

**MINUTES OF THE  
ADVISORY COMMISSION ON THE  
ADMINISTRATION OF JUSTICE**

**October 20, 2008**

The meeting of the Advisory Commission on the Administration of Justice was called to order by Justice James W. Hardesty, Chair, at 9:06 a.m. on October 20, 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  
Phil Kohn, Clark County Public Defender  
Arthur Mallory, Churchill County District Attorney  
James Miller, Sheriff, Storey County  
Dorla M. Salling, Chair, State Board of Parole Commissioners  
Richard Siegel, President, ACLU of Nevada, Inmate Advocate  
Howard Skolnik, Director, Department of Corrections

**COMMISSION MEMBERS PRESENT (LAS VEGAS):**

Raymond Flynn, Assistant Sheriff, Las Vegas Metropolitan Police Department  
Senator Steven A. Horsford, Clark County District No. 4  
Catherine Cortez Masto, Attorney General  
Assemblyman David Parks, Clark District 41

**COMMISSION MEMBERS ABSENT:**

Senator Mark Amodei, Capital Senatorial District  
Gayle W. Farley, Victims' Rights Advocate  
Douglas Herndon, Judge, Eighth Judicial District Court

**STAFF MEMBERS PRESENT:**

Janet Traut, Senior Deputy Attorney General  
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau  
Olivia Lodato, Interim Secretary

**OTHERS PRESENT:**

Matthew C. Leone, Ph.D., Grant Sawyer Center for Justice Studies, UNR  
James F. Austin, Council of State Governments, President, JFA Institute  
Philip K. O'Neill, Nevada Department of Public Safety, Records and Technology Division  
Ron Titus, Director, Administrative Office of the Courts  
Martin Overstreet, Teamworks Consulting  
Linda Krueger, Las Vegas Metropolitan Police Department, Forensic Lab  
Katherine R. Kruse, Professor, William S. Boyd School of Law  
Scott Coffee, Clark County Public Defender  
Brett Kandt, Executive Director, Nevada Advisory Council for Prosecuting Attorneys  
Kristin Erickson, Washoe County District Attorneys Office  
Bradley Nickell, Las Vegas Metropolitan Police Department  
Gloria Rosen  
John R. Johansen, Nevada Department of Public Safety  
Claudia Stieber, Nevada Division of Parole and Probation  
Bryan A. Nix, Program Coordinator, Nevada Department of Administration, Victims of Crime Program  
Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence  
Lori Bagwell, Nevada Department of Corrections  
Mark Woods, Deputy Chief, Division of Parole and Probation  
Tonja Brown  
Sandy Finelli, The Ridge House  
Flo Jones  
Pat Hines

Chair Hardesty opened the meeting of the Advisory Commission on the Administration of Justice at 9:06 a.m. He requested a roll call of members present.

Ms. Angela Clark called the roll. Fourteen members of the Commission were present. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty asked if there were any modifications, changes or edits to the minutes of the September 22, 2008, meeting. Commissioner Carpenter moved to approve the minutes, and Commissioner Miller seconded the motion, the motion carried. Chair Hardesty said there were a number of matters previously discussed that the Commission needed to take action and vote on during this meeting. The monthly summary, Agenda Item III, by Dr. Austin and Dr. Leone was the first item for discussion.

Matthew C. Leone, Ph.D., Grant Sawyer Center for Justice Studies, UNR, opened the Power Point presentation on key trends in corrections and the justice system ([Exhibit C](#)). He said the

jail population was stable; the probation population had a slight decrease and a slight increase in the releases. He said prison population versus budgeted population showed a slight uptick. Nevada was within actual budgeted projections.

Chair Hardesty asked Dr. Leone to clarify the slide representing Institutional Population Actual vs. Budgeted and what it meant ([Exhibit C](#).) He asked if the “actual” meant the actual population versus the budgeted population. Dr. Leone replied yes, actual population versus what the system had budgeted for the institution. Chair Hardesty asked if it was before or after cuts. Dr. Leone said he assumed it was before cuts.

Commissioner Skolnik said it was before cuts.

Chair Hardesty asked when the cuts were implemented, what was the effect on some of the bar graphs. If the budgets were cut, did the percentages increase?

Commissioner Skolnik said there was still a budgeted amount for Southern Nevada Correctional Center (SNCC). He said it was closed and thus would not have an impact. The other major budget cut was the closure of the Silver Springs Conservation Camp. The rest of the reductions NDOC did were in capital improvement and other non-operational issues.

Dr. Leone continued the PowerPoint discussion. He said the Facility Population -Actual vs. Budgeted., was at 93.2 overall. He asked Commissioner Skolnik if he anticipated decreases in population based upon decreases in budget.

Commissioner Skolnik said the funding levels for the inmate “drivens” were underfunded from the very beginning. He said some money saved in certain areas would assist them in those areas.

Chair Hardesty said as an example, part of the proposal was to close Pioche and Tonopah. Commissioner Skolnik replied it was in the budget recommendations for the coming biennium. Chair Hardesty said if the camps were closed, their capacity had to be shifted to other camps.

Commissioner Skolnik said the Three Lakes Valley Camp was under construction and added 350 beds to the system. He said it would absorb the population from the closed camps. Chair Hardesty said there would not be a dramatic shift in the actual and budgeted in the other camps.

Commissioner Skolnik said they anticipated a reduction in the minimum security population due to [Assembly Bill 510](#).

Commissioner Carpenter asked where the Nevada State Prison was on the chart. It was ranked at 102.02% in the Institutional Population-Actual vs. Budgeted. In the next slide, the Stewart Conservation Camp was shown at 145.28%. Commissioner Skolnik said when the Silver Springs Camp closed, the Department of Conservation requested that the NDOC boost the population in the Northern camps. He said it resulted in the large number. They provided the work crews for the Department of Conservation.

Dr. Leone next showed the number of programs completed in the NDOC. He said the charts reflected the starts and ends of the cycle of the programs.

James F. Austin, Council of State Governments, President, JFA Institute, said he wanted the Commission to link the information to the population drop. He said the flattening out of the prison population was the result of Assembly Bill 510. He said everything anticipated had happened. The program information was important because inmates received credit off their maximum or parole eligibility dates. He said if the Department “ramped up” the programs, it had a direct impact on the length of stay in prison.

Chair Hardesty said the ability of the Department to “ramp up” the programs was directly related to the amount of funding they had available. He said the more they cut, the less they were able to do. Dr. Austin said if programs were cut, they may actually lose money. Chair Hardesty said it was like paying for overtime instead of straight time.

Commissioner Siegel asked for the monthly totals from the previous year. Dr. Austin said he did not have them but would see if he could get them.

Dr. Leone moved to the Parole and Probation Population Trends slides. He said parole received numbers dropped slightly and parole completions dropped slightly also. There were slight upticks in probation received and probation releases. The revocation rates were within normal ranges. He said the Number of Offenders by Felony Category were level. There were no dramatic upturns in the felony categories.

Dr. Leone moved to questions proposed last month by the Commission. He said they were asked to examine burglary using the NOC numbers as opposed to NRS. He said the chart showed the different types of burglary that fit under the NRS 205.060 code. He said first-offense burglary had the bulk of the numbers, which was NOC code 00299. Dr. Leone said it was data from 2007. He said NOC codes 00299, 02002 and 02236 were the groups that comprised 95 percent of the burglaries statewide. He said just looking at the NRS 205.060 did not give a complete picture of the burglary problem in Nevada. He said the NOC codes provided finer detail.

Chair Hardesty asked if 53 percent of those convicted of burglary in 2007 were being shown as a first offense in the chart, [Exhibit C](#). He asked how many of those individuals had additional, concurrent or consecutive charges. Dr. Leone said using the NOC codes, the 00299 charge indicated it was a first offense and was their primary charge. Chair Hardesty asked if it was possible to receive a breakdown of the 505 persons under 00299 to determine how many had other charges. Dr. Leone said they had information on past criminal history.

Dr. Siegel asked if it were typical of felonies to distinguish first offense from all other versions. Dr. Leone said it was typical when looking at NOC codes.

Dr. Austin said he thought the question was whether it was typical for a penal code to list the crime as the first offense. He said it was unusual. He asked the Commission if it represented the first burglary.

Commissioner Kohn said NRS designated a difference between a first-offense burglary and second offense burglary in terms of eligibility for probation. He added it was not typical in most states.

Dr. Leone next showed slides of the NOC codes for burglary. The first slide was background of offenders by NOC. He said the three NOC codes were relatively low-level burglaries. The next chart showed there were few juvenile commitments or prior incarcerations. Dr. Austin interjected that those were state prison incarcerations. He said large numbers received plea bargains.

Dr. Leone moved on to the second question the Commission asked concerning court filings. He said there were dramatic shifts last month, and they wanted to know what the shifts represented. He said they received numbers from the Administrative Office of the Courts (AOC). He said the next chart showed court trends in terms of felony and gross misdemeanor.

Commissioner Siegel said Washoe County had a 2 to 1 felony ratio and the Eighth Judicial District was more than a 4 to 1 felony to gross misdemeanors ratio. He asked if there was anything significant in those numbers. Dr. Leone said there was nothing significant as far as the operations of the courts. He said it mimicked the crime patterns in each of the districts. He asked Commissioner Kohn if he agreed.

Commissioner Kohn said he thought the numbers were accurate, but he was surprised by them. He said they estimated between ten and twelve percent of cases going to district court were gross misdemeanors. He said he was surprised Washoe had 33% gross misdemeanors. He could not explain those figures. The Clark County figures were probably correct.

Chair Hardesty said the reports were provided to the AOC by the Second Judicial District Court. He said the numbers required further evaluation. He said it was one of the areas in the statistical information which required examination and further study.

Commissioner Kohn said he was interested to know which were common law burglaries versus technical burglaries. He said only two of the burglaries had weapons and two had gang enhancements. Commissioner Kohn said he was curious to look at the issue in order to see which were technical burglaries and which were the more traditional burglary. He said he could look at all the cases through Blackstone as they had done with the other cases. He asked Dr. Leone if there was a way to get that information.

Dr. Leone said Blackstone was a very powerful system. He said the numbers were from 2007. He said Blackstone was being phased out and 2008 might not have the same numbers or data available because the new system may not have the same data capabilities as Blackstone. He said it might be possible to pull a sample from 2007 and see what they find.

Chair Hardesty said the new system should be enhanced beyond Blackstone. He said it was worthwhile to explore further. He also inquired about minimal or no financial impact and assumed it was based upon the absence of any restitution order and the judgment of conviction. Chair Hardesty asked if that was a correct assumption.

Dr. Leone said the information was from Parole and Probation data but, since the last two were conspiracy and attempt, it might weigh heavily into that finding because he did not think they actually ever did anything.

Commissioner Kohn said his concern was the burglary cases in Clark County where someone entered a building to cash a check that was not theirs and they were arrested. He said they were charged with forgery, theft and burglary. The burglary charge was the highest. He said if the check was not cashed, there would be no restitution or loss.

Dr. Austin said he looked at a lot of the cases, and Commissioner Kohn's comments were correct. The minimal ratings were from the Parole and Probation database. He said the staff looked at the actual loss incurred by the victim of the crime.

Chair Hardesty stated of the 943 burglaries shown under financial impact in [Exhibit C](#), roughly 473 of those cases did not result in a financial impact. He said that was almost forty-five percent.

Dr. Austin said the vast majority of criminal cases had little or no financial impact to the victim. Chair Hardesty asked if all 943 cases resulted in incarceration. Dr. Austin said no, the

chart represented the entire number of cases from Parole and Probation and approximately thirty-five percent resulted in incarceration.

Chair Hardesty returned to the 943 cases and asked how many received probation and how many received prison time. Dr. Leone said he did not have those figures. He said he would find that information and also the information concerning those who had moderate or no financial impact. Chair Hardesty said it was important information to know. The assumption that no financial-impact burglaries resulted in prison terms should not be made; they likely received probation. He wanted the breakdown of those numbers.

Dr. Leone referred to the chart in [Exhibit C](#), Length of Probation, and assumed the people at the bottom of the chart coded as 999 did not receive probation and might be the group that went to prison.

Chair Hardesty said if that were true, then approximately 445 people went to prison. That put the incarceration rate for burglary at almost fifty percent. He said it was vastly in excess of the thirty-three percent incarceration rate.

Dr. Austin said it would be higher if those numbers were correct and they needed to verify the numbers.

Dr. Leone continued the discussion including Court Trends. He said the numbers were relatively stable. He said the large drop-off last month was from counties that had not reported. He received the reports, and it flattened the curve and reflected stable court trends.

Chair Hardesty said the conclusion was criminal filings in Nevada were flat. Dr. Leone replied that was correct. The next topic was Dr. Austin's work.

Dr. Austin discussed four specific questions the Commission asked them to study. He said one question looked at the case studies and the amount of harm committed by people put on probation. Another area was the Class Es and programs run by the Department.

Chair Hardesty said he wanted to make a connection between court filings and future planning by the Commission and the Legislature. He asked if it was true felony filings were flat through June 2008, and also assuming time to disposition in Washoe and Clark Counties was between 120 days and one and one-half years, could they project prison population would also be flat.

Dr. Austin said the new projections his firm were contracted to do would be delivered on November 4, 2008. Historically, all the forecasts assumed a growing increase in prison admissions consistent with the demographics of the State and the historical trends. He said

A.B. 510 reforms were designed to reduce the length of stay and improve success on probation and parole. He said the projections probably changed downward to a certain degree if they assumed a flat intake. He said it was a big assumption. The trend Dr. Leone showed was very promising for the State. Historically the State was growing and a decline would be a big change.

Chair Hardesty said it deserved continued monitoring. He said there could be a significant trend in the courts and it was important for the AOC to have all the courts monitor this trend through December 31, 2008. They needed to be sure the past six months remained flat, which was his information from talking to court administrators around the State. He said the graphs in [Exhibit C](#) cut off in June 2008. He said in Clark County criminal filings may actually decline by 500 cases.

Dr. Austin said it was a well-established trend for 12 months.

Chair Hardesty wanted to add the next 6 month's statistics showing that the trend stayed the same with a slight decline. He assumed it was part of Dr. Austin's report and trusted it would be part of his consideration.

Dr. Austin said they would be showing an estimate that assumed a flat intake into the prison population. He said it would be one scenario; another would be more historical in nature. The one the State adopted depended upon people's comfort with those assumptions. He said there were two major assumptions: the intake and the Parole Board decision-making rate.

Chair Hardesty said there was another major assumption needing consideration: the incarceration rate. He said it would be very helpful to have the 2008 calendar year data to determine if the incarceration rate had changed from 33 percent to something significantly higher. He said if the population was flat, and the incarceration rate remained the same, it built strength in the assumption the numbers were declining.

Dr. Austin said Parole and Probation could supply the first six months of 2008; it would give his company 18 months of the disposition rates to see if they were moving at all.

Commissioner Curtis said he could supply the information for Dr. Austin. Chair Hardesty said it would be helpful for the Commission to make a connection between those three numbers. He said it also impacted other decisions, including funding.

Dr. Austin referred to the chart labeled "Severity of Crime to Victim Study," [Exhibit C](#). He said he assessed the direct loss to victims and the cost of imprisonment. He said there was a statistical error, and it should say 70% were crimes against persons or property. He said he did a random sample of 30 cases and studied the cases in detail to see the actual loss to the



victim and the prior record. The next slide showed the prison admission stream in 2007. The next slide recorded the level of financial loss to the victim. He said the majority of the crimes were rated as having minimal impact. He said it was 76 percent. The psychological or mental impact to the victim was also recorded. He said three-fourths had minor or no treatment required. He gave the national perspective and said the figures were totally consistent with those numbers. He said the median loss was approximately \$100.00.

Dr. Austin looked at a random thirty cases. He said the vast majority did not have a juvenile record, which was consistent with national data. Even though they had not been to state prison, most had felony and misdemeanor convictions with prior probations or jail sentences for similar crimes. He said he specifically reviewed several cases for the Commission.

Case 1 was one of the more serious crimes against persons. He said it was battery with substantial bodily harm. He said it was a biker confrontation that occurred at one of the casinos. The person, age 56, had a number of arrests for weapon-related offenses, murder, attempted murder and battery but was only convicted of one misdemeanor. He said there was no financial loss for the victim recorded because the shooting could not be tied to an individual victim. The man received a 12 to 30 month sentence. The cost to the State was between \$21,000 and \$50,000.

Case 2 was a robbery. A male offender went into an elderly couple's home. The victims identified the offender. He was charged with robbery and admitted taking personal property. The offender had four prior felonies, both violent and property, but had never been to prison. He received a 60 to 180 month sentence, and the cost will be between \$105,000 and \$315,000. He said that was prison costs and did not include parole costs.

Case 3 was a theft. It was a 38 year old woman with a previous felony conviction and three misdemeanors. She had been to jail but not to prison. No restitution was ordered. Her sentence was 12 to 60 months, and the cost will be \$21,000 to \$105,000.

Case 4 was attempted possession of stolen property. It was a warehouse theft for aluminum wire. The subject had been in prison three times before. He was sentenced to 12 to 30 months, and the cost to the State will be between \$21,000 and \$50,000.

Case 5 was a burglary. The person had been free for approximately 10 years. He had served three prison terms almost 30 years ago in Washington State. He was caught shoplifting. Because he was considered a habitual under the statutes, he received a 50 to 150 month sentence. The cost to the State will be \$105,000 to \$260,000.

Commissioner Siegel said the indication of the disproportional amount of money spent for incarceration for the property cases was pretty strong. He said there were two additional

elements. One of the elements left out was the construction budget. He said \$300 million dollars was spent in the last two years on prison construction. He said capital money was being spent. He also said all prisoners were not equal. He said the differences between men and women, twenty-year-old and sixty-year-old were extremely important. He said the issue of rationality in term of property crimes was something that had to be looked at.

Commissioner Curtis placed value on the fact a person is away from society and cannot victimize others.

Dr. Austin said he agreed with what Commissioner Curtis said, that by incapacitating the person it prevented crimes he otherwise would have committed. He said if they did something different, they had to have the capacity to manage them safely in the community. He said some of the people were very high risk. The bigger question was how long they should be incapacitated. Nevada had a low recidivism rate. He said it was an attempt to look at the costs of criminal justice.

Commissioner Curtis said there were other costs involved in the criminal justice system other than financial costs. He said there were social and cultural costs as well.

Dr. Austin said all the cases had tremendous variance in costs.

Commissioner Skolnik said that the costs indicated were somewhat misleading. He said there were fixed and variable costs. The fixed costs did not change with the release of three people. He said it just drove the cost per inmate up.

Dr. Austin said it was true for these three people, but that was 70% of the intake. It was representative of the big stream.

Commissioner Kohn said it was a difference in philosophy. He said Case 5 was someone who may not have needed the five-year sentence. He asked if there were a way to handle such a case with more community services. He asked if more treatment facilities, which were less expensive than prison, were better options for people with drug problems. He said the Commission needed to look at a number of different things. He said the cost of incarceration was incredibly grave.

Commissioner Curtis said he sometimes had to think more about the victim than society being victimized. He said in some cases there was an additional cost that was not financial.

Commissioner Kohn said Case 5 was a man who had been in prison thirty years ago. His current crime was a small theft. He said victimization affected everyone. People who hurt people belong in prison. Theft-related cases do not necessarily mean they should be put in

prison for five years. He said Nevada also had to think about some type of treatment other than prison.

Commissioner Curtis agreed Nevada was not doing a good job with treatment, counseling and interim steps.

Chair Hardesty said from the perspective of the judiciary, the judge who entered the sentence in Case 5 put a person who had been in prison thirty years ago and had not been incarcerated in the past ten years into a five-year minimum sentence under the small habitual criminal. He said the problem was that judges had few options or alternatives in considering what to do with that individual. He said what was needed were interim steps to deal with similar people instead of ratcheting it up to the most expensive step.

Commissioner Horsford had questions about some earlier slides. He said the only choices he heard was to lock them up or do not lock them up. He proposed the system take on resources within the system to address the needs based on what was coming into the prisons. He wanted to know about the cases relating to drug offenses. He asked about substance abuse treatment or mental health counseling within a facility that met those needs. Were there any examples of those types of strategies in other states?

Dr. Austin said Commissioner Horsford was referring to the 20% who were in prison for victimless crimes who were mostly drug and alcohol abusers. He said people who had committed crimes against property and victims had substance abuse and alcohol problems.

Commissioner Horsford said a victimless crime for drug and alcohol abuse was a place to find common ground for agreement. He asked who those people were and what type of offense had they committed.

Dr. Austin said they could do case studies if the Commission wanted them to do so.

Chair Hardesty said one of the concerns of the specialty court judges was that there were not enough resources to attack a number of those kinds of defendants early on. He said Category E felons were required to be granted probation in the first instance. However, there were over 290 Category E inmates in the prison system.

Commissioner Digesti commented on Case 5. He said he was trying to understand why the individual received a 60 to 120 month sentence. He said the person was charged with a Category B burglary and a habitual criminal enhancement. He said the prior record indicated he had four felonies and sixteen misdemeanor convictions from 30 years prior. He said it seemed the individual was being punished by the state of Nevada for crimes committed 30 years ago in the state of Washington.

Commissioner Digesti discussed Profile of Prison Admissions 20. He said the category of victimless crimes of approximately 23% dealt mostly with drugs and alcohol. He assumed the alcohol convictions were third-time DUI convictions where there was no death or substantial bodily injury. He asked if it was possible to know how many of the drug convictions entailed trafficking charges where there was mandatory prison. He said there was a difference between trafficking and drug sales. He asked if a change was needed in the mandatory prison sentence for trafficking offenses and was there an alternative for third-time DUI offenders besides sending them to prison. He asked if the figures could be broken down into more detailed information. He said money might be better invested in helping individuals as opposed to sending them to prison.

Dr. Austin said the information could be broken down for more detail.

Commissioner Mallory agreed with Commissioner Horsford. He said victimless crimes did not count the wives, children and the rest of society affected by people with alcohol or drug addictions who were doing further harm to the fabric of society because of their addictions. He said one of government's primary obligations was public safety. Alternative programs were needed, but we cannot ignore the responsibility to address the problems by saying these people do not need to be removed from society. He said they did need to be removed, and the question was whether it was done through special programs, training or some other manner. He said they were not poor victimless criminals, and they cause many problems by virtue of their conduct.

Commissioner Curtis said some information was skewed on Case 5. He had the PSI report for that person. In 2001, he was on probation, was revoked and was sent back to prison to do the remainder of his time. He had three prison incarcerations, eight county jail incarcerations and was convicted of sixteen misdemeanors, one gross misdemeanor and four felonies. Commissioner Curtis said the man had not been out of prison for 10 years, he had been in the system.

Dr. Austin continued his report with Class Es in Prison. The DOC did an audit of who was in the system as Class Es. There were approximately 200 in the prison system at a cost of \$4.2 million per year. He said they were mostly men and were there for possession of controlled substance first offense and under the influence of controlled substance. The majority were there for probation violations. He said 21% were listed as a new commitment. The DOC was auditing those cases to see if it was a coding problem.

Commissioner Horsford asked what the types of technical violations were. He said constituents told him it could be as simple as not paying their \$30 supervision fee. He asked what type of technical violations caused a Category E to be returned to prison.

Dr. Austin said they did not know. He said the typical technical violator had multiple violations of the probation terms. The major reasons were failure to report, testing “dirty” for drugs and arrested on a minor or misdemeanor crime. He said very few cases had one single violation.

Commissioner Curtis said if someone did not pay their restitution fees, it was not a cause to return them to prison.

Commissioner Horsford requested a report showing the percentages for the types of parole or probation technical violations occurring.

Dr. Austin asked if the study was for the Class Es only. He said they had done another study a year ago which included everybody.

Chair Hardesty said it would be worthwhile to have the percentages on the 200 Class Es. He said the question was whether the system could have accomplished a different result with interim measures costing less money. He asked Commissioner Skolnik for an approximate variable cost for incarceration of the Class Es.

Commissioner Skolnik said they would be in minimum security, and the cost was approximately \$17 a day.

Dr. Austin said the cost estimates were based on the \$21,000 a year average cost.

Chair Hardesty asked for follow-up on the Class E issue, a breakdown on the probation violations sending them to prison and an understanding of the 21% listed as new commitments.

Commissioner Mallory asked for the jurisdiction where these occur. He said his experience was someone was never revoked for failure to pay fees.

Chair Hardesty said he did not see people being sent back to prison for failure to pay fees or failure to pay restitution. He said with Category E offenders, there were repeat usages, dirty tests or absconders. The problem was the judicial system and probation department lacked interim measures allowing supervision of these people in some form of different setting than prison. He said the absence of interim measures sent the Category Es to prison. He said \$17 a day for 200 people was \$3,400 a day.

Commissioner Kohn said in the South very few people violated for not paying fees. However he disagreed in terms of not paying restitution. He said there were three to five district court judges willing to put people in prison, not necessarily E felons, for failure to stay in contact

with the parole and probation department. He said a lack of communication between defendants and the Department of Parole and Probation was the reason. He said interim sanctions did not exist in the South.

Commissioner Curtis said they would research the amount of revocations and types. He added there were quite a few openings in the South for officers.

Commissioner Horsford asked for a definition for testing “dirty,” and if it included alcohol. He said he had seen a person on parole and probation supervision for an offense they committed ten years ago who had answered a question by saying he had a beer, and his probation status was revoked.

Chair Hardesty said it was very hard for him to believe that occurred. He asked for the name of the person so they could be tracked in the system to see if there was more involved in the revocation. He reiterated he would be very surprised if that occurred. He said most conditions of probation included a no drug or alcohol use clause.

Commissioner Salling said from the parole board’s perspective on the issue of technical violations, substance abuse was at the root of all the problems. She said they worked diligently with the offenders. When the offenders quit reporting it was usually alcohol or drug abuse that started the problems. She said she rarely saw a district court judge revoke anyone for fees or restitution.

Chair Hardesty said a presentation was scheduled today for a program he would like to see established in Nevada.

Dr. Austin continued his discussion on Category E felons. He said the DOC information showed they were serving 30 to 48 month maximum sentences. He asked if it was the judge on the revocation giving the 30 to 48 month sentence.

Chair Hardesty said the judge in the original sentence gave 12 to 30 months. The defendant of a Category E offense had mandatory probation and tested “dirty” and now was doing prison for 12 to 30 months. He said with A.B. 510 they probably were in prison for about 7 months, then they went to the Board and now they were supervised. He asked if it would have been less expensive to deal with this subject beginning earlier on. He wanted answers concerning GPS tracking, alternative housing and more intensive supervision with these people.

Dr. Austin wanted to report on the programs offered in the DOC. He said the Legislative Counsel Bureau had an excellent study auditing the DOC’s programs. He said the members could look at it on LCB’s website. He showed some of the items covered by LCB: Reporting

Structure, Overall Program Budget, Substance Abuse, General Counseling, Program Type and Education. He said there were waiting lists to get into any educational program. He discussed slides listing the GED certificates and diplomas given per year and the Vocational Programs.

Dr. Austin said one of things the LCB auditors pointed out was that a priority system needed to be developed as to who got into the programs. Under the Recommendations in [Exhibit C](#), the first was the priority system, second was developing policies and procedures for required assessments and lastly developing ways to evaluate the programs. Dr. Austin said the assessment process and prioritizations were important.

Dr. Austin talked about Probation and Parole. He spent time with the Division of Parole and Probation. He said Chair Hardesty had requested a recommendation on the service gaps. He said he did not know what the service gaps were in the State. He said there was no good standardized assessment processes. The National Council on Crime and Delinquency (NCCD) was looking at the issue, as was his organization. He said Parole and Probation did not have a standardized, centralized needs assessment capacity. He said it made it difficult estimating what was needed. Two of the major problems in terms of offenders were their economic conditions and the cost of supervision. He said it cost the people money to get supervised and to get services. He said there were a number of people not being released because they did not have an approved place to live. He showed a slide listing the costs of supervision, [Exhibit C](#).

Commissioner Horsford asked what happened when the offender was unable to pay the fees. Dr. Austin said they did not get counseling services or some mandated service.

Chair Hardesty said the failure to obtain counseling was viewed as a basis for revocation. The inability to pay for it can put a person in prison. Commissioners Kohn and Digesti agreed.

Commissioner Salling agreed with Dr. Austin that it had a snowball effect. She said it left the parole and probation officer with no alternatives.

Dr. Austin said Parole and Probation needed to be rebuilt. He said the resources and staffing needed enhancing.

Chair Hardesty asked Commissioner Curtis if the absence of resources in that area ended up costing the State in other areas. Commissioner Curtis replied yes, absolutely.

Dr. Austin profiled First Time Prison Admissions. He said the money was spent in another department. The State spent money on people going to prison, and they needed to be diverted to parole and probation.

Commissioner Horsford said none of the recommendations included treatment. He asked where treatment was incorporated into the strategy. He said it had to be at the centerpiece of the reform.

Dr. Austin tried to find what services were needed but not met. He said a lack of good assessment of what was really needed made it impossible. He said they could guess, but the first thing needing fixing was the assessment process. He said he could not tell what was missing in the State. Parole and Probation reports said services were available, but he asked if there was money to pay for them.

Commissioner Horsford said the Interim Committee on Health Care had a subcommittee on substance abuse treatment for the entire State. He said Nevada ranked 50th in funding for substance abuse treatment. He disagreed with Dr. Austin that if the funding was available, the services were available. He said there were waiting lists of 100s of people, not offenders, with funding who cannot get treated. He said it did not need to be restudied, but pull the existing information and include it in the strategies for the reforms that needed to happen in prison. He said they had to build resources for substance abuse treatment as part of the recommendations.

Commissioner Kohn said he had his social workers check throughout Clark County as to how many beds there were for live-in alcohol and drug treatment. He said there were less than 200 beds available. He did not know how many beds were necessary, but 200 was a ridiculous number in a city of 2 million people. He said judges and district attorneys felt much more comfortable about releasing them into society if there were locked treatment facilities. He said it did not exist throughout the State.

Dr. Austin said his point was until there was an assessment process in place, if the State gave money there was an extremely high probability the money was wasted. He said they would put wrong or inappropriate people in those beds. The assessment process must first be in place. He said he did not understand a state that said "give me the money first, and then I'll figure out where it needs to go." He said that seemed very wasteful and inappropriate.

Commissioner Horsford said the problem had already been identified and studied. He did not disagree about the need for an assessment tool; he disagreed it should take a year to implement. He said they already knew, based on prior studies, 70 percent of the people in corrections had some type of substance abuse problem. He said without the services to treat them they cannot expect the numbers to decline. He said Dr. Austin said if the goal was to



reduce the number of incarcerations and transfer them to Parole & Probation and utilize the money in the system it cannot be obtained without the strategies in place which must include substance abuse treatment. He said it was a matter of putting all of the strategies in place and not just some of them.

Chair Hardesty wanted to clarify the issue of assessment and the assessment instrument. He asked what Dr. Austin meant by that. He said almost everyone placed on probation was required to have a substance abuse evaluation as a condition of probation. It was an assessment of the individual and what their needs were and it existed in almost every probationary case. He said he assumed Dr. Austin's assessment instrument was matching up those individuals with those profiles with some program.

Dr. Austin said the assessment process, which was part of the problem, was done privately and not by a State agency. He said the offender paid for it and because of that, it was never done. He said the data he looked for was how many people needed residential treatment, needed general counseling or needed detox. He said nobody had those numbers. He said until they had those numbers, they could not estimate what was needed. The assessment process he suggested was something controlled and paid for by the State and was professional and standardized.

Commissioner Kohn said he was not sure he agreed with Dr. Austin. He said the drug court in the 8th Judicial and the specialty courts did an excellent job of assessing. He said the problem was they did not have places to put people outside of a drug court program. He said in the mental health court, the biggest problem was having the resources available. Housing was also a huge problem. He said the assessments were made and the problem was there was nowhere to go after they were made.

Dr. Austin said there were no drug assessments on his data system. He said it did not exist. If there were good professional assessments on people not going to prison, he could not find them. He said that was the group that needed to be assessed.

Commissioner Kohn said that was also the group that may fail, the Category E felons discussed earlier. He asked Dr. Austin if he spoke to the people in Clark County who did the assessments.

Dr. Austin said he had not talked to them. He said he had enough difficulty getting the court data from Clark County. He said people asked for data and it mysteriously disappeared.

Commissioner Kohn said he was not saying it did exist or was easily obtained. He said it needed further examination.

Chair Hardesty said there were certainly evaluations for Category E felons. He said they were put on probation and a condition of probation required an evaluation. He said the majority had an evaluation and if not, the probation officer would insist until they did get one. He said if there was no evaluation, it could become the subject of why they were revoked. He said he would be surprised if many of the Category Es were revoked for absence of a drug treatment evaluation. He said Dr. Austin was correct that people being sentenced to prison, not probation violators, did not have a drug treatment evaluation. He said the 23% going to prison for drug-related crimes did not have evaluations. He asked Dr. Austin if that was the type of evaluation he was referring to or was it a different assessment.

Dr. Austin said he was referring to an assessment that stated the person's programmatic needs and what type of services they required. He wanted a very clear statement.

Chair Hardesty said the people in prison did not have that sort of assessment. Dr. Austin said the recommendation would solve that because everyone going to prison would have gone through the specialists that did the assessments. He said the Director's job then was to get them lined up.

Chair Hardesty asked if what he was saying was in all cases there would be some institutionalized assessment of the individual and their programmatic needs. Dr. Austin replied correct. Chair Hardesty said with respect to certain felons, that existed, but with a number of others it did not exist.

Commissioner Kohn said that created another problem. He said if the assessment was done once they were on the way to State prison, they have already been sentenced and there was nothing further to do.

Dr. Austin said the assessment would be part of the PSI. The assessment was done prior to sentencing.

Chair Hardesty said it was all related to the data issue. He said the person's birth date never changed from the time they entered the system. He said when the data was first collected, repetition needed to be avoided throughout the process. The data collection should be the same. He said the assessment could be used by the DOC and P & P.

Dr. Austin said it was a seamless system starting at the PSI, standardized assessment on risk and services needs, whether going to probation or prison, the assessment followed all the way through.

Chair Hardesty said he thought it was a different kind of thing than what Senator Horsford was discussing. He said they knew there was a huge demand for unmet needs. Dr. Austin was

discussing particularizing the needs of the individual entering the system. He said Dr. Austin was not talking about doing another study that reconfirmed there were unmet needs.

Commissioner Horsford asked who should be responsible for initiating the assessment tool and the development of its implementation. He said it was similar to what was happening in the public school system. He said there was supposed to be a longitudinal tracking of every student in the system. He said it was implemented four years ago and was still no further along. He did not want to wait to implement a tool when he knew there was a lack of capacity issues on treatment. He did not disagree with the strategy, but disagreed with waiting to implement.

Chair Hardesty said the assessment was in P&P. He said it was a time when the person was waiting an entry of judgment and assessment was critical. He said it would improve the ability of P & P to make recommendations and the judge in making sentencing decisions.

Commissioner Salling said in the 1990's they had a similar program. She said it was only in Washoe and Clark counties. There were certified counselors who did the evaluations which became part of the PSI. If the offender did not go to prison, they worked with the Division and with certified and mental health counselors. She said it was not re-funded at the next legislative session. She said the program did not provide for any services in the rural counties.

Chair Hardesty asked Dr. Austin if he had a model program in mind for the assessment program. He asked if the recommendation was forming a department or enhanced funding and support for P & P to perform the function.

Dr. Austin said it should be placed in P & P. He recommended State counselor positions. He said they needed about 25 staff to cover all P & P presentence investigations and do a standardized assessment. He said it would cost the State about \$1.6 million.

Chair Hardesty said the Commission identified a potential savings of \$2 million in the prison budget by discontinuing overtime. He said there were funds, but not much as the prison was already underfunded. He said the Commission needed to look at what was good policy. He said the good policy was to do the assessments.

Commissioner Skolnik said the individuals being identified were in prison and they were already sentenced, and funding for staff to supervise them needed to continue. He said if the recommendations were implemented going forward, that would be great. He said currently they did not have adequate beds; the budget crisis caused closure of facilities, and he would be very distressed to see funds taken from the DOC to fund anything other than the department.

Dr. Austin summed up the information concerning First Time Prison Admissions. He said half the people coming to prison each year were there for the first time in prison. Most had prior misdemeanor and jail sentences. A significant number had prior felony convictions or had been on probation. He said about half the people on the P & P guidelines had 18% scoring for probation, but they went to prison. He said a third were on the borderline; they could go to probation or prison. He referred to the charts shown in [Exhibit C](#).

Chair Hardesty said the instrument being discussed was a probation instrument that was still under study for revisions. Dr. Austin said his information was based on 2007 statistics. Chair Hardesty said the instrument had not been revised since 1995. He said under the old instrument, 592 people were in the midrange. If they got a 55 to 64 score, the division recommended probation.

Dr. Austin said the score had to be 65 and above and they might recommend probation. He said they were sent to prison. The borderline group could go either way. Chair Hardesty said it depended on the nature of the crime, or whether there were victims. Dr. Austin said they were scored on a variety of factors. He said it cost between \$88 million and \$250 million to incarcerate 592 people. He said a large number of the people could have had probation.

Chair Hardesty asked if the numbers supported the argument that judges were put in the default position of sending people to prison. Dr. Austin said the people had histories of being arrested, misdemeanor convictions and sentenced to jail. He said the judges and prosecutors were saying it was time to send them to prison.

Commissioner Horsford said this last point illustrated the need to bring the information forward. He wondered how to educate the courts about this option, and was there anything procedurally that could be done through the courts to provide additional review. He asked if there was a way for the court to understand the budget implication of their decision and was there another step, through the courts, that recommended further review rather than determinations being made at the initial level.

Chair Hardesty said the problem for a district court judge was someone who was borderline, and there were very few options available to the court. The only option for the court was placing the individual on probation with a series of conditions. He said the court lacked confidence in P & P to carry out the conditions due to lack of resources available to P & P. A judge considered the impact of sending the person to prison, and they did not have any alternatives to consider other than specialty court. He gave an example of people who had mental health problems and were in the borderline category. He said they committed a number of offenses and had little mental health treatment. He said judges were not willing to take a chance on borderline individuals who had little or no supervision, no treatment

program, no money and no mental health capability. The judge cannot put these people on the streets.

Commissioner Horsford said Chair Hardesty provided a good explanation. He said from a budgeting standpoint, the money needed was not in the system. Mental health and substance abuse were underfunded. He said the Commission was suggesting intermediate steps providing treatment or additional supervision.

Chair Hardesty said the Commission began looking for dollars within the system that could be moved to other alternatives. He said he learned that was a false assumption. The false assumption was there were adequate dollars in the system. He said dollars from an underfunded system cannot be taken and moved to another part of an underfunded system. He said that was the situation in the prison system today. At least five of the major prisons in the State were over capacity. Money could be saved by using some of the proposed systems, but money cannot be taken from an already underfunded system and expect to save money. He said alternative systems did not provide dollar for dollar savings.

Commissioner Horsford agreed it was not a dollar for dollar savings. He said the current corrections budget may be underfunded, but everything in state government was underfunded. He said the Commission cannot squelch the strategies that would reduce spending in the future and that could result in cost savings along the way. He said ultimately the Commission needed to provide specific examples for the Legislature to follow.

Chair Hardesty said small steps were required. He said if the State had \$1.6 million for a uniform assessment process, it would save money in the future. It was an investment worth making.

Commissioner Salling agreed with everything being said. She cautioned the Commission to be prepared to give the suggestions time to work. She said the last time this was done, by the next legislative session it had not diverted enough people, and the program was discarded. She said 10 or 15 years later the same program was being proposed. She said it was a great idea but do not tie it to dollar for dollar.

Chair Hardesty opened the discussion on Agenda Item VI. He said the topic dealt with the statistical data on which some of the decisions were being based.

Captain Philip K. O'Neill, Chief, Division of Records and Technology, Department of Public Safety, said he had been invited to discuss the Nevada Offense Codes (NOC) and other items related to criminal justice data collection. He introduced Mr. Ron Titus and Mr. Martin Overstreet.

Ron Titus, Director, Administrative Office of the Courts, said his discussion concerned the sharing of data across various entities. He was discussing NOC codes today. He said NOC was a process of charges or offenses as a person went through the courts. He said the initial NOC was assigned by local law enforcement ([Exhibit D](#)). There were approximately 30 local law enforcement agencies throughout the State. He said the NOCs were sent to the criminal history repository and the district attorneys. The criminal history repository was the only electronic process currently. The district attorneys use the NRS codes. He said NOC codes were assigned as needed. NOC codes changed and did not always match. Mr. Titus said they realized the NOC codes needed standardization. They needed to be organized sensibly and be accessible to everyone. He said they partnered with the Criminal History Repository. They had considered creating a penal code. He said it was easier to correct the deficiencies of the NOC code. He said the ultimate goal was that once data was entered, it was replicated after that. He said it was not happening at the felony and gross misdemeanor level. Mr. Titus said Mr. Overstreet would continue the presentation.

Martin Overstreet, Teamworks Consulting, said he had a contract with the AOC to work on the NOC code project. He said he had to make sure they had something that worked for everyone, not just law enforcement and the Department of Public Safety but also prosecutors and courts. He said they asked if the existing NOC code table was usable and were told it was not. He said no court or prosecuting office used the NOC codes in their systems. He said there were 13,000 NOC codes of which almost 3,000 were inactivated but still in the tables for historical reasons. He said there was no organization of the NOC codes. He said it was difficult to find the crimes. There was no formal procedure to maintain codes. He said approximately 25% of the NOC codes did not need to be there because they were already entered in some other form, or the NRS had changed from year to year. He added another 10% of the codes were wrong and could not be supported by NRS. He said the goal was to eliminate all the inaccuracies. He said the code only had a 50-character description to describe a crime. They assembled a group of 100 people to discuss and make sure the redesigned NOC code met everyone's needs. He said they requested an intelligent code. They wanted to provide adequate descriptions for crimes, eliminate duplicate and invalid existing entries and cite all statutes that differentiate crime. He said they built in backwards compatibility. The new model needed to be usable for everyone.

Mr. Overstreet reviewed the 11-character intelligent code. He said it was broken into six different components. Each section of the code was designed to provide a separate piece of intelligence into the code. He said the new NOC model had approximately 150 NOCs that use the words first offense or second offense. He continued the power Point -Presentation showing how the codes operated, [Exhibit D](#).

Commissioner Mallory asked for clarification in order to comprehend what was occurring. He asked why a NOC code was needed as opposed to the statute numbers existing in the NRS. He asked if it was in order to communicate with the federal system.

Mr. Titus said the reason is so the law enforcement system can communicate with the D.A., the district court, the DOC, P & P and the Criminal History Repository. He said unless there was a standard representation for the crimes, there could not be an integrated system.

Commissioner Mallory asked why the NRS code sections with subparts were insufficient. He said he had prosecuted in Nevada for 15 years and had never used a NOC code.

Mr. Titus asked if he ever wanted to communicate electronically with the courts, sheriff's department or the Criminal History Repository. He said they could not match the NRS electronically. Commissioner Mallory said if he entered NRS 200.030, a homicide, and every county used the same NRS how would it be different from NOC codes?

Mr. Overstreet asked if he was discussing first or second degree homicide. He said the NRS was not adequately structured to provide the information. Commissioner Mallory asked if it was easier to structure the NRS than to add a wholly different language. Mr. Overstreet said it required that the Legislature design a codifying system for the NRS. Commissioner Mallory said it just gave slightly longer numbers to the NRS. Mr. Overstreet replied it was building intelligence into the number. He said the NRS did not have any intelligence in terms of finding the crime.

Mr. Titus said they considered going to the Legislature and the LCB and asking if they could create a penal code. The research showed it was easier to standardize the crimes. He said once the number was entered, there were standard definitions. He said the district attorneys agreed with them.

Commissioner Mallory asked if there were states with a penal code that was the same as their NOC code that functions well among all the principals.

Chair Hardesty asked the expense involved in the development of the NOC codes.

Mr. Titus said the expense was a basic part of standardizing. He said he did not know the exact dollar amount. He said the AOC had borne the majority of the development of the codes.

Chair Hardesty asked what was involved in realigning the criminal code.

Mr. Titus said he assumed that was a major task which was a lot more costly and time consuming than what they had done with the NOC codes.

Commissioner Mallory said he was in Georgia in the 1980s when it switched criminal codes to another group of numbers and there was little difficulty.

Chair Hardesty asked Mr. Titus the status of the project; was it completed. Mr. Titus said the basic descriptions were completed.

Chair Hardesty asked if the conversation to the 11-digit NOC code had occurred. Mr. Titus said it was a large ongoing process. He said his court system was converting to it. He said most of the cost in the system was expanding the field from 5 digits to 11 digits.

Chair Hardesty was worried about the existing problems with entries in the existing NOC codes and entry problems with the correct statutes. He imagined there would be significant problems with the entries into this design. The system seemed so complicated. He said when the district attorney filed a complaint, they charged a multitude of NRS statutes. He asked if it would make sense to charge them with one crime describing one statutory violation.

Commissioner Kohn said criminal statutes were added every two years. He said the codes did not always flow. It might be time to have a real penal code where things were proportional to the next crime. He said Nevada's complaints were more complicated than some other states. He said it was because they had to refer to three or four different codes. He suggested putting together a committee or bringing it to the Legislature to revamp the NRS and make a penal code. He asked if it was a possibility.

Mr. Titus said they considered that earlier. He said it was decided revamping the NOC codes was a simpler and quicker way to proceed. The systems would still have to be modified to accept the new penal code. He said people assigning the NOC codes would know what they meant.

Commissioner Kohn said when different systems tried to integrate in Clark County, it never worked. He said everyone was "crashing" right now. His concern was the system worked between a few systems, but statewide there would be incompatibility.

Mr. Titus said they had representatives from almost every county, district attorneys, law enforcement and public safety working on the problem.

Chair Hardesty said he doubted anybody considered the prospect of revising the criminal code.



Mr. Titus said they considered it two or three years ago, but there was nowhere to take it.

Commissioner Miller asked if the new proposed system was going to have less NOC codes than the current one that was very confusing with over 13,000 NOCs.

Mr. Overstreet said currently there were about 4,800 NOCs. He said they believed they had addressed all of the enhancements, and attempts and conspiracies that were likely to be charged. He said they eliminated duplicate records and erroneous records.

Commissioner Miller asked if they had set up a meeting with Sheriffs and Chiefs. He asked if the new system had been discussed.

Mr. Overstreet said it was not a system; it was a model that contained a list of crimes. He said everyone had to have their own systems to do their work. He said they were not proposing a new system. They were proposing a model of the common list of crimes.

Chair Hardesty asked if the list totaled 4,800 prospective crimes.

Mr. Overstreet hoped a penal code would eventually happen. However, in order to move forward with electronic sharing of data in order to enhance the outcome of the system, so statistics were accurately captured, and the flow occurred without duplicating data, the collective group decided they could not wait for the Legislature to realign the codes. He said structuring a penal code took a lot of work to write.

Commissioner Siegel said he wanted to reinforce the idea of the possibility of the larger penal code project. He said the Commission might want to recommend that sort of thing to the Legislature. He said the Commission would want to identify certain inconsistencies, disproportional and irrational elements in the existing criminal statutes. He said gender issues 25 years ago in the NRS were reformed by LCB and certain committees.

Mr. Titus said they had taken all the crimes in the NRS and reorganized them into the NOC code. He said it did not eliminate unnecessary crimes or classify them. He said reorganizing the NRS would eliminate them.

Chair Hardesty said the organization of the crimes could be renumbered as an NRS penal code. He said it seemed worthwhile to have more information. He suggested Mr. Titus, Mr. Overstreet and Captain O'Neill visit with their colleagues and present an update at the next meeting. He said the existing NOC codes were causing some wild and curious statistics that caused the Commission to raise questions about their validity. He said they knew it needed improvement. His concern was the best steps for the State should be taken even if it was difficult or time consuming. He asked if in the long term it would be better to revise the code.

He asked what the pros and cons were of revising the penal code and that the Commission had not vetted the pros and cons.

Mr. Titus said Chair Hardesty was correct. He said they did not want to force a very technical framework on the NRS. He said they were approached so information could be shared with law enforcement and be electronically forwarded to the district attorney and the courts. He said without a standardized format, NRS, penal code or NOC, integrated justice will not happen. He said one of the major problems was maintaining it. He said they did not want to put a technical constraint on the Legislature.

Chair Hardesty said he wanted to know the pros and cons of shifting to a revised penal code.

Commissioner Flynn said there was great difficulty in integrating all the different systems and the real challenge was getting everybody communicating on the same wavelength.

Chair Hardesty said if everyone operated from the same statute, it would be a good starting point. Commissioner Flynn agreed. Chair Hardesty deferred the presentation to a future date.

Captain O'Neill asked for input from the Attorney General's Office and LCB Legal. He invited the members of the Commission to a presentation with the FBI of a National Data Exchange Program on November 6, 2008.

Chair Hardesty opened the afternoon session of the Commission. Fourteen members were present. Commissioners Amodei, Farley and Herndon were absent. Chair Hardesty said he planned to bring forward some of the items on the Agenda for voting.

Commissioner Flynn said there were 8 or 9 people present from Las Vegas Metro and the Clark County District Attorney's Office to comment on the matters involving habitual criminals and biological evidence.

Chair Hardesty said the first item to discuss was the biological evidence draft. He asked Commissioner Kohn to explain the status of that draft.

Commissioner Kohn said he spoke to people from Metro, The Rocky Mountain Innocence Project, William S. Boyd School of Law Professor Katherine R. Kruse and Lori Teicher from the Federal Prosecuting Attorney's Office.

Commissioner Flynn said Linda Krueger, Director, Metro Crime Lab, Sergeant Cheryl Hooten and Captain Kurt Williams, Commander of the Criminalist Bureau were present. Linda Krueger, Director, Las Vegas Metro Forensic Laboratory, noted her comments were in reference to a memorandum to the Advisory Commission on the Administration of Justice

from the Thomas & Mack Legal Clinic ([Exhibit E](#)). She said the laboratory reviewed the five items listed in Appendix A. Some of the issues regarding the proposals were very limited. The discussion on what biological evidence meant was acceptable. The changes proposed caused some concern. She said the issue was the mechanism for maintaining the evidence as well as the amount of space needed for retaining large items. She said suggestions for keeping more evidence than was currently maintained in the evidence vault were troubling. The current vault had 84,000 square feet of storage in three buildings. The current inventory consisted of 783,737 items. The oldest evidence was from 1958. Their concern was the increased amount of storage capacity for all the law enforcement agencies in the State. The Metro Lab provided analysis capacity for all the counties in the southern half of the State, and Washoe County provided DNA analysis for the counties in the North. The proposed legislation increased the items of evidence that had to be maintained because it consisted of all felonies rather than limited felonies. She said the mechanism for finding out how to dispose of the evidence was also a concern.

Commissioner Kohn said he understood her concern about retaining evidence from any felony. He asked if there were a way to limit it to include the type of felonies that involved violence where DNA evidence was normally kept.

Ms. Krueger said the statute could be structured in that way, but it was not the case currently. She said the Metro Forensic Laboratory analyzed a number of burglaries in the last quarter.

Commissioner Kohn asked Ms. Krueger how she would limit the statute. She replied she would limit it to homicides and sexual offenses. She said if the Commission wanted to increase it to any violent felony, they could add language to increase the named felonies and limit the number of crimes to which the statute applied.

Katherine R. Kruse, Professor, William S. Boyd School of Law, said their concern on preservation of evidence was that DNA was an ever-expanding world of technology. She said advancements in testing DNA found that more and more physical evidence can be tested. She said if the evidence was not kept, then it could not be used to correct mistakes made in convictions of people who were not guilty of the crime. If technology continued to advance there were many more areas suitable for testing. She suggested a uniform destruction policy might be initiated. They did not want to pass a procedure that encouraged destruction of evidence more than what the current practices were. She suggested formation of a subcommittee or task force to gather more information before recommending a uniform policy throughout the State.

Chair Hardesty asked what was the length of time Metro retained biological evidence.

Ms. Krueger said the laboratory maintained extracts from the DNA analysis for years. She said currently they were not destroying any of the evidence. The evidence vault had a standardized process for the destruction of evidence. The primary detective on the case was responsible for filing the paperwork allowing the destruction of the evidence. She said after the paperwork was filed, an additional six-month wait followed. She said the proposed legislation did not have a clear mechanism for telling the laboratory when the petition or motion was filed to destroy the evidence.

Commissioner Flynn said the biggest concern from law enforcement agencies in the South was if the BDR was not crafted properly, it would create a “black hole” where evidence was entered and never came out.

Professor Kruse said the proposal, expanding testing and preservation to any felony, had since resulted in them believing there was a better way. She said there was consensus between the defense community, law enforcement and the district attorneys on the value of preserving evidence. The question was how long evidence needed preserving and a good policy for deciding when to let it go. She said having a uniform destruction policy was necessary. The agency retaining the evidence would have a procedure that they understood and it created clarity as to what the procedures were on the basis of destruction rather than preservation.

Chair Hardesty asked Ms. Kruse if she could assist Ms. Krueger and some Commission members in refining the bill as it was currently drafted. She responded she was available. Commissioner Flynn, Commissioner Kohn and someone from the district attorney’s office would meet with Ms. Kruse and Ms. Krueger to review the bill draft and present it with alternatives if possible.

Professor Kruse said it was important to have representation from the rural counties.

Chair Hardesty replied the rural county evidence locker people were doing more than required by the proposed statute already and that it may not be an issue. He said doing all felonies was unnecessary and created an enormous unnecessary fiscal impact. He referred to Mr. Kandt’s memo ([Exhibit F](#)), describing what was occurring throughout different states and jurisdictions. Mr. Kandt also submitted a draft from Ms. Romero. Chair Hardesty said he believed a starting point could be A felonies and perhaps A and B felonies.

Commissioner Kohn said some B felonies might be too expansive. He wanted Mr. Kandt to participate in the discussions. Chair Hardesty said input from the rural sheriffs would also be beneficial and he would have the AOC canvas the evidence locker clerks throughout the rest of the state. He also asked the committee to take up Miss Tonja Brown’s letter with her suggestions for the Commission.

Chair Hardesty said the next issues concerned a statute dealing with habitual criminal sentencing changes, Item IX on the Agenda and the other was consideration of a potential statute enhancing petit theft to a felony.

Commissioner Kohn said they provided two revised statutes: NRS 207.010, the habitual criminal statute; and a new statute for NRS 205.240 ([Exhibit G](#)). He said NRS 205.240 was a modification to the petit larceny statute that contemplated a felony for a third time petit larceny. He said it was in the present statute for habitual criminal and they decided to move it and make it a D felony. He said the recommended changes included removing life without possibility of parole for the small habitual. They tried to get the habitual statute to apply to people who had been to prison several times and had not learned their lesson. He said they added paragraph 3 under (b) in [Exhibit G](#). He said if someone completed probation or did not go to prison, it did not count as a prior prison term for habitual eligibility. He said his goal was that people who had not been to prison before were not eligible for the habitual statute under NRS 207.010. He said there was another habitual criminal statute NRS 207.012 involving violent felons. Commissioner Kohn said they did not recommend any change to that statute. He said they were also asking, under paragraph 4 of (b) in [Exhibit G](#), if someone stayed out of trouble for 10 years, those felonies did not apply.

Scott Coffee, Clark County Public Defender, said they made some changes from previous discussions. He said they removed the “brought and tried separately” requirement and they tried to tighten the habitual criminal statute. They discussed prior felony convictions resulting in prison terms. He said “violent habitual criminal” was not discussed or changed. He said the statute currently includes a provision for petit larceny, misdemeanor and gross misdemeanors involving fraud or theft. He said they recognized there were businesses involved and there needed to be a way to punish repeat offenders. They suggested modifying the petit larceny statute in a manner where it could be enforced. They proposed something similar to a DUI statute where two petit larcenies guaranteed jail time, automatic 10 days and a third petit larceny was a felony conviction. He said if someone had five or six charges of possession of stolen property or burglary, a sentencing court still had the option to habitualize someone and run the counts consecutively. He said that for nonviolent crimes, life without possibility of parole seemed draconian. He said an important thing to remember was it increased judicial discretion.

Brett Kandt, Executive Director, Nevada Advisory Council for Prosecuting Attorneys and The District Attorneys Association, said they had two issues with the proposal. The first was removing the sentencing option of life without possibility of parole. The second was proposed in section 3. They were concerned from an administrative standpoint as to how to effectively carry-out that section.

Kristin Erickson, Nevada District Attorneys Association, said they had concerns with section 3 that were mainly a language problem. They had issues regarding successful completion of probation and asked if a dishonorable discharge from probation was regarded as probation.

Bradley Nickell, Detective, Las Vegas Metropolitan Police Department, said he spent the last nine years assigned to the Repeat Offender Program. They dealt specifically with the habitual statute. He said it was an essential belief for society that a citizen who did wrong can be rehabilitated. He said the sentencing guidelines were built with the idea of rehabilitation as its foundation. There was a small portion of society that did not rehabilitate and chose lives of crime after multiple types of intervention. He said advocates for changes in the NRS must make a representation that too many people were treated as habitual criminals. He said many defendants qualified for habitual treatment by the NRS, yet were not pursued as such by the district attorney's office. He said a very small portion of criminals eligible for habitual treatment were actually sentenced under that statute. He said the number had grown slightly due to an appropriate tougher stance on repeat offenders by current District Attorney David Roger. He said all modern policing studies showed approximately 80 percent of all crime was committed by 20 percent of all offenders. He said it made sense that law enforcement and the justice system focused greater energy and resources towards those who committed the majority of crimes. He said the large habitual statute was the only statute with the possibility of life without parole. He said the habitual statute being used in court proceedings was not the norm, it was the exception. He said every single person had prior prison terms and most had multiple prison terms. He said Metro required that the defendant have three prior felony convictions in three separate years and none of those qualifying felonies included a conviction for drugs. He said they went above the requirements in the NRS. They wanted to deal with true recidivists. He said it was his belief that the proposed changes would have little or no effect.

Mr. Coffee said the concern was a number of people were subjected to habitual criminal by eligibility or threatened with it.

Commissioner Kohn said paragraph 4 addressed the concerns Detective Nickell had about someone spending the last 10 years in prison and thus were unable to commit crimes. He said a person had to be 10 years free of incarceration for a felony to not receive credit for it. He said the difference between the small habitual, which was 5 to 20 years, and the large habitual was two prior felonies versus three prior felonies.

Commissioner Siegel was impressed with the testimony from Clark County on the approach they took toward the habitual. He asked if Washoe County and Churchill County had comparable standards for asking for habitual status.

Ms. Erickson said she was the primary repeat offender prosecutor in Washoe County. She said Washoe County had a standard similar to Clark County. She said she did not know of a case where Washoe County sought habitual status for somebody with only three felony convictions. She said that in order to qualify as a repeat offender target they had to be voted in by the committee. The qualifications included three felony crimes of theft or violence. The average repeat offender had at least six felony convictions.

Chair Hardesty asked if there was any reason why the statute should not be amended to conform to the policies Washoe and Clark Counties use. He said both used the same type of screening and requirements in order to be eligible for prosecution of habitual criminal. The proposed amendment, according to Detective Nickell, would have no impact on what they do.

Ms. Erickson said they wanted life without possibility of parole to remain in the statute and some defendants needed that sentence.

Commissioner Mallory said the Legislature set the number at three felony convictions, and it became a useful tool for prosecutors. He said he took very seriously the responsibility of not abusing that discretion. He urged not changing the statute and stated he was opposed to any alteration to life without possibility of parole.

Commissioner Digesti asked Mr. Coffee about the proposed revision in NRS 205.240 petit larceny; penalty. He said paragraph (2) (c) of the proposed legislation appeared to contradict the revision to the habitual criminal statute eliminating offenses that had an element of petit larceny or fraud. He said it appeared to be an inconsistency between the two revisions.

Mr. Coffee said he did not believe it was a contradiction. He said if the third petit larceny was a felony conviction, and the person was otherwise eligible for habitual criminal status, and the petit larceny was elevated to a felony, they would still be eligible for habitual criminal under the newly rewritten habitual criminal statute.

Commissioner Digesti said including that language in the petit larceny statute created confusion. He said he saw many issues that created potential appeals that did not need to occur. He reiterated it was creating confusion.

Mr. Coffee was amenable to language changes. He said there was consideration as to whether or not to include this provision. He said the concern was that if a provision such as this was not included, a person might not be eligible for habitual criminal.

Commissioner Siegel said many countries in Europe had given up the life without the possibility of parole sentence. He said he would support the revision on habitual criminals but he opposed the language concerning life without the possibility of parole.

Chair Hardesty asked Mr. Kandt and Mr. Kohn to meet on the language revisions in subparagraph 3 of [Exhibit G](#). He asked Detective Nickell and Ms. Erickson to work with them on the language changes.

Chair Hardesty asked if there were people in Las Vegas who wanted to make public comment.

Gloria Rosen said she had concerns and comments regarding conditions and treatments of inmates at High Desert State Prison. She said the number of inmates requesting rehabilitation treatment, jobs, schools or vocational training compared to the number of inmates receiving the programs was alarming. She said without the programs the inmates did not receive the good time credits or the opportunity to lower their point scores. She said many inmates were denied through no fault of their own. Educational and vocational training gave offenders a better chance of receiving jobs, and made them less likely to return to the life of crime. She said more programs needed to be made available to inmates who have addictive behaviors. She was concerned about the phone service provider and the raise in her phone rates. She was also concerned about the lack of medical facilities.

Chair Hardesty asked Mr. Johansen for a presentation regarding Driving Under the Influence, (DUI).

John R. Johansen, Nevada Department of Public Safety, gave a PowerPoint presentation ([Exhibit H](#)) on the promise and potential of some specialty courts, specifically DUI courts. He said their goal was to reduce the number of injuries and fatalities on Nevada's roads. He said some of the programs started with law enforcement. The number one cause of traffic fatalities was impaired drivers. He said they had been very successful in getting DUI drivers off the road. In 2002 a law enforcement program titled "Joining Forces" asked them to emphasize traffic enforcement during specific periods of the year. From 2002 to 2005 they primarily concentrated on seatbelt usage until they reached the 90% level. He said in 2005 they added greater emphasis on impaired driving. In 2007, 18,235 DUI arrests occurred in Nevada.

Mr. Johansen discussed DUI courts. He said DUI courts were very effective in reducing recidivism. He said they currently had three grant agreements with various courts: Las Vegas Justice Court, 2nd Judicial District in Washoe County and the Washoe Alternative Sentencing Division. He said the third was not a specific court. The Washoe Alternative Sentencing Division had a case manager position funded within the Alternative Sentencing



Department. He said they actively worked with a number of judges and courts providing common, central resources patterned after a more traditional DUI court. He referred to the table showing the results of the Las Vegas Justice Court.

Commissioner Carpenter asked Mr. Johansen if the people who attended the programs were first time DUIs.

Mr. Johansen said typically it did not matter, but for practical purposes the targeted population was a DUI first with a high blood alcohol count (BAC) or any DUI second. He said the trigger was usually a .15 BAC when arrested or any second arrest.

Chair Hardesty said the programs also had third-time DUI offenders in them.

Mr. Johansen said the district courts were felony level and there were specific requirements to allow people to enter treatment programs. He said all third-time DUIs had at least three DUIs within the past seven years. They could not have a DUI resulting in serious injury or a fatality. Mr. Johansen reviewed further slides in his presentation. He said the felony level people did as well with their three-year minimum program as the misdemeanor people did with their one-year minimum program. He said the "Potential," was the final slide in his presentation. He said total recidivism was at 3,386 in the best case scenario compared to the total 6,382 who received no treatment. He said if there were DUI courts available in all jurisdictions of the State, they would probably save 3,000 people a year from coming back into the system.

Commissioner Digesti said he understood how the felony DUI court worked in Washoe County. He said he understood there were DUI courts at the justice court and the municipal court level in Clark County. Mr. Johansen replied affirmatively in Clark County and in the new Washoe Alternative Sentencing Program.

Commissioner Digest asked what the *quid pro quo* was for getting into the program. Mr. Johansen said a lighter sentence was possible. He said the jail term and the fine could go away and that the court was used as a lever to get people into treatment.

Commissioner Digesti said in his experience he had never seen a six month jail sentence imposed for a first time misdemeanor DUI offense. He said typically it was 96 hours of community service or occasionally house arrest. He asked for suggestions to motivate and compel first-time offenders to enter the program.

Mr. Johansen said that on occasion, judges sentenced for six months if someone failed the treatment program.

Commissioner Digesti said most courts imposed the sentence, and there was no suspended sentence possibility. He asked if there were some other way to encourage the offenders to take advantage of the programs. The felony drug court's benefits were obvious.

Mr. Johansen said increasing the penalty was discussed and it was decided it was too problematic.

Chair Hardesty asked Mr. Johansen the source of funding for the programs.

Mr. Johansen said it was federally funded. His office received funds from the National Highway Traffic Safety Administration which was part of the Department of Transportation. He said they received funding for a variety of traffic safety issues. He said they were typically funded for specific alcohol programs. He said they funded the case manager for the DUI courts.

Chair Hardesty asked if any rural courts had asked for funding for a case manager.

Mr. Johansen said there were preliminary discussions but he could only fund for approximately three years. Each court costs approximately \$100,000 per year. He said the question was after three years where the funding source would come from for the program.

Chair Hardesty asked Lt. Stieber to give a presentation regarding the HOPE Court in Hawaii.

Claudia Stieber, Lieutenant, Nevada Division of Parole and Probation, introduced an innovative program Hawaii had used for the past four years. She said it dealt with technical violators of probation. She said Dr. Austin's presentation this morning centering on intermediate sanctions, or the lack thereof, in dealing with the offenders in Nevada was a good lead-in to her presentation. She said she attended a conference and had the privilege of listening to Judge Steven Alm, a circuit court judge in Hawaii and the creator of the HOPE program ([Exhibit I](#)). She referenced the handout provided by the National Institute of Justice (NIJ) which listed Judge Alm's website. She said HOPE stood for Hawaii's Opportunity Probation with Enforcement. Lt. Stieber played a short video for the Commission. She said the problem Hawaii experienced was that probationers were not taking their terms of supervision seriously. The lack of sanctions for technical violations they committed left the offenders with the impression they could offend repeatedly without any consequences. She said the probation officers had difficulty handling the technical violators because they had so few options. She said the eventual outcome was enough technical violations were committed that the offenders probation was revoked.

Lt. Stieber said in 2004 Judge Alm launched a pilot program, HOPE, to reduce probation violations by drug offenders and others at high risk of recidivism. Probationers in HOPE

received swift, predictable and immediate sanctions. Immediate sanctions were the key to the program; they had much more effect than lengthy prison sentences somewhere in the future. She said short, quick, immediate sanctions had more of a deterrent factor. The sanctions resulted in several days in jail for each detected violation. In Hawaii there were over 1200 offenders in the HOPE program. She said Judge Alm stated the hardest part of the program was coordinating all the various groups; the probation department, the courts, the prosecutors, defense attorneys, public safety, treatment providers, local jails and criminology all had to work together. She said Judge Alm stated the “hardest sell” of the program was to the local jails. He eventually convinced them to move forward with the program. Lt. Stieber referred to the article in *The Wall Street Journal*, [Exhibit I](#) which discussed specific success rates in fewer positive drug test rates and missed appointments.

Lt. Stieber said she spoke to Chief Curtis and Deputy Chief Woods about starting a pilot program similar to the HOPE program in Nevada. She said her presentation today was the first she had made. She said the key to the program was everyone participating, from judges to treatment providers. She proposed starting the program with a very small group, one judge and two probation officers working with the program. It was essential to establish a control group for comparison. She thanked Judge Alm for his generous gift of time, printed material and all the help he gave her. She said he offered his on-going assistance if Nevada set up a similar program.

Commissioner Salling said research showed swift reaction to a violation by an offender was important. She asked why a special program was needed. She said another problem was low staff numbers; HOPE was an intensive treatment program. The due process hearing also created problems. She said the concept was good but did not need pilot programs but rather utilize what was already available. She added substance abusers needed treatment, and it was previously established there were no treatment facilities available.

Commissioner Horsford agreed with Commissioner Salling. He asked if there were units available at Casa Grande, in partnership with the DOC, to initiate the program. He said Parole and Probation, working with the DOC and a judge, could move to implement the plan and the program. He said the resources were there, and they should move forward. He cautioned not to focus on the detention centers because they were already over capacity. He supported the concept.

Commissioner Skolnik said he would work with Parole and Probation to identify some beds in order for this to take place.

Chair Hardesty thanked Lt. Stieber for her research on the subject. He said resources were in place to be able to do the program on a pilot basis with one important exception. The exception was there may be statutory problems that required certain notice provisions. He

said part of the problem with probation revocation was the length of time associated in the statutes for revoking probation. He did not advocate not affording anyone their due process rights. He suggested modifications to the statute that contemplated a quicker response time to some of these issues. He proposed Chief Curtis, Deputy Chief Woods and Lt. Stieber identify possible statutory modifications allowing Nevada to accommodate this program on a more accelerated revocation basis. He asked Commissioner Skolnik and the Nevada Sheriffs' and Chiefs' Association to determine impacts on facilities where this could occur. He asked them to report to the Commission in November. The program was very successful in Hawaii.

Commissioner Salling said the State Board of Parole Commissioners was available. She said they did revocation hearings one day a week. She said they were available to do modification hearings. Commissioner Salling said a way that would not impact the jails was to video to the counties and to modify their parole. She said that would be an additional sanction.

Chair Hardesty said it was worth pursuing on the parole side. He said on the probation side, statutes and other issues needed to be investigated.

Chair Hardesty identified areas on the Agenda that needed completion on various suggestions and recommendations made to the Commission. He said Item XI and XII on the Agenda were the next topics. He asked Commissioner Salling to provide language that accelerated parole hearings or eliminated unnecessary parole hearings. He said Ms. Lang worked on some language to streamline the process. It was necessary to look at specific categories of offenders who qualified. Chair Hardesty referred to a suggested Bill Draft Request (BDR) allowing the Board of Parole Commissioners to grant parole without holding a hearing or eliminating unnecessary parole hearings, ([Exhibit J](#)).

Commissioner Salling said the BDR granted parole to a person without a hearing when the parole guidelines suggested parole should be granted, the victim had not requested notification and no person had objected to a formal hearing. The exclusions did not apply to murderers, sex offenders, habitual criminals or life sentences. She said their guidelines suggested they grant parole with those exceptions identified in section 6 and section 8 of NRS 213.133 in [Exhibit J](#). She said if the guideline suggested denial of parole they would return to the typical hearing. She said currently the hearings were done as a result of the money given the Board by the Legislature. She said the BDR allowed for the future when the prison population grew and it kept them from having to add more Parole Board commissioners.

Chair Hardesty reminded the Commission they voted in concept to approve the two concepts: one allowing hearings to proceed in absentia and the other to avoid the necessity of a hearing when someone moved to the next consecutive sentence without a full-blown hearing.

Commissioner Mallory moved to accept the proposed language as presented.

Commissioner Carpenter seconded the motion.

Commissioner Masto asked Commissioner Salling if the standards referenced in [Exhibit J](#) regarding NRS 213.10885 were already created and there would be no changes to them. Commissioner Salling replied she was correct.

Ms. Clark called the roll for the vote. The motion passed. Commissioner Curtis was absent for the vote. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty said the vote covered Item XI and XII on the Agenda. The next items for discussion were matters concerning the Victim's Rights Subcommittee.

Commissioner Masto said there were copies for two of the three suggested BDRs. The first BDR was related to contributory conduct. She said Mr. Bryan Nix would testify concerning the BDR. She said the first discussion was on contributory conduct and its application to sexual assault and domestic violence. She said they voted to change the NRS to exclude any type of sexual assault or domestic violence from the contributory conduct provision in the compensation program, BDR to amend language in NRS 217.180 ([Exhibit K](#)).

Bryan A. Nix, Program Coordinator, Nevada Department of Administration, Victims of Crime Program, said the majority of the members of the subcommittee decided the particular crimes, sexual assault and domestic violence, were not subject to contributory conduct considerations. He said they submitted that concept as a BDR. He said they also submitted the policies that would be in place until legislation was passed.

Commissioner Skolnik moved to move the Bill Draft Request forward.

Commissioner Siegel seconded the motion.

Ms. Clark called the roll for the vote. The motion passed. Commissioner Curtis was absent for the vote. Commissioners Amodei, Farley and Herndon were absent.

Commissioner Masto said the second BDR allowed the Victims of Crime Compensation Program to have access to the law enforcement complaints.

Mr. Nix said currently the Victims of Crime Compensation Program encountered problems obtaining police reports because there were no clear statements in the law that a police agency was required to provide the Victim of Crime Compensation Program with the police report. The Victims of Crime statutes require the compensation officers to consider certain

factors contained in a police report. They are also required to review the police report. He said it is a statute within the Victims of Crime Program but not a statute that concerns the activities of a police agency. He summarized by saying the BDR clarified police agencies had the authority and responsibility to provide a report to the Victims of Crime Program when requested in order to determine whether a victim was qualified for their benefits.

Commissioner Carpenter moved to approve the BDR.

Commissioner Mallory seconded the motion.

Ms. Clark called the roll for the vote. The motion passed unanimously. Commissioners Amodei, Farley and Herndon were absent.

Commissioner Masto said the third BDR had to do with sexual assault language [Exhibit K](#).

Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence, said the BDR was to include, with exceptions on sexual assault cases that the victim not be required to undergo a psychological examination as part of the prosecution process.

Chair Hardesty requested the BDR be deferred until the next Commission meeting. He also requested input from a deputy attorney general on the implications surrounding Kirshner and Court Ordered Evaluations. He said if the BDR was focused on evaluations as a condition to compensation he understood that. If the BDR attempted to adjust the relationship between the defense and the prosecution over whether an evaluation took place, it might implicate some other issues. He said if the focus was only on someone's right to participate in the victim's fund that was different. He said if the BDR focused on the prosecution, it changed the dynamic and the Commission needed to see the specific language.

Commission Masto said the BDR required more discussion regarding the language.

Mr. Nix said it had nothing to do with compensation. He said his organization would never require a psychological evaluation unless it was related to specific requirements for counseling payments.

Chair Hardesty asked Mr. Nix if he had investigated the lost revenue to the fund from the over-collection of AA's in the last fiscal year.

Mr. Nix said he had not spoken to the former budget person who worked for the Department of Administration. He said he verified the figures he stated last time which amounted to \$300,000 in the last fiscal year. He said Chair Hardesty's findings were supported by the information they found in their investigation.

Commissioner Masto said the committee and Mr. Nix worked diligently to standardize the application and guidelines for the Victims of Crime Compensation Program.

Chair Hardesty said a request was made by the Juvenile Subcommittee to become a standing committee of the Commission. He suggested the Victim's Rights Subcommittee also become a standing committee of the Commission. He asked for a motion on that subject.

Commissioner Masto said it was already voted and approved as a standing subcommittee.

Chair Hardesty said a number of prison budget issues and related prison issues from the last meeting were postponed at the last meeting. He said three BDRs were included in the presentation by Mr. Skolnik and Ms. Bagwell. He said the BDRs dealt with amendments to clarify A.B. 510 regarding the placement of individuals sent to prison under NRS 176A.660 and NRS 213.1213. The Commission deferred until today to vote to support the request of that BDR by the Department of Corrections. Chair Hardesty said the BDR related to Item VII C on the Agenda. He asked for a motion amending NRS 176A.660 concerning placement authority by the Nevada Department of Corrections.

Commissioner Mallory asked if it broadened the powers of Mr. Skolnik and his department. Chair Hardesty replied the purpose was to clarify the authority of the Department of Corrections concerning the placement of individuals.

Commissioner Mallory moved the motion.

Commissioner Miller seconded the motion.

Commissioner Flynn asked for further clarification of the motion and comments based on Commissioner Mallory's question. He asked if the Department of Corrections supported the motion. Chair Hardesty replied it was requested by DOC.

Ms. Clark called the roll for the vote. The motion passed. Commissioners Horsford and Siegel abstained. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty said the next item was Item VII F on the Agenda. The BDR created an exception to NRS 284.4062 to allow random drug testing of staff after initial hiring. He said the requests were all made by the DOC.

Commissioner Kohn asked if the BDR allowed random drug testing without any probable cause or reasonable cause. Commissioner Skolnik replied it would.

Commissioner Mallory moved in favor of the BDR.

Commissioner Curtis seconded the motion.

Commissioner Siegel asked if the intent included only correctional officers or were other prison personnel or State agencies subject to the BDR.

Commissioner Skolnik said it was applicable to those individuals in security positions within the Department of Corrections. He said it was limited to correctional officer or peace officer status.

Commissioner Siegel asked if it included the people who supervised correctional officers. Commissioner Skolnik said that was correct.

Commissioner Digesti asked about the wording “found to be under the influence of drugs or alcohol.” He asked if there is a standard or a definition of “under the influence.” He asked if there were certain levels of alcohol or drugs they had to have in their system before they were found to be under the influence.

Commissioner Skolnik said for peace officer status on duty it is .04 for alcohol and illegal substance were illegal in any amount.

Ms. Clark called the roll for the vote. The motion passed. Commissioners Kohn and Siegel voted no. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty said the next subject was Agenda Item VII G. He said it revised NRS 289.470 to classify the Inspector General and Criminal Investigators as Category II Peace Officers.

Commissioner Skolnik said Criminal Investigators were currently Category III Peace Officers which limited their authority and power beyond the institution to do investigations. He said they requested P.O.S.T. make them Category II and it was not honored. He said they should be classified the same as criminal investigators in other State agencies which were Category II. The criminal investigators would be required to complete Category II training.

Commissioner Mallory moved to approve the motion.

Commissioner Curtis seconded the motion.

The motion was approved on an oral vote. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty recalled a lengthy discussion from the last meeting involving overtime compensation. It was suggested with the addition of 70 straight-time personnel



approximately \$2 million in overtime could be saved. He requested Ms. Bagwell do a study on this topic.

Lori Bagwell, Nevada Department of Corrections, said they looked at Northern Nevada Correctional Center (NNCC) to study the impact if they moved forward with the recommendation to add positions to assist in eliminating overtime ([Exhibit M](#)). She said they looked from January 14 to April 13, 2008, for a study period to determine the purposes of the overtime and on which shifts the overtime occurred. She said it was determined that by hiring ten new staff it would save \$269,748 in overtime costs at NNCC.

Chair Hardesty said, in round numbers, it was calculated that approximately \$2 million in savings would occur within all the prison systems. Chair Hardesty requested a motion that the Commission recommend to the Governor, the State Prison Board and the NDOC that it institute, as soon as possible, a conversion of the overtime expenditures to the replacement and hiring of the straight-time employees as proposed.

Commissioner Mallory moved to accept the motion.

Commissioner Curtis seconded the motion.

Chair Hardesty said there was an implication that Director Skolnik had been told to freeze positions and hold positions. Chair Hardesty said if positions were filled, some overtime expense would end. He said the Governor, the Prison Board and the Legislature needed to know that they needed to cease the process of freezing positions because it was not always the best savings.

Ms. Clark called the roll for the vote. The motion passed. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty next referred to Agenda Item VII B. He said there was a recommendation of a relief factor for the Nevada Department of Corrections at 1.85. He said if action were taken with respect to the overtime, the current relief factor of 1.6 would improve to 1.67. He proposed a motion that urged the Governor, Legislature and the Prison Board to adopt a 1.85 relief factor for NDOC and budget to that relief factor.

Commissioner Miller moved the motion.

Commissioner Curtis seconded the motion.

Commissioner Flynn asked what the current staffing ratio was at the prison. Chair Hardesty replied it was 1.6.

Commissioner Skolnik said the NDOC has been staffed to the 1.6 relief factor for a long time.

Commissioner Horsford said without fully understanding whether there were other operational steps that could be taken, he needed to know the type of staffing and the ways it enabled the DOC to work more efficiently. He said he was not prepared to support the motion at this time.

Commissioner Skolnik said the positions would all be correctional officer positions. He said they allowed DOC to do things required for the job. He said currently the original staffing for Southern Desert was two officers in each unit, one in a bubble and one as a floor officer for 102 inmates. The population had since doubled to 204 inmates, but the staffing remained the same.

Ms. Clark called the roll for the vote. The motion passed. Commissioner Kohn abstained and Commissioner Horsford voted no. Commissioners Amodei, Farley and Herndon were absent.

Chair Hardesty said the next item on Agenda VIII G was a report by Deputy Attorney General Janet Traut regarding Medicare and Medicaid options for health care needs for aging inmates.

Deputy Attorney General Janet Traut said the Department of Corrections may not seek any Medicaid funds for any inmate unless they were out of the actual custody of the DOC. They would have to be at an inpatient medical facility. She said the operative statute had a specific exclusion for inmates. She said limitations on payments to prisoners, certain other inmates of publicly funded institutions, fugitives, probationers and parolees received no monthly benefit under this section. She said the statute was a blanket exclusion. Further, the inmate had to be 30 days outside the DOC before any funding could be sought. She said it was not a new idea. In 2003 a consulting firm was hired to do in-depth research concerning Medicare and Medicaid payments for inmates. A work program was prepared but the potential recovery was less than 50% and it was determined not to be worthwhile. She said unless an inmate was out of prison in a hospital for 30 days, there would be no recovery.

Chair Hardesty asked Ms. Bagwell if the DOC prepared a list of the number of inmates who faced chronic or permanent health problems.

Ms. Bagwell said they did not keep lists. She said those inmates who become eligible or had chronic conditions were known to the DOC.

Chair Hardesty asked how many inmates had chronic conditions or were expected to have serious medical needs.

Commissioner Skolnik said they did not house inmates with a chronic illness outside of the Department. Inmates with chronic illness were housed at the Regional Medical Facility. He said another Regional Medical Facility was being built in the southern part of the State. He said to his knowledge no inmate was maintained in the community for an extended period of time. He said it was cost prohibitive due to security and was intrusive on the facility.

Ms. Bagwell said the 30 day category Ms. Traut referenced was someone who would go into an actual organ failure. She said it was a rare event for someone to be out of the facility for that length of time.

Chair Hardesty asked how many inmates had chronic conditions.

Ms. Bagwell said the Regional Medical Facility had a population allowance of 112 medical beds and another 100 beds were proposed in the South.

Chair Hardesty asked if that met the needs of everybody. Did the number of beds carry the DOC out 1 year or 10 years ahead?

Commissioner Skolnik said at this time nobody was in chronic care outside of the DOC. He said the Florence McClure Correctional Center was being discussed for conversion to a long-term geriatric facility which would accommodate most of the needs of the Department in the future.

Commissioner Siegel suggested contacting the Congressional Delegation. He also suggested contacting the National Corrections Organization to see if anybody had found a way around the statute. He said not providing Medicare or Medicaid to inmates was not punishing the inmate, but rather the taxpayers of Nevada.

Ms. Traut said one of the reasons mental health found a way around the statute was many of the people fell under Social Security Disability and not SSI or regular Social Security. They were considered in a different category.

Chair Hardesty said Dr. Austin made five recommendations on page 48 of [Exhibit C](#). He said the recommendations were focused on the enhancement of staff counseling to do assessment programs at a cost of \$1.6 million. He asked if the Commissioners wanted to make those five recommendations to the Legislature.

Commissioner Carpenter said it was time to make decisions and the recommendations should be presented to the Legislature. He moved to have the \$1.6 million put into Parole and Probation's budget to start funding the counselors.

Commissioner Kohn seconded the motion.

Commissioner Masto asked about the fiscal impact of the \$1.6 million. She asked if that was an annual cost and how did that cost increase long-term.

Commissioners Curtis said the cost was \$64,000 per counselor. He said this budget year was still not completed. He appreciated the motion, but the money situation was difficult.

Mark Woods, Deputy Chief, Division of Parole and Probation, said the number \$1.6 million was very low. He said the majority of the offenders who received probation were told to get an evaluation for the type of counseling they needed. He said one counselor could do approximately 40 evaluations a week. The 1.6 number was a total of 20 people plus 5 supervisors that would just do assessments, not the counseling. He said it was not on-going counseling; it was a one shot triage and that was all they would be doing. The \$1.6 was just for salary and did not take into account the facilities, spacing or benefits for State employees.

Commissioner Kohn said the number might be low, but Dr. Austin said the State needed to know what kind of counseling was available and what the needs were in Nevada. Dr. Austin said the only way the State would know what was needed was to have some type of assessment.

Commissioner Carpenter said he understood it was for assessments. He said he thought the assessments needed to start.

Commissioner Salling said, rather than hire employees, the money should go to contract services. She said there were certified counselors throughout the State who were qualified to do evaluations.

Deputy Chief Woods said he had to defer to his Administrative Services Officer, but he believed their budget deadline was past. He said the motion appeared to want Parole and Probation to put it in their budget.

Chair Hardesty said it could be made as an independent request from the Commission. He said the point was to get the function started.

Commissioner Horsford said he was adamant about supporting the concept, but only if treatment was also included. He said it was a hodge-podge approach to only assess and not ask for the money needed to provide the treatment. He requested the motion be made to include a recommendation including treatment services and not put a specific dollar amount in the request but allow the concept to go forward prior to session.

Chair Hardesty said he had intended to bring forward a specific treatment subject matter that the Commission could pass on to the Legislature. He said the Commission had already endorsed an expansion of the Specialty Court Business Plan. He requested a categorization of all treatment possibilities available and the deficiencies. He said the motion focused on doing assessments and the treatment subject was a broader subject.

Commissioner Horsford asked if the motion could be held for the next Commission meeting.

Commissioner Carpenter said he preferred to go forward with the motion if possible. He said the treatment subject could be pursued more extensively at a later date.

Chair Hardesty said if it were approved now it would be part of the Commission's recommendations on this subject.

Commissioner Flynn had similar concerns as Commissioner Horsford. He remembered touring High Desert Prison and being briefed that there were not enough programs for treatment programs. He said having a dollar amount for the treatment programs or a strategy should come first.

Chair Hardesty asked if the motion could be continued until the next meeting. Chair Hardesty said Agenda Item XIII concerned restitution. He said there had been a discussion about restitution and a call by the Commission for the utilization of collection agencies to expand restitution collection. He said it was pointed out NRS 176.064 currently gave the Division of Parole and Probation the ability to utilize collection agencies to collect restitution. He asked Commissioner Curtis if the Division used that authority and what was the utilization of collection agencies within the Division.

Commissioner Curtis said the Division did not utilize collection agencies. The Division collected restitution after a person was off paper in some cases.

Chair Hardesty asked Commissioner Curtis to discuss the issue with his staff to see whether the language within the statute could be utilized to defer some of the restitution collection efforts to the collection agencies authorized in the statute.

Chair Hardesty said another issue was the utilization of technical monitoring. He asked Deputy Chief Woods to give a status report. He wanted to entertain a motion requesting that the Division of Parole and Probation increase the use of, and the Legislature fund, technical monitoring to increase the capability of supervision of defendants.

Deputy Chief Woods said the Division used electronic monitoring. It was considered house arrest. The program being used was an electronic device attached to the offender's body. It

allowed them to know when a person left their residence; it did not tell them where the offender was at any given time. He said there was a pilot program using GPS that centered on the sex offender bill. The permanent injunction on that bill meant there were no offenders on GPS.

Chair Hardesty said he understood there needed to be some sort of expiration of a contract which limited the Division's ability to begin contracting with other vendors. He said GPS would be used for monitoring outside of the residence and non-sex offenders.

Deputy Chief Woods said the current contract expires the last day of January, 2009. The State issues a Request for Proposal (RFP) and then several vendors, including others who had not testified, were invited to demonstrate the abilities of their products and bid on the contract.

Chair Hardesty asked if the Division planned to use the new technology in supervising defendants.

Deputy Chief Woods said the GPS technology being used in Florida had a twenty to one staff ratio. He said that was twenty offenders to one officer. He said Nevada had a ratio of forty five offenders to one officer. The budget was developed for presentation at the last Legislative Session with a pilot program for the Tier 3 offenders. He said it was very expensive and discussions were needed to decide if they were going to be passive or active systems. He said passive meant they knew where an offender had been at any given time. An active system told them where the offender was at that given time. He said response people were required. At this time, there were not a lot of statistics justifying the cost.

Chair Hardesty said the Presentence Investigation Report (PSI) had been carried forward by the Commission. The Commission had discussed an interest in revising the guidelines for recommendations within the PSI.

Deputy Chief Woods said Dr. Austin referred to that in the morning presentation. Deputy Chief Woods said they had a contract with the National Council on Crime and Delinquency, (NCCD) and Dr. Austin was also working on it. He said there should be a recommendation to develop the new program by January, 2009.

Chair Hardesty opened the meeting for public comment.

Ms. Tonja Brown said she had suggestions on where money could come from for medical expenses. She said people sent back on revocation, those in prison who had been paroled and revoked, should look at their medical because there might be a great deal of money there. The Medicaid Ms. Traut discussed did not mention the veterans. She said some inmates

medical conditions were service related. She asked if there was a way to recoup that money from the Veteran's Administration.

Chair Hardesty said that was a good suggestion.

Ms. Traut said the Department had a representative from the Veteran's Administration who spoke to the Department. Any benefits available to the inmates may not be touched by the Department of Corrections. She said there was a specific statute dealing with that subject. She said the funds went into the inmates trust account.

Ms. Brown asked if there was a federally funded program that could set up Alcoholics Anonymous (AA) treatment programs. She asked about the costs for medical for people returned to prison.

Sandy Finelli, The Ridge House, gave an update from the last meeting. She said they met with RAIN and the Urban League and were working on cooperative efforts on prisoner reentry. She said The Ridge House received a grant from the Veteran's Administration for reentry for veterans in State correctional systems. She thanked the Commission for their hard work.

Chair Hardesty said he wanted to meet with Ms. Finelli and the RAIN organization to address the issue about reentry and treatment.

Florence Jones commented about Dr. Siegel's statement regarding \$300 million spent on capital improvements for the prisons' 2007 Legislative budget. She said she understood they had already submitted between 80 and 90 new capital improvement programs that were approved by the Public Works Department. She said the cost was approximately \$400 million. She was opposed to the closure of NNSP. She said construction continued at the High Desert facility even though water appeared to be an issue at the site. She was also concerned about the report on the percentage of beds-to-inmate ratio. She said the high, overcrowded estimate appeared to be based on taking out beds in existing facilities. She said money should be spent in parole and probation and programming.

Pat Hines said as an advocate she wanted to remind the Commission of areas that had been overlooked. She asked if qualifications for the camps could be changed so more people can attend them. She wanted an oversight committee or an ombudsman for the inmates. She wanted statistics from the Parole Board. She hoped the psych panel was reviewed and changed. She said some people said the psyche panel needed to be rescinded. She recommended people who appeared at a Parole Board hearing or psyche panel be put through a perjury oath and videotape the meetings. She said the Adam Walsh Act funding has been pulled. Ms. Hines said probation and parole were the areas she was most interested in. She

said there was a problem with parole violators and we needed a risk assessment strictly for the violators. She requested the Commission not forget habitual criminals, enhancements and the Pardons Board needed revision.

Chair Hardesty suggested the next meeting of the Commission be Friday, November 21<sup>st</sup>. There were several exhibits present but not discussed. Mercedes Maharis submitted information regarding NDOC and the Nevada State Health Officer ([Exhibit N](#)). A Buffalo City Court Veterans Project ([Exhibit O](#)) was also not discussed at this meeting. As there was no further business, Chair Hardesty adjourned the meeting.

RESPECTFULLY SUBMITTED:

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Olivia Lodato, Interim Secretary

APPROVED BY:

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

DATE: \_\_\_\_\_



## **EXHIBITS**

**Committee Name: Advisory Commission on the Administration of Justice**

**Date: October 20, 2007**

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

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
	C	Matthew Leone	PowerPoint Presentation
	D	Ron Titus	PowerPoint Presentation- NOC Codes
	E	Boyd School of Law	Preservation of Biological Evidence
	F	Brett Kandt	Memo on Preservation of Biological Evidence
	G	Phil Kohn	Revised suggestions NRS 207.010 and NRS 205.240
	H	John Johansen	Office of Traffic Safety Programs PowerPoint presentation
	I	Claudia Stieber	HOPE in Hawaii
	J	Dorla Salling	Suggested BDRs
	K	A.G. Cortez Mastro	Suggested BDRs
	L	Lori Bagwell	Overtime Analysis
	M	Tonja Brown	Letter about DNA Bill
	N	Mercedes Maharis	Letter about NDOC & NV State Health Officer
	O	Buffalo City Court	Veterans Program