MINUTES OF THE
ADVISORY COMMISSSION ON
THE ADMINSTRATION OF JUSTICE

JUNE 9, 2010

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, at 9:36 a.m. on June 9, 2010, 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 4412, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Assemblyman William C. Horne, Chair, Assembly District 34
Phil Kohn, Clark County Public Defender
Senator Dennis Nolan, Clark County Senatorial District No. 9
Senator David R. Parks, Clark County Senatorial District No. 7
David Roger, Clark County District Attorney

COMMISSION MEMBERS PRESENT (CARSON CITY):

Connie Bisbee, Chairman, State Board of Parole Commissioners
Assemblyman John C. Carpenter, Assembly District No. 33
Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims Rights Advocate
Honorable James W. Hardesty, Justice, Nevada Supreme Court
Donald L. Helling, Deputy Director, Operations North, Nevada Department of Corrections
Catherine Cortez Masto, Attorney General
Richard Siegel, President, American Civil Liberties Union of Nevada

COMMISSION MEMBERS ABSENT:

Thomas W. Finn, Chief, Boulder City Police Department
Raymond Flynn, Assistant Sheriff, Las Vegas METRO
Judge Douglas W. Herndon, Eighth Judicial District Court
Howard Skolnik, Director, Nevada Department of Corrections

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel
Risa B. Lang, Chief Deputy Legislative Counsel
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Kim Madris, Deputy Chief Southern Division, Parole and Probation, Department of Public Safety
Mark Woods, Deputy Chief Northern Division, Parole and Probation, Department of Public Safety
Sharnel A. Silvey, Founder, A Scarlet Covering
Melissa Holland, Counselor, A Scarlet Covering
Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys
Sam Bateman, Clark County Deputy District Attorney
Jim Sweetin, Clark County Deputy District Attorney
Rebecca Gasca, American Civil Liberties Union of Nevada
Elaine Voigt, My Journey Home
Carvin Richardson, My Journey Home
Tobie Lamb, My Journey Home
Jaclyn Thun, My Journey Home
Paula McCeig, My Journey Home
Tonja Brown
Laurie Johnson

Chair Horne opened the meeting at 9:36 a.m. He requested a roll call of members present.

Ms. Angela Clark called the roll. A quorum was present.

Chair Horne reminded the members that the Commission did not have statutory authority to submit Bill Draft Requests (BDRs). He said the Commission could choose to make recommendations to propose and seek sponsors for draft legislation, resolutions and draft letters urging or requesting action, or include a statement in support of the Commission's final report. Chair Horne requested a motion on the minutes from the March 30, 2010, meeting of the Commission.

> SENATOR PARKS MOVED TO APPROVE THE MINUTES OF THE MARCH 30, 2010, ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE MEETING.

Mr. Siegel said a correction was necessary on page 6, line 7 from the bottom of the minutes. He said the intention of Ms. Gaska was to state the law would intensify racial biases.

SENATOR PARKS AMENDED THE MOTION TO APPROVE THE MINUTES WITH THE CHANGE NOTED.

MR. CURTIS SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Horne said he would follow the order of the Agenda. He opened the discussion on Agenda Item III, Presentence Investigation Reports by Chief Curtis.

Mr. Curtis, Chief of Parole and Probation, Department of Public Safety, introduced his Deputy Chief for the Southern Nevada Command, Kimberly Madris, and the Deputy Chief for the Northern Command, Mark Woods. Mr. Curtis said the report would be presented by Ms. Madris from the Southern Command and the emphasis would be on reports from the Southern Command.

Ms. Madris gave a brief overview of the presentence process in Clark County. She referenced the handout giving details of her discussion, Exhibit C. She said pages 3, 4, and 5 showed the presentence investigation (PSI) process. She said once the court requested a PSI, they completed the report and sent it to the court, the district attorney, and the defense council.

Ms. Madris said pages 6 and 7 explained issues they had due to demand for the PSI report. She said a time study showed the Southern Command should be able to produce an average of 18 investigations per writer per month. Mandatory furloughs dropped that number to 17 reports per writer. She said the Southern Command received an average of 730 referrals a month and with current staffing produced an average of 650 investigations. The courts had helped them by not requesting gross misdemeanor PSIs except for sex offenses and violence. She said they were hiring four additional writers this month and they should be trained by September. Her intention was to begin doing all requested investigations in a timely fashion beginning in September.

Assemblyman Carpenter asked Ms. Madris what she meant by “writers.”

Ms. Madris said it was the court service's staff; they were called specialists. They were required and expected to write the court report on all the referrals to the Division.

Assemblyman Carpenter asked if the writers were lawyers or had to have special training to write the reports.

Ms. Madris said they were not lawyers, but they had degrees. The writers went through a testing process where writing and understanding of basic law enforcement was required.

Chair Horne asked if when the PSI was created, the writer created it from information given by the investigator. He said he thought the investigator created the PSI because at the end of the report, the investigator signed the report along with the supervisor.

Ms. Madris said the writer and the investigator were the same. She said the court service's writer/investigator was responsible for gathering information from the district attorney or the Attorney General's file when they receive it. The writer did a questionnaire with the offender to obtain background information on the offender. They utilized the criminal history, types of plea bargain, and police reports in creating the final PSI for the court.

Mr. Curtis said the writer also conducted investigative activities with victims and other witnesses and accumulated a full family history. He said they utilized a myriad of sources and information.

Justice Hardesty asked Ms. Madris if the capacity evaluation study was only for the Southern Command or was it statewide. He asked if she had statistics concerning the amount of demand for the remainder of the State, and if they were able to meet the demand.

Ms. Madris said Deputy Chief Woods had the time study and could speak to the rest of the State.

Mr. Woods, Deputy Chief of the Division of Parole and Probation, said the time study was done statewide. He said it included the Southern Command, which was Clark County, Washoe County, Carson and the rurals. The study was done over a six-month period, and it showed the Las Vegas office could produce around 18 reports a month and the rest of the State did approximately 16 reports per month. He said the time study was available for the Commission if they requested it.

Justice Hardesty said capacity in Southern Nevada was higher than the capacity in the remainder of the State.

Mr. Woods said yes, the difference was due to the specialists in Las Vegas not going to the courthouse on a regular basis. He said Carson City and Washoe County had more writers because they went to court. The rural areas were different due to the amount of time the writers spent traveling.

Justice Hardesty asked if they had the statistics for Washoe County, Carson City and the rural areas for the number of requests versus the number of reports being written as shown on page 8 of Exhibit C.

Mr. Woods replied he did not have the statistics available today, but he could get those numbers.

Justice Hardesty said the Southern Command showed a backlog of more than 100 per month. He asked if there was a backlog in the rest of the State.

Mr. Woods said there was a slight backlog in Washoe County and Carson. He said the majority of the backlog was due to the furloughs. The time study did not take into account furlough hours, which were a day per writer loss. In Las Vegas 34 PSIs were not done, and in the Reno office it was 15 not written. The rural areas were relatively flat or a slight decline.

Justice Hardesty asked if the addition of four writers in the Southern Command would maintain the amount of production against the amount of requests.

Ms. Madris said that was their intent, but they could never factor in all the factors involved in writing reports. She said the additional four people hired should allow them to maintain the referrals they received with the exception of the furlough time.

Justice Hardesty said it appeared at the time of the study, July through December, the Southern Command sustained approximately a 600 PSI backlog in felonies. And he assumed it continued to sustain a backlog of about 100 or more per month in 2010. He said it suggested by July 1, 2010, there would be a backlog of 1,200 in the Southern Command.

Ms. Madris said currently the backlog was receiving extra man hours from light duty officers that focused on the backlog. She said the number he suggested was relatively high. The courts also worked with them by expanding sentencing dates for out-of-custody and in-custody offenders.

Justice Hardesty said for the Commission to have an accurate understanding of the backlog of PSIs, they needed the current number. He said it would be a concern to the citizens of the State to know the supervisors were being used to write PSI reports; that was a public safety concern. Justice Hardesty said his other concern was if only four PSI writers were available, they would not be successful in reducing the backlog in a short period of time.

Mr. Woods said Justice Hardesty was correct; however, two words were being used: backlog and continuances. He said the numbers showed the continuances and there were many reasons for continuances. The system had a difficult time differentiating the reasons for a continuance. He said a judge may ask for it or the district attorney or the defense counsel may request it. The more prevalent reason was failure to show for sentencing. He said the last criterion was the staffing issues. It was not possible to check on each and every continuance and the reason for it. The backlog can be covered with the four additional writers, and they should be able to maintain the level of referrals. He said there would always be the continuances due to the other issues involved.

Justice Hardesty said his concern was whether or not the Division was able to meet the statutory requirement for the production of PSIs. He said the impact on the criminal justice system and county jails resulting from the Division's inability due to short staffing and demands exceeding capacity were important to assess. It increased the amount of occupation in county jails and also delayed the resolution of the case for victims and others involved in the dispute. He said it was important for the Commission to have the capability of assessing the capacity of the Division to meet the demand for PSI reports. He said if PSIs were waived for gross misdemeanors, it was a concern. In order to shed full light on the subject, better statistics were needed about capacity and the compliance with the statutes. The Legislature needed to know if more staff was required.

Mr. Curtis said they were reacting to the current situation as far as staffing was concerned. He said it was an unknown at this stage with future budget concerns. He said Justice Hardesty's question concerning the use of sworn officers as PSI investigator/writers was preferable to having an officer on light duty or injured and not working. They were assigned to the function of writing PSIs and did a satisfactory job. The priority for the Division was to accomplish PSI reports for those in custody first.

Justice Hardesty said he was not being critical of the Division. He said this was a clear example of failure to provide adequate resources and prioritize them toward an important division of the criminal justice system. If the standards were not met, it had a serious impact throughout the rest of the criminal justice system. He said the Legislature needed to increase the capability of the Division of Parole

and Probation to adequately meet the statutory requirements of producing PSIs on a timely basis so sentencing was completed in a timely manner.

Mr. Curtis said it was a point well taken.

Justice Hardesty asked the Division to provide the Commission with supplemental statistics to the report.

Chair Horne said the report needed to be presented by the end of the month for the work session. He said before Chief Curtis came into the position, the recommendations and budget proposals request made by the Division was short of expectations of the 2007 Session of the Legislature. He said Chief Curtis was limited in his budget requests because they function under the direction of the Governor.

Mr. Kohn said for the last three years, he attended judges' meetings every month where the discussion was held about the Department of Parole and Probation not being able to meet the statutory requirements of probation reports. They agreed, especially for those out of custody, to extend the reports long beyond the statutory requirements. He said it was important to know how many reports were done within the statutory time. He understood continuances had various causes, but he wanted to know how many reports actually were delivered in the statutory time frame.

Mr. Curtis said he received some statistical data. He said referred cases averaged 610, 613, and 656 done in time, with continuances on the higher numbers; it was a rolling process. The reality of the budget and shortfall in State finances took a toll on the Department. He said it sometimes created a no-win situation. They reacted to whatever situation occurred.

Mr. Kohn said he understood Mr. Curtis's position. He said long continuances cost everybody money and it was something the Legislature had to know. He was not critical of the Division, but wanted to know how many PSIs were done within the statutory time, especially out of custody.

Mr. Curtis said the Northern Command was easier and the Southern Command had a huge issue.

Ms. Madris said staff gave priority to those offenders in custody. PSIs were assigned to in-custody first and out-of-custody next. Typically, each month there were 241 in-custody cases assigned. The number of in-custody continuance letters over the last four months averaged four a month on in-custody cases. She said they understood the issues with local jails and the impact it had when offenders were held in custody longer than they needed to be held. The average

for the last four months was 610 referred cases from the courts. The continued cases were 323 cases. She said there were many reasons for continuances. Her staff requested 43 cases continued. They were very concerned about the numbers and meeting their obligations. She said another measure taken to increase their capacity was that the court allowed a 60-day sentencing date on in-custody cases and 120 days for out-of-custody cases.

Justice Hardesty referred to the issue of out-of-custody cases. He said a number of the defendants were under the supervision of the county court service's officers. He said by delaying the cases, it increased the cost to the county to supervise those with conditions and delayed income for supervision fees from those who would receive probation, and that seemed counter-productive.

Ms. Madris did not have the statistics of the number of people out of custody who were on house arrest with Clark County detention.

Justice Hardesty said many in Washoe County had to report to the court service's officer and some expense was incurred in supervising them. The delay in out-of-custody had a financial impact.

Justice Hardesty said when restitution was ordered, there was a further delay because they were not paying restitution until it was ordered.

Ms. Madris said he was correct. She said the other request made in district court in the Las Vegas area was to use the PSI if it was completed in the last five years, rather than ordering a new one. Another time-saving measure for the employees was to set up telephone interviews at the local jails with an offender in lieu of actually going to the jail.

Ms. Bisbee commented that Ms. Madris's request for using PSIs from five years back was entirely inappropriate for use by the Parole Board. She said it was not just the sentencing court using the PSI. Many things could occur in five years and without a current PSI on a case being considered for parole, they did not have current information. She said it made it very difficult to do a proper hearing without current information.

Mr. Woods said statute allowed the five years.

Ms. Bisbee said she understood statute allowed it. When the Parole Board requested information in terms of a post-sentence investigation, it was unavailable. She said if they lacked the appropriate information to make decisions concerning parole, someone may not be paroled who deserved parole.

Mr. Curtis said in a perfect world they would have the ability to make current PSI reports, but they did not have that world.

Chair Horne asked Ms. Bisbee for suggestions about her concerns that the Commission could address at the work session.

Ms. Bisbee replied she would offer her suggestions at the next meeting.

Chair Horne opened discussion on Agenda Item IV, aggregating minimum prison sentences.

Ms. Bisbee asked to present Agenda Item V, current use of psychological review panels, first.

Ms. Bisbee opened her discussion on the use of the psychological review panels. She said the Commission had asked for additional information as to how other agencies throughout the United States handled psychological panel issues. She polled the Association of Paroling Authorities International, and the results were included in Exhibit D. She said only nine other states were mentioned because they had the time to answer the questions. She had met with the staff of the Attorney General's office and the Department of Corrections to discuss recommended changes to the psychological panel law. She said the presentation was in the form of a suggested Bill Draft Request and that she was aware the Commission did not have the authority to draft BDRs.

Ms. Bisbee said there was a substantial amount of litigation generated as a result of the current way the psychological panel was handled and how the law was worded and the manner in which the hearings were conducted. She offered proposed changes for the Commission's review, Exhibit D. She said the first attachment was a suggested BDR and the result of the survey she conducted.

Ms. Bisbee suggested revising the psychological panel law to make it an advisory function instead of a certification. She said currently the psychological panel was required to certify that a prisoner was not a high risk to re-offend sexually. She said if it was determined the prisoner was a high risk to re-offend sexually, the Parole Board was prohibited by law from granting parole. Ms. Bisbee said a recent court case said a psychological panel review can only be performed when an inmate is serving the last sexual offense in a sentence structure. She said if there was a non-sexual sentence to go to, parole release on the sexual offense can only be institutional. When an inmate had a consecutive sentence to serve, the risk to re-offend sexually was minimized and the inmate may be certified as not being a high risk to re-offend. When the last sentence was a non-sexual offense, the Parole Board was unable to determine if the

person was a high risk to re-offend sexually. She referenced the examples in Exhibit D.

Ms. Bisbee recommended changes to subsection 1 of Nevada Revised Statute (NRS) 213.1214. She recommended eliminating the certification requirement and making the psychological panel an advisory function. Her second suggestion required that a psychological panel evaluation be conducted on any inmate who had a conviction for a sexual offense anywhere in his current sentence structure. The third suggestion required the psychological panel to rate each inmate who was evaluated as a low, moderate, or high risk to re-offend. She said this would allow the Parole Board to integrate the information into the risk assessment and give them additional information.

Ms. Bisbee next suggested that the Parole Board be allowed to request a psychological panel on any sex offender if the information would assist the Board in determining whether parole should be granted. She said subsection 2 of NRS 213.1214 required that the panel re-certify an inmate if he was returned to the Department of Corrections for any reason, Exhibit D. She said new language would allow the Parole Board to obtain an evaluation on any sex offender being considered for parole if the information would be helpful in determining whether parole should be granted.

Chair Horne asked Ms. Bisbee if there would be an increase in the number of evaluations for inmates coming up for parole, either to the community or a consecutive sentence. He asked if she had an estimated number of additional evaluations that would occur per year and how much it would cost.

Ms. Bisbee said she did not have a specific answer at this time. She said prior to the Supreme Court finding, they were doing the psychological panels as she was suggesting. The same panel was seeing the people on each of the cases. It would allow the panel to go back and do what they had been doing, but had to stop due to the litigation.

Chair Horne asked if there would be an increase in cost in conducting the panels.

Ms. Bisbee said it should not have a fiscal impact.

Ms. Bisbee suggested revising the current language pertaining to liability, and deleting the statutory language pertaining to the revocation of a psychological panel certification, Exhibit D. She said the psychological panel did not have a procedure or regulation in place regarding the revocation of a certification. She suggested the indemnity language be changed to reflect "evaluate" rather than "certify" and provide that the panel was not restricted in its ability to evaluate an

inmate. The current language does not prevent others from bringing a cause of action against the State.

Ms. Bisbee's fourth suggestion required the psychological panel adopt regulations regarding the evaluation of prisoners and review their assessments at least once every three years. She said the current risk tools being used were consistent with the other states using psycho-sexual evaluations.

Ms. Bisbee said the fifth suggestion clarified that convictions for child abuse or neglect that were deemed sexual in nature were required to be evaluated by the psychological panel. It would add the crime of kidnapping with the intent to commit sexual assault to the required list of offenses. Subsection 5 of the current NRS required sexual or non-sexual child abuse or neglect to be evaluated by the psychological panel. She said when the law was written, she believed "sexually related" was omitted by accident. She said the panel was required to certify as not being a high risk to sexually re-offend child abuse and neglect cases that had nothing to do with a sexual matter. She said the crime of kidnapping with the intent to commit sexual assault was not on any of the lists. She requested that it be put back into the NRS.

Ms. Bisbee said item six of her suggestions was specifying that the Parole Board may adopt regulations pertaining to the manner in which the sex offender risk assessment will be used in conjunction with the parole standards, Exhibit D. She said the standards had been revalidated as being very accurate.

The seventh suggestion by Ms. Bisbee was the definition of certain terms. The Parole Board constantly had a problem with interpretation. The new subsection would define the term "current term of imprisonment" to mean the group of sentences that were relative to each other by the status of concurrent or consecutive relationship.

Ms. Bisbee said the new subsection 8 clarified the term "custody of the Department of Corrections" as used in subsection 7. She said it meant inmates who were physically housed in the NDOC because they were a parole violator or those inmates who were housed in out-of-state facilities. Ms. Bisbee referred to the proposed BDR included in Exhibit D. She said the BDR was a combined effort of the Attorney General's office, the DOC, and Parole Board.

Chair Horne questioned recommendation number three regarding indemnity. He asked who else had standing in bringing litigation for doing an evaluation or not doing one.

Ms. Bisbee stated she was not an attorney, but anyone could sue for anything, including a victim who was unhappy with the psychological panel's actions. The

section specified no one may bring charges against the panel for doing its job. She said currently it only prohibited the inmate from filing charges. The suggestion extended to anyone who wanted to file charges.
Chair Horne wondered who else would come with a suit against the psychological panel other than the inmate.

Ms. Bisbee said it could be on behalf of the inmate or a victim or anyone who had an interest in the panel.

Ms. Cortez Masto said the term was broad enough to include any victims or future victims. She said, for instance, if someone was released without going through a psychological panel and committed another sexual assault crime on a future victim, the victim could come back on the State for releasing the individual. She said it was an attempt to accommodate all potential consequences. It was offered as a broad protection for the State.

Mr. Siegel raised the question about the appropriate naming of what was referred to as the "psych panel" in discussions. He asked if that was how it was referred to in the statutes.

Ms. Bisbee said it was referred to as the Psychological Review Panel.

Mr. Siegel asked if Ms. Bisbee would consider stating it more narrowly. He said it seemed to be about a propensity for future sexual offense. He said his interpretation was that it was a more general psychological evaluation. He doubted it was appropriately named and suggested a change in the name of the panel.

Ms. Bisbee said as long as it fulfilled the needed functions, she did not care what it was named in a revised bill.

Chair Horne opened discussion on Agenda Item IV, aggregating minimum prison sentences.

Ms. Bisbee said she was asked if they could discuss one other item from Agenda Item V regarding the psychological panel in regards to the Open Meeting Law.

Justice Hardesty said he wanted the Commission to be informed about a case where the Supreme Court concluded the panel was subject to the Open Meeting Law. He said the Commission might consider exempting the panel from the Open Meeting Law. The panel's function as a certification process as to someone's sexual propensity was not the kind of thing the Legislature intended to include in the Open Meeting Law. He suggested adding the omission as an additional

recommendation. He said it would have to be addressed statutorily because the case said the panel was subject to the Open Meeting Law.

Chair Horne concurred that the psychological panel's purpose was basically a gathering of information for an advisory purpose for the Parole Board to be able to make informed decisions. He said he did not know how that evaluation fell under the Open Meeting Law and felt it was appropriate to make the recommendation for statutory change.

Ms. Bisbee said she would add the suggestion into the recommended language in the proposed BDR in Exhibit D.

Mr. Siegel asked Justice Hardesty if the privacy interest involved in the operation of psycho-sexual evaluation was public. He asked if the report was public as part of the Parole Board.

Ms. Bisbee said the report was not public information; it was for the use of the Parole Board. She said it was not a psycho-sexual evaluation. It was a determination of the propensity to re-offend.

Justice Hardesty said the contents of the psycho-sexual evaluation reports were very detailed and affected the privacy of the person who was the subject of the report and also the privacy of other persons, including the victims. He did not think the Legislature intended to put the information on display in the open meeting context. He said the Pardon's Board gave victims notice and others had opportunity to weigh-in on the Board's decisions. That was where the process should be vetted after recommendations or certifications depending on what changes were made.

Ms. Bisbee opened the discussion on Agenda Item IV, aggregating prison sentences. She was in favor of the process of aggregating sentences, and her presentation was a response to the request for additional information. She said it was in regard to changing Nevada's sentencing structure to one that aggregates the minimum and maximum terms of sentences that were ordered to be served consecutively and make them into one sentence, Exhibit E.

Ms. Bisbee said there were several areas that must be considered regarding the implementation of aggregating sentences involving determinate sentences. She said a determinate sentence meant there was an end at some point. The areas concerning the determinate sentences included the application of credits from A.B. 510 applied to reduce a minimum sentence; establishing limits to aggregated sentences; prospective and retroactive application of aggregated sentences, including new convictions; the manner in which the offenses would be

considered for purposes of classification, parole guidelines, and community supervision; and the costs related to database programming changes, Exhibit E.

Ms. Bisbee said the application of credits applied to reduce the minimum sentence of Category C, D, and E felony convictions applied only to those categories on the front-end of the sentence. The major issue of aggregating the minimum sentences in Nevada was that an inmate may be sentenced to serve consecutive sentences, some of which may allow credit reductions and others that did not allow for credit reduction towards the minimum. She offered examples in Exhibit E, Attachment 1 – examples of credit reductions off a 12-month minimum sentence. She said it was a very difficult concept.

She offered examples of consecutive sentence structures for two different cases that ran one after another. She then offered the example of what occurred if the sentences were aggregated. She said she was unable to determine the parole eligibility of aggregated sentences. It was a problem trying to determine how to apply credits to only one of two aggregated sentences. She said in order to qualify, Category C, D, and E felonies must be fixed and not be affected by fluctuating credits. She said there were at least two ways to address this problem. She said they could require the NDOC to reduce the minimum sentences of qualifying felonies by 50% for the purposes of determining parole eligibility. Another way was to change the minimum sentence that may be imposed by a court for qualifying felony convictions to a total period of not less than six months or not more than 20% of the maximum sentence. Ms. Bisbee said in order to consider aggregating the minimum and maximum terms of determinate sentences, a resolution for allowing credits on the minimum terms of imprisonment must be found.

Ms. Bisbee recommended considering establishing maximum limits to aggregated sentences when the offense was not one that would result in a life sentence. She said she saw examples of some inmates who had so many consecutive sentences for non-life offenses they served more time than some inmates sentenced for having committed murder. She gave an example of an actual case, Exhibit E. She suggested the Commission consider supporting a limit to the aggregated minimum and maximum on sentence structures that have strictly determinate sentences. She recommended no minimum greater than 20 years and no maximum greater than 60 years.

Ms. Bisbee said the most efficient way to implement the change to aggregate minimum and maximum sentences would be to apply it going forward, but there may be some benefit in allowing sentences already imposed to be aggregated retroactively. She said in all cases the affected inmate should agree to the change in sentence structure. She suggested inmates be allowed to opt-in to

aggregated sentences. She listed some of the things that needed consideration, Exhibit E.

Ms. Bisbee said once sentences were aggregated, a blending of different offense groups and types occurred, so the most serious offense should be considered first.

The costs related to database programming changes and implementation concerns were related to changing the sentence management module within the NDOC's information management system. She said there were costs involved in handling both the current consecutive sentence relationship structure and the aggregated sentence structure. She said after a review of the A.B. 510 programming changes, a recommendation was made to go to a table-driven system which would cost approximately $300,000. She said if the Advisory Commission determines that it will recommend legislative changes to provide for aggregated sentences, they should consider making the suggestion to the Interim Finance Committee prior to the Legislative Session, stating if the BDR had a fiscal note it would not pass. She recommended specific language authorizing the Director of the NDOC to establish a time line to coordinate the retroactive conversion of consecutive sentences and specifying the inmate may not bring a cause of action against the State or the NDOC with regard to the timing of reviewing and implementing any consecutive sentences, Exhibit E.

Ms. Bisbee recognized it was a difficult topic with many different areas of concern. She was a proponent of aggregated sentences and it made management easier for the NDOC. She said the long term impact on Parole and Probation would be parolees with a longer time on parole. The parole officers would have time to get to know the parolee.

Chair Horne asked Ms. Bisbee if she had an estimate on the reduction of the Parole Board's workload if aggregated sentencing was adopted.

Ms. Bisbee said currently there were 3,000 inmates with consecutive sentence structures, so the impact would be immediate. She said the Parole Board held over 8,000 hearings a year. She could not give Chair Horne a specific answer.

Chair Horne said the information was important to counter the fiscal findings.

Ms. Bisbee said she would determine if they could get that information. The plus for the NDOC was each parole hearing had staff producing up to 800 parole board reports a month. She said if the sentences were aggregated, the inmate might only come before the Parole Board once versus as many as 10 to 20 times and that would be a reduction in the case worker's workload.

Chair Horne asked Mr. Curtis if the action would increase Parole and Probation's workload.

Mr. Curtis replied it increased the workload. He said it also required some programming revisions for his Division.

Chair Horne asked Mr. Roger to comment on Ms. Bisbee's suggestions.

Mr. Roger said his concern was public safety and candor with respect to victims. He said Clark County filed 66,000 cases last year. The majority of the cases were negotiated. He said the goal was protecting the community and making sure the victims understood the system. Judges do a good job at sentencing individuals and sending people to prison who deserve to be in prison. He said people do not go to prison the first time unless they committed a tremendous act of violence. The majority of the cases remained in justice court. He asked where the problem was and what needed fixing. He said Dr. Austin was unable to answer his questions. He believed the right people were in prison for the right reasons and the sentencing judge made the decision after hearing from multiple sources. He said aggregating sentences removed consequences for misbehavior during incarceration for the inmates. Aggregating sentences furthered removed truth in sentencing. It was not better for the victims. Mr. Roger said it let inmates out sooner to the detriment of public safety and added to Parole and Probation's work supervising inmates.

Ms. Bisbee said the victim was often being notified of parole hearings and had to come to the hearing every two years. She said victims were often traumatized by parole hearings every two years. Aggregating sentences was not a guarantee of parole. Parole remained a privilege and not a right. She said it enhanced the probability of parole and made people eligible for programming anywhere along the sentence term. It did not increase the number of paroles, but it increased the length of time they were on parole. She said the sentence being shortened by credits was an aside from aggregating and was a result of A.B. 510. She was not suggesting additional credits by aggregating sentences.

Mr. Roger stated some victims never wanted to be notified, but others always want notification. He did not think it was a benefit for victims. If someone was not behaving in prison, they were held accountable and would not be given parole. He said giving additional programs under aggregated sentences could be accomplished by changing the prison rules adding that judges had an expectation the sentence would be carried out. He said it appeared to him inmates were being given additional benefits with aggregated sentencing. He said there was also discussion about lengthy sentences.

Ms. Farley agreed with Mr. Roger. She said a deal was made with the killer of her daughter and he would not spend the time in prison to which he was first sentenced. She was concerned about public safety and about people who received deals.
Chair Horne said some sentence structures were not from deals, but rather from a trial and the judge handing down the sentence. He understood the positions on both sides of the question. He had to look at the fiscal realities, public safety, and policy. He said it was appropriate that Ms. Bisbee had brought the subject to the Commission.

Senator Parks asked if there was any input from the NDOC relative to the proposal.

Ms. Bisbee said there were discussions with the NDOC. She said they were kept informed of her actions and ideas. If the report were to go forward, all three agencies should be involved.

Justice Hardesty asked whether the Commission wanted the three agencies to continue to evaluate the proposal and provide a final report to the Commission.

Chair Horne said if there was more to be finalized in her proposal, he welcomed it. He asked Ms. Bisbee if she wished to go forward.

Ms. Bisbee said a lot of work had gone into the proposal and she would continue to pursue the question if the Commission wanted her to do so. If it was not the intent or desire of the Commission, her time would be better spent elsewhere.

Senator Nolan said this would be brought up during the Legislative Session. However, with the $3 billion deficit, there were going to be draconian cuts to all programs and at all levels of state government. He said from a policy issue it should be explored, but from a fiscal issue Ms. Bisbee needed to research the cost savings such a program would generate.

Chair Horne asked Ms. Bisbee to present a more definitive proposal on a recommendation she would like to see proposed.

Ms. Bisbee said she would contact the NDOC and Parole and Probation and work on the proposal. She said a fiscal impact would be a deal killer and her recommendation would be for IFC funding.

Chair Horne asked Justice Hardesty if he was ready to present Agenda Item VI.

Justice Hardesty had a number of conversations with Jim Austin concerning funding sources for the additional study of issues related to criminal justice in

Nevada. He said Dr. Austin had conferred with the Pew Foundation to determine their interest in providing funding sources for additional research. Dr. Austin said the Pew Foundation personnel were interested in providing financial support subject to conditions. They wanted to meet with Nevada officials to address some of the conditions they wanted to impose. Justice Hardesty said the Pew Foundation would like to fund a study conducted by Dr. Austin of the various impacts associated with A.B. 510. There were multiple impacts from the bill. He said it would be useful to have an independent evaluation of the effects of A.B. 510 so the Legislature could be advised about the benefits associated with good time credits. He said there were other areas the Pew Foundation was willing to support relating to the consideration of changes in the criminal justice system. He added the Pew Foundation wanted direct dialog with the Chair of the Commission and other members of the Commission. The previous Commission employed the services of the Grant Sawyer Center in monitoring sentencing statistics. He said the information was helpful in formulating some of the Commission's recommendations. It would be helpful to have the work with the Grant Sawyer Center extended, and the Pew Foundation would support further study. He said the study showed the sentencing patterns of every district judge in the State. The study reduced conjecture and speculation about inmates who went to prison versus those who received probation. He recommended the Chair and other members meet with the Pew Foundation people and solidify the funding they might provide and focus on outside reports that would benefit the Commission.

Chair Horne said he was eager to meet with the Pew Foundation members. He requested Justice Hardesty contact them for possible dates when they could meet and where they could hold the meetings.

Justice Hardesty said the people from the Pew Foundation could come to Nevada and meet with the Chair, himself, and include the three agencies and also the Attorney General.

Chair Horne asked for a series of dates and times so they could all coordinate. He opened the discussion on Agenda Item VII, a presentation concerning child prostitution.

Sharnel A. Silvey, Founder, A Scarlet Covering, offered her background as the reason for founding A Scarlet Covering. She said she had a 15 year-relationship with Joe Conforte, the man who first legalized prostitution in Nevada. She worked as an employee at Mustang Ranch and worked as the madam and general manager there. She said she occasionally had underage people apply for work at Mustang Ranch. Through her life with Joe Conforte, she never had an identity and was lost due to her situation. She said she had learned through her job that the majority of women in the sex business came there after being sexually

assaulted, whether it was incest, rape, or molestation. The average age of prostitutes was 13 years old. She founded A Scarlet Covering to provide help and assistance for people who wanted to have other resources and get out of the sex business. She said they did outreach into brothels and strip clubs. They worked with Judge Van Winkle to provide a specialty court for women who come from the sex industry. They also worked with the Reno Police Department doing undercover operations. The organization provided free HIV testing through one of their partners. She said they wanted to build a safe haven sometime in the future.

Melissa Holland, Counselor, A Scarlet Covering, provided a PowerPoint presentation, Exhibit F. She had extensive research experience and education in the sex industry worldwide. She said fighting sex trafficking and global prostitution was the topic of her presentation. The State Department estimated between 14,500 and 17,500 people were trafficked into the United States annually. She said Las Vegas was named one of the 20 most likely destinations for sex trafficking victims. The majority of people trafficked were women and half of them were children, adding one little girl could be worth over $200,000 a year. Ms. Holland said sex trafficking existed due to basic supply and demand economics. Sex trafficking would not exist without a demand for commercial sex. She said Sweden passed a law in 1999 that prohibited the purchase of sex, not the person selling the sex. They decided to look at the prostitute as a victim of abuse rather than as a criminal. She quoted the Deputy Prime Minister of Sweden, Exhibit F. She said trafficking dropped dramatically in Sweden after the law was passed.

Ms. Holland said 86% of the women in the United States in prostitution said they had been subjected to physical violence by their buyers, and 95% of the women in prostitution were problematic drug users. She said prostitution was not just another job. A survey conducted of 45 women in Nevada's legal prostitution showed 81% of the women said they wanted to escape prostitution. An estimated 80% to 95% of the children selling sex had a history of sexual abuse. Nationally, the average age that girls entered prostitution was 13 to 14 years old. Ms. Holland said legalization of prostitution increased child prostitution. In Las Vegas between 1994 and 2007, there were 1,596 minors facing prostitution-related charges.

Ms. Holland referenced the Safe Harbor Act being implemented in New York for children which stopped treating the exploited children as criminals and looked at them as victims, Exhibit F. The Safe Harbor Act recognized that sexually exploited children deserved the protection of the Family Courts. She said sexually exploited children needed specially designed programs for rehabilitation so they could recover from the trauma of exploitation and abuse.

Ms. Holland referenced the Department of State's “three P's.” The first was prevention and public awareness, including training, law enforcement, and judiciary professionals to eliminate the demand. There was prosecution to impose the proper punishments. Third, there was protection and rescue and restore. The children needed secure safe houses. Ms. Holland wanted to add a fourth “P” to include partnership with community organizations. She said Nevada had one of the highest per capita juvenile incarceration rates in the nation. The average cost to incarcerate 266 children for 17 days at $84 a day was $379,848. Those numbers offered the ability to have sustainable services instead of annual costs. She added that she had presented a very short summary to the Commission.

Chair Horne thanked Ms. Holland and said hopefully during the next Legislative Session she would present her findings again.

Ms. Farley said she had senate bills from other states proposing raising the age limit from 18 years old to 21 years old. She said Nevada NRS 201.295 stated an adult meant 18 years of age and a child meant less than 18 years old. She asked if the Commission had an appetite for changing the age limits.

Chair Horne said the discussion could be had during Session concerning changing the age in the brothels from 18 years to 21 years of age. He asked Ms. Farley if that was a proposal she was asking the Commission to make a recommendation.

Ms. Farley replied that was her request.

Justice Hardesty asked Ms. Silvey to describe how Judge Van Winkle's court worked and how many people he currently had under supervision.

Ms. Silvey said there were three people under his supervision at this time. They had nine people total. She said the Judge sentenced people to her group for six months to a year. They were also tested for drugs and alcohol if necessary. She said the client came before the judge bi-weekly and he addressed their needs.

Justice Hardesty said everyone in that program was over the age of 18 years. He asked Ms. Silvey if she was working with the Juvenile Court in Washoe County.

Ms. Silvey said they had not begun with the juvenile system yet. She said the McGee Center in Washoe was closing due to the budget, but they were working on being included in the juvenile courts.

Mr. Siegel asked if Ms. Silvey worked with the Child Protective Services in Las Vegas.

Ms. Silvey replied not as of yet.

Mr. Siegel said he understood this kind of county service was under great strain due to the State budget crisis. He said those kind of services needed to be as strong as possible.

Ms. Cortez Masto said there were no county services for addressing child prostitution. She said it was only addressed through the judicial system. They were trying to put together a program and a facility addressing the child prostitution problem. She said there was no funding for non-profit organizations to address the problem. It was important that everybody understand it and recognize it was a problem.

Chair Horne opened discussion on Agenda Item VIII.

Mr. Siegel presented two reports from the Sentencing Project. He said the Sentencing Project was a highly respected organization that worked on the entire spectrum of the criminal justice system. He said the two reports were titled *The State of Sentencing,* Exhibit G, and *Downscaling Prisons: Lessons from Four States*, Exhibit H. The reports included information from 19 states which were reducing their prison population mainly due to their budget crisis. He said a five percent reduction was accomplished in Kansas, up to a twenty percent reduction in New York. Nevada was discussed in Exhibit G in the Pew reports, including A.B. 510. He wanted to highlight approximately six elements in the two reports that could be discussed in the future work session. He said he was focusing on C, D, and E felons. He said C, D, and E felonies did not have to be considered in one group. A.B. 510 distinguished between C, D, and E felons. He said Kentucky allowed D non-violent felons to receive eligibility for parole at two months or 15 percent of their sentence. Another element occurring with good time credits in Louisiana gave 180 days for completing an approved program. He suggested giving a bonus good time credit for completing a program. Another approach to good time credits in Texas allowed credits taken away from inmates to be restored. The State was starting with a $3 billion deficit and a situation where the State can take away county money in large amounts. He said if there were people in the criminal justice system that could be moved out without risk to public safety or political damage, it made it possible to have other programs. Many programs will be eliminated due to the lack of money for programs. Mr. Siegel mentioned that Washington State had a program to save money utilizing medical incapacity. He said few if any prisoners were on Medicaid for their health problems because they were in prison. If they were not in prison, their care could be through Medicare. He said in California there were people costing $200,000 and $300,000 a year in medical care. Those people needed to be taken care of in a different way. He also said property crime amounts needed to be updated for current situations. Six states had increased the amount of dollars in theft and

robbery, so it made sense to update the amount. He requested the Commission read the two reports he had cited earlier.
Justice Hardesty asked if Nevada restored credits that had been removed.

Mr. Helling replied the State awarded, removed, and restored good time credits. He said improved behavior, programming, and the reason they had lost the credits was taken into consideration; however, some types of violence usually did not receive the credits back.

Justice Hardesty said there was credit provided in the statutes for programming and completion of programs.

Mr. Helling replied under A.B. 510 there were a significant amount of meritorious credits for completion of educational and vocational programs. He said there were a significant number of programs available.

Justice Hardesty said it would be beneficial for the Commission to have the presentation that the prison did for the Nevada District Judges Association meeting. He said many judges were perplexed, confused, and dumbfounded about good time credits in Nevada; it was a complicated system. He said perhaps a simplification of the process could occur. He requested that Mr. Helling make the presentation at the next meeting.

Ms. Bisbee added that the credits earned while an inmate was on parole, other than merit credits, were owned by the Parole Board. If they violated parole, any portion of those credits could be returned or the credits could be kept.

Mr. Siegel said the structure for A.B. 510 was established very quickly at the end of the Legislative session. He said the fiscal crisis in 2011 allowed for changes and adjustments in good time credits. There were going to be deep cuts in other areas, and the credits had been very successful.

Justice Hardesty opened Agenda Item IX, reports from subcommittees.

Mr. Kohn reported on the Subcommittee on the Reclassification of Crimes. He said there were approximately 210 Category B felonies. The largest number of felonies was in the B category. He said D and E felonies were defined as those crimes that can be punished by a term in prison of one to four years. A C felony can be punished by a one to five year prison term. The A felonies were life sentences and B felonies contained everything else. It could be a one to six year term or a two to twenty year term. The crimes included criminal anarchy. He said some B felonies did not belong in that category. He suggested Justice Hardesty ask the Pew Foundation to look at B felonies. He said Dr. Austin testified before the Subcommittee and one of his observations was 60% of the prisoners in

Nevada were B felons. He said the question asked was why they were looking at B felonies. The response was that the huge deficit facing the State made the costs of an inmate a concern. Mr. Kohn suggested amending NRS 209.4465 to allow A.B. 510 credits to B felons who were not violent, accused of a sexual crime, and not accused of a DUI, Exhibit I. He said it gave the Parole Board the opportunity to review B felons in the same manner as C, D, and E felons and it gave the discretion to the Parole Board. Those people who do not behave in prison would not be paroled and those who do behave would have a chance at parole. He did not have any easy answer on how to get B felonies down to a manageable number.

Ms. Farley asked if language in the proposed amended bill was going to add "other than domesticate, or violent, or sexual behavior."

Mr. Kohn said the reason he proposed what he did was based on Ms. Farley's earlier discussion at the last meeting. The statute already eliminated the DUIs, a sexual offense, and anything involving violence and made those people ineligible for consideration. He said by eliminating the term "B Felony," all that she talked about last time was accomplished.

Mr. Carpenter asked for more detailed information of Mr. Kohn's suggestion.

Mr. Kohn said he was suggesting any B felon who was not guilty of a DUI, violence, or sexual conduct would receive the same treatment under A.B. 510 as would any C, D, or E felon.

Justice Hardesty said the Subcommittee reviewed a proposal dealing with the reclassification of Category B felonies. He asked Mr. Kohn if the rest of the Commission could have that proposal. He asked Mr. Anthony to circulate the report among the Commission members.

Mr. Kohn said Mr. Anthony and Ms. Clark had done great work in assembling the information on the B felonies.

Justice Hardesty opened discussion on Agenda Item IX B.

Ms. Cortez Masto said the Subcommittee on Victims of Crime had met twice this year. She said the Subcommittee had one suggested BDR they wanted to present to the Advisory Commission. The Subcommittee was working on a survey to identify gaps in services to be sent to various stakeholders in the legal community. The other area of focus for the Subcommittee was concern about the nurses who were certified to conduct sexual assault examinations after an assault on a victim. She said the State was very limited in the number of nurses available. The Subcommittee contacted the Nursing Board and discussed the

problems and how they could be addressed. It was an ongoing issue for the Subcommittee.

Ms. Cortez Masto added, as a result of her work with the Subcommittee, she learned that victims were often not notified when certain issues were before the judicial system regarding the defendant who had committed the crime against them. She said the Attorney General's Office sought and received federal funding to assemble a Statewide Victim Notification Program. The program was in Clark County and Washoe County. It notified victims at any stage of the process what the defendant was going through and kept the victim current on the process. A working group had been assembled to implement the program statewide.

Ms. Cortez Masto said there were two other issues the Subcommittee was considering that may require potential legislation. She said an issue the Subcommittee voted on for recommendation to the Advisory Commission concerned psychological or psychiatric examinations of victims and witnesses in sexual prosecutions, Exhibit J. The District Attorneys Association presented the topic to the Subcommittee. There were concerns from both sides of this subject, and the Subcommittee recommended the BDR appear before the Advisory Commission to make further recommendations.

Ms. Cortez Masto said Brett Kandt worked on the project in Northern Nevada and the district attorneys in Southern Nevada would introduce themselves.

Brett Kandt, Executive Director, Advisory Council for Prosecuting Attorneys, said the Southern Nevada experts would discuss the topic.

Sam Bateman, Clark County Deputy District Attorney, Nevada District Attorneys Association, said he would discuss some case law which allowed for the testing of sex crimes victims. He said in the past, the Nevada Supreme Court allowed psychiatric examinations for victims of sex crimes where a defendant could show a compelling need for the exam. He said current law as changed in 2006 allowed the defendant to show a compelling need which included three factors: whether the State was employing an expert to talk about the victim, whether there was co-obligation in the case, and whether there was a reason to believe the victim's mental or emotional state affected her veracity. Two years prior to that decision, there was a more restricted test in Nevada. He said it concerned district courts not having the authority to order a non-party to submit to psychological testing. He said only in cases where the State was seeking to introduce the testing could it potentially occur. It allowed the victim to say they would not be tested. They had drafted a statute providing a middle ground between victims' rights to privacy and the defendant's right to a fair trial. He said several states had outlawed the practice completely and several states said the courts did not have the authority

to make a non-party victim submit to testing. He said their proposal was a reasonable middle ground.

Jim Sweetin, Clark County Deputy District Attorney, said the district courts in Clark County were having trouble with the case law which established the criteria for ordering psychological evaluations of the victim or witness. He said the changes in case law over time, as well as balancing the rights of the victim with the rights of the defendants, was difficult. The proposal addressed many of the Supreme Court's concerns in giving balance between the State and the defense. The purpose of the proposed legislation was to prevent the courts from ordering a victim or a witness in a sexual abuse case to submit to a psychiatric evaluation. He said an earlier case contained a lot of sexist language. The wording noted women falsely accused men of sex crimes as a result of a mental condition that transformed into a fantasy which was a biological urge and women had aggressive tendencies directed at the accused or a childish desire for notoriety. He said that was the nexus of an entire line of cases. There was not a statute in Nevada that addressed this, but there was a line of cases. He said it had changed over the years. Under certain circumstances, it existed so the court could order a victim or witness to submit to a psychological exam by a defense expert. He said none of the three criteria mentioned earlier had to be met, but the criteria were considerations the court had laid out. He said no delineated consideration of the effect of the exam on the victim, or of the right of the victim to refuse the exam, was in place currently and it was a traumatic event. He said the scope of the exam was not limited in any way. The examiner could ask about any part of a person's life. The proposed legislation said the ability of the court to order the sexual abuse victim to submit to the evaluation was removed.

Mr. Sweetin said if the victim consented to a second psychological evaluation, then the evaluation could go forward and both sides would receive the evaluation, but the courts would set parameters for the examination. He said it would not be a "fishing expedition" to ask any questions. He added that in either case the victim or the witness submitted to the examination upon their consent. He said that was the goal of the bill. Four other states had statutes saying the examination was not appropriate, and six other states, through case law, said there was no constitutional, statutory, or common law authority allowing for such an order. He said Nevada stood out in that it allowed the psychological evaluation using criteria that did not take into consideration the victim. Sexual abuse victims and witnesses in various other cases were treated differently. The legislation would correct that problem and was fair and evenhanded to both the State and the defense.

Mr. Kohn said in the proposed legislation under paragraph 6, there were approximately 20 named crimes. He asked how many crimes would have been charged in Clark County last year under the named crimes in paragraph 6.

Mr. Sweetin said in regard to crimes of violence committed against both adults and children, there were approximately 278 cases last year.
Mr. Kohn said there were other crimes in Clark County delineated in paragraph 6 of Exhibit J that Mr. Sweetin's team would not handle. He asked if there were thousands of cases under the 20 statutory designations.

Mr. Sweetin said he could not say there were thousands, but there were more than the 278 he referenced.

Mr. Kohn asked if the District Attorney could tell the Commission how many cases there would have been by the next meeting.

Mr. Sweetin said he could assemble approximate numbers from the past year for the cases he had delineated for the Commission's next meeting. He noted there was a catch-all category that was referenced.

Mr. Kohn asked how many of the cases had an order from the court that had a victim take a psychological exam.

Mr. Sweetin said it varied from year to year and he did not have specific tracking methods. As a general number it was approximately 50 motions a year, and approximately 50% of that number was granted.

Mr. Kohn said approximately 25 motions were granted. He asked what the penalty was for the crime of lewdness on a child.

Mr. Sweetin said it was 10 years to life and was not probational.

Mr. Kohn said a touching of a child above the clothing can be lewdness and could lead to a life sentence.

Mr. Sweetin said a touching with the intent of either sexually gratifying the person touching or the person being touched, given the age requirement, would be lewdness with a child.

Mr. Kohn agreed with the definition. He asked what the penalty would be for touching a child without the intent to sexually gratify either party.

Mr. Sweetin said that was not a crime.

Mr. Kohn said he was referring to a non-sexual battery.

Mr. Sweetin said an accidental touch was not going to be a crime. If someone were to touch a child in a manner which was purposeful and in an area where there might be sexual intent, a battery would be a misdemeanor.

Mr. Kohn said there was a radical difference between sexual crimes versus the same conduct without a sexual innuendo.

Mr. Sweetin said the difference between a misdemeanor and category felony was a significant. There were many crimes; kidnapping, robbery, many other significant crimes similar to sexual assault cases that were prosecuted only as having a victim who testified about the crime. He said those cases did not have the mechanism to require a psychological or psychiatric evaluation as there was in sexual assault cases. Mr. Sweetin said in his view, the discussion should be statutorily addressed. He said it was something in which the public had a great interest. Subjecting the victim of a horrendous crime to additional trauma, seeking statutory redress in this case, was appropriate.

Mr. Kohn said sexual assault cases were taken very seriously. His concern, as a defense attorney, was it was an A felony without corroboration needed, where a child could be coerced into testifying in a way they would not in any other crime.

Mr. Sweetin said there were remedies available to ferret out information during the course of a trial, short of a psychological evaluation.

Mr. Kohn said one of the concerns was who qualified as a witness. He asked if that question was addressed in the proposed legislation. He asked if a police officer would qualify as an expert.

Mr. Sweetin replied no. He said Mr. Kohn was referring to testimony that was elicited out of law enforcement personnel, which was essentially vouching testimony and that was not appropriate testimony. He said vouching testimony was not appropriate on its own, and that was really the issue involved instead of whether it was an expert retained for a psychological examination.

Mr. Kohn asked what occurred if vouching testimony happened.

Mr. Sweetin said the judge would probably uphold an objection by the defense.

Mr. Kohn asked how many cases were filed, and he assumed approximately 25 were granted last year, and how many crimes in Clark County the proposed legislation would cover.

Ms. Cortez Masto said an American Civil Liberties Union (ACLU) member was at the Subcommittee meeting and addressed their concerns.

Justice Hardesty asked Mr. Kandt to canvas Washoe County to see how many other such motions were granted in other districts. He asked Mr. Sweetin to expand his comments concerning some of the difficulties judges were having with the case law in this area.

Mr. Sweetin said there were a number of cases recently with different factual scenarios presented in the cases and the manner in which the Supreme Court had responded to the various cases. He said many district court judges were concerned about what the Supreme Court might rule and the course of least resistance was to submit a victim to a psychological evaluation.

Justice Hardesty said a decision would be deferred to the next work session. He asked Ms. Gasca to comment on the item.

Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada, said the current state of law under the Abbot decision was the right balance between the courts and victims and defendants. She said the ACLU believed the defendant had a compelling and constitutional right to due process and that might include forced psychological testing. She said that had not changed with codification of a different type of law. The ACLU thought if it became law, many of the cases could be overturned on appeal. She said the ACLU recognized the compelling interest of victims' and witnesses' privacy; they believed it should be in the hands of the court to weigh that principle against the principle of the defendant. Hypothetically, the charges could be from someone with a long history of bringing false accusations against a slew of defendants. She said if the defendant did not have the opportunity to have a psychological evaluation of those who were presenting the accusations, it would be detrimental to the due process rights of the defendant. The proposal being offered could result in an overturning conviction in the future if the court were to decide the person should have had the right to argue for psychological testing.

Senator Nolan recused himself from voting or participating in any discussion on this issue. He said he had received, from the Legislative Counsel Bureau, Legal Division, a written advisory that indicated allegations against him were unsubstantiated. He said it was prudent for him to not participate in the vote on the issue.

Justice Hardesty made a similar disclosure. He said in areas such as this, his intent was to recuse on votes regarding suggested public policy changes driven by court decisions from the court on which he sat. He did not want any lawyers to be dissuaded from making arguments to the Commission about decisions of the Supreme Court. Everyone had a right to express their views to public policy-making boards such as the Commission.

Ms. Gasca said in her research on this proposal, she spoke with members of the defense bar. The ACLU understood that compelled psychological testing happened very rarely. She said the ACLU believed that was because the compelling need was addressed based on a set of facts before the judge. It was an opportunity given to the court that would not necessarily be there under the proposal as put forward. She said the ACLU thought a right balance was currently being struck within the State.

Justice Hardesty opened the discussion on Agenda Item XI, Public Comment.

Elaine Voigt, My Journey Home, Inc., gave an update of her organization to the Commission. She said she had people with her who would testify today.

Carvin Richardson said he was in the prison system for some time. He said it was difficult to find a job in today's situation. He had three high-level drug trafficking charges, and it made it difficult to find employment. He received a reference to My Journey Home. He said he acquired a job and was paying his fees and fines. He said My Journey Home helped him get his skills sharpened. He volunteered his time to My Journey Home to help other people.

Tobie Lamb said she worked as the administrative assistant at My Journey Home. She said prior to her job, she made bad choices and was placed on probation for five years. She had 100 hours of community service and she volunteered to work for My Journey Home. She said the organization provided assistance for people to help keep them out of prison and help them grow.

Jaclyn Thun said she was 23 and had four children. She lost custody of the children due to her longtime addiction to meth and alcohol. She said she had been a victim of child prostitution and rape. She had been sober for 242 days. She worked at My Journey Home helping convicted felons like herself to do resumes and on-line job searches. She had completed five months of treatment and was now living on her own. My Journey Home provided the home she needed.

Paula McCeig said her husband went to prison for a DUI, and she found My Journey Home through Christian fellowship. She came to My Journey Home to find somebody to talk to about her husband. She said she had found a family with My Journey Home and was now the program manager at that organization.

Elaine Voigt said her organization received a huge gift from Microsoft. She had a grant for drug and alcohol counseling for ex-felons. She applied for another grant to train peer-to-peer counselors. She said she was attending OWDS training, which was the Offender Workforce Development Specialist training. The Workforce Investment money that funded the My Journey Home program was

cut. She contacted everybody she knew for funding. She said her organization needed funding for approximately six weeks, which amounted to about $20,000. Ms. Voigt said Senator Reid's office offered some help as well as the President of the Bank of Alaska.

Ms. Bisbee commented that one of the difficulties in paroling people was they did not have a place to go after prison. She personally recommended My Journey Home to recent parolees. She said she had never heard anything ugly about the organization. She appreciated what Ms. Voigt's organization achieved.

Senator Nolan asked if My Journey Home allowed sex offenders in the program and whether the program was available in Las Vegas.

Ms. Voigt said she had been asked to locate resources for sex offenders in the community. She was trying to put together a program for them. She said she did not have an office in Las Vegas.

Mr. Curtis said he had some ideas for funding for Ms. Voigt for the 30-day period.

Tonja Brown asked the Commission to recommend Nolan's Law to the Legislature. She said Nolan's Law would require evidence be turned over to the defense. She provided a copy of a writ of mandamus that she had filed in March 2009, Exhibit K. Ms. Brown asked that Mr. Klein's conviction be overturned. She asked that the risk assessment guidelines be amended to read the Parole Board was not to consider the inmate's reluctance to admit guilt for the crime they were convicted of but maintained their innocence. She also asked that the Commission recommend to the Legislature an oversight committee over the NDOC.

Justice Hardesty asked if there was further testimony in Clark County.

Laurie Rielly Johnson asked about the AWA committee. She said AWA was the Adam Walsh Act Committee, A.B. 85.

Ms. Cortez Masto said the Committee was created by Legislation so it was set statute. She said Keith Munro chaired the Committee and the meeting minutes were published on the Attorney General's website.

Ms. Johnson said she was actively involved in SOSEN.org which stood for Sex Offenders Solutions and Education Network. (She asked to forward facts, prevention and questions brochures to the Committee.) She said she was the mother of a sex offender who was arrested as a juvenile and was serving an adult sentence.

Justice Hardesty asked Ms. Johnson to submit the material to the LCB staff for the Commission to study. Justice Hardesty opened the discussion on Agenda Item X, a discussion of recommendations for the work session.

Justice Hardesty said staff had assembled different items that were discussed at earlier meetings for possible recommendations. Justice Hardesty read through the items listed in Exhibit L. The list included aggregation of sentencing; use of psych panels; and placement of Parole and Probation in the courts or the NDOC. Justice Hardesty withdrew the placement item from consideration. He continued the outline of items with the centralization of fees, fines, and restitution; limitations on the use of the psychological examinations of victims; reclassification of certain category B felonies; additional study by the Pew Foundation or the Grant Sawyer Center; extension of A.B. 510 credits to category B felonies; extending the amount of good time credits; a policy statement of support of the state funding of all indigent defense; a study of fiscal impacts of state funding for indigent defense; moving the office of the State Public Defender from the Department of Health and Human Services to the Office of the Governor; and requiring DNA testing on all felony arrests. Justice Hardesty added a recommendation that the statute segregating administrative assessment revenue to the Victims of Crime Fund not be subject to reversion to the State General Fund. He asked the Commission members if they wanted to add any of the suggestions offered by Ms. Brown. The suggestions included support of Nolan's Law, an oversight Committee of the NDOC, modification to regulations relating to parole consideration by those who declare their innocence, and misidentification cases discussed by the previous Commission.

Mr. Siegel said Ms. Brown's first suggestion was that existing statutes or caseloads were not followed. He said it was not a matter of the statute that was in effect.

Justice Hardesty said he understood the district court found a *Brady* violation in connection with evidence in the District Attorney's office in Mr. Klein's case. He said *Brady v Maryland* required an exchange of exculpation evidence in discovery.

Mr. Siegel said the law was in place.

Justice Hardesty said he thought she was asking for a statute that would compel law enforcement to provide to the defense the same information they develop in the case that they provide to the prosecution.

Mr. Siegel said law enforcement was required under *Brady* to turn over exculpatory evidence.

Justice Hardesty said some prosecution offices operated discovery in different ways. Ms. Brown's suggestion was a statutory requirement that whatever law enforcement generated for the prosecution must be delivered to the defense.

Mr. Siegel asked if the admission of guilt required by the Parole Board was a statutory requirement or Parole Board policy.

Ms. Bisbee said there was nothing preventing parole without an admission of guilt. She said the only thing the Parole Board dealt with was the conviction. She said there was no requirement to say they were guilty. There was no reason for a statutory change because it was not something considered by the Parole Board.

Justice Hardesty said an issue of eye witness testimony was discussed. A study was being conducted by the Justice Department on re-evaluating the recommendations involving misidentifications and eye witness testimony. He said the study was not completed and the Commission deferred the item until the Justice Department study was completed.

Mr. Siegel asked Mr. Kohn if he agreed that the discussion was not timely.

Mr. Kohn agreed. He said it was a work in progress and the Commission would have a stronger position after the study was completed.

Mr. Siegel said the last item of Ms. Brown's suggestions was the oversight committee which was a statutory requirement. He said the people who wrote the oversight committee into the statute deserved an answer.

Justice Hardesty said the suggestion would be added to the agenda. He asked if there were further suggestions to be added to the list.

Ms. Bisbee said it was not an item, but she needed an answer. She said she thought the Prison Commission was the NDOC oversight board.

Justice Hardesty said the question was whether the present board satisfied that responsibility. He said the legislation that reconstituted and expanded the Advisory Commission posed a question as to whether there should be an independent oversight committee in addition to the Prison Commission.

Mr. Digesti wanted to clarify for the record that Mr. Siegel's presentation concerning good time credits and the studies he presented in the sentencing report were included in the list of possible recommendations, Exhibit L.

Justice Hardesty said that was his intent.

Mr. Anthony said he would add the points Mr. Siegel made today in regard to the sentencing project.

Mr. Siegel wanted to add the suggestion that all property crime dollar limits be adjusted to 2011 dollar amount.

Justice Hardesty said it would be included and it was part of Mr. Siegel's presentation.

Mr. Kohn said Senator Parks asked him to request that the documents be ready a week before the next meeting.

Mr. Anthony said they would try to get everything out to the Commission by the 16th of June. He asked for any documents they wanted added to be sent to him no later than the 14th of June.

Mr. Curtis asked if the item in the second number 3 on the list in Exhibit L concerning the use of more formal and traditional PSI reports was possible by his officers.

Justice Hardesty said they could change the second number 3 to read as any recommendations concerning the PSI reports. He said the intent was not to modify the forms, content, or risk assessments being used now.

Mr. Curtis said he hoped to use documents similar to the documents used by the federal government, but it was not possible at this time.

Mr. Siegel said he also spoke on medical indigence. He said it was discussed at an earlier meeting. The Director of the NDOC had the power to make the determinations, and it was not used. He said he wanted to consider the possibility of moving people into a Medicaid funded medical position.

Justice Hardesty suggested expanding the recommendation of using compassionate release by the NDOC.

Ms. Cortez Masto asked how long the work session was projected to last and whether presentations would be a part of the work session.

Justice Hardesty said to plan on taking a full day for the workshop. He said there would not be any further presentations.

Mr. Helling asked if the presentation on A.B 510 was still scheduled for the workshop meeting.

Justice Hardesty said yes it was needed for understanding. He asked if there was further discussion. As there was none, he adjourned the meeting at 3:18 pm.

Submitted by:

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Olivia Lodato, Interim Secretary

APPROVED:

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William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice
Date: June 9, 2010 Time of Meeting: 9:30 a.m.

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Kimberly Madris	Presentence Investigation Report
	D	Connie Bisbee	Psych Panel BDR Suggestions
	E	Connie Bisbee	Information Related to Aggregate Sentencing
	F	Melissa Holland	Presentation on Sex Trafficking and Child Prostitution
	G	Dr. Siegel	The State of Sentencing 2009
	H	Dr. Siegel	The Sentencing Project
	I	Phil Kohn	Bill Draft Proposal
	J	Attorney General Cortez Masto	Psychiatric exams of victims in sexual offense prosecution
	K	Tonja Brown	Writ of Mandamus
	L	Nick Anthony	List of possible recommendations for the Commission