The meeting of the Advisory Commission on the Administration of Justice was called to order by Justice James W. Hardesty, Chair, at 9:07 a.m. on September 22, 2008, at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The Agenda is included as Exhibit A and the Attendance Roster is included as Exhibit B.

COMMISSION MEMBERS PRESENT (CARSON CITY):
Justice James W. Hardesty, Nevada Supreme Court, Chair
Assemblyman John C. Carpenter, Assembly District No. 33
Bernard W. Curtis, Chief, Division of Parole and Probation
Larry Digesti, Representative, State Bar of Nevada
Arthur Mallory, Churchill County District Attorney
Catherine Cortez Masto, Attorney General
David Smith, State Board of Parole Commissioners
Richard Siegel, President, ACLU of Nevada, Inmate Advocate
Howard Skolnik, Director, Department of Corrections

COMMISSION MEMBERS PRESENT (LAS VEGAS):
Douglas Herndon, Judge, Eighth Judicial District Court
Senator Steven A. Horsford, Clark County District No. 4
Phil Kohn, Clark County Public Defender
Assemblyman David Parks, Clark County Assembly District No. 41

COMMISSION MEMBERS ABSENT:
Senator Mark E. Amodei, Capital Senatorial District
Gayle W. Farley, Victims’ Rights Advocate
Raymond Flynn, Assistant Sheriff, Las Vegas METRO
James Miller, Sheriff, Storey County
Chair Hardesty opened the meeting of the Advisory Commission on the Administration of Justice at 9:07 a.m. He said Commissioner Richard Siegel was attending the meeting via telephone. He requested Ms. Clark take the roll. Commissioners Farley, Flynn, Miller and Amodei were absent.

Chair Hardesty asked the Commission to approve the minutes of the last meetings. There were two sets of minutes. The minutes of August 18, 2008 and August 25, 2008 were approved.

Chair Hardesty said the third item on the Agenda was a letter to the Legislative Counsel Bureau reporting the actions taken by the Commission during the August meetings. He said he wanted the minutes approved before he reported on the various motions. He wanted to include any actions taken in the meeting today in the letter. He opened the discussion of
Agenda Item IV, the monthly tracking information on the prison population, parole and probation. He referenced a handout dated September 22, 2008 (**Exhibit C**).

James F. Austin, Council of State Governments, President, JFA Institute, said he was going to respond to specific data requests from the last meeting.

Matthew C. Leone, Ph.D., Grant Sawyer Center for Justice Studies, UNR, opened the PowerPoint presentation, **Exhibit C**. He said they had some problems receiving information. He said arrest bookings were stable, court dispositions declined slightly, jail populations were stable, and there were slight increases in prison population and a declining Parole Board grant rate. The probation population was stable. Revocations increased slightly and releases decreased slightly. There were slight increases in the parole population admissions and the revocations were flat. He showed a slide of the court trends for the year which were relatively stable. The numbers remained stable since March 2008. The prison population versus budget projections was fairly flat. He said it was well below the projected numbers. He said the mandatory and discretionary grant rates showed a decline.

Dr. Austin said a key factor driving the prison population was the parole grant rate. The grant rate had been higher than the rates Dr. Leone showed. He said the absolute number of people paroled increased for the months of May through August. It was a function of the good time credits which sent more prisoners to the Parole Board faster than under the previous law. He said the grant rate declined but the number of people paroled went up.

David Smith, State Board of Parole, said during the first part of calendar year 2008, in an effort to parole as many people as possible with the backlog continuing every month, the Board selected the candidates most likely to receive parole for the hearings. He said the backlog was composed of sex offenders and violent offenders. The volume went up in July and August but there were fewer candidates for parole due to their offenses so the grant rate declined. Mr. Smith said the majority of the backlog had been cleared up. The backlog referred to people overdue for parole hearings. He said some people entering prison were past eligible as soon as they entered prison. There were always a few people they were seeing late.

Dr. Austin asked if the grant rate would increase to where it had been historically.

Mr. Smith said once the number of hearings leveled out, and face-to-face hearings were resumed in late November, the numbers would return to the previous trends.

Chair Hardesty said he requested Dr. Austin, Mr. Skolnik and Mr. Smith provide the Commission with numbers surrounding **Assembly Bill (A.B.) 510** included in the report. The numbers concerned how many of the inmates had their parole eligibility accelerated because
of the provision of A.B. 510 that reduced the amount of the good time credits on the minimum side; further, of that group, how many were granted or rejected parole. He wanted to know of those granted parole, how many had been revoked. He asked, with respect to revocation, what was the cause of the revocation. He said those were important statistics to furnish to the Legislature.

Dr. Austin said the issue was identifying the people that were accelerated. He said as long as the Department of Corrections provided the information it was possible to identify them.

Commissioner Skolnik said he was able to provide the information.

Mr. Smith told Chair Hardesty the revocation records were kept by Parole and Probation. He said the Parole Board did not keep statistics on the reason for revocation.

Commissioner Curtis said Parole and Probation had the information. Commissioner Skolnik said the information would be available in approximately six weeks.

Chair Hardesty said the report needed to be presented by the middle or end of November.

Commissioner Mallory said the information showed who had been accelerated due to A.B. 510 and how they did after being paroled. He said the budget shortfalls in the State might have impacted law enforcement and affected the felony and gross misdemeanor cases filed.

Chair Hardesty said there was a dramatic decline in court cases filed, but there was also a decline in the crime rate during the same period. He said there were probably multiple reasons for the decline.

Dr. Austin said there were no negative repercussions on crime or jail populations. The system seemed to adapt itself without any negative consequences.

Chair Hardesty said there were a number of people who would have obtained parole eligibility during the past year in any event. Their parole eligibility was accelerated. He said the questions were, did they get relief and what happened after they got relief. He said there was some misconception about A.B. 510 on the minimum side. He said it only affected categories C, D, and E and their minimum sentences would have been one to two years maximum.

Mr. Smith said the inmates coming up with a one-year sentence prior to A.B. 510 served the twelve months. He said now it was approximately eight months served.
Chair Hardesty said it was not a whole lot different than DUI sentencing. He said third-time DUI offenders were sentenced to prison for twelve to thirty months. In actuality, a large number of DUI offenders were getting out in less than six months in an alternative setting. He said it was not unusual for parole eligibility to accelerate. He said the Parole Board was now dealing with people who had accelerated eligibility provided and others who were on schedule for parole. He said the Parole Board dealt with a tougher group of parolees and the Board said no to their release when it was appropriate to do so.

Dr. Austin said he would “drill down” to see if that was occurring. He said the State should go back to the normal grant rate in November and December. He said if that did not occur the prison population would go up again.

Dr. Leone continued the Power Point presentation discussing population trends for parole and probations, Exhibit C. He said the trend was relatively flat. He said when the Parole Board saw more serious cases they took a great deal more time.

Mr. Smith said each case was considered on its own merits. The more severe the crime or the criminal history, the longer it took for the hearing.

Chair Hardesty referenced the slide showing Court Filings. He said there was a reduction of 200 to 300 cases for four months. He said if the trend continued throughout the summer, a reduction in some of the other numbers may be because most of the cases were resolved by plea. The cases filed in March or April were resolved by pleas in August.

Dr. Austin said the reductions were substantial. He said the numbers caused them to question the data they received. They were not sure what had happened. The other question was the disposition of the cases. He said it suggested fewer admissions into the probation and prison system.

Chair Hardesty said the reduction would be almost 1,000 criminal cases in the State.

Dr. Austin said their first concern was an error in the reporting system from the Courts. He said if the numbers were right, then the statistics showed there were fewer cases coming into the court and fewer people being put on probation.

Chair Hardesty suggested filings of felony cases in Justice Court be included in the reports. He said a column for felony and gross misdemeanors from Justice Court could be included.

James T. Richardson, J.D., Ph.D., Grant Sawyer Center for Justice Studies, UNR, said they were surprised with the numbers and did not have time to check them. They had problems with data before and suggested caution regarding the current data.
Commissioner Mallory asked if some jurisdictions were omitted or late in reporting.

Dr. Austin said the Administrative Office of the Courts (AOC) needed to certify that all the courts had reported.

Dr. Leone next discussed page 10 of Exhibit C. He said the rate of parole and probation revocations jumped from 38 to 41 percent. He said it did not indicate a trend toward increased prison populations.

Chair Hardesty said there were a number of inmates who had their parole eligibility accelerated under A.B. 510 and were granted parole in the last ten months. Yet, the parole revocation rate remained the same.

Mr. Smith said one thing the Parole Board saw was that former inmates spent less time on parole. He said if someone violated at the end of their term, they did not necessarily return to the Board.

Chair Hardesty said if they were granted parole under the accelerated basis there was another question. If they were discharged, did they then commit new crimes?

Commissioner Skolnik said he believed they could get the information the Chair requested.

Mr. Smith said if the person was sent back to prison, NDOC could capture that information in their system.

Dr. Austin said the problem was time. It was too short a time to track people. It may take six or seven months before their names appeared at NDOC. He said he would look for rearrest data. The people affected by the law could be compared to a state rap sheet information system and see if they had been arrested after discharge from supervision.

Chair Hardesty said the names could be given to the sheriffs and they could tell whether the people had been rearrested.

Dr. Leone said Washoe County used a unique offender number identifier each time a person appeared before the justice system.

Chair Hardesty said the discussion needed to be about facts and not episodic events or speculation.
Dr. Leone next showed slides of parole and probation by felony type. Everything was flat or moving in a slight downward direction. He said page 13 of Exhibit C had the totals of programs completed and the overall numbers were encouraging.

Commissioner Carpenter asked about program completions. He noted high school diplomas dropped off in July and August. He asked if Dr. Leone knew the reason that had occurred.

Commissioner Skolnik said it was summer break for the school and they were not in session.

Chair Hardesty said the slides raised some questions. He said it was significant, the number of people who completed programs, but in relationship to the total prison population the numbers were fairly small. He asked if there were adequate funds for the programs. He asked how many people participated in programs and did not complete the programs. He said they had seen earlier slides showing over 9,000 participants in various prison programs.

Commissioner Skolnik said the total program completions exceeded ten percent of the population. He said they were cumulative numbers. Once someone graduated from high school, they would not repeat that program. He said it was the same with the substance abuse programs and vocational programs. He said the NDOC had the highest rate of GED completion of any body in the State. NDOC had the largest number of treatment beds for substance abuse and mental health issues in Nevada. He said it was time for everyone to recognize NDOC did an incredibly good job with the resources they were provided.

Chair Hardesty said another part of the discussion was the fact that the NDOC had the highest level of success in mental health and drug treatment programs, which showed the lack of availability of funds for people outside the prison program.

Commissioner Skolnik agreed. He said if there were more diversions NDOC would have fewer needs for the beds. He said 4,500 inmates had strong history of methamphetamine use. He said they had approximately 2,500 diagnosed mentally ill inmates.

Chair Hardesty said his concern was approximately 13,500 people were on probation, another 4,000 were on parole and the number of resources available was not sufficient. It put the people at risk of being sent back to prison to be treated within the prison confine. He asked if the Commission needed to examine ways to shift the dynamic. He said funding needed increasing to increase capability so some of the programs were accomplished outside of the prison setting. He said it was not a criticism of the prisons. The prison system’s accomplishments were excellent. He said incarcerating people cost $19,000 to $22,000 a year. He said outside the prison setting the cost for the programs was about $3,000. Chair Hardesty said perhaps some of the population could be dealt with before incarceration or while they were on parole.
Dr. Austin said they were showing the information for several reasons. He said the Parole Board Risk Instrument looked at participation and completion of rehabilitative programs. Inmates participating in the programs had their risk level dropped. He said A.B. 510 added good time credits for completion of programs. He said their next presentations could discuss the percentage of inmates getting programs. He said the programs being used were good, high-quality programs, but money was needed for programs.

Chair Hardesty said if there were insufficient resources to deal with people granted parole or probation, they were at a higher risk of being revoked and brought back into the prison system. His concern was the adequacy of resources available to the Division of Parole and Probation to deal with the needs of people granted parole or probation.

Dr. Austin agreed there was a lack of resources. He said a careful assessment of how much funding was needed was necessary. He said it needed to be a precise figure. He said there was precise information on probation.

Chair Hardesty said the Commission needed to report to the Legislature the resource needs in all the categories. He asked Dr. Austin how the Commission could gather that information between now and the end of the year.

Dr. Austin said by meeting with the DOC and Parole and Probation and using the information already collected, he could arrive at precise estimates of types of programs needed and the cost within 60 days.

Chair Hardesty said Dr. Austin had a substantial compilation of those needs areas in the Drug Court report provided by the Drug Courts as well as their calculations of costs for people within the drug court. He added Drug Court was one of the more efficient supervision and treatment operations taking place outside the prison setting.

Dr. Austin said mental health services needed to be added.

Chair Hardesty said there were Mental Health Courts also. He said in Clark County they had 75 slots for the entire county, with the need for 600 slots.

Dr. Austin said they would have a report by November of service gaps and how much they would cost.

Commissioner Mallory noted, for the minutes, that the prison system had extremely successful programs. He said it would be a serious mistake for the Legislature to take resources away from those programs and try to put it at the front end. He said the current programs were successful in the prison. They would be self-reducing if the Legislature
funded the programs on the front end. He said if the programs were diminished now, they could increase the chance of people returning to prison. He hoped the Legislature understood the problems.

Chair Hardesty said it was not a case of taking from an underfunded operation and trying to address the needs in an underfunded operation. He said both needed to be done.

Dr. Leone referenced page 15 of Exhibit C, jail population management. He said in Washoe County the trends were below the past two years’ bookings.

Dr. Austin said the booking data was critical. It reflected arrests. The front end of the system was processing fewer people. Dr. Austin said Nevada was a growth state and it was great news the numbers were dropping.

Chair Hardesty said both large counties in the State showed major declines in their admissions and bookings.

Dr. Leone referred to Washoe County Average Daily Stay in Jail on page 18 of Exhibit C. It showed the trends were lower than in the past two years. He said page 19 referred to alternative programs which were relatively flat.

Dr. Austin said page 19 referred to the total number of days people spent in alternative programs. He said the use of these programs was increasing in Washoe.

Dr. Leone next referred to prisoner status, which remained stable. There were decreases in crime and filings which generated decreases in days in jail. The jail population breakdown was also lower.

Dr. Leone discussed questions the Commission had asked the consultants at the previous meeting. The Commission asked if they could audit cases using mandatory sentencing requirements and determine if they were sentenced within guidelines. The Commission asked if they could select cases out of range and provide case numbers to the various district courts. The next question was if they could determine if sentences with blank fields were within range. The final question asked was if they could select a subsample of the out-of-range cases and determine if the sentence was truly out of range.

Dr. Austin said they looked at mandatory sentencing and how it drove the prison population. He said they looked at the Parole and Probation data file and found only eight percent of all cases with a felony conviction were convicted of a crime that could qualify them for a mandatory prison term. He said the problem his organization encountered was the encoding process was not specific enough to give a good study of compliance with guidelines. He said
of the 909 cases, they were relatively certain 170 were mandatory prison cases. He said 739 may or may not be mandatory. He said mandatory sentences were not that big. He said of the 909 cases, 434 actually received a probation term. He said they audited a random sample of 25 cases looking at people sentenced under a statute that said it could be a mandatory prison term. The most frequent mandatory prison term sentences that received probation were second-offense crime against a child, home invasion and drugs with intent to sell. He said of 1809 sentenced prisoners who had no prior state incarcerations, only 270 were there due to mandatory sentences.

Chair Hardesty said 1809 individuals sentenced to prison had no prior state incarcerations. He said 270 of those individuals were there due to mandatory sentences. Dr. Austin replied the number could even be smaller. He said 1539 people were sentenced to prison with no prior state incarceration and not on a mandatory sentence.

Dr. Austin said of that group, only 392 had no prior jail sentence. They had been convicted of other things that did not reach the level of state incarceration. He said there were very few people coming to prison for the first time who had never been convicted of anything before.

Chair Hardesty said approximately 1,100 people were sentenced to prison with some prior incarceration. He said almost 400 people had no prior prison or jail sentence or a mandatory sentence. He asked why those 392 people went to prison. He asked if there was anything that could have been done that would have diverted those people. He asked if they were A felons or C, D, and E felons. He said E felons were not supposed to go to prison by statute. He suspected it was coupled with some other felony, but the Commission needed to understand that.

Dr. Austin suggested a case study. He said likely they were put on probation and then they engaged in activities that violated the terms of their probation. He said a pattern he saw in Nevada was they started out okay, then started using drugs and stopped reporting and lost their job. He said nothing happens until there was some other violation and the matter was brought back to the court.

Chair Hardesty said the point had to do with the work of other subcommittees. He said there was a subcommittee to look at intermediate sanctions and alternatives. He said it did not make sense to pursue an entire system of intermediate sanctions for the courts to use or alternative steps before prison, if the group was not amenable to it. He said they were trying to define the group to test the theory. Judges lacked intermediate sanctions and the default position was to send them to prison. He asked if there were alternatives that would be less expensive for the taxpayers and still do the job.
Commissioner Digesti said he had a question about the 392 people with no prior jail sentences. He said that number did not take into account prior convictions that they may have had but received no jail sentence.

Dr. Austin said they had not been convicted.

Commissioner Digesti said there was a difference between a jail sentence and a prior conviction. He said they may have had multiple prior convictions but no prior jail sentence.

Dr. Austin said that was likely.

Commissioner Mallory said his district had the highest percentage of sending people to prison. He said they saw cases where people had 22 to 23 misdemeanor convictions by the age of 25 and had never been sentenced to prison because they were in different jurisdictions. He asked if that situation was accounted for in Dr. Austin’s statistics. He asked if they were considered a first-time offender if they were sent to prison for the first time.

Dr. Austin said if the sentence required them to be sentenced to the jail, it would be included.

Chair Hardesty said they would be in the 1,000 group, not the 392.

Dr. Austin referred to point 8 on page 26 of Exhibit C. He said they audited 25 of the 434 cases that could be mandatory prisons terms, but they got probation. He said Mark Woods and Bernie Curtis’ staff helped audit the 25 random cases. He said those cases were all properly sentenced. He said the current statute allowed them to be sentenced to probation.

Dr. Austin said point 10 on page 26 of Exhibit C was important. He said the data system needed to be fixed. The data system could be easily fixed by expanding the field that recorded the NRS code so it showed all the details of the sentencing provision. It would allow for quick and easy analysis. He said it was not a difficult thing to change. The NRS code had to become the linchpin of the entire data system.

Chair Hardesty asked if it was something that could be changed immediately.

Dr. Austin said it could be changed in 30 days. He said the current code was six digits. He said a good programmer could do that in his sleep; it was not difficult to do. He said it goes forward with all new cases, not backward for past cases. He said in his professional opinion it was a “no brainer.”

Chair Hardesty asked if it was possible to do. Dr. Austin said he would volunteer to sit with the programmers.
Commissioner Curtis said they all needed to know the programmer. He said everything required money and a degree of time. He said they would do what they could do.

Dr. Austin asked to sit with Commissioner Curtis’ programmer and within an hour he would have the program.

Mark Woods, Division of Parole and Probation, said it was not a programming fix per se. He said he was talking about the Nevada Offense Code that affected every legal jurisdiction within the State. He said it was referred to as the NOC codes and that had to be changed. He said the Chief and Director did not have the authority to change the NOC codes.

Dr. Austin referred to the NRSX code on page 27 of Exhibit C. He said the detail shown on page 29 of Exhibit C was the level of information needed. He said current code only recorded the first six digits. The field could handle 10 or 12 digits without changing the format. He said the NOC codes also needed to be discussed.

Chair Hardesty said he wanted to talk about the NOC codes today. He said for the last year the Commission had been trying to develop information and data and recommendations for the Legislature. He said the first study by UNR which examined over 10,000 sentencings in 2007 showed 13 percent of the cases were sentenced out of range. He said they cautioned the media and others not to rely on that information. He said no one in the system believed that 10 to 13 percent of the cases were sentenced out of range. He said the Public Defenders in Clark and Washoe Counties examined every single case in their jurisdictions and found that not to be the case. He said the problem occurred in part due to the data system problem. He said it had to be fixed in order to make reasonable decisions.

Mr. Woods said there was a subcommittee with Assemblyman Parks to study the system. He said simple fixes seldom turned out to be simple.

Chair Hardesty said Dr. Austin had offered his assistance. It was a critical component. He said without the subparts of the statutes, it was obvious it was not an accurate reflection of the sentencing range. He said it was a critical fix and they did not need to go back and fix the past.

Commissioner Skolnik said he believed they could do the fix.

Dr. Austin continued the Power Point presentation. He said the majority of the cases audited were in the Class D drug possession area. He said nearly 800 of the 909 cases studied were for drug offenses.
Chair Hardesty said most of the drug cases were trafficking cases. He said this group was going to prison for lengthy periods of time. The sentences were 10 to 25 or 10 to life. Chair Hardesty said over 700 cases were drugs.

Dr. Austin said only 320 went to prison and the majority went on probation. The audit showed they were properly sentenced according to NRS statutes.

Commissioner Digesti asked for clarification on a comment Dr. Austin made. He said Dr. Austin was relating mandatory sentences not being used by the court. Commissioner Digesti said if it was mandatory, the court had no discretion.

Dr. Austin said he meant they were not a large bulk of the cases being disposed of by the court. He said the court used them as required by law.

Commissioner Digesti said Dr. Austin was not suggesting if it was a mandatory sentence, courts were not following the mandates. Dr. Austin said the audit showed the courts were following the mandates.

Dr. Leone moved to the next question. The question involved the out-of-range cases and provided the case numbers to District 2 and District 8. He said they found two basic areas of error. He said there were errors in the data entry; there were “typos” which made the crime look different than what it was. He said the other problem was incorrect NRS codes which made it look like the cases were out of range when they were not. He said special circumstances were not indicated within the data set they had. He said the substantial assistance issue was not addressed in the data they used. He said the two courts also reported some of the cases went to appeal and they were affirmed.

Dr. James T. Richardson wanted to discuss how the data was analyzed because it illustrated the problems they faced. He said Chair Hardesty asked them to furnish case numbers, which they did, and he wanted the people who did the work to receive credit. He said the Public Defenders, Mr. Bosler and Mr. Kohn, hand checked the case files. He said the problems were minimal or nonexistent upon further study. He said he hoped the media reported that fact.

Chair Hardesty expressed his appreciation to Mr. Kohn and his office and Mr. Bosler and his office. He sent 600 cases to Mr. Kohn’s office and 300 cases to Washoe County. He said it was very labor intensive to go back through those cases. Everyone in the system would have a huge concern if any one person had been sentenced out of range. The misinformation was shocking. He said the two public defender’s offices did not have the time to do this but did it to confirm the sentences were not out of range. Chair Hardesty said if some of the data systems were corrected, hopefully consultants and researchers would have easier access.
Commissioner Skolnik confirmed he could make the suggested changes.

Dr. Leone discussed the next question. The question was to determine if sentences with blank fields were within range. It was found the blank fields were all correct with nothing going on other than errors or information improperly coded or hardware failures. He said they selected burglary for a subset of out-of-range cases. Burglary was selected because it represented the category with the largest percentage of out of range sentences. He said the consultants determined there were too many offenses that fit under the same NRS heading. He said the NRS code 205.060 for burglary had a multiple number of crimes charged under the same NRS code. He said the column marked NOC, the Nevada Offense Code, had very different numbers. He said the NOC code was constructed to parallel the federal offense codes. He said the NRS code was a more general heading. He said the NRS code could be expanded to pick up the differences within the code.

Dr. Austin said there was more detail in the NRS statute which showed the paragraph and subparagraph, but in the data systems it was truncated on six values.

Chair Hardesty asked what the FREG column meant on page 34 of Exhibit C. Dr. Leone said it was the number of people within the data set sentenced under the NRS code versus NOC. Chair Hardesty said, for example, 464 people were sentenced for the crime of burglary. He said there were 209 people sentenced for the crime of “attempted burglary.” He said there were subsets within those codes. Chair Hardesty asked for the description of the NOC codes on burglary.

Dr. Leone said he had copies of the NOC codes and would supply them for the Commission. He said the descriptions were very detailed. Dr. Leone added the NOC codes were not Nevada law.

Chair Hardesty said the same information was available using the subparagraphs of the statute. Chair Hardesty said the problem was the NOC codes were used to report out to the Federal Government what was occurring within Nevada’s system. He said a tremendous amount of money and time was spent by agencies developing NOC codes in an effort to tie the codes to our statutes. He questioned how much money was being spent in that venture. He said most of the money was being set aside in the criminal history repository and funded through a proportioned share of administrative assessments. He said the Victims of Crime Program received a piece of this through administrative assessment fees being paid. He asked how the money was being spent and whether it was producing useful information to the State in making business decisions about the criminal justice system. He asked if codes were simply being made to provide information to the Federal Government. He asked Dr. Austin to comment about the NOC codes.
Dr. Austin said the NRS code, fully enumerated, was the reference. Then tables could be written that transferred the information to the NOC codes. The foundation of all the data systems should be the NRS code fully enumerated.

Dr. Leone said the federal administrative codes changed annually. He said a fully enumerated NRS code could be lined up with the new offense codes at the federal level.

Commissioner Carpenter asked why there were NOC codes other than to provide information for the feds. He asked if the State received anything in return such as grants or money. He said the Legislative Commission had a regulation from the Department of Public Safety that they wanted to do the same thing.

Chair Hardesty said this was a serious issue. He asked the head of the Administrative Office of the Courts to contact the Criminal History Repository and make a presentation to the Commission as soon as possible. He asked what was occurring with the money. He understood approximately $5 million of administrative assessment fees went to the NOC project. He said the amount of money being set aside for victims of crime was approximately $2.9 million.

Commissioner Mallory said the District Attorneys Association had representatives on various committees for the past 10 years trying to change and clarify the NOC codes. He said it was an ongoing problem. He said there was probably an easy fix with the proper computer program correlating the NOC code with the NRS codes in more detail. He said most prosecutors were truly interested in seeing justice done. He said they were appreciative of the fact the public defenders and Justice Hardesty took the time to straighten out the misconceptions in mandatory sentencing. He was grateful to know things were being done correctly. He added once a question of doubt was raised it was immediately investigated and determined; everything was done correctly. He reiterated the prosecutor’s appreciation and thanked the public defenders for their work.

Chair Hardesty asked the Commission to look at the various components of the crime of burglary listed on page 34 of Exhibit C. He said there was a variety of sentencing ranges. He said in order to make an assessment of burglary it was necessary to know more detail than was available now. He said judgments and informed decisions were not possible with the existing data. He said the data was episodic or speculation. He said straightening out the data system was critical to making informed decisions by the Commission and the Legislature.

Commissioner Siegel asked if progress had been made on identifying the Hispanic population.
Dr. Austin replied no, they were not recording it. He said it could be introduced through existing data systems but it would require instruction on how to enter the data. He asked if there was information on the sentencing data basis.

Dr. Leone said the information available that had race beyond black/white was only available through law enforcement people. He said they had the ability to link Washoe County’s data with Parole and Probation’s data but did not have the Clark County data.

Dr. Austin said he was informed the Department of Corrections recorded race including Hispanic. He said they could now report on the Hispanic prison population. He said the missing population was Parole and Probation.

Chair Hardesty asked Dr. Austin to see how that information could be added by the next Commission meeting.

Chair Hardesty opened the discussion on Agenda Item XI, Reports on Activities of Subcommittees. He asked the Attorney General to provide an update on the Victims of Crime recommendations and report portion. He specifically asked for an update concerning the allocation of funds and contributory behavior as it related to qualifying for victim of crime funds.

Commissioner Masto said they provided several BDRs at the last meeting. She said there were a couple of bills that needed further discussion. She said one bill concerned the contributory language in the Crime Victim Compensation statutes, (Exhibit D). She said it was a hot topic that deserved attention. The discussions were not completed. She asked Bryan Nix to report on how the contributory language had changed based on the recommendations of members on the subcommittee. She said the changes did not need Legislative approval but could be accomplished through the Board of Examiners.

Bryan Nix, Program Coordinator, Nevada Department of Administration Victims of Crime Program, said they created a subcommittee of the subcommittee to discuss the contributory conduct language that existed in the Board of Examiners’ policies. He said they took input from committee members and he attended a national conference with sessions on contributory conduct as well as domestic violence and sexual assault claims. He said they took the existing language and expanded it to five pages of language. They broke down the various crimes by type and tried to fashion the language specific to the nature of the crime. He said sexual assault claims were defined as a separate category. He read the first sentence of the policy which stated Victims of Crime Program policy recognized a victim’s conduct cannot be deemed to constitute consent to sexual assault. He said that was a preliminary statement to the entire policy and sets the tone for the policy. The policy is more in line with the comments from the subcommittee members, the Attorney General and the Commission.
Chair Hardesty asked Mr. Nix to read a portion of the statute.

Mr. Nix said the statute was NRS 217.180. He read the first portion of the statute, which said the compensation officer shall consider the provocation, consent or behavior of the victim that directly or indirectly contributed to his injury or death, the prior case history, social history, the need of the victim or his dependents for financial aid and other relevant matters. He said the language was broad and applied to a broad category of crimes, including sexual assault cases. He said sexual assault cases were approximately 25% of the claims that the Victims of Crime Program received each year. He said they received claims for domestic violence, assault and a variety of other crimes. He said the subcommittee established the crime of sexual assault and domestic violence had their own considerations and should be looked at differently than crimes of battery, assault and battery or DUI. The nature of the crimes and fears of the victim come into play requiring different standards. He said there was room for discretion within the policies to address those types of crimes and how they should be evaluated. He said the subcommittee tried to update the policies which had not been updated in 20 years.

Commissioner Masto said the discussion included somebody committing a crime by being underage and drinking or doing illegal drugs and then becoming a victim. There was concern that the individual was allowed to commit a crime and still be compensated. They had to discuss two separate things. She said the type of activity such as underage drinking or illegal drugs should not be condoned. However, they were talking about different things.

Andrea Sundberg, Nevada Coalition Against Sexual Violence and a member of the subcommittee, said Bryan Nix and his staff did an excellent job of taking into account the concerns her organization had about the program.

Sandy Heverly, Stop DUI, said there were several issues with DUI victims that were resolved. She also thanked Mr. Nix and his staff for doing an outstanding job in resolving the many concerns of the various organizations.

Chair Hardesty asked Mr. Nix to remain for further information from the Administrative Office of the Courts regarding funding.

Christina Conti, Washoe County District Attorney’s Office, offered appreciation of General Masto and the Commission for looking at the issues and addressing things lacking in the State. She also thanked Mr. Nix for his work. She said some issues remained that needed further discussion.

Chair Hardesty asked Ms. Conti if the issues needed to be addressed legislatively or whether they would still be a part of the policies that could be adopted by the Board of Examiners.
Ms. Conti said her issues were policy issues rather than statutory issues.

Kareen Prentice, Domestic Violence Ombudsman for the Office of the Attorney General, said good work was accomplished concerning the sexual assault claims but further discussion concerning domestic violence contributory conduct was needed.

Nancy Hart supplied comments concerning the draft policy Mr. Nix had discussed (Exhibit E). She said the comments indicated work still needing to be done. She said there was more than one remedy. The statutory reference NRS 217.180 allowed the policy and regulations to be in place. She supported taking contributory conduct out of the statute. She said the direction of the subcommittee was to try to reconcile some language and take it to the Board of Examiners.

Chair Hardesty said there was a question as to why the three phrases were in the statute. He asked if they should be removed completely or was there a good policy reason for retaining it. He said Commissioner Siegel asked the same question at the last Commission meeting.

Ms. Hart said she was not sure the entire statute should be omitted for all cases. She said there was good reason to argue for statutory exclusion of certain crimes. She said the issue of provocation, consent or other behavior could be excluded for sexual assault or domestic violence cases. She said that would be a statutory change listing the exclusion in the statute. Ms. Hart said if the Commission decided it was not a statutory change but policy or regulation changes, that it again be discussed by the full Commission for review. She referred to page 3 of Exhibit E which discussed Contributory Conduct-Domestic Violence which said injuries to victims of domestic violence were presumed as a matter of policy. She said at minimum the section was poorly written. There was a statement that benefits may be denied or limited based on prior incidences involving the same offender. She said the sentence was troubling and reflected a lack of knowledge of the reality of domestic violence. The statement reveals the unfortunate propensity to blame domestic violence victims for the crimes committed against them by their perpetrators. She said more progress needed to be made in this area. She was uncomfortable with any reference to contributory conduct in cases of sexual assault and domestic violence.

Chair Hardesty asked Mr. Nix what the policy reason was for including contributory conduct in the above-referenced cases.

Mr. Nix did not agree the statute needed modification. He said the paragraph she referred to was removed from the draft. He said the subcommittee was much closer to agreement with Ms. Hart’s comments than she might know. He said they agreed in domestic violence and sexual assault cases the consideration of contributory conduct was different. He said a prior incidence involving the perpetrator or contributory conduct issues needed different treatment.
in sexual assault and domestic violence cases. He said the reference to cooperation in this section was an attempt to make it clear that a victim’s failure to cooperate can be excused and not held against them. He said there needed to be a level of cooperation. He said what they often saw in domestic violence cases was the victim misled the officers. He said the program now recognized those types of comments or failure to cooperate were done out of a sense of fear. He said Ms. Hart’s comments were appropriate and he agreed with them.

Chair Hardesty suggested continuing the discussion during the October meeting of the Commission. Chair Hardesty said he asked the Court’s Budget Office to examine the amount of administrative assessment fees collected through June 30, 2008. He said the fund Mr. Nix supervised was primarily funded through administrative assessment fees paid largely on misdemeanor traffic violations. He said the fund received a relatively small portion of those fees. He said there was a budget the fund submitted to the Legislature for approval. If the administrative assessment fees generate more money than the budget, the excess money reverted to the General Fund. He asked for an estimate of the amount of money the fund lost at the end of June, 2008. He was told it was approximately $441,000. He asked Mr. Nix to confirm that amount. He said they lost almost one-half of a million dollars because of this issue. It underscored the importance of the BDR on this subject. He said it was a money committee issue not a judiciary issue.

Mr. Nix commended Chair Hardesty as the first person who had identified this issue that caused so much frustration. He said the number of $440,000 was similar to numbers he had seen. He said every year they put together a budget of what they needed to spend and also what they needed to accept in revenues. The budgets were limited to what was received or spent the previous fiscal year. The budget was capped at what was spent or earned in the previous year. Mr. Nix said the BDR submitted said the money would go into reserve or go to the program rather than revert to the General Fund.

Chair Hardesty said it would be worthwhile to coordinate all the people involved in administrative assessment fees revenue business. He asked if there were further comments about the BDRs.

Mr. Nix said during the subcommittee meetings he submitted several BDR requests. He said some of the requests had not been discussed before the full Commission. One of the bills required the police departments throughout the State to provide the Victim of Crimes Program with a police report. Currently, there was inconsistent response from various agencies. He said there was no law stating the police agencies shall provide a police report to the program. The critical issue was, the law required the program consider the police report and the report contained information the program needed in order to decide if a claim should be accepted. He said some of the considerations were contributory conduct issues, a filed
police report and that there was an actual victim. He asked the Commission for support of that BDR.

Mr. Nix said the other BDR concerned a section of the statute, NRS 217.220, which had a misplaced comma. The misplaced comma caused problems in cases involving pedestrian injuries. The purpose of NRS 217.220 was to provide pedestrian victims of a DUI eligibility for the program. He said the sentence with the misplaced comma read that any pedestrian who suffers an injury was subject to coverage by the program. The BDR removed the comma and replaced it with two words.

Mr. Nix said the third BDR he was seeking the Commission’s support for was an issue concerning the interpretation of NRS 217.260. It was a provision adopted before the Victim of Crimes Program was a State agency. He said it used to be a budget account. The original intent was a mechanism by which the budget office could dispose of claims with available resources by paying the claims on a pro rata basis of available funding. He said the current program was much more responsive to the needs of the victims. He said paying a flat amount based on available revenue did a huge injustice to the victims. They proposed having the freedom to have the Board of Examiners adjust how the claims were paid, not based on a flat formula imposed by statute but a program that took into account a variety of factors. He said they submitted language which repealed a section of NRS 217.260 and replaced it with six or seven words giving authority to the Board of Examiners to determine how the claims were going to be paid.

Commissioner Masto said the subcommittee had one additional BDR. She said it was regarding a name change in NRS 200.364. The change was from sexual seduction to unlawful sexual conduct with a minor. She recommended they provide the language change to the Commission at the October meeting for review.

Chair Hardesty said he needed to place Mr. Nix’s suggested BDRs on the October agenda along with a follow-up report on contributory conduct issue and the other BDR.

Ms. Conti said one of the reasons they had not come forward earlier was because it was a requirement that the subcommittee unanimously decide to back all BDRs submitted to the Commission. She said she absolutely did not support one of the BDRs.

Chair Hardesty said he would let the subcommittee vet all the BDRs and present them to the Commission. He said there were some remaining items the Commission must address during this meeting for the purposes of getting BDRs initiated.

Chair Hardesty reconvened the Commission following the lunch break. He opened discussion on Agenda Item VIII concerning biological evidence. He said the Commission previously
received a memorandum from Brett Kandt proposing a preservation of biological evidence statute (Exhibit G). He said they also received a memo from the Rocky Mountain Innocence Center which proposed two amendments to the proposed statute (Exhibit H).

Commissioner Kohn said three people were present who were invited to discuss the proposed legislation. He said there may be an oversight in not notifying the police agency that had samples and that this was an issue.

Ms. Lori Teicher, UNLV Innocence Clinic, said Mia Ji and Rob Jones were instrumental in drafting the memo to the Commission, Exhibit H. She said they looked at what had been proposed for the preservation of biological evidence from the Advisory Council for Prosecuting Attorneys, Exhibit G. She said they supported their legislation because it would strengthen the ability to correct wrongful convictions in the State. She said to make the remedies more effective and to make Nevada eligible to receive federal grant money, she suggested some changes to the amendment and post-conviction DNA testing statute found in NRS 176.0918. She said the changes proposed included the ability to move upon motion to a District Court Judge for testing in all felonies and not just homicide and sexual assault cases. She said the two amendments made Nevada eligible to receive funding under the Justice for All Act of 2004.

Mia Ji, UNLV Law Student, Innocence Project, said they support the proposed legislation with one change. She said the proposed legislation only applied to people convicted of homicide and sexual offenses. She wanted that extended, at the discretion of judges, to apply to anyone convicted of any felony. She said it would not be mandatory but could be done at the discretion of the judges.

Commissioner Carpenter asked why the decision would be left to the discretion of the judge.

Ms. Ji said it was partly due to the large number of people convicted of felonies. She said it was not reasonable to mandate preservation of biological evidence for all the cases.

Chair Hardesty referred to the summary by Mr. Kandt, Exhibit G, showing biological evidence preservation positions in other jurisdictions. He said the discretionary approach was considered in some of those jurisdictions. He asked if she had read that memo and those requirements.

Ms. Ji said she briefly reviewed the memo. She said it was not uncommon for this type of statute to be put in place. It was a good answer to meeting the needs of people that may have been wrongfully convicted while also meeting the needs of law enforcement and the State. She said it would be mandatory in cases of homicide and sexual assault, but every other felony, only where needed.
Chair Hardesty identified the fact that under federal law and 26 other jurisdictions, the preservation of physical evidence was automatically required at or prior to conviction. He said 12 states had qualified evidence preservation statutes for DNA testing. He said the point of her recommendation was that by allowing it to be determined by the judge’s discretion it was not legislatively required in all crimes where it might not be necessary. However, it would still qualify for federal funding under the federal statute by having the flexibility to secure the preservation in a variety of crimes the judge might order.

Ms. Ji replied Chair Hardesty was correct. She said they were willing to look at expanding retention to all felonies.

Chair Hardesty said the Supreme Court had a commission studying the preservation of court records including evidence. He said the evidence lockers in the State were in dire condition for capacity. He said the capability of even the larger judicial districts to handle the preservation of biological evidence was an issue and concern. He said if it were required in all crimes it would overwhelm the capability of the evidence lockers. It would be particularly difficult in the rural districts.

Ms. Teicher said an important thing to note in DNA exonerations across the country was that only 17 of the prisoners were on death row. The majority of prisoners were wrongfully convicted in noncapital offenses. There were many felonies in Nevada that carried very high sentences. Those petitioners should be allowed to petition the court. There were a number of categories where the petitioners should be able to come before the District Court judge, make their case and ask for DNA testing to occur.

Commissioner Carpenter said it seemed a bank of DNA evidence on everyone needed to be established. He said there should be criteria for a judge to follow.

Ms. Ji asked what criteria should exist. She asked if the criteria was what a petitioner should show or criteria in terms of how the evidence should be stored.

Chair Hardesty said it was the criteria the judge would use in deciding whether to preserve the biological evidence in a given case.

Ms. Ji said they had not discussed that in their proposal. She said it was necessary for the grant program.

Ms. Teicher said the proposal crafted by the Innocence Project was similar to Arizona and California’s proposals. The district court judge was in the best position to determine if a reasonable possibility existed that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through a genetic marker analysis of the evidence.
The district court judge with the case file before him should be able to determine if the threshold had been met.

Ms. Ji said two separate proposals were being discussed. She said one was proposed legislation for the preservation of biological evidence and the second proposal was an amendment to the existing post-conviction DNA testing statute. She said these proposals left discretion to the judges in both proposals.

Chair Hardesty referred to Appendix A, page 5 of Exhibit H. He said that was the first proposal and Appendix B on page 6 of Exhibit H concerned the language for the DNA testing.

Commissioner Siegel supported the proposed amendments. He asked if the Commission was satisfied that conditions for maintaining the biological evidence were satisfactory. He asked Chair Hardesty if an enlargement of storage was adequately dealt with by the Commission.

Chair Hardesty said the Commission would have dealt adequately with the issue of requiring the preservation of biological evidence and addressing the issue of DNA testing. He said it would set statewide standards for the preservation of biological evidence. He said once it was in place the court could address by rule within the various evidence lockers. He said he did not want to give the impression the evidence lockers were in such a state that the evidence was in jeopardy. He said improvements were needed. An issue in front of the Commission was how long the evidence should be retained, how it should be retained, when it can be discarded and under what circumstances. He said statutorily the State determined by legislation that the evidence must be preserved. The approach giving discretion was good. He asked Commissioner Herndon if the statute proposed in Appendix A of Exhibit H gave sufficient guidance to the judge to order preservation of biological evidence.

Commissioner Herndon said he was not sure the decision had to be an overwhelming totality of circumstances of the case. He said many cases had a large amount of biological evidence that was not used and the retention of the evidence might not be relevant. In other cases, very little evidence might have great import later. He said it gave the judge the umbrella to look at everything as opposed to being pigeonholed. He said the language was acceptable to him.

Ms. Ji discussed the proposed amendment to the post-conviction DNA statute. She said the current statute only applied to prisoners on death row. She said it needed to be expanded to other prisoners and other crimes at the discretion of the judges. The two amendments allowed Nevada to apply for federal grant money. She said Arizona was awarded $1.1 million this past year. Ms. Ji said Rob Jones, a UNLV student, had researched the parameters of the federal funding.
Rob Jones, UNLV Innocence Clinic, said the money could be used for testing and some storage. He was not sure the money could be used to build more lockers. He said the funds could be used to improve the existing facilities. A petition was filed at the beginning of the year dictating the use of the money and the needs. The program awarded a sum based on that.

Chair Hardesty said the funds could be used to enhance the concerns of some the evidence lockers about being able to preserve the evidence.

Mr. Jones believed that was correct.

Commissioner Carpenter thought a swab was enough DNA to convict someone or free them. He asked if that was true. He said that should not take too much room to store many samples.

Commissioner Herndon said the issue concerning the DNA obtained by swab provided enough of a sample to get a DNA profile on an individual. However, the evidence seized in a case may include a swab, but also the preservation of evidence that contained bodily fluids such as clothing, carpet and a large variety of things that take up more space than a swab. He asked about the length of time for preserving the evidence. He said the vast majority would never be required for further testing. He said there should be a mechanism for the jurisdictions to say the evidence has been held for X number of years and it can now be destroyed to create more room in the lockers.

Ms. Teicher said the way the statutes had been proposed, the evidence was preserved for the period of time the person was convicted and remained incarcerated until the sentence was carried out. She said the reason was that post-conviction litigation could take decades. It would not be good to pass a statute and then went before the court and the evidence had been destroyed. She said a mechanism could be written into the statute that would allow for law enforcement agencies to appear before the court and ask for it to be destroyed. She implored the Commission agree with the proposal of the Advisory Counsel for Prosecuting Attorneys, Exhibit G, that the evidence be held for as long as the person is incarcerated.

Chair Hardesty said that was consistent with the practices the Commission was told about at the last meeting.

Commission Digesti asked if “upon conviction” meant all cases, whether it was a plea to a felony as opposed to a finding of guilt by a jury.

Ms. Teicher replied in the proposal there was no distinction as to whether it was a jury trial versus a plea. She said a district court having the ability to look at the petition and determining whether it should be granted was more important. She added in many situations it was important to look at plea cases as well as those that went to trial.
Commissioner Digesti asked when the petition had to be filed after judgment of conviction entered upon a plea of guilty. He said the evidence was destroyed within a period of time, especially if there was a plea and not a trial. He asked who petitioned the court to seek the preservation of the evidence, or whether it was maintained as a matter of course and then submitted for DNA testing upon the filing of the petition.

She said it would be maintained and tested upon petition.

Commissioner Herndon said part 2 of Exhibit G stated upon a motion of a person convicted the court may order the preservation. He was concerned how long somebody had to move to preserve the evidence before it was destroyed. He said coming back three years later to move to preserve the evidence was too late and it was probably gone.

Commissioner Digesti said it was a tremendous procedural problem. He said often if it was a post-conviction hearing, it was not the attorney of record representing the individual. He said he did not know how long the courts were required to maintain the evidence and what the time frame was. He said there had to be guidelines established. He asked who it was incumbent upon to file the petition and within what period of time.

Chair Hardesty said the proposal by Mr. Kandt, Exhibit G, and Appendix A from UNLV, Exhibit H, placed the burden on the person convicted to seek the motion. The only procedural issue was when they had to bring the motion. He said a motion should be brought soon after the conviction of judgment was entered and the case was still fresh in people’s minds. He said the problem could be resolved by requiring the motion be brought within 30 days after the entry of judgment of conviction or even a shorter period of time. He asked Commissioner Kohn what he thought of the proposals.

Commissioner Kohn said it would be a problem to do it within 30 days. He wanted METRO or the Reno Police Department to say how long they kept the evidence. He said the evidence needed to be kept through at least the pendency of the first appeal.

Chair Hardesty suggested requiring the retention of the evidence up to one year after the completion of a direct appeal or at least up to the end of the period post-conviction must be filed. He said post-conviction counsel could make a motion to retain it beyond that period of time.

Commissioner Kohn agreed with Chair Hardesty.

Commissioner Digesti said that was doable and workable. He was concerned about those cases where there was a conviction upon a plea and no notice of appeal was filed. He asked how long the courts were obligated to maintain that evidence in the scenario.
Chair Hardesty said if there was no direct appeal, the defendant had one year to file a post-conviction writ. If the writ was not filed they did not have the authority or right to seek the post-conviction writ at all. He said the motion needed to be tied into the time period for making the motion for further preservation of the biological evidence beyond that period.

Commissioner Digesti said that would work.

Commissioner Herndon agreed there should be a shorter time period rather than a blanket decree that the evidence had to be kept for the full period of incarceration. He said if somebody was not pursuing their appellate remedies and the time period was past, then the evidence could be destroyed except for keeping evidence that was being contested.

Chair Hardesty said biological evidence would be retained in all cases until the period of seeking first post-conviction relief was expired. Then a motion must be made to continue to retain the biological evidence beyond that period if you were seeking post-conviction relief.

Chair Hardesty asked for a tentative vote on Appendix A in Exhibit H following his suggestion. Instead of paragraph 2 drafted on Appendix A, which provided for a motion by a person to keep the evidence, the evidence would be retained through the defendant’s right of first post-conviction relief at which time they must make a motion to continue to retain the evidence to the court. He asked for a motion to that effect.

Commissioner Digesti so moved.

Commissioner Kohn said the adoption of Appendix A and Appendix B with the Chair’s suggestion as a friendly amendment was acceptable.

Chair Hardesty said they would include the notice to law enforcement in the amendment. He said the motion referred only to Appendix A. The motion was to approve Appendix A with modifications to paragraph 2 as suggested earlier. Chair Hardesty exempted out any homicide or sexual offense cases. He said that evidence should be preserved until the period of incarceration under subparagraph 1 was completed.

Commissioner Siegel asked Ms. Teicher about people sitting in prison for 15 or 20 years and then new evidence came up. He asked if the limitations would have adequately dealt with these kinds of cases of exoneration.

Mr. Teicher was concerned about limiting the time the petitioner would have to put forth their post-conviction petition. She said paragraph 1 in Appendix A was left intact. That paragraph dealt with homicide and sexual offense and required the preservation of the evidence during the time the convicted remained incarcerated or until the sentence was
carried out. She said it was a good starting point in terms of the rest of the felonies. She asked how long evidence was currently maintained.

Chair Hardesty said they could ask the evidence locker people and the two major law enforcement organizations how long they retained evidence in the case of pleas.

Ms. Teicher said there were situations in cases in federal habeas litigation where extenuating circumstances became very important when petitioners suffering from a mental illness or retardation do not know what to do in terms of post-conviction litigation. She said cases may be brought up years later. She was concerned evidence could be destroyed.

Chair Hardesty said a requirement could be made in any life sentence case or any cases with certain lengths of sentences that the biological evidence must be retained throughout the period of their incarceration. He said that tied all the remaining crimes along the lines of his earlier suggestion.

Commissioner Siegel said Chair Hardesty’s suggestion for the longest sentences was a good one. He said those kinds of cases most often came to the Innocence Projects.

Chair Hardesty said any sentence with a maximum of 15 years; most were B Category offenses and above. He said approximately 3,000 inmates in the prison served such terms. The remaining cases would be addressed in the manner he suggested.

Commissioner Digesti suggested some language be proposed that if a defendant received a term of incarceration for any felony, the evidence was preserved for the entirety of that incarceration. He said his concern was the numerous felony cases where there was a plea and no incarceration. He said those types of cases needed some type of time restriction or limitation. He said for any term of confinement or incarceration, the DNA would be preserved for the period of time.

Chair Hardesty asked for a tentative vote on the concepts. He asked Mr. Kohn, Ms Teicher and Mr. Digesti to formulate revised language and consult with Mr. Kandt and Mr. Mallory. He said the discussion would continue in the October meeting.

Mr. Kohn said he would add Ms. Romano in the North and Ms. Linda Cougar with the lab at METRO in Las Vegas.

Chair Hardesty requested a tentative vote of the Commission.

Commissioner Herndon asked for a point of clarification. He asked if the vote included the friendly amendment Commissioner Kohn accepted under Appendix A, Exhibit H.
Chair Hardesty said it included Commissioner Digesti’s addition to take into consideration incarceration required retention of the evidence for the period of incarceration. He said there would be three categories of subjects in the bill. The first was paragraph 1 as written; the second subparagraph stated if anyone was incarcerated, the evidence was retained for the period of their incarceration; the third was in all other offenses, the evidence was retained to the point in time when they must seek a post-conviction petition.

Commissioner Herndon said the third paragraph encompassed having various jurisdictions keep the evidence even in probation cases through the end of their period for their first petition. He said the second paragraph now encompassed the entire period of incarceration for any other felony as opposed to up through the first period of petitioning.

Ms. Janet Traut said the motion was beyond the scope of the motion or amendment. It called for approval of the earlier motion. She recommended the Commission go back and resolve that question and then have a new motion for this action.

Chair Hardesty said they would start over again.

Commissioner Digesti withdrew the earlier motion. Commissioner Kohn agreed to withdraw the motion. Commissioner Digesti moved for reconsideration of three items set forth by Chair Hardesty. Commissioner Kohn seconded the motion.

Commissioner Herndon said he was in favor of the amendment about retaining the evidence in all felony cases in which the person was incarcerated up through the first petition period. He said if someone was pursuing appellate remedies, they could move for further retention. He said that created a time period where there was an onus on a person to make some motion before the court. He said he was not in favor of the subsequent amendment which reverted back to any felony for the entire period of incarceration. He said he foresaw that creating a large burden on many jurisdictions trying to maintain the evidence.

Commissioner Skolnik wanted the DOC to not be held accountable for the budgetary support of the DNA testing. He said they had just had two cases that cost DOC over $20,000.00.

Commissioner Mallory was very concerned about the language used creating unintentional consequences for the entire judicial system. He was concerned about unfunded mandates to the counties. He said he preferred further discussion before bringing a motion to the Commission.

Chair Hardesty asked for a tentative vote on concept. Commissioners Digesti, Curtis, Kohn, Smith, Siegel, Parks and Hardesty voted yes. Commissioners Herndon, Mallory, Skolnik, Masto and Carpenter voted no. There were seven members in favor and five against. Chair
Hardesty asked Mr. Kohn and Mr. Digesti to revise the language and present two versions to
the Commission at the next meeting.

Chair Hardesty asked for a motion on Appendix B of Exhibit H as drafted.

Commissioner Kohn supported Appendix B of Exhibit H as a motion to be accepted as a
BDR. Commissioner Siegel seconded the motion.

Chair Hardesty asked if there was discussion on the motion.

Commissioner Masto asked if there had been discussion with any law enforcement agencies.
She asked if this was the first time a request for a change to the statute had been before the
Commission.

Chair Hardesty said the item was in circulation prior to the meeting.

Ms. Teicher said the proposal had not been presented to law enforcement.

Commissioner Mallory said his association had not looked at the proposal.

Chair Hardesty deferred the vote on Appendix B of Exhibit H until the next meeting of the
Commission.

Commissioner Skolnik requested that someone look at Item 11 of Appendix B in Exhibit H
and remove that item. Commissioner Skolnik said his department was not funded for this. It
required that the DOC be charged for whatever analysis was ordered. He said it was not part
of their budget.

Commissioner Mallory said Item 11 needed to specify how it was funded. He agreed with
Commissioner Skolnik.

Ms. Ji said Item 11 in Appendix B was the current statute. The change to the statute was
in bold.

Commissioner Herndon said the statute in effect earlier pertained to a very small number of
people in prison. He said leaving Item 11 as written and changing the statute to any felony
created a huge monetary burden on the DOC.

Chair Hardesty said paragraph 1 of Appendix B of Exhibit H currently stated a person
convicted of a “crime and under sentence of death” was actually broader than the proposed
change which limited it to a felony. He said a crime could be any crime. He asked if the “and under sentence of death” in the above sentence was limiting or additional.

Commissioner Skolnik said the DOC interpreted it as limiting, which was why they only had two cases.

Chair Hardesty asked about subsection C on page 7 in Appendix B of Exhibit H. He said the discussion would be continued and a vote scheduled for the next meeting of the Commission. He asked Commissioners Kohn and Mallory to make the sections available to law enforcement and the prosecuting attorneys.

Chair Hardesty requested that Commissioner Kohn open the discussion on the habitual criminal proposal his office had made.

Mr. Scott Coffee, Clark County Public Defender, said the habitual offender statute on occasion cast a net too widely and caught small-time offenders. He said the non-violent habitual criminal statute was the topic being discussed. He said violent predators needed to be removed from society. Mr. Coffee was asked to write some revisions to the statute. The revisions would insure the net was wide enough to catch those who deserve it but excluded those who do not deserve treatment as a habitual criminal. He said specific changes to NRS 207.010 were listed in Exhibit I. The first change suggested was codifying and clarifying the rationale of Rezin v. State by adding a specific “brought and tried separately” requirement to the statute. He said of 41 states with recidivists statutes, 25 had a specific requirement for brought and tried separately. He said if multiple convictions came from a single indictment or information it only counted as one strike for the three strike purpose. He said the Nevada Supreme Court decided Rezin v. State in 1979 addressed issue. The language in Rezin lacked clarity. He said a single occurrence requirement was not in any other statutes, most states bring it by a brought and tried separately requirement.

Chair Hardesty said his proposed statutory changes required that someone who was being prosecuted for habitual criminal must have that portion of their conviction tried separately to the jury.

Mr. Coffee said the charges must have been adjudicated separately. For example, a person charged with burglary, forgery, and obtaining money under false pretenses would count as a single strike for habitual criminal purposes.

Chair Hardesty said there were a number of cases seeking to have the habitual criminal status tried separately as an enhancement trial.
Mr. Coffee said they were not seeking that or trying to make it a jury question. He said in the counting process, you only count the charges arising from single information one time.

Chair Hardesty said the language was intended to address charges that all transactional-related were being counted once.

Commissioner Digesti asked if they had to be transactionally related. Mr. Coffee said the Rezin decision talked about transactionally related, but no other states had a transactional related requirement. Commissioner Digesti asked about cases where there was single information, but had six or seven different felony counts that transactionally were not related that occurred on separate times and dates. He asked how that would be treated for purposes of habitual criminal statute.

Mr. Coffee said in Clark County those cases that arose from separate information might be negotiated as a package negotiation. He said five or six felonies occurring on different dates needed to be separated into separate trials.

Commissioner Digesti asked what happened if the trial judge did not grant the petition for severance and trial occurred on all the charges.

Mr. Coffee said the State had gotten the benefit of having a situation where unrelated charges were presented in front of a jury. He said it seemed a fair compromise if the State wanted to count something twice for habitual criminal purposes; it should be brought in separate indictment information.

Commissioner Kohn said the idea of habitual criminal was that someone committed crimes, time passed and they committed crimes again. He said when it occurred a third time, with the passage of time and a jail sentence and they still committed crimes, they were considered for habitual criminal status. He said if the District Attorney decided to have unrelated crimes put together from one period of time, then they would still only get one strike.

Chair Hardesty said the change on subparagraph (a) of Exhibit I would make an individual subject to the smaller habitual criminal with only two prior convictions and without regard to whether those convictions related to a crime of fraud or intent to defraud as an element. He said that seemed to broaden the number of people who might be subjected to small habitual criminal.

Mr. Coffee said currently the statute states two times convicted of a felony was the only requirement for habitual. The fraud language concerned a separate eligibility prong now in place which he suggested should be eliminated. He said two prior felony convictions made a person habitual-criminal-eligible on the third conviction.
Chair Hardesty said he was taking the petty larceny and gross misdemeanors out of this consideration. He said anyone who received two felonies could be subjected to habitual criminal status.

Mr. Coffee said under Nevada law, they were currently subject to that sort of punishment.

Chair Hardesty asked why Nevada was doing that as opposed to a three strike bill similar to what they have in California which states if convicted of three strikes, you do the long term. Why did Nevada have the shorter one?

Mr. Coffee said there was a sentence disparity between the small habitual and large habitual. The sentence disparity was that one was five to twenty on the third strike; the large habitual had a fourth strike that was covered in paragraph (b) which was three priors, and number four made them eligible for habitual status.

Mr. Coffee suggested in subsection 2 adding a section to the NRS which would eliminate certain minor offenses from the determination of habitual criminal eligibility. He said specifically those that resulted in a term of probation which was successfully completed by a probationer. He said recidivist statutes were designed to stop the revolving door of the prisons. He suggested eliminating those convictions for which a person was placed on probation and successfully completed probation and were not revoked. He said the suggested revision was at paragraph 3 of Exhibit I.

Commissioner Carpenter asked about paragraph (b) of Exhibit I which eliminated the petty thief. He said if they were eliminated, what chance was there to stop this type of crime.

Mr. Coffee said the next suggestion was eliminating those sentences which were most subject to abuse. He suggested eliminating petty larceny provisions from this statute and including them elsewhere. He said make a third or fourth petty larceny a felony.

Commissioner Carpenter said it was going to be very difficult to get his proposal through the Legislature.

Mr. Coffee suggested drafting another provision which allowed for multiple petty offenders to be sentenced as a felony similar to a DUI situation.

Mr. Coffee opened discussion of item number 4) in Exhibit I. He recommended codifying a section of NRS 207.010 by adding a staleness provision. He said it eliminated those offenders with a demonstrated ability to follow the law for a significant period of time. He recommended 10 years for consideration. Mr. Coffee said he got the idea from Judge Herndon. He said what really mattered was whether somebody stayed out of trouble.
for a long period of time. He said there was a provision in Nevada law that addressed whether a witness could be impeached with a prior felony conviction. He said the law stated if the felony was 10 years old, it could not be used for impeachment. He suggested another provision which made an offender who had been out of trouble for 10 years ineligible for small habitual criminal status. He said it would not affect the violent habitual criminal.

Chair Hardesty said Commissioner Carpenter made a good point that a BDR that ratcheted up the liability for someone who committed a misdemeanor or gross misdemeanor offenses involving petty larceny, fraud or intent to defraud would make some sense. He said someone appearing before a judge on large habitual criminal charges with a background of petty larceny for small thefts should not be put in prison for life. He said intermediate areas were needed.

Commissioner Mallory did not think the proposals had been vetted with prosecutors or various business interests who might have an interest in this type of legislation. He was opposed to the suggestions until they had been vetted and input received by the Commission.

Commissioner Curtis added that the Sheriffs and Chiefs should also have input.

Chair Hardesty asked if it made sense to ratchet the misdemeanors up to felonies.

Commissioner Kohn said he would approve adding a provision that stated the third or fourth misdemeanor theft would be a 1-to-6 felony. He said what they tried to avoid was where someone had several prior felonies but never went to prison and were being sought as habitual criminals with a sentence of 5 to 20 years. He said he would work with the district attorneys to add a provision for a lesser felony for recidivists on fraud-related misdemeanors. He wanted to avoid the habitual being used when someone had never been to prison.

Mr. Coffee said he would research the way the law worked on petty larceny. He would submit a joint proposal addressing two pieces of legislation at the same time.

Chair Hardesty requested that Mr. Coffee discuss the subject with Commissioner Mallory and the Prosecuting Attorneys Association and also get a copy to Commissioner Miller to distribute to the Sheriffs’ and Chiefs’ Association. He also wanted him to contact the Retailers Association and other business interests. He said there was an advantage to having some petty larcenies ratcheted up to a felony, and it would help the situation. He said it might give additional prosecutorial discretion in pleading out some of the cases. He continued the discussion to the October meeting.

Commissioner Herndon said he had concerns about taking away from the judges the discretion they had in viewing the totality of someone’s record. He was also concerned about
the “brought and tried separately” language. He agreed with Commissioner Digesti in which charges were brought encompassing many months or longer of criminal conduct. He said restricting the judges’ ability to use their discretion in looking at those charges was problematic. He said he viewed the topic as trying to take away discretion.

Chair Hardesty asked Commissioner Herndon to respond as a judge who made habitual criminal decisions to the suggestions made by Mr. Coffee.

Commissioner Herndon said Mr. Coffee was right. He did not want to be restricted from looking at everything and considering it for whatever weight he thought was appropriate. He said different judges would view discretion in different ways.

Mr. Coffee requested that the Commission review paragraph 3 in Exhibit I. He said he included additional language which gave the district court the right to exercise the discretion granted the court by subsection 2. He said it was important for the courts to maintain discretion and consider successful probations in decisions of whether or not to habitualize somebody. He said he was talking about eligibility and setting a floor below which people should not be treated as habitual criminals.

Chair Hardesty asked Commissioner Skolnik if it were possible to determine the number of felons in prison under habitual criminal sentences. He said specifically under a sentence under NRS 207.010 1(a) or 1(b).

Commissioner Skolnik said he would check and see if it was possible.

Commissioner Siegel asked Mr. Coffee and Commissioner Kohn to study Larry Frankel’s memo from the meeting of July 7, 2008, to be sure no important elements were overlooked.

Chair Hardesty said the next presentation was Agenda Items VI and VII. He requested Commissioner Skolnik open the discussion of Item VII.

Commissioner Skolnik, Director, Department of Corrections, said he assembled an extensive book of information for the Commission, (Exhibit J). He said Item VII was under tab 3. He said at this time there was a crowding issue in the Department primarily due to the closure of the Southern Nevada Correctional Center and the Silver Springs Camp. He said the construction at High Desert State Prison phase 4 was 6 to 8 weeks behind schedule. He said the 600 beds would not come on line until mid-November. They addressed this issue through a combination of things. They used a prison industry bay at the Lovelock Correctional Center along with intermittent use of the gym at High Desert State Prison and day rooms around the State to house the population. He said the provision of time credits had allowed them to do this. The Director, under statute, was authorized to afford inmates credit for meritorious
behavior. He said they deemed that living in non-normal living conditions without creating any incidences or problems was meritorious, and inmates received 15 days' credit per month for staying in those areas. He said they were primarily inmates nearing the end of their sentences and were able to speed up their release with the credits. He said they also found a significant shift since June 2008 to August 8, 2008; there was a 7.5 increase in medium custody inmates and a reduction in minimum and close custody, Statistical Report #54, NDOC Male Long Range CIP Projection, page 1, Exhibit J. He attributed the change to A.B. 510. It put a shift of the population to “harder” beds. He said if the projections hold and the 500 inmate reduction from the A.B. 510 hearings by the Parole Board come true, NDOC should be able to manage the population with the reduction of their budget.

Chair Hardesty asked Commissioner Skolnik about the shift to hard beds and asked if the information was shown on one of the schedules.

Commissioner Skolnik said it was the front page of the Male Long Range CIP Projection, Exhibit J. Chair Hardesty read the numbers for the Commissioners in Las Vegas. He said there had been a shift in the nature of the population at the prison to the harder beds.

Commissioner Skolnik said in terms of utilization of the beds, they can place any custody level in a close custody bed; minimum or medium custody can be placed in a medium custody bed but they can only place minimum custody in a minimum custody bed. Flexibility of the Department depended upon the type of beds open and was the reason most of the construction was for medium and close custody beds. He said many of the beds under construction can be modified from medium to close custody by changing staffing patterns.

Chair Hardesty said the prison did not place minimum in close custody beds. Commissioner Skolnik replied they only did that if there were no beds in minimum.

Chair Hardesty requested Commissioner Skolnik tell them how many minimum beds they had capacity for and how many minimum inmates were in the institutions.

Commissioner Skolnik said the Capacity Analysis Summary was listed under Tab 3 in Exhibit J. He said it was an analysis by institution and custody level. He reviewed the numbers: Ely State Prison was at 143% of its operating capacity and 133% of the emergency threshold; Lovelock was at 185% of operating capacity; Nevada State Prison was at 155% of operating capacity; Warm Springs was at 177% of operating capacity; Northern Nevada Correctional Center was at 113%; Southern Desert Correction Center was at 155%; Southern Nevada Correctional Center was closed; Florence McClure Women’s Correctional Center was at 128%; High Desert State Prison was at 178%, and the subtotal of all the major facilities was at 146% of operating capacity. He said the subtotal for the camps at this time was 94% of capacity, which reflected the vacant beds at almost all the camps. He said Indian
Springs Conservation Camp, Pioche Conservation Camp, Wells Conservation Camp and Stewart Conservation Camp were the only ones operating above operating capacity with the exception of Stewart which was at 149% of capacity. He said there were several different kinds of capacity talked about in the Department. He said the operating capacity had been over the numbers in terms of original design. He said since the 1990s the prison had operated above the capacity. He said the emergency threshold was that point above which they can maintain a safe and secure environment and physically maintain the infrastructure of the facilities.

Chair Hardesty said every single prison, not the camps, operated at a level above emergency threshold level except for Women’s.

Commissioner Skolnik said historically in Nevada additional beds were constructed or added to existing facilities. Southern Desert Correctional Center was originally designed for 700 to 750 inmates; currently it housed 2153 inmates. The core facility had not been expanded at this point. The seven standard cell houses were originally designed to hold 102 inmates with a bubble officer and floor officer. He said there were 204 inmates in those units today, but no staff had been added. He said there were infrastructure failures occurring frequently. He referenced a primary pump which failed last week. The inmates were under rationing and every-other-day showers. They had ordered an emergency pump. Commissioner Skolnik said he had a tremendous staff that allowed them to operate under extreme circumstances. He said when they did well, they were punished. He referred to an opportune purchase of food previously which resulted in a reduction of the budget for food to match the original. He said it was impossible to feed the inmate population on what they were budgeted today. He said they cut clothing which was also substandard, but it was better to be ill-dressed than run out food.

Commissioner Skolnik said 223 positions were eliminated when Southern Nevada Correctional Center and the Silver Springs Conservation Camp were closed. They managed to do that without releasing any inmates. He said Nevada did not have an early release policy. He said they relocated all those inmates and only laid off 3 people out of the 223 positions cut. He said the 3 people were registered nurses in Clark County. He said Southern Nevada had been closed, and they might be able to lease and staff it from the federal government. Casa Grande might become some type of an interim sanction facility. He said it was opened to women. It had been built in 50-bed modules, and they had to commit to 50 beds for anything they did. He said they were not staffed for the current inmates in Casa Grande because there were both male and female inmates. He said there were approximately 37 empty beds. Commissioner Skolnik said based on the original definitions, there was no way to fill the facility with the limitations placed on who could go there and how long they could stay.
Chair Hardesty asked if the restraints on who could go to Casa Grande were statutory. Commissioner Skolnik said the restraints were both statutory and administrative. He said the DOC had exceeded the statutory restraints because they did not want to lose the facility. He said they still had some room to expand if they chose. The NDOC committed to the restrictions on sex offenders in that facility to both the local community and the Legislature.

Chair Hardesty said in 2001, the Governor’s Commission, a Task Force Study, recommended the use of Casa Grande for intermediate-type sanctions. He asked Commissioner Skolnik if he was exploring the possibility with Chief Curtis.

Commissioner Skolnik replied they were doing so. He said they also were exploring the question with CCDC and some of their misdemeanant population. He said nothing had been settled concerning the discussions. Commissioner Skolnik thought they would eventually fill Casa Grande; they currently had 362 inmates located there.

Chair Hardesty asked if the Silver Springs Camp was closed.

Commissioner Skolnik replied it was. The NDOC maintained two female conservation camps at half capacity. He said there were still 50 unoccupied female camp beds at the Jean Conservation Camp. He said it was a factor of the definition of who could go to camp and how long they could be in camp. He said there had been a crisis in the female population and the Parole Board focused on that group first. They reduced the female population by approximately 17%, and a significant number of those people were minimum security.

Commissioner Skolnik opened discussion on the prison and camp staffing, relief and overtime factors. He said the relief factor recommended by the audit was 1.82. He said the only position in State government that had a relief factor was a Correctional Officer. The relief factor said it took at least 1.6, the current relief factor people, in order to fill one Post, because they were filled seven days a week, during annual leave, during training, or when illnesses occurred. He said the reality was that the Posts were only filled about 85% of the time because the relief factor was 1.6 and not 1.82. The reason they had a relief factor was they were not capable of taking any time off. He said they also had overtime and mandatory overtime. He said they spent about $8 million in overtime but gave back about $7 million in vacant position savings.

Chair Hardesty said overtime implied spending more money for that individual.

Commissioner Skolnik said the cost was one and one-half times as much money.

Lori Bagwell, Nevada Department of Corrections, said the State used the vacancy factor of the prior year. She said, for instance, if 20% of the correctional officer positions were vacant
in fiscal year ’08, they assumed the trend continued in the next budget cycle. Thus, all the positions were not funded. She said that was money taken from the DOC budget to fill all the positions they were authorized in the P.O.S.T. chart. She said the DOC then spent the money in overtime charges.

Chair Hardesty said it sounded as though that cost the State more money.

Ms. Bagwell said it was a budgeting tool the State had utilized for years. One of the recommendations the DOC hoped for was the use of vacancy savings eliminated or reduced to recognize the dollars needed to be used to fund the overtime.

Chair Hardesty asked if there was a calculation of the cost to the State to pay for the overtime as opposed to having funded and filled the vacant positions.

Ms. Bagwell said the audit performed showed some of the documentation within the results. She said there was always going to be vacant positions. She said they determined there were positions that should be added to the Post Chart that would save the taxpayer dollars. She said medical runs had no Post for that activity, and it was a common occurrence.

Commissioner Skolnik said the audit was in Exhibit J, under Tab 1 of the book. He said there was roughly $3 million in increased expenses in order to come up to 1.82. He said they were asked to reduce their budget, so adding more positions was not an option.

Chair Hardesty said part of the reason the State Prison Board asked the Commission to look at the subject was because the Commission was not constrained by any direction from the Governor or anybody else about what the DOC should be requesting. He asked what the most economical approach would be.

Commissioner Skolnik said they needed a minimum of 300 more Correctional Officers to begin to meet the requirements.

Chair Hardesty asked to the extent those positions were authorized, what would be the amount of overtime reduced in the budget.

Commissioner Skolnik said with only 70 additional positions, they could eliminate the overtime. He said they did not do things which were sound and good correctional practices because they lacked the staff.

Chair Hardesty asked if the cost to add 70 additional positions would offset the amount of overtime requested periodically.
Commissioner Skolnik said that was correct. He said those positions would cost approximately $55,000.00 each. Commissioner Skolnik said overtime asked people to work more hours. He said when people were tired, they did not make the same quality of decisions, or function at the same level of alertness. He said the average correctional officer in the United States will not live to 59 years of age. He said that was due to the stress of the position. He said the statutory responsibility of his position was to provide for a safe and secure environment for staff and inmates.

Chair Hardesty said the DOC could substantially offset the overtime being paid by adding 70 positions at regular pay. Secondly, in order to achieve a relief factor of 1.82, which was recommended by the audit, DOC would need an additional 330 positions. He asked if the 70 positions were included in the 330 total positions.

Commissioner Skolnik replied that was correct. He said the relief factor in the Department was the same for a camp as it was for death row. He said he was not sure they actually needed the same relief factor for a camp. He said there were probably areas or institutions where the 1.82 relief factor was necessary and areas where the 1.6 relief factor was acceptable.

Chair Hardesty asked with the 70 additional positions added what the relief factor would become.

Commissioner Skolnik said they currently had 1,800 correction officers, so the additional 70 was not a huge percentage of their total capacity.

Chair Hardesty said the 70 represented approximately one-fourth of the 330 additional officers. He said it would increase the relief factor to 1.7.

Ms. Bagwell said it would increase the relief factor to 1.68.

Commissioner Mallory said overtime was costing approximately $8 million.

Commissioner Skolnik said the overtime costs to the Department were $8,140,573.00.

Mr. Mallory said 70 positions at $55,000 a year was $3,850,000. Therefore, by not filling 70 positions, it cost the State an additional $4 million plus per year.

Commissioner Skolnik added approximately $622,000 would occur no matter what else happened. He said that was Fire Time overtime. He said those people fought fires and received the overtime.
Commissioner Mallory said maybe it was only $3,500,000 to not fill the positions.

Ms. Bagwell said the savings was probably $2,000,000. She said there were always going to be medical emergencies. She did not want to proffer that overtime would go to zero. She said it would be greatly reduced.

Commissioner Mallory said that was the point and it was in terms of millions of dollars.

Chair Hardesty said it was approximately $4 million in costs for regular positions. He said with time and half, the savings was still $2 million. It would make a significant difference. The State would be at the same level if it rechanneled the $2 million into another position in the budget. He said the $2 million could be spent for food, jeans, GEDs, drug treatments or any number of things previously discussed. He said the DOC had cut positions from what they were authorized. He asked how many positions had been cut to date.

Commissioner Skolnik said the DOC cut or froze a total of 223 positions. He said it was shown under Tab 4 in Exhibit J. He said the positions at the Southern Nevada Correctional Center and Silver Springs Camp were eliminated. The twenty-six positions at Ely were frozen. He said the majority of those total numbers were eliminated completely from the budget.

Chair Hardesty said when the Legislature budgeted in 2007, there was a hoped for savings in the budget if the capacity in the prisons went down to 13,400 people. He said it was hoped A.B. 510 would achieve that number. He asked if the prisons budget with 13,400 inmates was with or without the cuts and frozen positions.

Commissioner Skolnik said the budget they had was reduced by 4.5 percent off of their base. Chair Hardesty said that was 4.5 below the budget established in 2007.

Commissioner Skolnik said there was a chart in Exhibit J that showed the annualized cost per inmate. He said they spent approximately $20,000 per inmate for total costs. He said the costs were going down in the next two years.

Chair Hardesty asked what had been the impact on the relief factor by reducing or freezing the positions to take them to a 4 percent reduction.

Commissioner Skolnik said there was no impact. They eliminated institutions. The relief factor in the remaining institutions remained the same at 1.6. It was a relief factor per post.

Chair Hardesty said the consequence had been to increase the percentage of over capacity.
Commissioner Skolnik said they increased the ratio of inmates per staff. That was totally different than the relief factor. He said that was one of the reasons they requested a change from the Post position staffing patterns to a ratio of staff per inmate. He said unless they created a new post, when the population increased they did not receive any more correctional officers.

Chair Hardesty said in order to achieve the reductions the DOC made under the budget cuts, they closed facilities. The consequence of doing so was to make the over-capacity percentages higher. When High Desert Correction opens with the additional 600 capacity, and assuming the prison population remains stable, the DOC will no longer be over-capacity.

Commissioner Skolnik said as new designs for the cell houses were developed, they increased the effectiveness per staff of the supervision of the inmate population. He said the 200 plus staff supervising the inmates at the Nevada State Prison can be replaced by 112 staff at the High Desert State Prison. They supervised the same number of inmates, but because of the nature of the physical plant and their ability to control the population they did not need as much staff.

Chair Hardesty said if the prison population maintained the same level, and High Desert Correction facility opened, DOC will be back at capacity or just under capacity. He said they would be able to maintain the four percent reduction.

Commissioner Skolnik said they eliminated construction, repairs, maintenance and equipment in order to achieve the budget cuts.

Chair Hardesty asked how much money was represented in the four percent reduction in budget.

Ms. Bagwell referenced Tab 5 in Exhibit J. The total reduction was $27,544,000.00 for 2009.

Chair Hardesty asked what Reduction in Retired Group Insurance meant. He added he did not see the 200 plus positions.

Commissioner Skolnik said those were the decisions made in the special session regarding reductions for all state agencies. Commissioner Skolnik said there were 20 medical positions that were reduced; 2 in the Director’s office, 170 employees at Southern Nevada. A total 223 positions across the State were eliminated.

Chair Hardesty said one of the things hoped for was if the prison’s budget went to a level of 13,400 inmates, some savings would occur and $6 million would be set aside “in a pot” for use by other programs or specialty courts. He asked what became of that money.
Ms. Bagwell said the legislation set aside funding for entities to access if the population did or did not come to the Department. The DOC utilized a portion of that funding because of another piece of legislation that dealt with the public hearing process in S.B. 471. The DOC used a portion for videoconferencing. They were forced to make different cuts which caused delays in construction projects for the housing units that would have eliminated the over-capacity.

Chair Hardesty asked if a calculation had been made of what had become of the “thought about” savings from the 2007 Session.

Commissioner Skolnik said it was part of the Interim Finance Contingency Fund which was tapped by almost everybody.

Chair Hardesty said the perception was approximately $6 million would be available.

Commissioner Skolnik said they had been operating at approximately 400 to 500 inmates above the budgeted projected amount. He said they had to take some of the money back to operate the institutions because the population did not drop to the projected numbers.

Chair Hardesty said one of the charges of the Commission under A.B. 508 was to track the funds. He wanted to track those funds and include them in the report to the Legislature. He also wanted to determine if anything was left of the funds.

Ms. Bagwell indicated the Budget Office and Legislative Counsel reviewed all budgets and General Fund dollars, all IFC allocations and looked for items that could be reverted. The balance of the dollars were reverted as one of the options to reduce the cuts the other State agencies would take inclusive of the DOC. She said they took a 4.5 percent cut instead of a 5 percent or 6 percent cut. She said they would get the break-down of those dollars and see what was remaining or reverted.

Commissioner Parks said there was approximately $3 million in the contingency fund. He said the money was split between the two years. The first amount was allocated to the first year of the biennium and $3.1 million to the second year. There were some funds not expended out of the less than $3 million, and those funds may have been reverted.

Chair Hardesty asked if that money was intended to be used for things like expansion of specialty courts or reentry programs.

Commissioner Parks said it was broadly stated. The premise was it was either to be directed toward off-setting some particular cost or reducing expenses. He said the videoconferencing equipment was an example of the use of those funds.
Chair Hardesty said there were 13,500 inmates through August. He asked the consequence of staying approximately 100 inmates over the budget consequence. He asked if the $3 million was returned to the DOC.

Commissioner Parks said they could petition IFC for some of those funds. He added the funds would be available if a major operational failure occurred at one of the facilities.

Mr. Smith said some of the money was allocated to the Parole Board’s operation for the last fiscal year and a portion carried over to this fiscal year. He said they would be asking for $400,000.00 to maintain their operation.

Ms. Bagwell said the DOC asked for their fiscal ’09 allocation when they created the ’08. She said the remaining funds in the account were both divisions’ allocations to continue the fiscal year ’08 activities.

Chair Hardesty asked if that meant none of the $3 million was remaining. He asked for a break-down of the cost of the videoconferencing and other expenses related to S.B. 471. Chair Hardesty asked if the Department was operating at the same 4% reductions, or were there further reductions.

Commissioner Skolnik said they did not take any additional reductions. He said they needed to anticipate further reductions and identify them before the fact. They had been asked to consider an 18% reduction in their budget. He said they would have to close all of the camps or close another major facility and put public safety at risk.

Chair Hardesty said they cut their budget for fiscal year ending 2008 by 4 percent. He asked if they cut their budget for fiscal year ending 2009 by 4 percent.

Commissioner Skolnik said they reduced it by 8 percent off the original budget number, for an additional 4 percent. He said the 4 percent cut would impact the base year for their subsequent budget in 2010 and 2011.

Chair Hardesty said the $27 million under Tab 5 of Exhibit J represented an 8 percent budget cut. He said High Desert Prison showed a delayed opening of Phase V. Commissioner Skolnik said they were doing that on the assumption there would be 500 individual reductions in inmates and the intake of the facilities would not increase. He said if the prison population did not stay as projected, then they cannot delay the opening of Phase V.

Chair Hardesty said this was a different phase than the one opening soon. Commissioner Skolnik said 600 beds were coming on line in Phase IV. Those beds will be completed next month, and staff had been hired and trained. He said Phase V would be completed shortly
thereafter in terms of physical construction. They had not requested staffing for that phase based on current budget and population projections. They might approach the staffing of the additional units for the purpose of leasing those beds out to try and reduce the amount of budget cuts in the future. Phase V had the capacity of another 600 beds. Commissioner Skolnik said the new phases were self-contained. They could program, feed and otherwise manage without taking the inmates out of the units.

Commissioner Skolnik opened the discussion on the medical unit, Tab 7 of Exhibit J. He said during fiscal year 2008 the medical facility had clinical visits totaling 197,481 contacts. He said they were delivering medical services.

Chair Hardesty said the site visit at High Desert generated a question concerning the adequacy of the 34 beds servicing the entire male population in southern Nevada.

Commissioner Skolnik said the current design of Prison 8 included a regional medical facility for the southern region. He said the 34 bed facility plus the 6 additional beds at Southern Desert Correctional Center were currently servicing nearly 6,000 inmates. He said they were capable of moving inmates with chronic illnesses to the regional medical facility in the North in order to use the beds in the South for acute issues and not chronic ones.

Chair Hardesty said there had been discussions of the aging population in the prisons. He asked if the prison had done an evaluation of the aging population and the impact on the medical budget.

Commissioner Skolnik said they had done an evaluation on the impact of the Department. He said currently approximately 1,700 inmates were age 50 and older. The majority of them had long sentences. He said the current plan, which was a modification from earlier plans, was to request planning money during the course of the next biennium for the expansion of the Southern Nevada Correctional Center by two more of the new units, which would be an additional 600 beds. He said they would convert the women’s prison into a geriatric facility.

Chair Hardesty asked how many of the 1700 inmates aged 50 and over were chronically ill. Commissioner Skolnik did not know that number. He said they could come up with some information. He said the numbers should include the number of chronically ill inmates within the system.

Chair Hardesty said Commissioner Skolnik had statutory authority to grant releases in extreme disabled cases.

Commission Skolnik said he had not granted any compassionate releases. The first request was for a 94 year old man at the Northern Nevada Correctional Center who was committed at
the age of 92 for molesting children. He said each case was individually evaluated and based on the severity of their offense, their history and whether or not anybody would accept them. The NDOC lost a law suit because the released individual did not have adequate care upon release.

Chair Hardesty asked what the National Correctional Organization suggested for considering the high medical expenses for chronically ill inmates.

Commissioner Skolnik said he did not believe the National Correctional Organization had undertaken this other than recognizing it as a growing problem. He said the issue needed addressing at the Legislative level.

Chair Hardesty asked if there were alternatives to confinement for the chronically ill. Commissioner Skolnik said they could not supervise the chronically ill outside of the facilities. He said the regional medical center may help reduce the cost. He said the DOC was not going to do open heart surgery or transplants or other major medical procedures.

Chair Hardesty said it would be worthwhile to forecast a dollar projection associated with this. As the prison population hardened and got older, the State should be prepared to understand what the forecast of the expense was going to be. The Commission was charged with assessing the fiscal impact of some of these decisions.

Commissioner Skolnik said the national consensus was it was going to be very, very expensive. He said he would survey fellow directors to see if anyone had a comprehensive plan to address this issue and/or attach dollar figures to it.

Commissioner Siegel said California did a recent estimate of $100,000.00 per aged inmates. He asked what the total medical staff for the DOC was currently. Commissioner Skolnik replied the total medical staff was approximately 30 staff short including the clerical support and others paid out of the medical budget. The remaining total staff was 285.5.

Commissioner Siegel said the Division of Mental Health was able to receive Medicaid money, which were half federal funds. He asked if there was an option in the prison system.

Commissioner Skolnik said there were a series of laws past that eliminated inmates from access to entitlement, educational grants and other things while they were inmates. He said it was worth looking into and the Department would do that.

Ms. Bagwell said under the current State’s Plan, which was a requirement each state does for the federal Medicaid dollars, they create a plan of eligibility. She said the classification would have to be put into the State Plan. Ms. Bagwell said the 50% matching dollars were
available because they were spending them at 100% now. She said the issues were the hospital, the placement and other criteria for being eligible for Medicaid dollars. She said they cannot have a Medicaid dollar for any service provided inside of the prison. They could look at crafting a plan for those who left the prison under medical care for treatment and then return to the prison. They could collect for the days they were at the hospital.

Chair Hardesty said if the inmates went outside of prison to receive medical treatment, it was an issue concerning the costs. He said an aging population put the prison system at risk of having to deal with serious medical bills. A plan needed developing. Chair Hardesty said it was unfair for the taxpayers shoulder the entire burden.

Commissioner Carpenter asked which facilities were scheduled for closure.

Commissioner Skolnik said the current budget submission showed the closure of the Nevada State Prison in Carson City, the Pioche Conservation Camp and the Tonopah Conservation Camp.

Chair Hardesty said the closures were being made to effectuate the 14.5 percent cut of the budget. He asked how the closure of those facilities generated the necessary cuts.

Commissioner Skolnik said page 2 under Tab 2 of Exhibit J showed the reductions for the reserved amount for 2009. He said the closure of the Camps needed addressing by the Commission. He said they could not say whether closing the Camps would have a net positive or negative effect on the state budget. He said they could not meet their reductions without the closure of the two Camps. He did not know if the revenue generated by the Division of Forestry and the costs of bringing inmates in to fight fires exceeded the savings to the DOC. He said the Legislature needed to look at that problem.

Chair Hardesty asked how the Operating Cost Per Inmate by Institution on page 2 of Tab 2 in Exhibit J addressed the required reductions.

Commissioner Skolnik said the chart showed the closed institutions, Southern Nevada Correctional Center, Nevada State Prison, Pioche Correctional Center, Silver Springs Correctional Center and Tonopah Correctional Center. Those reductions were incorporated in this projection and brought the budgeted dollar amount they needed to meet. He said there was revenue identified for this biennium from the Southern Nevada Correctional Center. The revenue was anticipated from someone leasing the facility.

Chair Hardesty said questions were asked about closing Nevada State Prison. He asked where those inmates would be placed. He said the prison population needed to continue to
maintain a static level. The population would be transferred to the prisons constructed at High Desert.

Commissioner Skolnik said it was not the DOC’s intention to wait until June 30th to do all this. He hoped they would be able to close units down so at the end of the fiscal year it would have a minimal impact on staff and relocated inmates. He said if the Legislature decided to fund the continuation of the Nevada State Prison, they could rehire and restaff.

Chair Hardesty asked if the operating cost of the NSP had been calculated and compared to the operating cost of inmates in the transplanted facilities.

Commissioner Skolnik said the costs were significantly less expensive. He said over 200 staff were required for 900 inmates at the NSP versus 112 staff for 1200 inmates at new facilities.

Ms. Bagwell referred to Tab 2, page 3 of Exhibit J, and the operating costs per inmate history. The NSP, which was budget account 3718, was in the $19,000 to $20,000 range per inmate to operate that facility. She said High Desert State Prison in the same section, showed the costs at $12,000 and $13,000 per inmate.

Chair Hardesty said roughly $6,000 per inmate times 900 inmates was the projected savings. He asked for some of the reasons for the difference in operating costs between the two prisons.

Commissioner Skolnik said the NSP required 15 officers to supervise 97 inmates. He said 8 officers supervised 300 inmates in one of the new units at the High Desert State Prison. The new facility was an entirely different design than previous prisons. He said it had 6 small shorter wings allowing for almost 100 percent observation from the bubble. He said inmates could be fed in the unit at High Desert which eliminated officers supervising in the culinary.

Chair Hardesty asked how many staff were at the NSP. Commissioner Skolnik said there were approximately 170 staff members. He said they hoped to reduce another 15 within the next 60 days. He said they offered the staff at the NSP first right to any vacant position in Nevada equivalent to their current position. He said it was a planned closure which could be reversed if they were funded for the NSP.

Chair Hardesty asked if they had the additional 70 positions, where would they be placed?

Commissioner Skolnik said they would be placed around the State. There was a need at the Northern Nevada Prison for more staff due to the medical runs and also at High Desert State Prison. He said they did a lot of inmate movement without sufficient staff.
Commissioner Carpenter asked when the Camps would be closed. Commissioner Skolnik replied July 1, 2009, unless funded. Commissioner Carpenter asked if the decision to close the camps would be presented to the Legislature before they were closed. Commissioner Skolnik replied positively. Commissioner Carpenter said the communities were going to suffer when the Camps were closed.

Chair Hardesty asked how many employees in each camp and how many inmates in each camp.

Commissioner Skolnik said he had been told there were 30 employees at the Pioche Camp and 212 inmates. He said Silver Springs was already closed. There was a deed restriction at Silver Springs that said it could only be used for female inmates and did not allow conversion to juveniles or males. He said they did not have enough women who qualified to operate two camps. He said Tonopah had 146 inmates and 20 to 25 staff members.

Commissioner Hardesty said under Tab 2, page 2, Exhibit J, by closing Pioche they projected a savings of $180,000. Commissioner Skolnik said no, they projected a savings of approximately $1,700,000.

Ms. Bagwell said the dollars on the second page of Tab 2 in Exhibit J were dollars left for “mothball” activities at the two camps. She said the $93,000 was just incidental costs the State had to do to protect the asset. She said the expenditures shown on page 8 of 20 under Tab 2 in Exhibit J showed the original budget amounts on Pioche were $1,742,000, and they would only leave the $93,000 to protect the asset. Thus, they were saving approximately $1,600,000.00.

Commissioner Skolnik said the minimum security older population were medically limited and needed to be in a major institution for medical care.

Commissioner Carpenter asked if the prisons would be able to provide the necessary care for the inmates transferred out of the camps.

Commissioner Skolnik said they had committed to Forestry to bolster their population at some of the other facilities. He said they created the most revenue in the Carson City and Clark County areas.

Chair Hardesty asked Commissioner Skolnik to describe creating the most revenue.

Commissioner Skolnik said the forestry camps were also a revenue stream for the Division of Forestry. They take work crews who do community projects for which they were reimbursed. He said it generated money for the Division of Forestry, not the Department of Corrections.
Chair Hardesty asked the total population for all the camps.

Commissioner Skolnik said in order to be in the camp an inmate had to be within 36 months of probable release, have no violence for 2 years, and no sex offense in their history. He said approximately 40 percent of the population of the DOC had a history of sex offense.

Commissioner Skolnik said there were 1,500 inmates in the camps. He said DUI’s under category B qualified for the camps.

Commissioner Siegel said the issue had arisen about Tiers 1, 2 and 3 among sex offenders. He asked if there was a basis to make a distinction among what was used previously in terms of assigning sex offense histories to minimum security.

Commissioner Skolnik said it required a statutory change. The exclusion was in statute.

Commissioner Siegel asked if there was a basis for taking a percentage of the people.

Commissioner Skolnik said there were probably individuals sentenced under sex offender laws that would be fine in a camp. The issue was that it was statutorily excluded, and the other issue was one of the media. He said how the media would handle someone who committed a similar crime when placed in a minimum security facility was a concern. He said it would have to be a case-by-case basis.

Chair Hardesty asked about the BDRs recommended by the DOC.

Commissioner Skolnik said suggested BDRs were under Tab 1 of Exhibit J. He said they were listed on the final 5 pages of Tab 1. The first BDR clarified A.B. 510. He said A.B. 510 had some unintended consequences. The ability to place Category B felons in residential confinement was removed. It also authorized the courts to sentence for 6 months, identifying the facility to which that individual would go. He said a judge could indicate he wanted inmates to go to a particular facility. He said the Department needed total authority for posting people.

Chair Hardesty asked if they were opposed to the temporary custody of six months. Commissioner Skolnik said that was fine; they just did not want to be told where to put the inmates.

The next section asked for clarification regarding application of sentence credits for individuals sentenced to not more than 6 months.
The next BDR gave the authority for drug testing employees. He said they currently could drug test upon application prior to hiring, but without due cause and suspicion, they could not randomly drug test staff.

The next BDR clarified the Inspector General and Investigators. An Attorney General opinion said they should be Category 1. He said P.O.S.T. did not agree and refused to give them Category 1. Commissioner Skolnik said he thought they should be Category 2, similar to the Attorney General’s investigators. They needed broadened arrest powers.

Commissioner Skolnik said one of the issues **A.B. 510** created put the DOC in an awkward position where there were victims. He said there were laws requiring certain victim notification. He said inmates arrived ready to discharge in shorter time than the notification of victims. He said they posed additional issues to the Commission for which they had not requested BDRs.

Chair Hardesty asked about Agenda Item VI. He said which of the BDRs requested addressed the letters in Agenda Item VI.

Commissioner Skolnik said agenda item VI C was addressed by a BDR and items VI F, VI G, VI H, VI I were all addressed by the BDRs.

Chair Hardesty asked Commissioner Herndon if VI C was an issue concerning the clarification of NRS 213.1213.

Commissioner Skolnik said they did not address VC I. They addressed clarification of the statutes as they impacted the DOC directly through unintended consequences. He said they did not address Boot Camp eligibility, but we have the capability of expanding the Boot Camp. He said Indian Springs was being expanded to 600 beds. He said there were 600 beds in the new facility, and they could increase by approximately 200 beds, which would more than double the capacity of Boot Camp. He said Indian Springs was funded and was an ongoing project.

Chair Hardesty continued Agenda Items VI and VII to the next meeting. He wanted to discuss three areas. The first was modifying the relief factor consistent with the audit. The second was adopting a staff-to-inmate ratio by institution. The third had to do with modifying the base budget system.

Commissioner Skolnik requested the first two topics be discussed together. He said modifying the relief factor without the consideration of ratio was a snapshot fix and did not accommodate changes in populations. He said they had the same P.O.S.T. chart since 1970. He said they had more inmates at a facility without an increase in staff. He said it took 5
people to man a post for 24 hours a day, 7 days a week. He said they did not have the cushion they ought to have if something went wrong. They needed the post relief factor for the fixed posts and a staff-to-inmate ratio identified for the posts in the middle of the institution surrounded by inmates. He said they asked the National Institute of Corrections to come and do an evaluation of their staffing patterns, particularly the change from 12-hour to 8-hour shifts. He said the current ratio for case workers was 125 inmates per position. He said if they had more inmates, they needed more correctional officers.

Chair Hardesty asked what steps were needed to offset the 70 positions against the overtime.

Commissioner Skolnik said he needed permission from his boss to submit a budget that reflected that.

Chair Hardesty said it was an area that should be recommended to the State Prison Board for immediate consideration. He said it was a $2 million savings for the taxpayer and was something the Commission should endorse.

Commissioner Mallory moved on Chair Hardesty’s suggestion. Commissioner Carpenter seconded the motion. Ms. Clark called the roll of votes. The motion passed. Commissioner Skolnik recused himself. Commissioners Amodei, Farley, Flynn, Horsford and Miller were absent for the vote. Chair Hardesty said he would convey the sentiments of the Commission to the Governor and the Prison Board. Commissioner Skolnik said he would present it at the budget hearing.

Chair Hardesty asked how long it would take to receive a calculation of the $3.1 million that Assemblyman Parks discussed. Ms. Bagwell said it would take approximately one week. Chair Hardesty said the issue of base budgeting had not been specifically discussed.

Commissioner Skolnik said the current system of budgeting was the first year’s expenditures become the base for the following biennium. He said that became the base budget. If money was not spent in a given category, or less money than budgeted, in the new budget it would be a new figure. He said the system was designed to punish for saving money. He said that did not make sense for running a business. He said the current State philosophy punished you for saving money. He said every state agency in Nevada spends as much as they can the first year of their budget because otherwise they will be punished for it.

Chair Hardesty said base budgeting caused agencies to spend money they did not need to spend. Commissioner Skolnik said there was no benefit in trying to save money. Chair Hardesty said the State needed to reevaluate it base budget system.
Commissioner Skolnik said taking away money from agencies that save money was counterintuitive. He said they eliminated replacement equipment from their budget in an effort to not eliminate positions. He said that meant it would be three years without anything breaking by the system established by the State.

Chair Hardesty asked if the Commission wanted to make any general recommendations that the base budget system of the State should be completely revamped. Commissioner Skolnik said he believed that was part of the charge of the SAGE Commission.

Commissioner Siegel said the food and clothing issues arising with the base budget were reviewed by the A.C.L.U. He said eventually the food issue would have to be litigated because it was kept at such a low level. He said they were talking about Constitutional Adequacy. He said it was not already in the courts.

Commissioner Skolnik said currently they were considering modifying their entire culinary operation to a public-private partnership. He said they hoped to increase efficiency by as much as 20 to 30 percent. He said they were looking at a “cook-chill” operation which increased food yields. He said it had a longer shelf life and was refrigerated, not frozen, which kept quality up. He said the only other solution was increasing the per diem for the inmates which was a legislative decision. The current food per diem was $2.18 per day per inmate. He said actual cost was approximately $2.47 per inmate.

Commissioner Siegel asked if the Commission was interested in making a statement. He said when constitutionally protected issues were involved, basic food was one of the issues.

Chair Hardesty said it was also a broader question. It had to do with the budgeting process itself. He asked the Commissioners to think about the issue for further discussion in October.

Chair Hardesty asked for subcommittee reports, Agenda Item XI. He asked Commissioner Herndon if he had information on his subcommittee.

Commissioner Herndon said he had been asked at the last meeting to contact the District Judge’s Association for membership onto the subcommittee dealing with sentencing alternatives. He said Judge Adair agreed to be the contact person for that subcommittee. Additionally, he met with the Specialty Court Funding Committee to talk about the proposal for a specialty court assessment fee. He said Justice Douglas would get back to him. He said he did not have anything to report on the Drug Sentencing Subcommittee.

Chair Hardesty said Truth in Sentencing expected to have a report in October. He said Senator Horsford was not available, but there was little new information on the Juvenile Justice Committee. The Victim’s Subcommittee had no further information. Chair Hardesty
said he had a final group of names for his Subcommittee on Data Collection which he would email to Commissioner Parks. Chair Hardesty said the Alternatives to Incarceration and Intermediate Sanctions subcommittee needed a Chair, as Ms. Salling had too many conflicts.

Chair Hardesty opened the discussion on Agenda Item XII, Public Comment.

Commissioner Parks said Mr. Donald Hinton wished to speak under Public Comment.

Don Hinton said he submitted some names and deficiencies in the medical treatment in Nevada prisons, Exhibit K. He mentioned the Nevada Department of Health had no control or oversight on the prisons and their medical facilities. He said it was time the Department of Health checked the facilities in the prisons.

Sandy Finelli with the Ridge House in Reno, Nevada, said when Mr. Skolnik was speaking about a reentry system for inmates, she wanted to remind the Commission the Ridge House was a national model reentry program.

Chair Hardesty said he was glad she attended today. He said Agenda Item VI A discussed a system for reentry. He said it would be helpful to the Commission to receive their suggestions as to what form of legislation should be considered for a system of reentry. He said he wanted Ridge House to meet with Mr. Struve from RAIN to discuss legislation.

Tonja Brown had suggestions for the Advisory Counsel for the Prosecuting Attorney’s DNA evidence. She wanted an amendment added to the proposed BDR, Exhibit L.

Chair Hardesty requested that Ms. Brown submit in writing the points she wanted added to the BDR. He requested she give it to the Clerk so it could be forwarded to Commissioner Kohn and others who were working on the language.

Ms. Brown read parts of the papers she submitted for inclusion in the minutes, Exhibit L. She recommended a case study if DNA samples had been lost or were not available.

Chair Hardesty said DNA would be discussed in the October meeting. He said the photo identification issue had been discussed with Mr. Kohn. He said there may be some changes made by the Justice Department concerning the policies regarding identification practices. He said there had never been any empirical testing of the photo identification policies advocated by the Justice Department in 1999. He said the Sheriffs’ and Chiefs’ Association indicated those policy were being utilized throughout the State. Chair Hardesty suggested the subject be held until the testing by the Justice Department was completed.
Ms. Brown said she submitted a proposed bill summary on DNA sometime ago and wanted to Amend Appendix A to include funding from the counties. She said if there was no money available, the inmates could incur all the costs. She said if they did not have the money, perhaps they could receive some of the grant money like Arizona had.

Chair Hardesty said the statute had to be amended to qualify for the grant money.

Elaine Voigt, My Journey Home, updated the Commission on the activities of her organization. She submitted a written report of their activities, Exhibit M. She said they had opened an office for HIV positive ex-felons. She also opened a transitional house for HIV positive people. Ms. Voigt continued discussing the issues in Exhibit M.

Chair Hardesty asked Ms. Voigt if she still received funds from the prison. She said no, they received funds from Nevada Works, a Department of Labor grant. The grant was strictly for training those coming out of prison. She said the grant from Nevada Works was for $101,000.00. She said she was the new reentry person for finding jobs for ex-felons.

Chair Hardesty asked if there was any further public comment. As there was none, he closed the meeting of the Advisory Commission on the Administration of Justice at 5:20 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: **September 22, 2008**  
Time of Meeting: **9:00 a.m.**

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