the first time; others will carry them depending upon the nature of the offense or alleged violations.

DR. AUSTIN:
I understand the request. All the case studies we have done show the person being revoked has multiple violations that have been going on for some time. Quantitatively, we may be able to glean an average number of priors. These violators have many violations.

CHAIR HARDESTY:
Assuming UNR can obtain this data without too significant an effort, we are toward the financial end of the contract; we can make the inquiry. I do not know if we can drill past this.

MAJOR WOODS:
Dr. Austin worked with P&P about 1.5 years ago. A crystal report can be generated to determine how many times a person has been brought back to court and what the results were. When we did this last time with Dr. Austin on the parolees, it took several days to look at 50-100 cases because we had to read every chronology. It is labor intensive. A crystal report saying how many times the person was taken back to court would be fairly easy for UNR to do.

CHAIR HARDESTY:
Alright, we will have UNR do the crystal report.

JUDGE HERNDON:
That is fine.

PHIL KOHN (Public Defender, Clark County):
Are people being violated because of new crimes or are they being violated due to the technicals? If it is new crimes, I am comfortable with the way things are going. If people are being revoked more now because P&P does not have the resources to deal with clients having the problems we know they are going to have, such as drug addicts and alcoholics, and if we are revoking them due to dirty tests or missing an appointment or such things, I would be concerned.

MAJOR WOODS:
Once we take someone back for revocation, the officer checks one of three boxes: new criminal activity; absconder or technical violations. A Crystal Report can show how many people actually went back due to a technical, and then utilizing that list, someone can drill down as far as they want to. The technical violation is a small number; when we looked at this before, there were less than one hundred.

CHAIR HARDESTY:
We will see if the Grant Sawyer Center can break that out.

DR. AUSTIN:
I went through a lot of these cases with P&P staff. The devil is in the details. For example, typically on a revocation, the person is pulled over for a driving violation, is driving with a suspended license, possesses drugs and is using drugs in a public place. If there is a serious crime, they will be prosecuted, and that is where you see the probation violators come in with new felony convictions. There is criminal activity in a lot of these cases. People have to be mindful of the level of activity.

On the probation terms, my corrected statement is going to be, “about 50 percent of the probation terms are 36 months and about 25 percent are 24 months”.

CHAIR HARDESTY:
It needs to say “not to exceed”.

DR. AUSTIN:
Right.

CHAIR HARDESTY:
Does anyone have questions or comments regarding the “Suggested Recommendations?”

DR. SIEGEL:
The first recommendation under “Recommended Sentencing Reforms” is important. We should suggest who should do the assessment. We have the concept of a fiscal note in the legislative process which does not get you to the kind of assessment needed. The Legislative Counsel Bureau is busy. Does this recommendation mean this Commission would debate proposed changes?

CHAIR HARDESTY:
Currently the statute delegates this responsibility to the Advisory Commission. The Commission has voted on this issue, and it should probably be in the findings. The Judiciary Committees do not debate the sentencing lengths when criminalizing behavior in statute. The
Advisory Commission on the Administration of Justice’s Subcommittee to Consider Issues Related to a Study of “Truth in Sentencing”
December 3, 2008
Page 18

Commission has previously voted that when doing so, the impacts of the sentencing length or incarceration periods should be part of the discussion.

DAVID R. PARKS (Assemblyman, Clark District 41):
That is correct.

CHAIR HARDESTY:
We want to include in the findings something which has been acknowledged previously and augment this suggestion to say in the future not only proposed changes in sentencing structure, but also statutes added to the criminal code, need to be debated.

DR. AUSTIN:
OK.

CHAIR HARDESTY:
Does Senator Nolan have a BDR to require these statutes and structures be vetted through the Advisory Commission before the Legislature acts upon them?

ASSEMBLYMAN PARKS:
I am unaware of such a BDR.

CHAIR HARDESTY:
Does anyone object to the Commission having the responsibility stated in the first suggestion on page 18 of Exhibit C?

MR. SIEGEL:
There are probably a couple of hundred bills flowing to the Legislature which would fit under this suggestion. There are serious time pressures in terms of getting through the initial committee, the first floor vote, etc. We would have to be in a position to advise the first judiciary committee. I like the idea of the Commission being involved, but we need to be aware of the commitment.

CHAIR HARDESTY:
The Legislature is looking at the makeup of the Commission and its broad-based configuration to bring to the table all of the experiences of the entire system when talking about these impacts. Is there any objection to designating the Commission? The first suggested recommendation will then have two amendments.

Is there any comment on the second recommendation?
MR. LALLI:
Why is the focus on Class B crimes, drug trafficking crimes, victimless crimes, etc.?

DR. AUSTIN:
Regarding Mr. Lalli’s question regarding the Class B findings, page 16 of Exhibit C, on minimums and maximums, this is a significant trend. We have only been able to track this since 2006. In 2006, the average minimum sentence imposed for a Class B was 27 months; for the first 6 months of 2008, it has increased to 36 months. The maximum increased from 84 months in 2006 to 99 months in 2008. Conversely, the Cs, Ds and Es have either remained the same or dropped in the minimum and maximum imposed by the courts over that three-year period. It is creating a stacking effect. We just issued the preliminary projections for the Legislature. The prison population will start growing again because of the Class B sentence length increase unless something happens. The Class Bs are over 50 percent of the population and are now growing. As the Class Bs go, your State resources for prisons will go. In Nevada, there is not much differentiation based upon the amount of drugs in drug trafficking cases, unlike the federal and other systems where there is a tremendous range in punishment based upon the amount of trafficking. Burglary, in terms of victim loss, is under the same punishment. This has been suggested to me by people in criminal justice and correctional officials who think we need to have penalties based upon the severity of crime. The NRS does not presently do that.

MR. HELZER:
I am not opposed to looking at categories of crimes. When we deal with Class B felonies, we deal almost exclusively with statistical discussions about the length of time. The Class B felonies are unlike the Class Cs where you find one to five and one to five, etc. Do you agree that you cannot group Category B crimes together and say there is not an effort to recognize some have harsher penalties than others and there may be some logic to that?

DR. AUSTIN:
I am only restating what people in Nevada are saying; they think there should be more clarification. I have not studied the Class Bs in detail.

CHAIR HARDESTY:
Why is it that Category B captures such a broad group of crimes with such a disproportionate level of sentencing ranges?

MR. HELZER:
I am not opposed to looking at Category B to see if some should be Category C. If this is just saying there is a willingness to look at them, then yes; at some point in time, in addition to looking at statistics and realizing this category is responsible for a heavy percentage of
people incarcerated, there is a need to look at the theory of public policy and protecting that policy. I do not see that emphasized. We need to look at the numbers and the reasons why someone is in for a substantial amount of time.

DR. AUSTIN:
The Legislature wants to look at the prison population, which has been growing, to see if anything can be done which does not jeopardize public safety and makes for a fair and judicious criminal justice system. We need a better result for the public safety dollar. To have an impact on the prison population now, Category B needs to be looked at.

CHAIR HARDESTY:
We may be getting a false piece of information when you average all the Category Bs and say the minimum and maximum trend is increasing. Because we have Category Bs with sentencing ranges of 1 to 6 in some cases, you may actually be skewing it downward. Those length of sentences for the more serious crimes are probably longer than the 27 to 36 on the minimum side and 99 on the higher side. When you are trying to project the impact on the prison by using all the Category Bs with sentencing ranges on the high side and mixing them with a bunch of crimes with low sentencing ranges, you are getting a false indicator. The information needs to be broken down to get a better understanding of the stacking effect of the longer sentence length.

DR. AUSTIN:
If the prison admissions stay flat, no increase in admissions, your prison population, based on these current trends, will grow again.

CHAIR HARDESTY:
Part of the point of this Commission and of this Subcommittee is to help the Legislature make a decision regarding future construction. Even though our prison population is flat, that does not mean future prison needs will not grow because we continue to have people in prison for longer periods of time. How do we adequately and correctly project? The data does not give us the best way to project this consequence. That is why this second recommendation on page 18 has some value.

Does anyone have comments on the third recommendation related to the P&P criteria for recommending probation?

MR. CURTIS:
P&P is currently involved in a National Council on Crime and Delinquency (NCCD) study of our risks and needs tool; the results will be out in June 2009. The study was authorized by the 2007 Legislature in AB 628.
CHAIR HARDESTY:
I suggest we leave the recommendation as it appears, but add an acknowledgement of support by the Subcommittee and Commission for the NCCD study.

DR. AUSTIN:
I will add a statement that P&P is engaged in a study to address this issue. Is that alright?

MR. CURTIS:
Yes.

JUDGE HERNDON:
I support P&P taking time to evaluate the numerical tools utilized in coming up with probation versus prison and for the sentence. Those tools have not been looked at in a long time. I am concerned about the wording which says P&P will change their criteria to meet the criteria used by the courts. P&P’s criteria and the sentencing recommendations they make should be independent of the courts. Having P&P use the criteria used by the courts is difficult because, as the judge, a lot of what you do is based upon what you see in court with the individual, how they respond and their expression of certain things. The court considers more than what is provided in a paper document.

CHAIR HARDESTY:
This recommendation is trying to accomplish an update and standardization of the criteria P&P is using as opposed to trying to conform it to anything the court is using.

JUDGE HERNDON:
That is acceptable; the P&P tools need to be updated and changed to be uniform.

DR. AUSTIN:
I will make that change by adding a need to be updated and revised and add that P&P is now engaged in such a study with NCCD.

CHAIR HARDESTY:
Does anyone have questions or comments about the fourth recommendation regarding “subjective” items?

DR. AUSTIN:
This recommendation is really part of the previous recommendation as it refers to P&P. These are my recommendations. I get nervous when I see probation officers trying to evaluate someone on their honesty or motive in a systematic and standard way. Maybe the
courts do that. This will probably be covered by NCCD in their evaluation. We may want to remove this recommendation.

CHAIR HARDESTY:
I like the suggestion. When I served as a district court judge, we would get into debates about the P&P officer making credibility decisions or determinations, which is the function of the judge.

JUDGE HERNDON:
I understand the recommendation and your concerns. When P&P makes a judgment call on whether someone is being honest, it is dependent upon whether they thought the person was honest earlier; for instance, did you tell the police one thing and now you tell P&P something different. Motive is important in terms of sentencing. To the extent P&P reflects that information in their report, it may not be improper.

CHAIR HARDESTY:
Mr. Curtis seems to agree with that.

MR. HELZER:
I agree. Would it be a better practice to put in the facts allowing the courts to draw a conclusion as to consistency. For example, instead of “remorseful” maybe the better practice would be to report the comments, being more factual and draw fewer conclusions; leave the conclusions to be drawn or argued. These factors are important. If a person is uncooperative, defiant and unremorseful, their ability to succeed in working with the P&P is reduced. Maybe some of the terms are too subjective and there should be factual representations.

CHAIR HARDESTY:
Could the recommendation say, “The current P&P criteria should avoid subjective conclusions, but to the extent that factual information touching on the credibility or motive of the defendant should be provided.”

JUDGE HERNDON:
That sounds good.

MR. HELZER:
That is fine. You could mirror the same wording for other matters which are subjective.

DR. AUSTIN:
Yes, I can do that.

CHAIR HARDESTY:
The next recommendation refers to a ban on prison for Class E.

MR. SIEGEL:
I agree with the thrust of this recommendation; however, the Legislature may want to know what we want to do with these people. I assume we are considering jail terms and expansion of alternative custody of some kind.

DR. AUSTIN:
Yes, that is what you would have to do.

MR. SIEGEL:
We should make that reference to the Legislature.

JUDGE HERNDON:
Suppose I sentence someone to a maximum of 48 months and a minimum of 12, and they are placed on probation for a Category E felony; if the use of prison is banned, are you going to use other incarceration alternatives? Who calculates how long you can continue to incarcerate somebody before they expire their “sentence”? You cannot keep putting them in jail for 30 day stints; at some point the sentence must expire. If you are not sending them to prison on the sentence, no one is calculating their credits, etc.

CHAIR HARDESTY:
This recommendation raises an additional problem. If you do this, you might as well convert all the Class E violations to a misdemeanor or a gross misdemeanor. A prison sentence is meaningless. If this position is taken, there is no point in having Class E in the district courts, other than the gross misdemeanors. Usually most of the Class Es are drug users and abusers. It is because they cannot be or will not be amenable, or their addiction prevents them from addressing their problem; as a consequence, all options run out and they go to prison. The systemic problem is the absence of adequate treatment alternatives for these people. As long as the State does not have those alternatives, what is the judge, P&P or the system to do other than send them to prison?

JUDGE HERNDON:
I agree. It obliterates the sentence to not be able to impose it. There are still people with a strong desire to not go to prison.
MR. KOHN:
The law should never be a sham. The other problem is, we do not have reasonable counseling options for indigent people or even those who can afford it. It is wrong to send people to prison because we do not have rehabilitation facilities. The judges from the rural areas have said there are people they would like to put in programs, but we do not have them. It is disingenuous to put people in prison because we do not have programs and to have a sentence that cannot be carried out. We have to find a middle ground.

CHAIR HARDESTY:
The Legislature needs to know that 596 Class E felons are currently incarcerated in Nevada prisons. A number of those sentences may have been avoided had there been less expensive treatment available. Treatment requires a shift in funding to provide facilities and opportunities to avoid that population going to prison. That should be the recommendation; not that you cannot incarcerate a Class E felon. Some of those 596 made a deal and went to prison as a Class E. Some of those people are going to go back to prison. The Legislature has said we are not going to incarcerate Class Es on the first go-around; they have to get probation. The default position is what is occurring throughout the State. How does the Subcommittee feel about making this recommendation rather than the ban recommendation on page 18 of Exhibit C?

MR. BOSLER:
Are we having difficulty because we are embedded in the Nevada system? Are there other jurisdictions where people receive felony convictions, but if they are violated they receive some other punishment less than a prison term? Is there an appreciable difference in recidivism rates because they are doing jail time as opposed to prison time? The person is being punished with a felony conviction which has a significant life-long impact whether they do jail time or prison. Is Dr. Austin’s recommendation based upon other jurisdictions’ success with this type of intermediate sanction?

DR. AUSTIN:
I put in these last four recommendations on page 18 of Exhibit C to impact the prison population size. Washington State has a legislative ban on technical violators going to prison. Washington believes the prisons are for those committing new felony crimes. If you fail probation for technical reasons, you will be punished in other ways. Other places are doing this type of legislative ban. They are making a decision about what the prison is for. Most people go in for 6 to 12 months and come out pretty much right where they were before. Eventually, over time, they will either die for health reasons or drug overdose, but they are not dangerous people; they are people with severe problems for complex reasons; treatment would help, but they will be problematic all of their lives. Do you want to send people to prison for behavior which is not of a severe criminal nature but does not conform to
probation? You have to decide who is going into your prison and for how long based upon your budget. You have to punish within your means. This is one group occupying 300-400 prison beds. Do you want to pay for it? Fine. But you get someone who goes in and out. I want people in prison who are dangerous.

JUDGE HERNDON:
I am not in favor of the recommendation to ban prison for Class E or the next recommendation for a maximum limit of incarceration for probation revocations. There are people who deserve to go to prison. It is important to try to keep the probationers out of prison because of a technical violation or recidivism, and keep the parolees out of prison either because of violations or recidivism. You spend some money on the front end or you spend a lot on the back end. Good programming should be in place so the people can be successful. I understand the need for it but disagree with the theory of the administrative caseload at P&P. The administrative caseload is utilized a lot for the Class E felons and does not provide them with any mechanism for succeeding. I get people in court all the time on revocations where they have not committed new crimes, have a job and appear to be living a decent life, but they have not done any of their probation conditions and eventually a violation report is filed. They do not even know who their probation officer is. I know that is a function of not having the manpower to do what they need to do, but it also translates into the reason Class E felons do not succeed on probation.

DR. AUSTIN:
This is an investment type of discussion. Right now you are spending $7-8 million a year by incarcerating these people. Is that the best use of that $7-8 million? If people are saying if we had programs we could handle them better, the cash is in the prison system. To get to the cash you cannot let them go to prison. At some time, you have to make an investment. I understand there is no money in the State; there is no money except to take from one pot to another.

JUDGE HERNDON:
I agree.

CHAIR HARDESTY:
There may be a source of funds. It has been discussed at the Commission meeting and would allow an alteration in the way we impose fines and an improvement in our collection system for fees and fines. To the extent there are savings, funds could be shifted to help support programs. I would like to use my suggested recommendation as a way to point out to the Legislature that programs could result in prison savings.
JUDGE HERNDON:
I am in favor of that.

MR. SIEGEL:
Beyond the annual savings by diverting Class Es, there is a request from the DOC in excess of $100 million for a large capital construction budget which the Legislature cannot afford. The Legislature is facing a 20-30 percent reduction in resources for the next fiscal year. The Legislature will like the idea of diverting Class Es, but there will be a strong temptation to simply cut the DOC budget and make no other changes. If we have a strong consensus to divert funds to programs, which are absolutely necessary to deal with these people, we have to make the Legislature aware they need to accomplish that, if not this biennium, then the next biennium.

CHAIR HARDESTY:
Are there any objections to my recommendation, or would you prefer to do something different?

MR. HELZER:
There were many representations about the status of available programs which may not be accurate. We may not have adequate resources, but I go every Tuesday morning to the specialty courts where we focus on considering which people to give up on. I see great effort by the court; we have mental health staffing and dual diagnosis recognition. Out of 15 people we may be dealing with on a Tuesday morning, there may be three that are revoked, but those individuals have absconded once or twice; they do not participate; they have tried different programs; gone to in-house programs; tried transitional situations. I agree with the need to keep the ability to go to prison on a Class E, but a lot of things we discussed today allowed us to get the resources we have because we recognize there is value in diverting people to programs and not prison. At some point in time, you have substantial diminishing returns. We could always use more resources, more counseling, more in-house programs, more beds, so to speak. You are going to hit a point where there are people who simply say they will not do it. I do not disagree with the recommendation other than to say every diversion case is referred to the specialty court judge so there is more consistency. In the drug court cases, they may plea but there is no sentencing; there is a long process; it is not a quick decision. We need prison as an option. Often we get success because they see others fail.

MR. KOHN:
There is a substantial disparity between Clark and Washoe Counties. There are more positions for mental health court in Washoe County, which is a smaller county than Clark. There are not 200 beds for in-patient treatment in Clark County with a population of 2
million people. There is a substantial lack of resources. The disparity between the two counties is a significant problem. We have not put enough money into resources for rehabilitation and to prevent addictions.

DR. AUSTIN:
Before I leave for another meeting, I would like to discuss the next recommendation, the sixth recommendation. This recommendation is a good example of the issues the State has to deal with. It is an example of how much punishment you want to impose and can afford. These are technical violators on probation; they cost the State about $45 million each year, which is greater than the P&P budget. A maximum punishment of 12 months would produce a savings of $20 million and reduce the prison population 1,000-1,200. Research shows if they do the 12 or the 21, which they are doing now, there is no difference in recidivism rates. Nevada is much safer today than it was 15-20 years ago. The crime rate has dropped. The issue is to fine-tune punishment to what Nevada can afford. There will be punishment for a technical violation, but it will be limited. The savings could be diverted to wherever you believe it is needed. I am trying to find things that do not jeopardize public safety and generates funds to be reinvested in P&P to be more effective with prevention.

CHAIR HARDESTY:
Does this recommendation refer to the Class C revocations?

DR. AUSTIN:
No, this is all the technical probation violators.

CHAIR HARDESTY:
Let’s return to the fifth recommendation, the ban on prison for Class Es. I had suggested a modification, how do the other Subcommittee members feel about that modification?

MR. CURTIS:
There must be some sort of tool for P&P to use when dealing with people on probation. The alternatives are not there, especially in Clark County. The interim sanctions, treatment centers, etc., are not available. Why put them on probation if there is nothing you can do if they violate their probation?

CHAIR HARDESTY:
The Commission had a presentation on the parole violator’s court in Hawaii, the HOPE Court, which allows for the immediate review of a probation violation and the imposition of an immediate sanction. It is an interim step available to the judge which is short of imposition of the full sentence. To a degree, it seems that is what we should be looking at; it might allow increased tools for the judge and P&P to work with and take a different approach
at looking at the length of time these people serve in prison. A judge could revoke on a violation, not to the sentence originally imposed, but 60 days in the Nevada State Prison. That gets people’s attention and may be sufficient.

JUDGE HERNDON:
We have been discussing the 120-day evaluation we used to have. I am in favor of having as many options as possible for people coming in on revocation. Unfortunately, we do not have a lot of options in Clark County. For instance, in-patient drug treatment has become difficult due to funding problems; people are in jail and cannot get a bed. Whether it is a short 120-day evaluation or a 60-day evaluation in prison, it is helpful. There needs to be a change in the criteria for boot camp so probation violators with crimes not normally considered for boot camp could be considered for boot camp; if not, expand the number of people eligible for boot camp, which has tremendous success.

MR. KOHN:
Losing the 120-day diagnostic hurt us on so many levels. Mr. Skolnik is not here to defend himself; he would talk about the cost involved. It was an important tool. I would like to see the use of boot camp expanded to include some violent crimes. Some of the youth who do violent acts are exactly the people we need in boot camp. I agree with what Judge Herndon said.

JUDGE HERNDON:
Statutorily, folks are not denied boot camp because of the nature of the crime. It is the Nevada State Prison policy which limits the people allowed at boot camp because of fear of losing the program.

CHAIR HARDESTY:
You have been making this point since July 2007, which should be embodied in these recommendations. I would like to suggest we revise the recommendations to incorporate the discussion we have been having:

1. Inform the Legislature of the cost impact as a result of the incarceration of Class Es, which is in part the result of the lack of facilities, primarily in Clark and the rurals. The rurals have provided testimony indicating their problem and that the default position is to revoke. If the resources are provided, the prison population could be reduced and a savings created for the prison in that area.

2. Provide an additional tool and reinstate the 120-day evaluation.

3. Revisit the DOC’s regulations on regimental discipline.
Those revisions accommodate, not to the extent Dr. Austin wanted, significant changes in the Class E area.

MR. KOHN:
I agree. Judge Puccinelli went one step further. He talked about cases involving felony DUIs; the repeat offender program we have in Clark County is not available in Elko County, so his default position is prison. The rural areas need to use that default position for violations and in sentencing. The rural areas should have at least as much as Washoe and Clark Counties.

MR. LALLI:
I agree with Chair Hardesty’s suggestions.

MR. BOSLER:
With reference to the maximum limit recommendation, Nevada law already allows the district court judge to modify the underlying term of imprisonment when he revokes probation. With respect to limits on the length of probation, we would be in a better position if it was mandated that the courts look at that and base the revocation and modification of sentence on the seriousness of the violation. Why don’t courts do that; they simply revoke.

CHAIR HARDESTY:
Maybe the recommendation would be, depending upon the seriousness of the violation, the court should consider utilizing that authority if it is going to completely revoke, as opposed to exercising some interim measures.

MR. BOSLER:
Or, you could turn it around and say it will be a 12-month sentence unless the court finds some seriousness of the violation which justifies the underlying sentence. The statute is not used often enough and creates a big impact on the prison system.

CHAIR HARDESTY:
On the 12-month maximum limit recommendation, I do not know that we have enough information to calculate the impact. This is a sentencing modification. I would like to look at what the interim measures accomplish over the next year and a half. Then we will have something quantifiable to work with. The interim measures might produce a definitive impact and more importantly would provide us with some data.

MR. BOSLER:
I agree. Dr. Austin pointed out that there is a point where the risk of recidivism is the same.
CHAIR HARDESTY:
I do not think it is wise to roll back a Class B to a 12-month sentence. It would not make any sense for a Class E because they are only going to do 12 months or less.

MR. HELZER:
I agree with Chair Hardesty’s thoughts about making recommendations and suggestions concerning the 120-day evaluation and boot camp. In Washoe County, the 12-month incarceration recommendation is just starting to be discussed among district court judges. They have interesting thoughts on how they use a more substantial underlying as opposed to incarceration.

JUDGE HERNDON:
The Washoe County district judges probably have similar thoughts to those of us in Clark County. This recommendation gets away from the meaning of the sentence and the ability to have it as a disincentive. If I put a sex offender on probation and then find out he is hanging around schools, that is more concerning than the Class E felon who commits a petty larceny because he steals a pack of gum. One guy has committed a new offense; the other guy has not, but his technical violation is disturbing. I do not agree with putting a maximum limit on any probationer whose probation has been revoked. There are judges who give a higher suspended sentence as a disincentive; I try to give a sentence appropriate to the crime, but if you get revoked, you are going to get that sentence.

MR. CURTIS:
If we give 12-month incarceration sentences for probation violations; they will still get good time credits and get out much quicker.

MR. SIEGEL:
Where are we on reinforcing substance abuse and mental health counseling and treatment within the context of this recommendation?

CHAIR HARDESTY:
The Commission has made recommendations concerning the lack of available resources on both those topics. We have endorsed the proposal of the specialty court judges and their plan as presented to the Commission on both of those points. The other area that does not deal specifically with this but does deal with reentry, was the reentry plan presented to the Commission at its last meeting which will begin to make available resources for those who expire their terms but provide for some reentry alternatives for them, including available housing and addiction treatment programs.

MR. SIEGEL:
We started off talking a lot about substance abuse and mental health reinforcement programs. Can this idea be incorporated directly within this recommendation? We identified the idea that the absence of programs is exacerbating the problem of revocation.

CHAIR HARDESTY:
The absence of those programs is contributing to this portion of the prison population.

MR. SIEGEL:
I want that incorporated in this overall suggestion.

CHAIR HARDESTY:
Rather than adopting the three recommendations on page 18 of Exhibit C we have been discussing, I will draft one consistent with our discussion and circulate it to the Subcommittee for your review. The Advisory Commission meets on December 17, 2008. I do not know about the availability of those of you who are not on the Commission, but I suggest this Subcommittee meet at 8:00 a.m. on December 17 for the purpose of ratifying this particular recommendation and any others we address later in this meeting.

The last recommendation on page 18 discusses Class A and B offenses. This recommendation comes from Dr. Austin, but is also, in part, a recommendation from Mr. Skolnik. I say in part because I have not heard Mr. Skolnik propose that this extend to Class A felons, only to some Class B felons. I am concerned about this recommendation because not all Class B felons are Class B felons. Until we sort out the Class B felonies, it is difficult to say all Class B felons should get the benefit of good time credits, if it is going to be extended. There may be some Class B felons where that is appropriate and others where it is not.

MR. HELZER:
If I understand you, we are really looking at Class B, not Class A.

CHAIR HARDESTY:
Yes.

MR. HELZER:
We may want to postpone until we determine if some of the Class B may be more appropriately handled as Class C. The Category Bs need some truth in sentencing. Our victims need to know with greater certainty that the sentences mean what they mean. As to all categories, since we have had these modifications and we do not have the certainty we anticipated, we should consider something in the presentence investigation for the court’s consideration which would give estimates about when someone on any crime who is a
beneficiary of these advanced eligibility dates will be released from prison. What does a sentence of 48 months really mean? It would give a defendant incentive to be good; it would give victims notice of what the sentence really means; give the court an idea of what they are actually sentencing. These Class Bs are some of the worst cases in respect to what is inflicted upon victims.

CHAIR HARDESTY:
Does a majority of the Subcommittee want to extend this to Class A? Show of hands. With respect to Class B, how many agree with my suggestion that this consideration occur once there has been a sorting of the Class Bs, which is a process the Commission would have to undertake?

JUDGE HERNDON:
Everyone in Las Vegas is in agreement with that suggestion. It may obviate the need to have this suggestion. With the Class A and B crimes against a person, one of the good things about truth in sentencing is you could plead, negotiate, sentence, talk to victims with specificity about the sentence to be received and about their expectations. I do not have a problem with making some Class Bs, Class Cs. I would be against saying Class As and Bs will get some parole eligibility effects like the C, D and Es now have.

CHAIR HARDESTY:
The first item under “Information Systems and Technology” on page 19 of Exhibit C has already been discussed by the Commission. P&P has also discussed it.

The next two items referencing the NRS code specificity and a standard sentencing form are an attempt to standardize the data. Are there any objections to these suggestions?

MR. BOSLER:
If we are going to expand the data fields for P&P to include Hispanic, are there other race issues? Do they already record Asian or Native American? If we are going to do it, we might as well expand it consistent with the best practices of data collection.

MR. CURTIS:
We are not going to expand to include Hispanics.

CHAIR HARDESTY:
The DOC data system collects that ethnicity classification as well as other ethnic groups. When the data from P&P was analyzed, this one was missing.

MAJOR WOODS:
The DOC is tied in with the federal system which does not recognize “Hispanic” within its system as a race. We cannot change our system. The jails and the prison do capture that data.

MR. BOSLER:
We have to figure out some part in the justice system where we can collect the data. We talked about the police department or the sheriffs. We should recommend the right point in the system to collect all of the demographic and ethnic issues.

CHAIR HARDESTY:
We might modify that recommendation to reflect that either P&P or DOC or someone else is collecting that data.

The recommendations under “Information Systems and Technology” omit the recommendations we made at our August 11 meeting, page 31 of the minutes, which called for an improved data collection system and some remedy for the resource needs of the agencies; and the development of a system of compatibility for greater efficiency of the data collection, which is the standardized data collection from the time the person enters the system and is maintained throughout the entire process. We will add those to Exhibit C.

The “Organizational Changes” start with the reorganization of the DOC. The reorganization would be similar to other states and would improve data exchange and create greater efficiencies in the utilization of State resources. Dr. Austin’s rationale was to move P&P from supervision under the law enforcement branch of State Government and into the DOC and create a new Department of Correctional Services. Dr. Austin has made this recommendation in previous Legislative sessions.

SENATOR PARKS:
There have been discussions with Dr. Austin indicating that a more consolidated operation would create certain efficiencies.

MR. CURTIS:
P&P is opposed to this recommendation. Just because Nevada is different from many states does not mean we are in a negative situation. We do well with the diminished resources available. No specifics were given for this recommendation. In a couple of the interstate conventions I have attended, other states are looking toward Nevada as an example of what they would like to be. I do not see the need, especially in this time of short resources. It would be a costly change. If there is a problem with communication, we are not aware of it. We communicate with the DOC every day on many subjects. Essentially 16 percent of our work deals with the prison; 84 percent deals with the courts. I suggest we do not change things.
MR. KOHN:
There are appearances of conflict, not real conflicts. The fact that a law enforcement agency is making a recommendation to the court regarding my clients is an appearance of impropriety and a conflict. In most states, the recommendation to the court comes from an agency that is not law enforcement but part of either the administrative office of the courts or an independent agency. I am not as concerned about what happens after someone is sentenced. Dr. Austin has pointed out the number of times the courts do not agree with the recommendations. Speaking for the attorneys in my office and other defense attorneys, we would be more comfortable if a non-law enforcement agency was making the recommendations. The change does not need to be done in this time of great budget needs, but it is something we should talk about.

MR. SIEGEL:
There is another issue behind Dr. Austin’s recommendation which has to do with the kind of resources deployed by P&P. It came up in a report circulated two to four years ago at the Legislature: the balance between law enforcement resources and what might be called “social service resources”.

CHAIR HARDESTY:
When I was a district court judge, I felt P&P should report to the judiciary. The recommendations and the supervision is really a function of the judicial system. We put them on probation; we track them. Could this function be governed by the Administrative Office of the Courts (AOC)? Aside from the question of the supervision of the defendant, there are resources, responsibility and accountability issues for collection of restitution, fines and fees which need to be addressed. The proper location for that responsibility might be the AOC.

JUDGE HERNDON:
I understand what Mr. Kohn is saying, but I do not know that I perceive there to be an actual conflict and have never had the occasion where I have viewed somebody making a recommendation solely because they were law enforcement personnel. Most states do not do it the way Nevada does. Would P&P, under the arm of the judiciary, include the recommendations and the supervision after sentencing?

CHAIR HARDESTY:
Yes, in my view it would be both.

JUDGE HERNDON:
I do not have a problem one way or the other. There are things that would be beneficial if P&P was part of the judiciary and things which may benefit the DOC if P&P were part of the correctional system. There are a lot of judges who rely almost exclusively on the recommendations they receive from P&P. I am not one of those judges. The P&P recommendation is the last thing I read, if I read it at all. I try to come up with a sentence appropriately based on everything I know, not because of the numbers spit out by P&P. I understand, from a defense standpoint, what the concerns are.

CHAIR HARDESTY:
There is a question of timing. If you consolidate and consider some of the initiatives to improve and redirect some of the fine money to the system itself, you can find solutions for budget problems with supervising defendants. Imagine what we could do if we improved our collection of fines and redirected those resources throughout the criminal justice system. The amount of uncollected public defender fees is staggering. If we collect a portion of it, it would go a long way in addressing indigent defense issues. I am looking at revisiting the structure and the financing of the system. The Advisory Commission had a discussion about reconfiguring the fines. For example, a third time DUI mandatory $2,000 fine; currently that money, if collected, goes to the permanent school fund. There is nothing wrong with that except it does not help the criminal justice system that generated the funds. If we redirected the fines and improved the collection capability, there would be no harm to the permanent school fund, but there would be a new revenue source for the overall criminal justice system. If it is centralized, you can improve budget capability and strengthen P&P’s supervision capabilities. This is outside truth in sentencing, but I want a reaction from this group because you are so close to the system.

MR. BOSLER:
In Washoe County we have begun to look at collection of fees and fines. There is a problem when multiple agencies are collecting data. Does the data match; are we communicating in a timely fashion? To that extent, consolidation makes sense.

MR. CURTIS:
We are open to discussion on structures and disciplines, etc. Some things are going to be off the table.

MR. KOHN:
I think P&P should be with the AOC, there will be a separation-of-powers issue. We have heard many times that P&P does not have the needed collection resources. Victims would be better off with that change.

CHAIR HARDESTY:
Do any of the Subcommittee members endorse the recommendations listed under “Organizational Changes” on page 19 of Exhibit C as proposed by Dr. Austin? I would endorse the third and fourth recommendation. By a show of hands, everyone endorses the third and fourth recommendations. By a show of hands, no one endorses the first two recommendations.

Does the Subcommittee want to pursue the suggestion I have made, or do you want to defer to the Commission or the next session of the Legislature?

JUDGE HERNDON:
I would defer the issue to the Advisory Commission rather than this Subcommittee.

MR. SIEGEL:
Yes, the Commission should study the court jurisdiction.

CHAIR HARDESTY:
Are there any other recommendations this Subcommittee would like to make, other than the one we are going to rewrite. We will redraft the others and discuss those the morning of December 17. We will vote at that time. Is that procedure acceptable?

MR. SIEGEL:
I would like to send back to the Advisory Commission the issue of the impacts of the truth in sentencing legislation on racial, ethnic and gender categories. We need to address this.

CHAIR HARDESTY:
This is not the end of this Subcommittee or the Commission. We will continue to meet. It is an issue we need to put on the table.

There being no further business to come before this Subcommittee, this meeting is adjourned at 11:57 a.m.

RESPECTFULLY SUBMITTED:

______________________________
Sandra K. Small, Secretary

APPROVED BY:

______________________________
Justice James W. Hardesty, Chair
DATE: ___________________________
## EXHIBITS

### Subcommittee to Consider Issues Related to a Study of “Truth in Sentencing”

**Date:** December 3, 2008  
**Time of Meeting:** 9:07 a.m.

<table>
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<tr>
<th>Exhibit</th>
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<td>C</td>
<td>James Austin, JFA Institute</td>
<td>Nevada Truth in Sentencing Commission: November Update</td>
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