

**MINUTES OF THE
ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE
December 10, 2007**

The meeting of the Advisory Commission on the Administration of Justice (NRS 176.0123) was called to order by Justice James W. Hardesty, Chairman, at 1:04 p.m. on December 10, 2007, 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, Chairman
Senator Mark Amodei, Capital Senatorial District
Assemblyman John Carpenter, Assembly District 33
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims Rights Advocate
John Allan Gonska, Chief, Division of Parole and Probation
Douglas Herndon, Judge, Eighth Judicial District Court
Phil Kohn, Clark County Public Defender
Arthur Mallory, Churchill County District Attorney
James Miller, Sheriff, Storey County
Dorla M. Salling, Chairwoman, 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 METRO
Senator Steven A. Horsford, Clark District 4
Catherine Cortez Masto, Attorney General
Assemblyman David Parks, Clark District 41, via Internet

OTHER LEGISLATORS PRESENT

Assemblyman Bernie Anderson, Washoe District 31

OTHERS PRESENT:

Susan Stewart, Deputy Attorney General
Joe Ward, Chief Deputy Attorney General
Linda Blevins, Secretary

Chairman Hardesty called the Commission to order and roll was taken. It was noted that Susan Stewart, Deputy Attorney General, and Joe Ward, Chief Deputy Attorney General, were present as Carson City representatives for Catherine Cortez Masto, Attorney General.

Chairman Hardesty reviewed the agenda and pointed out that the report to the Legislature from the Commission was due by September 1, 2008. That being the case, he would present topics for discussion at future Commission meetings as well as possible meeting dates for the Commission.

Chairman Hardesty recognized Dr. James Austin, JFA Associates/The Institute, Council of State Governments. Dr. Austin provided a PowerPoint presentation, attached as [Exhibit C](#), which updated the Commission on the Justice Reinvestment Project and Tracking the Effects of Legislative and Administrative Correctional Policy Changes. Each month Dr. Austin would be providing the Commission with an update on the system response to the reforms to track the development of current trends or issues.

Dr. Austin indicated he would be providing monthly counts for the Department of Corrections (DOC), Parole Board (Board), and Parole and Probation (P&P) daily populations. He would also be able to provide reported crime, court disposition data, and jail data. Nevada was one of the few states able to monitor the system-wide status from the time the crime was committed until the individual left the system on parole and probation.

Page 6 of the exhibit noted the status of the criminal justice system which indicated that most areas were stable with the exception of the probation population which was declining while the parole population was increasing.

According to Dr. Austin, the crime rates for Clark County and Washoe County, Page 7, appeared to be stable since January 2006. Crimes had increased but in May 2007 there was a decrease. Research must determine the cause of the stability of the prison population and whether it would continue to remain stable. Court dispositions also appeared to be stable with no increase in the

number of cases the courts were processing each month. There was no arrest data on hand but it was anticipated the data would be available by January 2008.

Dr. Austin explained that he was attempting to track the county jail populations and had received one report which showed stability in the jail populations. Prison population was stable without significant increases or decreases. However, probation population had declined and the parole population was increasing.

Areas in which Dr. Austin needed additional information included parole grant rates. The last information received was through May 2007. There was a delay because of the new information systems that the DOC was implementing. The Parole Board relied on this information. Dr. Austin suspected that since the parole population was increasing, the Board was granting paroles at a higher rate.

Dr. Austin advised the Commission he was working closely with DOC to obtain the program credit awards for inmates, but the data was unavailable at this time. He also pointed out that detailed prison admissions and releases was only available through May. He believed more updated information would be available when he gave the next presentation to the Commission.

Dr. Austin did not have a slide for the crimes by type of offense; however, for violent crimes versus property crimes the areas appeared to be stable. There was no arrest data or type of court dispositions available. Dr. Austin wanted more detailed information on the jail populations.

Page 13 charted the average daily probation populations which had dropped from 14,400 in January 2007 to 13,500 in October. The probation releases had jumped in June, July, and August 2007 and had declined to an average of about 500 per month. Probation admissions had also declined which was an indication that the courts were sentencing fewer individuals to probation. This was a significant change and Dr. Austin was curious about the probation admission stream which had declined slightly overall with a bigger drop in October 2007.

Page 14 charted the probation releases by type of release. The felony revocations indicated that the individual was removed from probation because of a revocation for a felony-related matter. Misdemeanor revocations were fairly flat and discharges had a dramatic increase because of the new law passed and individuals being dropped from probation. There was no significant change in the type of releases.

According to Dr. Austin, until more data was received, no conclusions could be drawn regarding the Parole Board revocation hearings.

Page 17 addressed the parole populations which indicated a decline in May 2007 but was currently increasing. Page 18 charted the parole revocations versus discharges. Page 19 showed the probation revocation rate (top line) and the parole revocation rate (bottom line). What was encouraging about these numbers, according to Dr. Austin, was that historically probation had a higher revocation rate than parole. There was a drop in May and June for the percent of cases that were discharged because of probation revocation. That had increased slightly in October 2007. For the parole rate, it had dropped and then increased to near the probation revocation rate in September and October. Dr. Austin stated this would be monitored closely in the future.

Dr. Austin commented that at the previous Commission there was a request to find out why there were approximately 400 inmates in custody who had been granted parole but were past their parole eligibility date. There was a concern because they were still in custody. Through the cooperative efforts of the DOC and P&P, it was determined that 113 of the cases had no approved release plan. There were 108 who were approved and were going to be released quickly or had been released at the time of the audit. Other reasons for delay of release included:

- Pending Interstate Compact Acceptance (11 percent)
- Consecutive sentences; not late, pending eligibility date (10 percent)
- Pending review of previous order by Board (6 percent)
- Pending plan investigation (5 percent)

- Pending psychiatric panel decision (2 percent)

Dr. Austin pointed out that the major difficulty was problems with the release plan. This would require further review for possible resolution.

Prior to his presentation in January 2008, Dr. Austin would complete the following steps:

- Gather detailed and more current data on prison admissions and releases.
- Evaluate effects of new parole guidelines and accelerated hearings over the next three to four months.
- Gather detailed data on parole and probation revocations by type of violations.
- Secure more timely data on reported crime, arrests, and court dispositions.
- Evaluate needs for substance abuse and mental health treatment—in particular parole and probation violators.
- Gather detailed data on prisoners granted parole but not released.

Dr. Austin was encouraged that the system appeared to be stable at this time. The prison system leveled off and it was going to be interesting to see the December numbers for the admission and release stream. The Parole Board would be very important in the next few months when they instituted their new risk-based guidelines.

Chairman Hardesty requested Dorla Salling, Chairman, Board of Parole Commissioners, comment on the Board's anticipated status at the end of December 2007 and the approximate number of inmates who would have parole eligibility but whose hearings could not be conducted timely.

Ms. Salling stated that she could not give an exact number but believed it would be approximately 800 inmates eligible by the end of December. If the hearings could be held, the

parole plan approved, and the parole granted, the prison population would be reduced by that number.

It was Chairman Hardesty's understand that approximately two-thirds of the 800 inmates were camp prisoners. Ms. Salling and Howard Skolnik, Director, DOC, agreed that the numbers were not available and it was difficult to estimate.

Chairman Hardesty advised the Commission members that prior to the meeting he had met with Mr. Skolnik, Chief John Gonska, P&P, Cpt. Mark Woods, P&P, and Ms. Salling to review the issue of parole plans.

Senator Amodei commented that the information Dr. Austin presented today differed somewhat from the information Dr. Austin had provided during the 2007 Legislative Session. He was interested to learn what contributed to these differences.

According to Dr. Austin, Assembly Bill (A.B.) 510 was designed to accomplish four things:

1. Accelerate parole hearing dates—This acceleration was just beginning to happen. He expected the result would be a further drop in the prison population.
2. Accelerate parole discharges.
3. Accelerate probation discharges—This area provided for the most dramatic change which had already shown an impact.
4. Award credits to prisoners completing risk reduction programs—Dr. Austin could not anticipate the impact of this objective.

From Dr. Austin's perspective, there did not appear to be any surprises from the passage of A.B. 510. The full impact had not been felt. In three to four months he should be able to provide information on the long term consequences of the legislation.

Senator Amodei asked whether he could infer by Dr. Austin's response that the legislation was responsible for the beginnings of movement in that direction or whether other demographic factors such as crime rates also contributed to the trend.

Dr. Austin responded that crime rates were driven by other factors that effected broader social economic issues. The court disposition data also was not moving. He had received the data for sentences to prison and sentences to probation, but had not been able to assemble it.

Chairman Hardesty added that while A.B. 510 had presented opportunities for making a material change in the prison population, it was not the case that the Parole Board was able to hear more cases or help relieve the prison population as quickly as they otherwise could. Senate Bill (S.B.) 471 had been counterintuitive to that goal. The Board was now hearing half or less than half of the cases they had heard prior to that legislation. Regrettably, the additional funding that the Interim Finance Committee (IFC) had provided would not have been necessary if some of the procedural problems that the Board had been confronted with were not there. In his opinion, one of the reports the Commission should make to the Legislature would be the impact and effects of both A.B. 510 and S.B. 471. At this time, the major concern was the "log jam" created because the Board was not able to get to the 800 to 1,000 person "bubble" by the end of January 2008.

Richard Siegel, President, ACLU of Nevada, Inmate Advocate, noted that [Exhibit D](#), Unlocking America by JFA Associates, was distributed to the Commission. He asked Dr. Austin what the Commission should be able to learn from the report.

Dr. Austin stated that the report urged states to look at two areas:

1. Length of sentence for prisoners.
2. Revocations.

According to Dr. Austin research showed that what was driving the prison populations nationally, were those two factors. From his perspective, Nevada was one of the states leading

the nation on consideration of the data in those two areas for development of policy. States that had very low crime rates had very low prison populations. States with high crime rates had high prison populations. The prison system did not determine the crime rate. It was also true that states that lowered their prison populations substantially also lowered their crime rates. The two were not connected.

In response to Assemblyman Parks, Dr. Austin commented that the numbers on page 20 of [Exhibit C](#) did not total 100 percent because the remaining inmates did not fit into any of those categories.

There being no further questions, Dr. Austin concluded his presentation.

Chairman Hardesty advised the Commission that he did not request approval of the minutes for the October 30, 2007, meeting. Chairman Hardesty requested the Commission to voice any changes or corrections.

There being no requests for corrections or modifications, Chairman Hardesty requested a motion for adoption of the minutes.

ARTHUR MALLORY MOVED TO APPROVE THE MINUTES OF OCTOBER
30, 2007.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED.

Chairman Hardesty requested Dorla Salling, Chairman, Board of Parole Commissioners, provide the Commission with an update on the Interim Finance Committee (IFC) relevant to the Board and the status of parole hearings under A.B. 510 and S.B. 471.

Ms. Salling reported that the Board had previously received \$300,000 from IFC for installation of video conferencing equipment. The equipment was being installed currently. At the most recent meeting of IFC, the Board received \$600,000 for hiring additional staff, purchase of equipment, and acquisition of additional office space.

As for the status of parole hearings, Ms. Salling stated that A.B. 510 made more individuals eligible and some of those had come through the Board and some were waiting for hearings. Senate Bill (S.B.) 471 gave inmates a number of due process rights that they did not have previously. When the changes were instituted they had dramatically extended the length of the parole hearings. As a result, the Board could only complete approximately half as many hearings as they had previously. Once the Board was able to utilize the money received from IFC in hiring additional personnel, they expected to see an increase in the number of hearings held. Ms. Salling was unable to determine whether the Board would, at some point, be caught up with the hearing process as there were many factors involved. Hearings were held daily.

Assemblyman Carpenter was unclear why the Board could hold only half the hearings previously held.

Ms. Salling explained that A.B. 510 sped up the eligibility of inmates for parole and S.B. 471 increased the number of rights for the inmates. The Board was now required to attend to areas that were not previously addressed. It was now required that the Board see every inmate in person, whereas previously they were allowed to hold hearings in absentia. This was especially helpful for inmates who the Board knew could not get parole for reasons such as psychiatric evaluation failure. With the passage of S.B. 471 everyone could receive a parole hearing and everyone was allowed to bring a representative. This had lengthened the process.

In response to Mr. Carpenter, Ms. Salling did not believe that the assistance of video conferencing and additional personnel would get the system back to a normal schedule. Although the equipment and personnel would be of tremendous assistance, that would not speed up the hearing process. The Board was seeing 200 more inmates each month than they were seeing before passage of the legislation.

Mr. Carpenter inquired whether the Board would be paroling as many individuals as they had before passage of the legislation.

Ms. Salling pointed out that prior to the legislation the State had an extremely high grant rate. As far as granting parole, the State was as high as or higher than it had ever been. The problem was getting to the process. Ms. Salling noted that she had testified repeatedly during the 2007 Legislative Session that passage of legislation would cause this backlog.

Senator Horsford asked whether there had been an audit on performance efficiencies, or training of the Parole Board to aid in streamlining the hearing process and to help members better facilitate the hearing process.

Ms. Salling responded that the audit referenced in testimony had been performed on the pre-release and had nothing to do with the Parole Board. The Board had received a grant from the National Institute of Corrections and worked with Dr. Austin and the Council of State Governments for an efficiency audit. It was determined the Board was running efficiently but as a result of the new legislation the process had been slowed. Efficiency will improve but the process cannot possibly move as quickly as in the past with the passage of S.B. 471 and the subsequent changes.

In 2004 the Governor's Executive Internal Audit Committee visited the Board and completed a performance audit. Ms. Salling noted that their recommendation to the Board was to hold hearings in absentia, which had been put into practice.

Senator Horsford inquired whether Dr. Austin could comment regarding other performance related areas that could be looked into or evaluated and whether he was aware of other performance audits available.

Dr. Austin was not aware of any performance audits done on the Parole Board. The only area concerning Dr. Austin was the quality of the information that the Board was using on the risk-based guidelines. He had recommended setting up a sampling process to double check the accuracy of the data that the Board used to make a decision. That would be put into action soon.

Chairman Hardesty summarized the testimony of Ms. Salling stating that the Parole Board was presiding over fewer hearings than they were able to before the legislation, S.B. 471, was adopted. Second, there were approximately 800 individuals who were parole eligible but could not be heard because of the delay in the process of the hearings. Third, the Board was not able to obtain from DOC the exact number of inmates who were parole eligible under A.B. 510 because the new computer system was not yet running at full capacity. Finally, the amount of prison reduction that was anticipated by the end of December could not be achieved because of the inability of the Board to provide hearings for the 800 individuals eligible.

Arthur Mallory, Churchill County District Attorney, was curious to learn whether the hearing procedures in Nevada were the same as the states used as models or if Nevada was putting more stringent procedures in place while trying to achieve the same results as the model states.

Dr. Austin agreed that most state did not have the requirements which S.B. 471 legislation had imposed on the Parole Board. In fact, the parole boards in most states did not interview inmates. An interview with the parole board panel or members was becoming an increasingly rare phenomenon.

Chairman Hardesty attempted to clarify the issue by noting that the Parole Board heard individuals at a hearing whether or not they would be receiving parole. He suggested that the

Commission consider discussion on mandatory and discretionary parole under the statutes. He requested Ms. Salling describe the differences between the two.

Ms. Salling explained that Nevada had a totally discretionary system unlike many states. In Nevada discretionary parole was when someone came up for parole at their minimum eligibility date and a decision was made whether or not to parole the individual. Parole could be denied for either three or five years depending on the type of statute and at what point the inmate was sentenced. The individual would keep returning to the Board until they were either paroled or they reached the mandatory eligibility date. Mandatory people were the inmates who had one year remaining on their sentence. At this time it was "mandatory" that the Board see the individual. This did not mean that the Board must parole that individual. If the individual posed a threat to the public, parole could be denied.

According to Ms. Salling, unless the psychiatric evaluation had been failed, the Board did not know whether or not an individual would be paroled prior to the hearing. The hearings were open and victims also had a right to be heard. The case must be reviewed prior to the hearing to determine action of the Board, but the Board tried not to make the final decision prior to the hearing. When the Board was able to hear cases in absentia, the cases were generally for individuals that the Board believed would be receiving parole because they were working in the community or an individual who would not be paroled by law because of failure to pass the psychiatric panel.

It appeared to Chairman Hardesty that the Board was required to conduct hearings for individuals whom they were certain would be granted parole because of their status and also for individuals whom they were certain could not be paroled because of other conditions.

Ms. Salling confirmed that was the case since passage of the new legislation. That accounted for an additional 200 inmates the Board was now required by law to see face-to-face.

It was Chairman Hardesty's understanding that the Board was also required to see inmates who were being paroled to a consecutive sentence. This further contributed to the Board's delay in the hearings.

Chairman Hardesty also questioned whether the discussion at the previous Commission meeting regarding systemic changes in the Board's statutes that would allow the Board to meet in panels would make a dramatic change.

Ms. Salling responded that the Board did meet in panels. Following the panel meetings, the cases still required a majority of the Board to vote. The number of face-to-face hearings was the problem for the Board. The 200 additional hearings and the increased length of each hearing was causing the serious backlog.

Chairman Hardesty opened the floor for additional comments or questions. There being none, the Chairman introduced Susan Roske, Chief Deputy, Juvenile Division, Clark County Public Defender's Office, and Ryan Sullivan, Chief Deputy, Juvenile Division, Washoe County Public Defender's Office.

Ms. Sullivan addressed the Commission regarding juveniles certified as adults. One area of certification was a lack of jurisdiction in the juvenile courts when certain acts were committed or alleged by juveniles. That area was found in *Nevada Revised Statute (NRS) 62B.330* which stated what was not considered a delinquent act. Juvenile courts only had jurisdiction over children who were alleged or deemed to be in need of supervision or children who were alleged or deemed to have committed a delinquent act. The statute removed a category of behavior from what was considered a delinquent act. This did not give the juvenile courts jurisdiction over children who were charged with committing murder or attempted murder, sexual assaults or attempted sexual assaults involving force or threatened force or violence. As far as the sexual assault category, the child must be 16 years of age when the behavior was committed and must have had a prior delinquent adjudication for a felony act.

Another category automatically put into the adult courts was an offense or attempted offense involving the use or threatened use of a firearm. The same procedures applied here as for the sexual assault.

In this area it was not a certification process. If a child fell into these categories, they were immediately moved into the adult courts. There was no discretion of a judge to review the child's case and decide whether the community and the child would best be served by having the child remain in the juvenile system or if the case should be moved into the adult system.

Both Ms. Roske and Ms. Sullivan agreed it was unfair to the child that the case was not reviewed by a judge and there was no opportunity to present information about the child's background or circumstances. In Clark County the process was referred to as a direct file. The direct file was done by the prosecutor which took the case to the adult court. In Washoe County there was not a similar process. In some cases a juvenile would appear before a juvenile judge briefly for the prosecutor to say that the child did not fall under the jurisdiction of the juvenile courts because of *NRS 62B.330*. The juvenile was then taken immediately to the adult jail. In other cases, when the prosecutor's office was aware that a child was going to be imminently arrested or charged with adult offenses, the child was taken directly to the adult jail never coming to the juvenile facility.

Ms. Sullivan believed the review of this process was important for the Commission. There was no review of individual juvenile cases. If the juvenile fit the criteria, the case was immediately moved to the adult court.

Ms. Roske noted that *NRS 62B.330* excluded the jurisdiction from the juvenile court. Under the criminal statutes the lowest age of prosecution was defined as eight years old. Theoretically, a child as young as eight could be prosecuted in the adult system and there was no means to bring the case into the juvenile system. There were several other ways in which cases were moved into the adult system through certification or transfer process. There were two kinds of transfer proceedings. One was discretionary, which had been used in Nevada for many years. The judge

had the discretion to transfer the case to the adult system. The second method was the presumptive transfer, a relatively new process in Nevada. In this case, if a firearm was used in the commission of a crime or it was a sexual assault involving force or violence, the statutes dictated to the court that they shall transfer the case to the adult system. There were exceptions to rebut the presumption. The Legislature has said that if the child could prove that he suffered from mental or behavioral problems or substance abuse problems which contributed to his conduct, the court could consider keeping the case in the juvenile division. This process puts tremendous discretion in the hands of the district attorney rather than the judge.

Ms. Sullivan supported the statement made by Ms. Roske adding that the statutes currently placed the juvenile in the position of having to overcome the presumption. The only way they could do that, under current law, was to prove mental or developmental problems or substance abuse.

Chairman Hardesty summarized by stating that not all children who might use a weapon or have a sexual assault issue were wavering under addiction or mental health issues, but that child could not rebut the presumption.

Ms. Sullivan further pointed out that cases must be considered on an individual basis. The defense must present a wide range of factors but the statute narrowed the defense.

Ms. Roske noted that the handout ([Exhibit E](#)) documented the effects of transfer on adolescents and the devastating impact of prison sentences on children. Studies had shown that more violence was created because of the process of trying juveniles as adults. Numerous studies had been published over the past five years regarding the development of the adolescent brain. Research showed that the adolescent brain had not completed its development. Children thought differently than adults as the frontal lobe had not fully developed in children. This explained much of the risky and impulsive behavior seen in children. The U.S. Supreme Court had recently ruled that it was cruel and unusual punishment to sentence children to death for

committing a crime before their eighteenth birthday. Ms. Roske urged the Commission to review the Nevada statutes as many children were being sent to the adult system.

Included with [Exhibit E](#) was a graph from the U.S. Department of Juvenile Justice which showed the racial and gender breakdown of individuals in Clark County transferred via the certification process, as well as those directly filed in the adult system because the charges were excluded from the jurisdiction of the juvenile court. Overwhelmingly children of color were being sent into the criminal system.

In response to Chairman Hardesty, Ms. Sullivan stated that Washoe County did not have a direct file process. The procedures followed by Washoe County were the same as Clark County but the methods were different. In Washoe County some of the children who fell under *NRS 62B.330* were taken directly to the adult jail and the charges were filed as adult charges. This made it difficult to track statistics which showed that a child had been processed through the adult system.

Mr. Digesti stated that it was his understanding that it would be the desire of Ms. Roske and Ms. Sullivan to have the discretion removed from the prosecutor's office and placed with either the juvenile master or district court judge as to whether or not a particular child should be certified as an adult.

Ms. Roske voiced agreement with his interpretation.

Mr. Digesti and Ms. Roske discussed the certification process for juveniles noting that the district attorney made the motion to transfer if a child was sixteen years of age or older and was charged with a felony. The exclusion had been put into place in the 1970's where murder and attempted murder were taken out of the juvenile justice jurisdiction. Approximately five years ago the Legislature had changed the discretionary age for transfer to fourteen years or older. The presumptive transfer was created at the same time.

Mr. Digesti asked whether Ms. Roske and Ms. Sullivan envisioned the motion for certification being made in juvenile court before the juvenile master with the right of appeal de novo to district court or having the certification hearing go immediately to district court upon the State filing a notice of certification and having the district court judge review the petition at that level.

Ms. Roske responded that the practice in Clark County was that the district court heard the certifications and they did not go before the master. Rarely the district court judge would give the master the case to hear the transfer. She preferred to immediately go before the district juvenile court judge for the decision. She believed that all cases should go to a district juvenile court judge for ruling whether or not the case was a felony such as murder or attempted murder.

Ms. Sullivan agreed with Ms. Roske's preference to have all cases go before the district juvenile court judge for a ruling as to whether the case should be tried in the adult system.

Dr. Siegel commented that the juvenile brain development information discussed by Ms. Roske had been presented to the Legislature by a medical professor from the University of Vermont. The testimony seemed to have a dramatic impact on the legislators. He requested that data on juveniles in jails and the prison system be provided to the Commission. He further requested the data be broken down by race and age.

Judge Herndon was also interested in receiving data on the tracking of incoming prison population as to the percentage of individuals under the age of eighteen.

Mr. Skolnik stated that the information was available and he could provide it to the Commission members.

Additionally, Judge Herndon noted that the vast majority of criminal cases from juvenile court were negotiated through some type of plea bargaining. He requested data which showed the percentage of direct certification cases which were ultimately resolved to a less than automatic certification offense.

Ms. Roske was not aware of any statistics available. She knew of two high-profile cases involving thirteen and fourteen juveniles in Clark County that were negotiated to manslaughter charges in juvenile court. That was a rare exception. Most cases were negotiated to plead in the adult court. It was very rare that a case would be direct filed into district court and then a negotiation would withdraw the filing or dismiss the adult case and re-file in juvenile court.

Responding to Mr. Carpenter's question, Ms. Sullivan stated that a child found guilty in the adult court would receive adult consequences and go to the adult prison system.

Senator Horsford noted there were a disproportionate number of girls versus boys who were direct filed or certified as adult.

Ms. Roske stated that it seemed most cases involving the transfer were crimes against a person or crimes of violence. This type of behavior was typically seen in boys.

Senator Horsford further noted there were a disproportionate percentage of juveniles of color who were both certified and direct filed as adults. According to the statistics provided in 2006, 55 percent of blacks, 35 percent of Hispanics, and 6 percent of whites were direct filed as adults, and 54 percent blacks, 30 percent Hispanics, and 10 percent of whites certified.

Ms. Roske could not give a reason for the disproportionate numbers.

Senator Horsford commented that blacks in Nevada made up only 8 percent of the population, yet 55 percent of the juveniles certified as adults were black. Hispanics made up 20 to 25 percent of the population but 30 percent of the juveniles certified. In his opinion, the system should be able to defend why there were disproportionate numbers of people of color who were sentenced.

Senator Horsford was unclear about *NRS 62B.330(e)* which said that "any other offense if before the offense was committed the person previously had been convicted of a criminal offense."

Ms. Sullivan explained that the statutes involved children placed into the adult system and who had sustained a conviction of some criminal act. There had to be a vehicle to get into the criminal system, either by direct file or by transfer. Once a juvenile had been direct filed or transferred into the criminal system and then sustained a conviction, all future criminal acts must be filed in the adult system. There was no coming back to the juvenile system.

Senator Horsford inquired whether the juvenile sexual assault for fourteen years of age and older included consensual sex with individuals based on age. There were instances where teenagers were involved in consensual sex but were certified as adults.

Ms. Sullivan did not believe that was included in *NRS 62B.330* as the statute stated "sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim." In her opinion, that language excluded consensual behavior.

Judge Herndon explained that there was a caveat to *NRS 62B.330* which was "any other related offense to the sexual assault or attempted sexual assault." He had seen direct filings having lewdness of a minor under the age of 14 as a charge that was associated with the sexual assault. Lewdness with a minor could involve consensual conduct between a 16 year old and a 13 year old. In addition to a sexual assault charge being filed which resulted in a direct file, there might be other consensual charges carried along because of the caveat in the statute about "other related offenses."

Ms. Sullivan noted that the definition of consensual was also an issue. Whether it was the legal definition or whether the two individuals agreed to the conduct.

Ms. Roske commented she had had clients 12 years old charged with lewdness with a minor of 13 years old. The victim was older than the client.

At the request of Chairman Hardesty, Chief Deputy District Attorney Jo Lee Wickes, Washoe County Juvenile Division, came forward to address the Commission. Ms. Wickes stated that the direct file in Clark County was referred to as the automatic certification in Washoe County. The automatic certification was an exclusion from juvenile court jurisdiction for the Columbine-type situation where someone under the age of 18 years old went onto either public or private school property and created a situation resulting in either substantial bodily harm or creation of a situation that would result in substantial bodily harm. Ms. Wickes further clarified for the Commission that the way the Washoe County District Attorney's office kept the computer system made it impossible to provide the Commission with statistics regarding direct file or automatic certifications. In 2006 and 2007 Ms. Wickes' office had filed ten motions for certification. Eight of those were in 2007.

In her opinion, individual cases must be closely scrutinized, especially when the district attorney's office was filing a motion to certify. It was the responsibility of the prosecutors to exercise their discretion under the statutes and determine the seriousness of the offenses. It appeared that most of the crimes filed in Clark County as direct file or by motion, were crimes against a person. In the ten cases that Washoe County had filed motion to certify, every case involved either battery with a deadly weapon or robbery with a deadly weapon with one exception. The exception was a residential burglary which also included an invasion with the significant use of force.

Ms. Wickes continued noting that in brief conversations with the Clark County District Attorney's Office she had become aware of times when, as in Washoe County, the motion to certify had been withdrawn. She believed that was the essence of what prosecutors and defenders in juvenile law were supposed to do, look at the facts, do a complete investigation, and make decisions.

In conclusion, Ms. Wickes pointed out that some of the discussion during testimony at this Commission meeting had been in relation to who had the discretion. In her opinion, the

discretion must be housed with the prosecutor who was willing to read the police reports, look at the evidence, and determine what was admissible and in the best interest of all parties.

Mr. Kohn agreed with the testimony provided by Ms. Wickes and asked whether she believed the prosecutors should have that discretion in all cases, including homicide.

Ms. Wickes responded that she believed that homicide and attempted homicide were among the most difficult crimes to consider. As a prosecutor, Ms. Wickes was concerned that the resources were not available to address the problems that the juvenile courts and the juvenile defendants were facing. She was concerned about a crime of that nature being brought back to juvenile court without the resources to deal with the case properly. As a juvenile prosecutor, Ms. Wickes believed that it was impossible to prove murder or attempted murder for an individual over 8 years old. There were many scenarios to consider.

Mr. Kohn and Ms. Wickes discussed the issue of discretion for prosecutors for cases involving homicide committed by a juvenile.

In response to Chief Gonska, Ms. Wickes stated that the percentage of certifications with gang affiliations was not tracked.

Mr. Digesti requested clarification for the types of cases automatically excluded because they were not considered by statute as being delinquent acts.

Ms. Wickes responded that there were five types of cases: murder, attempted murder, sexual assault with prior felony, Columbine-type situation in which there was substantial bodily harm or action which would result in substantial bodily harm, and prior conviction in adult criminal court.

Mr. Digesti concluded from the testimony that there were other types of cases or delinquent acts in juvenile court when the acts could be certified up to district court by way of motion. Ms. Wickes confirmed his understanding.

Mr. Digesti stated that once that occurred there would be an investigation and recommendation by the department as to whether or not the child should be certified as an adult. He asked whether there would be objection to the same procedures being employed for cases that were listed under the automatic certification to district court.

Ms. Wickes responded that would only be a problem for murder and attempted murder charges. Those were extremely different in the long-term consequences and should be handled differently.

Mr. Digesti asked why those cases should be treated differently than a sex crime or a deadly weapon act that could also have significant consequences.

Ms. Wickes believed that part of the problem was the limits on jurisdiction in terms of what consequences could legally be provided to a juvenile in the juvenile court system and the limits on the prosecutor's jurisdiction in terms of when the juvenile court jurisdiction ended. Because the loss of human life was the ultimate in many ways, she was uncomfortable believing the juvenile prosecutor could adequately address those offenses within the juvenile system.

Mr. Kohn inquired what recommendation Ms. Wickes would make to the Commission to resolve the judicial inadequacies.

Ms. Wickes stated that a bill was introduced to the Legislature in the past to combine sections of the adult and juvenile system. This would give the prosecutors and the juvenile court ability to keep some offenses in juvenile court but provide consequences above what was currently available. At the time, the proposed legislation was unpopular with everyone. There were many different systems used around the country which could be researched. Ms. Wickes believed that the Commission was the first step in the process of looking into the offenses and the long-term

outcome and determining whether there was anything in the juvenile system that needed to be reworked. In her opinion the juvenile court did an excellent job, but there were some juveniles that committed such heinous acts that it was unfair to the community to keep those individuals in juvenile court as it was presently structured.

Attorney General Cortez Masto stated that it might be helpful to understand that when discussing additional consequences needed in the juvenile justice system what we were talking about were more programs and ways to work with the children, whether treatment or diversion programs.

Ms. Wickes agreed and added that the children must be accountable and learn that there were consequences for their actions. The State needed more resources for rehabilitation of the young offenders.

Senator Horsford asked who was responsible for collecting and maintaining the data which appeared in the graphs in [Exhibit E](#).

Ms. Roske stated that she had received the data from Cherie Townsend, the Director of Juvenile Justice Services in Clark County. The data was collected in their case processing program.

Ms. Sullivan added that the Washoe County Department of Juvenile Services also maintain statistics regarding the children detained in their facility, such as age, gender, race, number of days detained, and charges.

Senator Horsford pointed out that the statistics in the exhibit showed a 14 percent increase in the number of blacks certified as adults from 2003 to 2006. The Hispanic numbers stayed the same for the same period. Among whites there was a 10 percent decline.

Michael J. Pomi, Director, Washoe County Department of Juvenile Services, advised Senator Horsford that under SB No. 232 of 2001 Legislative Session the Department tracked juvenile statistics for juvenile commitments by disparate minority confinement and provided the

information to the State annually. There was a report generated and provided to the Division of Child and Family Services (DCFS) which was compiled and distributed. The youth were tracked under the juvenile guidelines, not the adult guidelines.

Chairman Hardesty noted it appeared that those certified or direct filed or excluded under the statute were not tracked. Mr. Pomi confirmed that was the case.

Dan Prince, Deputy Administrator, Department of Health & Human Services, Division of Child and Family Services, advised the Commission that all of the counties in the State were required to report to DCFS on an annual basis the number of youth by racial profile that were referred and otherwise matriculate through the juvenile justice system. The data was captured and an annual report was generated and provided to the Legislature and the U. S. Office of Juvenile Justice. Mr. Prince could provide the report to the Commission.

Mr. Skolnik stated that he could provide information on juveniles sentenced to the Department of Corrections.

Senator Horsford questioned what change occurred in 2003 that caused the increase in juvenile certifications from 39 to 95. He speculated that possibly it was an expansion of age or types of offenses included.

Ms. Wickes responded that the statutes were changed in 2003 to add the presumptive certification. That could have contributed to the increase.

Chairman Hardesty requested the Commission defer further discussion on the juvenile justice situation and move to the next agenda item. He stated that he intended to form a sub-committee to delve into information gathering so the Commission could work on the juvenile criminal justice system further.

Following a brief recess, Chairman Hardesty requested Chief John Gonska, Department of Public Safety, Division of Parole and Probation (P&P), present the Pre-Sentence Report information to the Commission. Chief Gonska introduced Lt. Charles Combs, Court Services Unit. Chief Gonska commented that during the sentencing process the presentence report was only one factor considered in pronouncement of sentence. Other factors considered were the plea agreement, arguments by the district attorney, and arguments by the defendant and counsel. The presentence report made a non-binding recommendation but that was not the sole purpose of the presentence report. The report was to educate the judge about the defendant. The report contained the defendant's history, type of crime committed including details of the offense, prior criminal history, victims, drug or mental health issues, and any other pertinent information. At the end of the report a non-binding recommendation was made. Judges used the report for a variety of reasons. Some judges only reviewed the criminal history, some judges were interested in the social history, and some judges did not read the recommendation.

Lt. Combs delivered a PowerPoint presentation ([Exhibit F](#)) on the presentence report used by P&P to the Commission. Lt. Combs gave a brief overview of the Presentence Investigation and Report applicable statutes and *Nevada Administrative Codes (NAC)* as listed on Pages 3 through 10 of the exhibit. He continued the presentation as follows:

The Purpose of the Presentence Investigation and Report

- The fundamental purpose of the investigation and report is to provide accurate information to the Courts to aid Judges in pronouncing sentences, keeping all concerned parties in mind.
- The report is forwarded to and reviewed by many professionals in the system and is quite often the only introduction these professionals have to the offender.
- The report is utilized by the Nevada Department of Corrections in the classification process and by the Nevada Board of Parole Commissioners in making parole decisions.

- The report provides the Division an avenue to recommend an appropriate sentence and special conditions that should apply if the defendant is granted probation.
- The special conditions establish the basic framework from which a supervision officer may build an effective supervision program.

Overview of Investigation and Report Preparation Process

- The defendant pleads guilty to or is found guilty of a felony or gross misdemeanor offense.
- The Court sets a sentencing date.
- The offender is referred to the Division of Parole and Probation for a Presentence report.
- The report is usually due within 30 to 45 days from date of plea or jury verdict.
- The District Attorney's office forwards their case file for reference.
- The defendant reports to Division offices if out of custody and is provided with a presentence background questionnaire.
- For defendants in custody, if possible, the questionnaire is sent to the defendant at the facility they are located in.
- The defendant is interviewed by a Specialist, who carefully goes through the questionnaire, asking probing questions in an attempt to verify and clarify information contained in the questionnaire.
- The Specialist requests verifying documents from the offender, i.e.: drivers license, birth certificates, social security cards, immigration documents, verification of employment, diplomas, etc; to attempt to verify as much information as possible.
- The offender is given an opportunity to give an explanation for the offense, make any statement they would like for the Judge to take into

consideration, and provide insight into how they feel about the impact the crime has had on them, their family, and any victim(s).

- A criminal history check is conducted on all offenders to begin the process of verifying the offender's prior criminal record.
- Upon receipt of the District Attorney file, the Specialist thoroughly reviews the file to become familiar with the offense committed by the defendant, the nature of the guilty plea, and any special details of the case that may be present.
- Initial victim information is derived from the DA file, and victim impact documents are forwarded to any victim(s) involved in the case.
- The case is set up into the Division Offender Tracking and Information System (OTIS).
- The Specialist enters a written chronological record into the OTIS system as they progress throughout the investigation.
- The Specialist sets up victim information and forms into OTIS.
- The Specialist verifies as much of the offender's criminal and social history as possible and as per Division guidelines.
- One of the most important functions of the presentence process is victim contact. It is recommended that whenever possible the Specialist have personal contact with the victims of any case.
- Victims are provided with the details of what the defendant pled to, pertinent sentencing information, and their rights regarding sentencing, including the right to testify at sentencing as to how the offense impacted them.
- Victims are advised of available programs and financial aid which they may be eligible for based on their particular case and circumstances.
- Victims are asked to provide information regarding any restitution they may be eligible for. (Verification of loss is requested for any loss).

- Victims are given the opportunity to describe how the offense impacted them and have that information included in the report, and they are given the opportunity to make a recommendation on what they believe would be an appropriate sentence.
- During the course of the investigation, the Specialist additionally determines and lists details on any co-defendants and/or co-offenders involved in the case and their status in the system to that point.
- Upon completion of the investigation, the Specialist prepares the written report, which is saved into the Division's Docs and Images system, through OTIS.
- Copies of the report are provided to the sentencing court, the District Attorney's office and the offender's attorney.
- In completing the report, the Specialist makes a recommendation based upon approved standards through the utilization of the Probation Success Probability form and the Sentencing Recommendation Selection Scale.
- Once an appropriate sentence recommendation has been determined, the Specialist prepares the conclusion section which supports the recommendation, enters the actual recommendation with any applicable fees, fines, and appropriate restitution.
- If probation is recommended, appropriate special conditions are included as well.
- The completed report is submitted to the Specialist's supervisor for final approval and submission.
- Per Division policy, the report is to be submitted to all parties a minimum of three working days prior to the scheduled sentencing date.

Lt. Combs continued the presentation by outlining the standards for recommendations regarding parole or probation and the applicable *NAC* (pages 25 through 28 of the exhibit). He moved on to page 29 of the exhibit with the following information:

The Probation Success Probability Form (PSP) and how it is used

- The (PSP) Probation Success Probability Form.
- A tool used to predict a defendant's potential to succeed on probation.
- The form is divided into two major sections:
 - Prior Criminal History and Present Offense.
 - Social History, Community Impact and Pre-Sentence Adjustment.

Lt. Combs explained the scoring system for the PSP recommendations. An example of the form was on pages 31 and 32 of the exhibit. He then continued by describing each section of the form as follows:

Prior Criminal History/Present Offense

- These sections look at defendant's prior criminal offenses, taking into consideration prior felony and misdemeanor convictions, pending cases, subsequent history, prior prison and jail terms, juvenile commitments if a young defendant (under age 21*), time in community without convictions, prior formal supervision terms and criminal patterns.
- The Present Offense section looks at the circumstances surrounding the instant offense, type of offense, violence, victim, multi-victim, financial impact, psychological impact, plea bargaining, sophistication, drug involvement, weapons, other co-offenders and motive.

Prior Criminal History/Present Offense

- Once this section is scored, the “raw” score is determined and entered.
The raw score is then multiplied by 1.2 which gives a total score for this section.
- Use of “Raw” score.
- Use of total score.

Social History, community Impact

- The Social History section looks at defendant’s social history including; age, family situation, education, employment, or programming (such as a vocational program, housewife, etc.), military history, employment, and current financial situation.
- The Community Impact looks at the defendant’s commitment and ties to the community, available resources, drug and alcohol abuse and mental health or substance abuse counseling issues.
- Pre-Sentence Adjustment focuses on the defendant’s honesty and cooperation in the investigation, their attitude towards supervision and the instant offense.
- Once this section is scored, the total is added at the bottom of the section.
- The adjusted score from the Prior Criminal History/Present Offense section is added to the total score from the Social History, Community Impact section.
- The total score is then used to determine the defendant’s amenability for probation.

PSP Score Range

- Total Score Ranges.
- 65-100=Probation.
- 55-64=Borderline.
- 0-54=Denial.

Lt. Combs next described the "Raw Score" table shown on page 40 of the exhibit as follows:

The SRSS (Sentence Recommendation Selection Scale)—A tool used to determine an appropriate penalty recommendation.

- Each count is treated separately; scale is divided into two sections by Row and Column.
- Rows are broken down into available penalty ranges.
- Columns are broken down to categories based on Raw Score, ranging from Low (scores of 39-49) to High (-5-5).
- First the assigned Specialist determines the penalty range for a particular count.
- Then they determine the column to use from the Raw Score.
- This gives a suggested sentence for the offender.
- The Specialist then utilizes the Total PSP score to determine whether to recommend probation or incarceration.
 - 0-54 = DENIAL 55-64 = BORDERLINE 65-100 = PROBATION
 - This is how the majority of recommendations are determined.

Exceptions and Division Discretion.

- Although the PSP and SRSS provide a suggested recommendation, other factors may influence the recommendation.
- With justification and with their supervisor's approval, the Specialist may choose to deviate from the suggested recommendation.
- Recommendations may be "Deviated" either In or Out of custody, or the penalty higher or lower.
- Justifications for Deviation may include, but are not limited to:

- A first time defendant who has committed an extremely serious offense may score probation and a low sentence, but may need to be deviated in to prison and/or a higher than suggested sentence.
- Negotiations in the offense may be reasonable and suggest a deviation to fit.
- A defendant may have a serious prior record which would cause the score to be a denial, however, the offense may be non-violent and his criminal history may have been several years before, resulting in the defendant's recommendation being deviated out for probation.

Lt. Combs gave an example from an actual case (pages 48 through 59 of the exhibit) which demonstrated to the Commission how the scoring was determined and the recommendations were made. In conclusion, Lt. Combs stated:

- Through careful planning, interviewing skills, verification of information, and use of the PSP and SRSS forms, Division personnel prepare Presentence reports, which provide a valuable and essential tool for the Nevada Criminal Justice System.
- The reports provide necessary information on an offender, not only at the time of sentencing, but for the remainder of time they are involved in the criminal justice system.
- The report follows the offender through probation, to prison, at the time of consideration of a parole grant, while on parole, for a future pardon application, and as a valuable resource for any future presentence investigations that may be necessary in the future.

In response to Chairman Hardesty, Lt. Combs stated that the PSP and SRSS were last reviewed for utilization in setting score in the late 1990's but deferred to Ms. Salling for additional information.

Ms. Salling believed that the Center for Crime and Delinquency did an analysis in the late 1980's or early 1990's but she had no recollection of any other review.

Chief Gonska commented that when he was hired the reports prepared by the Division were not disclosed. The first presentation made by the Division approximately 18 months earlier was to the Clark County Public Defender's Office. The Washoe County Public Defender's Office received the next presentation.

Chairman Hardesty stated that in testimony to the Legislature he had recommended inclusion of subpoena powers in A.B. 508 because he believed that disclosure of these reports was extremely important. Additionally, in the early 1990's a report was prepared by the head of the Division of Parole and Probation which concluded that over a three to four year period judges had followed the report recommendations approximately 85 percent of the time. This further substantiated the importance of the presentence investigation report.

Chairman Hardesty expressed concerns about the comment that some judges suggested that they either did not read the report or reviewed only a portion of the report and skipped quickly to the conclusion, while some judges followed the recommendation 100 percent. He believed that to the extent that there were any problems or concerns in the underlying scoring, the factor used to upgrade, or the SRSS, it had a direct impact on the recommendations made by P&P.

Chairman Hardesty requested the Commission members review the material provided as [Exhibit E](#) prior to the January 3, 2008, Commission meeting. At that time discussion would be held and the floor opened for questions. He requested that Lt. Combs return at that time to provide additional information as required.

Mr. Kohn was uncertain whether the public defenders should be allowed to see the scoring tools for each case to determine whether there were errors in the report.

Chief Gonska responded that he preferred to discuss that issue internally and with the district judges for opinions. In his opinion, the report was prepared only for the district judges.

Mr. Kohn commented that it was his understanding that the defendants in the southern district were given the 14 page questionnaire at the time they came into the P&P office and they were not allowed to take the questionnaire out of the office.

Lt. Combs answered that in the majority of the cases the defendant must fill out the form at the P&P office. The reason for this was because of the high rate of failure to appear when the defendant was allowed to take the information outside the office. The defendants could not be stopped from leaving the office with the form but they were encouraged to stay in the office while filling out the form.

Mr. Mallory asked for a description of the qualifications for the specialist who gathered the information.

Lt. Combs explained that most of the specialists were required to have a bachelor's degree or a comparable amount of casework experience in an equivalent agency. Many of the specialists were former officers who were writing presentence reports before this became a non-sworn position. The officers chose to demote to a non-sworn position and continue to write the presentence reports.

Judge Herndon suggested that the majority of judges would not be opposed to scoring information of the PSI being included. One reason for this would be because a defense attorney would like to know if the person who had a prison recommendation scored in the borderline category and where they scored. This would provide information as to whether it was human

discretionary input that moved the defendant from one category to the next. This would also be true for a prosecutor or a judge.

Chief Gonska was not opposed to providing the information. He also believed that the scoring information could delay the sentencing process because of more challenges.

Judge Herndon and Chief Gonska further discussed the scoring and possible interactions between judges and P&P on the issue.

Chairman Hardesty commented that as a judge sentencing was very difficult and more information was always better. He was interested to know how the PSP and the SRSS matched up with the parole guidelines that had been reviewed and approved by the Parole Board.

Mr. Digesti suggested that Chief Gonska consider the possibility of attaching the actual score card as an exhibit to the presentence report for the benefit of the defense counsel.

Chief Gonska requested Captain. Mark Woods, Executive Officer, Division of Parole and Probation, address the Commission regarding the status of the release of inmates who had been granted parole. Accompanying Cpt. Woods was Sgt. David Helgerman, the supervisor of the pre-release unit.

Cpt. Woods referenced the earlier testimony of Dr. Austin and the numbers of inmates currently in custody pending release because of parole planning issues. One of the major issues was a failure by the inmate to provide an adequate parole plan. This was an on-going issue and not new to the Division.

Sgt. Helgerman explained the parole process for the Commission stating that once an inmate was granted parole by the Parole Board it could take from one day to one month for the grant to reach the pre-release unit, but typically the timeline was one to two weeks. Once the grant paperwork was received at the unit, the administrative assistant input the information into the OTIS system

based on the eligibility date. As a result of A.B. 510 there were increasing numbers of inmates who were eligible immediately upon receipt of the grant paperwork. The unit could process approximately 22 grants per day. Once the grants were processed they were assigned to a specialist who reviewed the release plan and sent it for investigation. If no release plan was included, the caseworker at the Department of Corrections (DOC) was contacted.

According to Sgt. Helgerman, there was an increase in the number of inmates who did not want to be released on parole and would not provide a release plan. As a result of A.B. 510 the credits an inmate received could move their release date from prison close enough that the inmate preferred to stay in prison and complete their sentence rather than be released on parole.

When an officer received a release plan he had ten days to complete the investigation. If there was a problem with the plan, the officer could deny the plan and the inmate would be contacted for a new plan. Often the offender would not have an alternate plan to submit and would decide to expire (complete their sentence) in prison. If the inmate wanted to move to another state, federal mandates per the interstate compact allowed the other state 45 days to provide a plan approval. Once all of the approvals were received, the caseworker at DOC was contacted and the release date was set.

Chairman Hardesty commented that a fundamental problem that occurred in this situation was that there were inmates who were submitting either false parole plans or plans that were not feasible and, in some cases, they were being granted parole. His concern was that a number of inmates had decided to expire their terms rather than be under supervision. The process was consuming a considerable amount of time for both the Parole Board and P&P. Chairman Hardesty requested Chief Gonska, Cpt. Woods, Ms. Salling, and Mr. Skolnik to confer on how best to evaluate a pre-release plan. He proposed that a plan would be submitted to the Parole Board only if realistic. This would avoid the Board wasting time conducting hearings on unrealistic plans or plans that inmates had no intention of fulfilling. He had discussed the proposal with the group who would present suggestions to the Commission in January. If acceptable to the Commission, the proposal could be submitted to the Legislature. The

Chairman requested the topic be deferred until the January meeting unless members had questions or comments.

There being no questions from Commission members, Chairman Hardesty requested Gayle Farley, Victims' Rights Advocate, address the Commission regarding victims rights.

Ms. Farley introduced Lori Fralick, Victim Services Unit Supervisor, Reno Police Department, to address the Commission on behalf of the Alliance for Victims' Rights. Ms. Farley also introduced Pam McCoy whose son was murdered, and Jim and Dee Tresley, parents of Ms. McCoy.

Ms. Fralick began her presentation by introducing Kim Garret, Reno Police Department Victim Advocate; Kareen Prentice, Domestic Violence Ombudsman for the Attorney General; Traci Dory, Victim Services Officer, Nevada Department of Corrections; Christina Conti, Program Coordinator, Washoe County District Attorney's Office; Laurel Stadler, Mother's Against Drunk Driving (MADD). Ms. Fralick distributed [Exhibit G](#), a PowerPoint presentation regarding Victims' Rights, to the Commission. Ms. Fralick stated that in addition to providing the Commission members with an overview of the Alliance for Victims' Rights, she hoped to provide information on educating the various levels of the system from the time of investigation through post-conviction, hearings, and procedures.

Ms. Fralick noted that education started at the law enforcement academy level. According to Ms. Fralick, much of the victims' rights information included in the exhibit served as an example of information the Alliance believed should be distributed to professionals who interacted with victims and to the victims. Ms. Fralick continued her presentation with the following information:

Regardless of the outcome in criminal cases, whether it be conviction or not guilty, what matters most to us and where our interest lies, is the experience that the victim has in terms of the way that they are treated, their level of participation

in a case, their rights, not only being informed of them, but being ensured what rights are available to them and carried out. I think that is critical because regardless of the outcome of that case, it is never going to repair the harm or replace the loss in certain types of crimes. We know that is an unrealistic goal. Our interest here is to come up with a process and standardize it. Nevada is such a rural state and it will look different in every county. We do not want to come up with something that is 'one size fits all.' We want to do our homework and find out what has worked in other jurisdictions in terms of education and awareness. That is really our goal; to figure out a process. Oregon has a great one that they are working on to ensure victims' rights.

I included handouts Nevada Victims' Bill of Rights ([Exhibit H](#)) and *Your Rights and Responsibilities as a Crime Victim and Witness* ([Exhibit I](#)) booklet. These are great and we are excited that more and more information is being handed out at all different levels of interaction with victims and it is in the Nevada Constitution and we are grateful for that, but being in writing and being defined is not the same as being practiced. What we are looking at is trying to find out what that would look like in each community. We are working with advocates in rural communities and also the Community Coalition for Victims' Rights in southern Nevada and partnering with them on ideas and thoughts and how to work towards our goals.

With the Alliance for Victims' Rights, it is a forum in which survivors and family members can get involved in a positive way to make positive change. Often times whether they have had a negative or a positive experience, they want to give back on behalf of their loved ones or survivors themselves individually. A way to do that is often to be a part of events, to celebrate National Crime Victims' Rights Awareness Month and Week and to do events and to participate in community events such as candlelight vigils. We have a program where we are starting to recognize through an awards program criminal justice professionals, volunteers,

and agencies and businesses that do an outstanding job in working with victims and responding to victims. That is just one example.

In addition to having several mechanisms in place for them to do things such as plant trees in local parks, start scholarship funds on behalf of their loved ones, there are things that are really positive in nature to help with healing and recovery.

I have put together numbers from the Department of Public Safety's 2006 Uniform Crime Report. I change this every time I do a presentation for our law enforcement academies. It is amazing to me how as they update that website I have to constantly change that every 28 minutes 23 seconds we have a violent crime. It was 32 minutes last year. I heard in an earlier presentation that crime is not up but it seems to me that report is a little conflicting. Looking at these numbers, we have advocates throughout the system now which I think is a huge benefit. I think it definitely assists the victim through this maze. To a lot of people that do not work in the system the terminology and procedures are very foreign. I think it is a great way to offer a liaison between the system and victims. With the additional advocacy positions that we are starting to see around the state, we are seeing them at the law enforcement level, in prosecutor's offices, even at juvenile services in Washoe County, and the Department of Corrections at all different levels. The importance for us now that we have some of those positions is to pull it together and figure out how a victim transitions through the different agencies and offices so the advocacy is more consistent.

When we talk about crime victimization and the trauma that victims suffer, some of the things I wanted to mention that are important to us is that often people understand shock, they understand trauma. I can put these words on the slides and everybody could look at them and their obvious reaction to a loved one being murdered or a daughter being raped. But I think what is difficult is while the

cases are proceeding through the system there are many other collateral issues that these victims and their families are dealing with; where we are struggling with finding resources and the ability to effectively combat those things.

I just want to mention a few examples. I think that sometimes we forget these things are happening. Recently I worked on a case of an attempted murder and the victim, a student at the University of Nevada, and because of her victimization she was unable to finish her classes. She was carrying a full load of hard, intense classes. One of the problems that arose out of her victimization was that she withdrew from her classes but it was the University policy to only provide a 50 percent refund of tuition if the student did not withdraw by a certain date which was obviously out of the victim's control when the attempted murder happened. Part of our advocacy at the District Attorney's office and at the police department was to, on her behalf, negotiate with the Board of Regents, write letters, and go to bat for her so that we could justify her getting her tuition reimbursed.

I only share that with you because, again, that may not fit into the role of our job description or we may not see it as something that comes to the forefront because we do not care about it, but that is one of those issues as far as housing and transportation and lost work and things that do come up for victims having to attend court hearings. Even with the assistance that our agencies can offer, it still is not enough to compensate them for the loss.

We have a great compensation program, as do many states. Great as it is, it is most often not enough. I want to mention that I think people freely will state that, "we have compensation programs and why don't they apply for benefits?" I want to give you an idea. You have a murder case and you have numerous surviving family members, children, parents, and siblings who are all probably in need of counseling. The counseling benefit is approved at \$3,500 and possibly extended to \$5,000. For a family that does not have insurance, that is eaten up quickly.

The same with funerals. The process is very lengthy and even if you can get an approval within a week or two in a felony case, the funding is not going to come through and to find a funeral home that is going to provide services without credit is a difficult thing. We don't talk about these things enough to realize it does not work that way. I think that is something the Alliance and the Coalition in the south is going to start working on . . . how we can improve that process.

Chairman Hardesty requested Ms. Fralick walk through the process by which a victim would attempt to seek compensation and share her insight with the Commission.

Ms. Fralick explained that there was an application process which included criteria to be met. The victim must have sought medical attention to be able to qualify. When the Alliance filled out the application on behalf of the victim, the application was faxed to the Victims of Crime Compensation Office in Reno speed up the process. There was also an office in southern Nevada. The victim received a letter requesting them to contact the office to set up a telephone interview. In the meantime, the Compensation Office would obtain a copy of the police report from the law enforcement agency involved. The telephone interview usually occurred within two to four weeks following receipt of the application. Following the telephone interview, a claim number would be issued if the case was approved by the Compensation Office. The victim could then submit bills they had received from the hospital, the emergency room, or funeral homes. Once they received the claim number they could seek counseling services. Often counseling service providers would not take Victims of Crime claim numbers for payment. The victim would have to pay upfront and submit for reimbursement. In cases where a death occurred, the Alliance attempted to expedite the process. The Alliance would assist the victim in negotiations with funeral homes.

Chairman Hardesty asked why, especially in homicide cases, the reimbursement could not occur immediately rather than a victim having to wait two to four weeks.

Ms. Fralick responded that the Alliance was working on improving the process. The Compensation Office had to wait for a police report which could be delayed. The criteria included a statement that the victim could not be involved in commission of the crime.

Ms. Fralick advised that one area not covered by the compensation program was crime scene cleanup. In serious felony cases the burden was on the family to provide for cleanup. The costs could be several thousand dollars.

Chairman Hardesty requested that Ms. Fralick meet with her colleagues and prepare a list of areas that needed improvement and their recommendations. The Commission would consider the recommendations when preparing the report for the Legislature.

Judge Herndon inquired whether there were county and state funds available for the compensation program.

Ms. Fralick replied that it was a State program which was overseen by the Board of Examiners. According to Ms. Fralick there were several agencies which had money for emergency services. The county money would apply to such cases as sexual assault where statute required payment for the exam and up to \$1,000 in counseling services.

Christina Conti, Washoe County District Attorney's Office, Victim Witness Assistance Center (VWAC) Coordinator, added that per statute the county money was only available for sexual assault. Per the statute, a victim of sexual assault, child or adult, was given \$1,000 for follow-up treatment. The follow-up treatment included medical treatment or counseling services. The \$1,000 must be used prior to use of the \$3,500 for Victims of Crime.

Ms. Fralick advised that individual agencies also received money from the Victims of Crime Act (VOCA) Grant administered by the Division of Child and Family Services (DCFS).

Judge Herndon inquired whether there were other federal grants that would be available for crime scene cleanup or other areas excluded from the compensation program.

Ms. Fralick was not aware of any federal funds available for that use. Ms. Fralick also noted that most of the compensation programs were not available to undocumented aliens. This was an additional area of concern which should be considered.

In conclusion, Ms. Fralick noted that there was a small grant used during National Crime Victims' Rights Awareness Month to raise awareness and provide education on victims' rights. She suggested that in-service training at all levels would be beneficial. As previously mentioned by P&P, an effort was made to contact victims when preparing the PSI. In her opinion, training for the officers would be helpful both for the officers and the victims.

In response to Chairman Hardesty, Ms. Fralick noted that for victims to provide an impact statement in the PSI was an individual decision. She believed that the type of crime and the relationship between the offender and the victim also had an impact on the decision of the victim to provide the information. In domestic violence cases or intimate partner violence cases, victims may not feel comfortable in open court facing the offender. In that case they might prefer providing the information in writing on the PSI.

Chairman Hardesty and Ms. Fralick discussed training for judges in dealing with victims who wanted to testify in open court. Ms. Conti added that the Washoe County advocates prepared the victim along with the prosecutors throughout the process.

Responding to Chairman Hardesty, Mr. Mallory pointed out there were no programs in the rural areas. The district attorneys took on the role of advocate when necessary. He also noted that it was taxing on the resources of the district attorney offices throughout the state.

At the request of Chairman Hardesty, Ms. Fralick was willing to canvas the availability of advocates in the rural counties. She stated that the Attorney General's Office provided a great

deal of support to the rural areas. Ms. Fralick had recently presented training in Winnemucca for the Humboldt County area. Recently a systems-based advocate was hired in Winnemucca who served as both law enforcement and prosecution advocate housed in the district attorney's office. It was hoped the services could be expanded. According to Ms. Fralick, the prosecutor in Winnemucca said that the position had improved victim participation and cooperation. In White Pine County there was a law enforcement-based advocacy program that served several rural counties. Ms. Fralick was not aware of any other programs in the rural counties.

In response to Dr. Siegel, Ms. Fralick noted that there was a full time bilingual advocate in her unit at the Reno Police Department and at the Washoe County District Attorney's Office. The advocate was extremely busy handling the Latino caseload. The advocates worked with victims of all classes, including those at or below the poverty level. The lower socio-economic classes made up the majority of the caseloads. The demographics were available for review.

Ms. Conti commented that the socio-economic status of a victim was not widely discussed among the advocates. The advocate determined the resources needed for the victim. It was difficult to use the economic status of a victim as a measurement of participation, but the majority of the time the victims provided the victim impact statement either in writing or by reading the statement in court.

Ms. Fralick added that especially in intimate partner violence cases, victims who did not have resources available to them often returned to an abusive situation because they had no other option.

Chairman Hardesty requested Ms. Fralick share information with the Commission regarding the domestic violence situation. He believed it would be beneficial to hear about the available resources or the lack of available resources concerning counseling to abuse victims.

Ms. Fralick would prepare a presentation for a future meeting of the Commission.

Judge Herndon remarked that he had never seen any restitution requested for crime scene cleanup, funeral expenses, or other incidentals. Prior to the testimony presented today, he had not realized that crime scene cleanup cost was not covered. Chairman Hardesty voiced agreement that the Commission should look into the issue of costs for the incidentals involved.

Mr. Kohn pointed out that it was unlikely the person convicted would make restitution because of a lengthy prison term.

Further discussion ensued between Judge Herndon and Chairman Hardesty regarding the restitution issue for incidentals such as crime scene cleanup. The issue would be considered further by the Commission members at a later time. Chairman Hardesty also suggested that the victims' advocacy associations work closely with victims when preparing appropriate restitution requests.

Ms. Fralick agreed that perhaps the restitution requests were not being used to their fullest degree. She was also interested in meeting with P&P officials to make certain that victims understood what they could be requesting in the way of restitution.

Maria Alcott, victim advocate for Safe Next in Las Vegas, testified regarding support for the victims of crime. According to Ms. Alcott, the long-term effect of crime on the victims was not considered. At the time of an incident the victim or the family of the victim was distraught and unable to apply for all of the services available. Often the cutoff date was reached before the victim was aware that additional services were needed.

Ms. Alcott also testified that victims were often reluctant to discuss the case when the crime first occurred. She believed that if the victim did not take advantage of services at the time of the crime, the services should be offered to the victim later . . . once the victim had time to reconsider and think clearly.

Chairman Hardesty suggested that Ms. Alcott consider working with her colleagues to make recommendations and develop information for the Commission.

Chief Gonska commented that victims' rights were extremely important and had improved tremendously over the years. He thanked the advocates for their work and dedication.

Chairman Hardesty remarked that he was concerned about the workload and availability of victims' advocates. He wanted to know the need for advocates throughout the State and requested the information be made a part of a future presentation.

Assemblyman Carpenter noted that at the end of the Legislative session there was a problem with some of the funding for victims' advocates which came from marriage licenses. The DCFS had informed the legislators there was a shortage. The Legislature had appropriated additional funding to cover costs for two or three months. He believed the Commission should look into the issue to see whether the funding was put into place.

Chairman Hardesty requested that Mr. Carpenter look into the issue for the Commission. The Chairman was also curious to learn about the availability of shelters for victims of domestic violence.

Ms. Fralick responded that in Washoe County there were two domestic violence shelter programs which were usually at full capacity. The programs worked with local hotels for emergency services but during big event weeks hotel rooms were not available. It was challenging to help the victims.

Ms. Alcott added that Safe Nest in southern Nevada had 102 beds for victims. She believed that Safe House had approximately 60 beds and there was one other shelter that housed both women and men, which was not a safe place for women and children. Total number of beds for Las Vegas was approximately 165 beds.

Attorney General Masto pointed out that she chaired the Domestic Violence Prevention Council and the statistical information was available. She would work with the advocates to provide the information to the Commission on statewide services available.

Chairman Hardesty thanked Ms. Farley and the advocates for their testimony and opened the floor for public comments. Chairman Hardesty requested that comments be restricted to three minutes per person because of time limitations.

Florence Jones, private citizen, commented that she was opposed to the use of the word "expire" when referring to inmate sentences. Ms. Jones had two sons incarcerated and believed that no one should be released from prison without a parole tag. She was aware that would incur additional expenses but believed the overall savings was invaluable. She requested the Commission strongly consider that the word "expiration" be taken out of the sentence structure.

Chairman Hardesty next recognized Teresa Werner, concerned citizen, who commented regarding violent versus non-violent offenders. Ms. Werner requested the Commission consider the following suggestions:

- Review the statistics of violent acts in the prisons and whether the acts were committed by violent or non-violent inmates.
- Place literature regarding advocacy programs in all schools and churches.
- Ensure the amount of restitution could adequately aid the victims.
- Provide community education and awareness to prevent violent crime.

Additionally, Ms. Werner thanked the Parole Board for extending the amount of time given at each parole hearing.

Chairman Hardesty recognized Tonja Brown, advocate for the innocent and inmates on appeal, who provided [Exhibit J](#) for the record. Ms. Brown stated that minutes from the October 30,

2007, meeting of the Commission had omitted statements from Mr. Kohn and Mr. Bosler who testified asking for a request to be submitted for a case study on inmates wrongly convicted through misidentification through lineups and DNA evidence.

Ms. Brown read the following statement into the record:

On 9-12-07 Parole Board Chair Dorla Salling answered unequivocally "no" when Attorney General Catherine Cortez Masto questioned her about the wording of the risk assessment guidelines, denial of crime of inability to accept the responsibility for the offense. AG Masto questioned whether it would violate an inmate's due process with regard to law and A.B. 510 in determining whether to grant a parole to a prisoner the Board shall not consider whether the prisoner has appealed the judgment of imprisonment for which the prisoner is being considered for parole. In Chairman Dorla Salling's response, she stated she had no knowledge of the Board ever asking an inmate whether or not they had an appeal pending, nor did she have any knowledge that the Board ever consider whether or not to grant or deny parole if an inmate has an appeal pending. In your own minutes of the September 12, 2007, is Dorla Salling's testimony again, it is in complete contradiction do what Ms. Salling testified to.

My integrity is in tact and I challenge the Commission to operate with the integrity that we, the voters, of the 2007 legislators placed with them, especially in A.B. 510, wherein this Commission was specifically directed to report back to the Legislature and the Governor regarding an oversight committee and an independent audit of both the Department of Corrections and the Parole Board. Had we had an oversight committee, Parole Board commissioners Dorla Salling, Bisbee, Veith, and Goodson would not have been able to do as they pleased at Mr. Klein's due process hearing on July 10, 2007. Instead they would have had to follow what our legislators enacted yet they chose to do otherwise because as it

stands now they have no accountability to anyone, including you, the Advisory Commission on the Administration of Justice.

For example, at Mr. Nolan Klein's due process hearing it was acknowledged that his sentences had already expired and they no longer existed; however, the Parole Board Commissioners revoked his granted paroles. How is that allowed to happen when our laws are perfectly clear that unless an inmate violates the condition of his/her granted parole it cannot be revoked? Yet Dorla Salling revoked the granted paroles on his expired sentences all the while it was acknowledged that Mr. Klein did not violate the condition of his granted paroles.

It is clear to everyone that it was in retaliation because Mr. Klein refused to sign their offer which consisted of Mr. Klein keeping his granted paroles starting back from 1990 that would include the granted parole from his first life sentence to his second life sentence and changing his 1997 and 2004 denials to grants making eligible for release. This is what this court case has been about, that Mr. Klein maintains and his documented parole papers do indicate that he has been on his second life sentence for a number of years and this Parole . . .

Chairman Hardesty interrupted, pointing out that the Commission was concerned with making recommendations to the Legislature and establishing policy for the State. He welcomed Ms. Brown's input but remarked that it was not helpful to the Commission to re-litigate Mr. Klein's case repeatedly. Chairman Hardesty requested Ms. Brown provide her recommendations for the Commission.

Ms. Brown responded that she requested the Commission consider establishment of an oversight committee. She asked that discussion of such a committee be placed on January 2008 agenda of the Advisory Commission for the Administration of Justice. Ms. Brown further requested that the issue of the misidentification as discussed at the previous meeting be placed on the agenda.

Mr. Kohn interjected that Ms. Brown should give the Commission an opportunity to gather the information they needed before placing an item on the agenda. He suggested that she not demand an item be placed on the agenda on a specific date as witnesses had to be contacted and information gathered.

In conclusion Ms. Brown requested that the information she had provided ([Exhibit J](#)) be made a part of the record.

Chairman Hardesty recognized Pat Hines, concerned citizen. Ms. Hines provided [Exhibit K](#) to the Commission. In the interest of time, Ms. Hines had three areas for consideration by the Commission which were as follows:

1. Consider discussions on sex offenders. Ms. Hines believed the Commission should review the issues of sentencing through limitations placed on sex offenders in the community. She stated that since the Adam Walsh Act passed in 2006 as Public Law 108-249 the issue was timely. She suggested that the Advisory Committee on Community Notification of Sex Offenders, if active, could provide assistance to the Commission.
2. Review the Parole Board and their responsibilities. In her opinion, the number of cases heard annually needed to be increased.
3. Evaluate the neighborhoods where the prisoners came from and where they returned. She requested the Commission discuss the issue and request funding to improve the community situation.

Chairman Hardesty requested additional public comment or questions. There being none, he requested the Commission discuss future meeting dates, topics, and possible sub-committees. Chairman Hardesty suggested that in January and February 2008 the Commission focus on the issue of sentencing. Additionally, he believed it was critical to report to the Legislature on the impact of [A.B. 510](#) and [S.B. 471](#). He suspected that it would be May or June 2008 before all information was gathered and an assessment could be made.

Chairman Hardesty suggested a sub-committee should be formed to discuss the juvenile justice system. The information could be gathered and formulated into a report that the Commission could review prior to proceeding. Chairman Hardesty suggested Senator Horsford chair the sub-committee.

Chairman Hardesty requested Attorney General Masto chair an information gathering sub-committee on the victim advocate issue. He asked for funding information to be included. He also requested that Ms. Farley serve on the sub-committee.

Chairman Hardesty requested two sub-committees on the sentencing issue. He noted that some states had taken alternative approaches to sentencing and it was important to have a survey of those approaches and how they were being used. Chairman Hardesty presented [Exhibit L](#), the Missouri Plan, for Commission members to consider.

Another area that Chairman Hardesty suggested the Commission should review was S.B. No. 416 of the 1995 Legislation Session as addressed by R. Ben Graham, representing the Nevada District Attorneys Association, at the October 30, 2007, meeting.

Chairman Hardesty asked the Commission to examine the availability of services and resources in the communities, whether treatment, mental health, or other programs. Because of a lack of funds available in the State, the Commission should consider a resource shift. Budget issues and available dollars should also be discussed.

Chairman Hardesty advised the members of the process he believed should be used when writing the report to be submitted to the Legislature.

The formation of the sub-committees would be on the agenda for the January 3, 2008, meeting of the Commission.

[Although he was unable to testify, Scott Shick, Chief Juvenile Probation Officer, Douglas County, submitted [Exhibit M](#) for inclusion in the record.]

There being no further business or public comments to be presented before the Commission, Chairman Hardesty adjourned the meeting at 6:02 p.m. The next meeting will be January 3, 2008, at 9:00 a.m. at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada. Agenda items will be provided to Commission members.

Submitted by:

Linda Blevins, Interim Secretary

APPROVED:

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

DATE: _____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice

Date: October 30, 2007

Time of Meeting: 9:03 a.m.

Bill	Exhibit	Witness / Agency	Description
***	A		Agenda
***	B		Attendance Roster
	C	Dr. James Austin, JFA Associates/The Institute	PowerPoint Presentation
	D	Dr. James Austin, JFA Associates/The Institute	Unlocking America report
	E	Susan Roske, Chief Deputy, Juvenile Division, Clark County Public Defender's Office	Juvenile Prosecutions
	F	Lt. Charles Combs, Court Services Unit, P&P	Presentence Report presentation
	G	Lori Fralick, Reno PD	Victims' Rights presentation
	H	Lori Fralick, Reno PD	NV Victims Bill of Rights
	I	Lori Fralick, Reno PD	Booklet on Victims' Rights
	J	Tonja Brown, citizen	Correspondence
	K	Pat Hines	Improving Prison Benefits
	L	Justice Hardesty	The Missouri Plan
	M	Scott Shick, Douglas County chief Juvenile Probation Officer	Testimony from 2005 Legislative Session re AB 329