

**MINUTES OF THE
ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE'S
SUBCOMMITTEE TO CONSIDER ISSUES
RELATED TO A STUDY OF "TRUTH IN SENTENCING"**

June 16, 2008

The meeting of the Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues Related to a Study of "Truth in Sentencing" was called to order by Justice James W. Hardesty, Chair, at 1:14 p.m. on June 16, 2008, at the Legislative Building, Room 3138, 401 South Carson Street, Carson City, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT:

Justice James W. Hardesty, Nevada Supreme Court, Chair
Jeremy Bosler, Public Defender, Washoe County
John Helzer, Assistant District Attorney, Washoe County Criminal Division
Douglas Herndon, Judge, Eighth Judicial District Court
Phil Kohn, Public Defender, Clark County
Christopher Lalli, Assistant District Attorney, Clark County
David R. Parks, Assemblyman, Clark District 41
Richard Siegel, President, American Civil Liberties Union of Nevada, Inmate Advocate

SUBCOMMITTEE MEMBERS ABSENT:

Bernard W. Curtis, Chief, Parole and Probation
Howard Skolnik, Director, Department of Corrections

STAFF MEMBERS PRESENT:

Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary

OTHERS PRESENT:

James Austin, President, JFA Institute

CHAIR HARDESTY:

Are there any corrections to the minutes for the Subcommittee's meetings on March 17, 2008, and March 24, 2008?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 2

MR. KOHN MOVED TO APPROVE THE MINUTES OF THE MARCH 17, 2008, MEETING.

MR. SIEGEL SECONDED THE MOTION.

THE MOTION CARRIED. (MR. CURTIS AND MR. SKOLNIK WERE ABSENT FOR THE VOTE.)

MR. KOHN MOVED TO APPROVE THE MINUTES OF THE MARCH 24, 2008, MEETING WITH ONE CORRECTION: MR. LALLI RATHER THAN MR. BOSLER VOTED NO.

MR. SIEGEL SECONDED THE MOTION.

THE MOTION CARRIED. (MR. CURTIS AND MR. SKOLNIK WERE ABSENT FOR THE VOTE.)

CHAIR HARDESTY:

The Commission worked with Dr. Austin of the JFA Institute, the University, the Pew Institute and others to begin the examination of the 1995 legislation regarding truth in sentencing. The Pew Institute has contracted directly with the JFA Institute to fund a portion of the study. The Commission is paying for the balance of the study. The study is proceeding under a scope of work attached to the contract. There are three phases of work. Phase I is to determine the impact of the 1995 sentencing legislation and contemplates the JFA staff would: conduct an analysis of the aggregate and specific offender trends prior to and after the passage of this legislation; and conduct interviews with legislators and correctional officials involved in the passage to better understand the law. At this point, it is unreasonable to expect Phase I to be completed by June 15, 2008. Dr. Austin provided an initial report to the Commission on June 9, 2008. All the members of this Subcommittee have been provided with a copy of Dr. Austin's PowerPoint presentation titled "Truth in Sentencing Study by the JFA Institute and the University of Nevada, Reno and Las Vegas." Mr. Helzer's questions about that presentation were forwarded to Dr. Austin.

MR. HELZER:

I would like to concentrate on Dr. Austin's presentation of June 9, and the 49 percent incarcerated without a prior felony conviction. Can we break that group down? Do we need

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 3

to eliminate people who were on probation or parole and failed? Should we look at the various mandated crimes to see how certain crime groups influence the remainder?

JAMES AUSTIN (President, JFA Institute):

We can get more information about the 49 percent group, such as the type of crime and prior record.

MR. HELZER:

Will the Subcommittee make recommendations, as to this specific group and specific crimes, regarding what could be done to reduce the population going to prison?

DR. AUSTIN:

That will be up to the Subcommittee. It is not my role to make specific recommendations regarding what should be done. What I can do is provide information for you to make the determination whether they should be going to prison and for how long. This is a group to look at because they do not have a long prior record. They may have committed a serious crime with a mandated prison term. Once we provide more information to the Subcommittee, it will help you make decisions.

MR. HELZER:

Would you agree there is a need to look at the crimes committed because the issues differ?

DR. AUSTIN:

That is correct.

CHAIR HARDESTY:

Phase III of this project addresses recommendations. When the other phases are completed, the Commission is looking to JFA and the Grant Sawyer Center for Justice Studies to make recommendations relating to sentencing disparity, proportionality, correctional population growth and costs, and reductions in crime. There is a separate subcommittee chaired by Judge Herndon addressing mandatory trafficking sentences which will make recommendations to the Commission regarding trafficking and substantial assistance.

MR. HELZER:

How do we handle the 49 percent group's failure on parole and probation? This population probably did not have the opportunity afforded others for options other than incarceration.

DR. AUSTIN:

There would not have been parole failures because they have never been convicted of a felony. Under Nevada statutes, are misdemeanor convictions placed on probation?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 4

MR. LALLI:

Only gross misdemeanor convictions are placed on probation.

DR. AUSTIN:

This is unique to Nevada. If there is no prior felony conviction, there could have been a prior gross misdemeanor conviction, placed on probation, and then failed probation. We will try to separate those with no criminal record who go to prison. There will probably be many receiving a mandatory prison term. There is another group, without a mandatory prison term, who are going to prison without a prior felony conviction. There is another group, without priors, which may be suitable for alternative action by the courts.

CHAIR HARDESTY:

Sixteen percent seems to have held steady between 1995 and 2006 with one prior.

MR. LALLI:

Are those with no prior felony convictions going to prison as a prison sentence without probation on their first felony conviction included in the 49 percent group? For example, if I have never been in trouble before, commit a felony, receive probation, and probation is revoked for a technical violation, I go to prison. Am I included in the 49 percent?

DR. AUSTIN:

If you are going into prison on a technical violation of probation, you would be counted as a "none." All the information I provide to you comes from agency records. Agency records must be interpreted. This information comes from the Department of Corrections' (DOC) classification system. It is used to classify inmates for security level. The number of prior felony convictions is part of that system. The data I will show you today is the Division of Parole and Probation's (P&P) presentence investigation intake information. The P&P and DOC numbers agree with each other. The 49 percent range appears to be accurate in terms of the people being seen by the courts and going to prison. They could have a felony in California we do not know about.

MR. SIEGEL:

Will we know about the non-Nevada felonies?

DR. AUSTIN:

I think we will because P&P, which does the intake, has an address field so we will know the residence.

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 5

MR. HELZER:

How does the Nevada success rate of 39 percent rate nationally? Dr. Austin stated 82 percent on parole is a high success rate, low recidivism.

DR. AUSTIN:

Nevada is about average. The failure rate is 39 percent. Whenever I say nationally, I am referring to the U.S. Department of Justice, Bureau of Justice Statistics (BJS). Since 1995 the BJS surveys the probation department in each state, using universal definitions. The BJS has been tracking the percent of people who successfully complete probation and those who complete parole. The national average from BJS is 41 percent failed to complete their probation term. Nevada has a 39 percent failure rate; it used to be higher. The success rate is getting better; the failure rate is reduced.

MR. HELZER:

Where do the numbers come from for the 41 percent without a prior felony conviction?

DR. AUSTIN:

The information comes from the Nevada DOC's classification system. The information includes eight or nine factors to determine the classification of custody.

MR. HELZER:

How current is the information? There are approximately 300,000 dispositions not in the repository.

CHAIR HARDESTY:

Would that matter? The source of Dr. Austin's information is the DOC and P&P.

MR. HELZER:

Are criminal histories used at intake?

DR. AUSTIN

We will get that information.

MR. HELZER:

The 57 percent violent crime rate in Nevada is higher than the national average, so we would expect a higher prison population.

DR. AUSTIN:

That is correct. There are 742 violent crimes per 100,000 population, which is higher than the national average.

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 6

MR. HELZER:

There was some discussion last week regarding out-of-state individuals, non-residents of our prisons.

CHAIR HARDESTY:

That is proportional. The crime rate report has us at 742 people, which is less than 300 more than the national average. While it is 57 percent, all of these are category A and B felonies; we need to keep in context the numbers we are using. There are 13,300 people in the prisons.

DR. AUSTIN:

In general, states with higher crimes rates have higher incarceration.

MR. HELZER:

What about being an adult tourist destination? Twenty percent of our population is non-resident. Is that attributed to tourism?

DR. AUSTIN:

Previously I looked at the 20 percent in other studies here. A large portion is California residents. Nevada is a popular tourist area for Californians. There is a book, Social Stress in America, which looks at indicators for violent crime, suicide, etc. Nevada scored high in that 15-year-old study. The economic base in Nevada contributes to these factors. If we want to reduce the crime rate, those indicators will need to be addressed as well as the criminal justice system.

MR. HELZER:

What is the percentage of people who are going to prison due to a mandated sentence?

DR. AUSTIN:

We are working on those numbers. The data received from P&P did not have the NRS statute which will tell us which crimes have mandatory prison terms. The information should be received today.

MR. HELZER:

If we remove the mandatory sentences for the 40 percent of the time a district court judge follows the recommendation for prison, can we look at the balance to determine how often the recommendation is followed?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 7

DR. AUSTIN:

The 40 percent are not mandatory sentencing. These are cases where P&P has recommended prison and the judge gives another sentence. There should be no mandatory prison statutes included in the 40 percent.

MR. HELZER:

I am curious about the justice by geography.

DR. AUSTIN:

We are looking at the variation in how courts do their business. A pattern has emerged here. In other states, urban cities generally have lower prison disposition rates than rural areas.

CHAIR HARDESTY:

Of the 40 percent of the time the judge orders prison, what percentage required mandatory sentencing? That percentage will tell us to what point judges are exercising discretion for or against prison recommendations.

DR. AUSTIN:

I will get that information.

MR. LALLI:

I would like copies of the truth in sentencing graphs from Dr. Austin's PowerPoint presentation last week.

DR. AUSTIN:

I will get copies to you. Those graphs are provided monthly to the Commission.

MR. SIEGEL:

The DUI drop from 1995 to 2006 is interesting. Was the drop in DUI incarcerations anticipated?

CHAIR HARDESTY:

The material provided at the last Commission meeting implies mandatory incarceration is operating successfully as a deterrent. An average sentence length went from 7.8 years to 6.6 years between 1995 and 2006, but the length of stay went from 1.7 years up to 2.0 years; the percent of time served went up from 22 percent to 31 percent, and there is a 25 percent recidivism rate. Those numbers imply heavier incarceration is having a deterrent effect. These numbers do not allow us to draw any conclusions at this time. Can you obtain a similar or lower recidivism rate without incarcerating someone 6.6 years? Will incarcerating for 5 years do the same thing?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 8

MR. SIEGEL:

Are there any research questions as a result of the drop in admissions?

MR. BOSLER:

Clark County developed its felony DUI program to encourage long-term treatment in lieu of a prison term. I do not know if a conviction was entered before participation in a treatment program was required. Has this program impacted felony convictions?

MR. LALLI:

The Serious Offender's Program is formalized statutorily in the DUI court. A person with three or more DUIs, without a DUI death or DUI substantial, would plead guilty to felony third offense DUI and then go through the program without being adjudged guilty. If they fail the program, they were adjudged guilty and sent to prison. If they were successful in the program, the charge would be reduced to a DUI second offense. Credit for time served would be applied on the DUI second offense.

CHAIR HARDESTY:

How long did the Clark County program operate?

MR. LALLI:

The program started before 2003 under Stewart Bell when he was District Attorney.

CHAIR HARDESTY:

How many people went through the program annually?

JUDGE HERNDON:

That is hard for me to say; I have had a full criminal caseload since the beginning of 2007. My dealings as a district attorney were before the program began. During the last 1.5 years, the majority of DUI cases were referred to the program as opposed to coming in, pleading and receiving a normal sentence.

CHAIR HARDESTY:

Impressions are not good with respect to deterrent effects to the extent Clark County was operating this program before it was statutorily sanctioned. It would skew the DUI incarceration rate. Could we get some data from Clark County? The Clark County District Attorney's Office, the Public Defender's Office and the judicial system managed to put people into a program and avoid prison time. This was accomplished in the face of mandatory prison time. This is an alternative which worked. What was the reasoning behind the program? How did Clark County do this even though the statute mandated prison?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 9

MR. LALLI:

There is one primary DUI advocacy group in Clark County; they gave their blessing to this program. The success of the program, with its low rate of recidivism, resulted in the program's continuance. We knew there were problems with the program when we looked at the statute.

CHAIR HARDESTY:

Is that what precipitated the statutory change?

MR. LALLI:

Yes. The courts and advocacy groups wanted to keep the program alive. Clark County was going to remove itself from the program in light of the statutory obligations.

JUDGE HERNDON:

The use of the program, before statutorily available, would skew the numbers, and, much like the boot camp program, it was rare, if ever, that a person referred to the program failed the program. The program was designed to give everyone an opportunity to succeed while recognizing there may be stumbling blocks along the way.

CHAIR HARDESTY:

We can get together to see what the numbers are for this program. This is an example of a program which has been successful and diverted people away from prison. This success implies something could be accomplished with other crime types. The problem is, the program now available by statute is not available in most of the rest of the State due to lack of funds. The Supreme Court has nine or twelve writ petitions from other jurisdictions around the State challenging the program, not because they do not view it as successful, but because it is not supported. The problem is the different forms of justice. A DUI in Clark is treated differently than a DUI in Carson City. This is a proportionality item we need to reconcile. Clark County should be applauded for what it succeeded in doing. We need to determine how to extend that success in the rest of the State.

MR. BOSLER:

The Public Defender's Office provides representation in the felony DUI court. We have 22 people in the program, which started in January 2008. To participate, one must be a resident of Washoe County. A justice-by-geography issue does exist.

CHAIR HARDESTY:

What was the length of the pre-statute program?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 10

MR. LALLI:

It was a three-year program.

MR. BOSLER:

Washoe County's is a three-year program.

MR. SIEGEL:

The numbers the Subcommittee is looking at represent a breakdown of crimes in a given year. It does not mean there was a drop or a rise in a particular crime. The mix may be an explanation. Driving Under the Influence, as a percentage of those incarcerated, could have fallen because there was a rise somewhere else.

DR. AUSTIN:

That is correct as represented in the chart indicating male and female 1995 and 2006. The male prison population was about half of the 2006 population. Are we seeing admissions for DUIs into the prison system changing? The Parole Board could have done something differently with DUIs to shorten the length of stay. I would like to have a contact person in Las Vegas. Contrary to what most people believe, DUIs generally do have a lower recidivism rate than the typical prisoner, as shown by the Department of Justice and other small studies. There is a group of DUIs who get a "hit" of prison and sober up. There is another group that does not sober up; they are the danger group. There are people, at a local level, who enter a program which is sufficient for them to not repeat that behavior. A program to target a particular type of criminal behavior may be used rather than the way they are being handled now. The more I can learn about the program operated in Clark County, how it selects people and its success rates, will help me describe the DUI changes.

CHAIR HARDESTY:

Clark County's success could account for a number of defendants.

MR. LALLI:

I will help Dr. Austin get those statistics.

CHAIR HARDESTY:

The Subcommittee will move to Agenda Item III.

DR. AUSTIN:

The "Nevada Court Disposition Summary, USA v. Nevada" ([Exhibit C](#)) is based on data from P&P intakes during 2007, almost 11,000 people. The major dispositions recorded are categorized as prison, jail, probation and miscellaneous. The file consists solely of felony cases; further analysis is required to determine if gross misdemeanors are included. This

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 11

information provides a sense of some basic parameters about court disposition by key indicators.

The first table compares disposition rates with what is published by the BJS, U.S. Department of Justice. The BJS does not have felony dispositions by state. The limitation on the USA data is the numbers include only the 75 largest counties in the United States. Las Vegas is one of the 75 largest counties, and possibly Reno. We are comparing some apples and oranges, but it is interesting information. Nevada sends 33 percent of its felony cases, and perhaps gross misdemeanors, to prison. Six percent receive a jail sentence. Sixty-one percent receive non-incarceration, almost all of which is probation. Nevada differs by not using jails for sentencing felons. Nevada has a small percent of felons sentenced to jail. In the USA, 40 percent are sentenced to jail, generally a term of less than 12 months. Credit for time served may apply.

MR. LALLI:

Is that also a condition of probation?

DR. AUSTIN:

The disposition is not reported in the BJS data. I will get that information. I suspect they use the most severe sentence and work backwards from prison, jail and probation. Nevada's prison disposition rate is not much different from the USA's.

MR. HELZER:

Does the prison disposition, 33 percent in Nevada, factor the felony cases which plea or fall to the wayside?

DR. AUSTIN:

These are only cases with a sentence imposed. The University of Nevada, Reno, is looking at the "front end." Nationally, approximately 20 percent of felony cases result in dropped charges, acquittal, diversion program or the case was not strong enough, etc.; no conviction is achieved.

The "Recommended Sentence by Actual Sentence" table shows the 2007 P&P recommendation to the court and the actual sentence. A probation disposition was recommended for 5,687 (52.3 percent) people; actually sentenced to probation was 6,407 (58.9 percent) people. P&P recommended prison for 4,585 (42.2 percent) people and the actual sentence was 3,597 (33.1 percent) people.

The "Detailed Recommended Sentences by Actual Sentence" table shows that 1,099 of the recommended prison cases were put on probation by the court. This is an interesting group.

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 12

What is it about these cases that the court is saying no to the P&P recommendation? It would be interesting to determine how well this group of people succeed. It gets to the heart and soul of P&P's work, which they are undertaking now. I had a good meeting with Chief Bernard Curtis. P&P has a scored system which has not been touched in many years. This type of disparity between P&P and the court suggests the system needs to be reanalyzed and retooled.

For those P&P recommended probation for, 240 people received a prison sentence. There is not much happening in the jail because it is not used much although the courts use jail more than what is recommended by P&P.

MR. LALLI:

Would you go into more detail regarding this last table?

DR. AUSTIN:

Take the 4,585 people P&P recommended for prison sentencing, as shown in the second table, down to the third table under recommended prison; add the three numbers across (126 plus 1,099 plus 3,344) for a total of 4,585. The third table indicates what the court actually did with P&P recommendations. If the court was following P&P recommendations, the prison system population would be higher than what it is today. The table shows where the people are. We can drill down on the numbers; we can tell you about their prior record, their crime, substance abuse problems, county of residence, district and which judge did the sentencing.

CHAIR HARDESTY:

Are the 240 people sentenced to probation (third table) coming from a particular department in this State?

DR. AUSTIN:

The "Prison Disposition Rates by District and County" ([Exhibit D](#)) table provides information for the 33 percent, table 1, ([Exhibit C](#)) sentenced to prison. This table indicates a prison rate high of 46 percent in District 3 to a low of 25 percent in Districts 5 and 6. This information tells the Subcommittee nothing at this point about a statistical variance in rates. If everyone was doing everything the same (looking at the evidence the same and getting the same type of defendant, for instance) there would be little variation. This table indicates variation by district. The researcher's task is to explain the nature of the variance; is it the nature of the crime, prior records, etc. Clark and Washoe Counties, the largest and the urban counties, have disposition rates of 33 percent. There is a large variation in the number of cases being processed. The second table indicates Prison Disposition Rates by Judge and

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 13

includes only judges, represented by a letter not by name, who have handled at least 100 cases. The highest rate is 58 percent; the lowest is 23 percent.

JUDGE HERNDON:

I do not mind if you tell me which letter represents me.

CHAIR HARDESTY:

There are a number of judges who would not be on this list because they are strictly civil judges in Clark County and a number of judges in the rural counties who do not hear 100 criminal cases.

DR. AUSTIN:

Judge Herndon is at a rate of 31 percent, which is lower than the State's base rate.

The "Nevada Probation Comparison" ([Exhibit E](#)) provides an indication of the types of information we can drill down to and what is recorded on these people. For instance, race is recorded. Race is important to demonstrate it is not having an independent effect on judicial decision-making. The table reflects "column" percents as opposed to "row" percents. For instance, of the 624 people sentenced to jail, 2.2 percent were Asian; 20.8 percent were black; 1.6 percent were Indian; and 73.4 percent were white. What you want to see is the percentages moving across the disposition. Looking at the prison group, there is not much movement; there is a movement on black going from 20.8 percent to 25.2 percent; the white movement is from 68.9 percent to 73.4 percent. That gets into statistical and substantive significance. The probation numbers indicate about the same percentages. Preliminarily, this looks pretty good to me. I do not see much of a racial disparity. Looking at the other information about these people (prior record and nature of the crime) may explain why the differences exist, which will be our next phase of work.

MR. LALLI:

To give more sense to these numbers, would you want racial profiles on actual/arrested crime?

DR. AUSTIN:

Yes. The chart I did for that nationally, which looks at estimated racial profile and involvement in crime from self-report surveys, can provide race and gender arrestees. That can be broken down by convicted population and prison disposition rates. Nationally you see a large switch over on the conviction rate. Looking at reported crime by race, you will see a higher proportionality among African Americans; not huge, but they are being self-reported as being more involved in certain kinds of criminal activity. There is a slight increase in chance of being arrested, but a big jump in being convicted. Statisticians look at that and say

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 14

it is fueling a high incarceration rate for African Americans and Hispanics. We can try to do that for Nevada.

The gender of people significantly varies, most people are males. Males are over-represented in the jail and prison populations. Women have a higher percentage going to probation, although the female prison population is increasing.

The jail sentence becomes a big factor. If you are going to prison, you are more likely to have had a prior jail sentence; however, 30.4 percent of people sentenced to prison have not had a jail sentence of any kind. Prior incarceration data shows 48.8 percent of the people have not previously been in prison. Conversely, a much higher percentage of those placed on probation do not have prior incarceration of any kind. With prior formal supervision, one is more likely to have been on supervision before and go to prison. These are things you expect to see; the court is taking into account prior criminal records. Overall, about half of the people going through the courts are regular users or serious abusers of an illegal drug. The numbers were not as high as I had expected on alcohol abuse. The real action seems to be in the meth and cocaine users. I cannot drill down to the drug type; that information is lacking in the database. Additional information is shown, including people convicted of a property crime are more likely to be put on probation or get a jail sentence, but a sizeable number will go to prison; victimless crimes are largely drug crimes. When I have the actual statutes, we will be able to drill down on the particular crimes. The PSP score is an overall index which drives a recommendation to the court. The lower the point total, the more likely a person is recommended for a jail or prison system. The point total is followed somewhat; it is a measure of severity of problems, prior criminality and does have an influence. There is a lot of other information in this data file.

What other information does the Subcommittee want from me and the University? This type of information can be used to look at the disposition decision-making made at the district, county and judge levels.

CHAIR HARDESTY:

Under truth in sentencing, it was the expectation a person sent to prison would serve a minimum term, up to 40 percent of the maximum. The graph provided the Commission showed the percent of time served was 31 percent. Is there a correlation there? Did people serve the promised minimum sentence?

DR. AUSTIN:

I do not know. That information came from the DOC. We have been having difficulties there. We will get the information. You want to know precisely what percent of the minimum term is being served. Does that include credited jail time?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 15

CHAIR HARDESTY:

Yes, it does. My question relates to A.B. 510 because the statistics, if possible, should pre-date July 1, 2007, when A.B. 510 became effective.

DR. AUSTIN:

We can do that because I have all the data on people sentenced after that date. I can also get the next six months of 2008.

CHAIR HARDESTY:

Yes, we need that as well.

MR. LALLI:

The percentage rate could represent people sentenced prior to truth in sentencing or still in there for serious crimes.

CHAIR HARDESTY:

That is true.

DR. AUSTIN:

Did the legislation affect the people arrested after a certain date?

MR. LALLI:

Truth in sentencing went into effect July 1, 1995.

DR. AUSTIN:

We know the date people were admitted to the prison system.

CHAIR HARDESTY:

We probably want to back out people sentenced after July 1, 1995, to re-determine that percentage because it could skew the percentage. Average sentences are interesting. We have talked about areas where we can focus our attention and target a program. What skews the average sentence number, obviously, are A and B sentences. It would be helpful to get the average sentence length by the five categories. It would then be more meaningful to evaluate sentence lengths in the context of the crime. With respect to the B categories, we continue to have the question about proportionality. That should be broken down by crime type.

DR. AUSTIN:

That is not a problem. Could someone from your staff send me a formal listing of statutes by A, B, C, D and E?

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 16

CHAIR HARDESTY:

I will get that to you. Mr. Art Mallory is taking the mandatory statutes you listed in your June 9, 2008, presentation and converting those to categories.

MR. HELZER:

We are looking at the prison population and who is mandated by statute to go to prison. I understand reducing prison population by reducing the number of mandated prison terms and counting on a judge's exercise of discretion to choose probation. Is a solution to also increase the number of mandated probation sentences? Have you looked at the category Es to see the rate of recidivism?

DR. AUSTIN:

Other jurisdictions, to control prison population in an affordable way, first focus on the length of stay, which is the safest way to control the prison population. It does not divert anyone from prison. Studies in Nevada and elsewhere indicate modifying the prison stay two or three months does not affect recidivism rates or public safety. To divert people from prison brings up interesting questions. You may start diverting people from prison who have a short prison term already, and it does little to the prison population; it may save 500 beds. The class E's are mandated probation; we still get 500-600 in the prison system each year. We believe they are routed to prison by the court on a violation of probation. Some states have mandatory probation terms.

MR. HELZER:

How does the use of county jails come into play with what you deem to be successful?

DR. AUSTIN:

Use of jails could solve the problem for the State, but create one for the counties. The "Jail Populations by Legal Status" ([Exhibit F](#)) looks at three large jail systems in Nevada. Looking at Las Vegas, February 2008, the capacity is 3,200 but 3,462 inmates are held. Of those, 555 are P&P holds and/or sentencing. Tomorrow I will find out more about these people. There is preliminary evidence that these are probation violators who sit in jail until the court decides what to do with them. From my experience, that is a large number. There are 1,748 people awaiting sentence and 927 are sentenced. The same pattern is shown in the next two systems. Reno has a smaller percentage on P&P holds. There are 660 pretrial and 227 are sentenced. If a recommendation was going to jail rather than prison, it simply shifts the population and may worsen the situation. In some states, the county jail is ill-prepared to handle the population. It does not make sense to shift from the prison to the county. A shift would have to be from the prison to a probation term. Almost everyone going to prison in Nevada is spending 3-4 months in the county jail.

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 17

MR. LALLI:

There are two considerations; one is the fiscal impact to the counties. The only available sentence for a felon is prison. There is not an available sentence in a county jail other than as a condition of probation.

CHAIR HARDESTY:

There is either probation or prison.

MR. LALLI:

That is correct, unless we are talking about gross misdemeanors.

CHAIR HARDESTY:

If P&P holds and sentences are combined, does the number include gross misdemeanors?

DR. AUSTIN:

We will be looking at that population tomorrow. P&P has uniformly noted when a person on probation starts to violate as a drug abuser, they go to detox in the jail.

CHAIR HARDESTY:

The drug court relies on the jails for enforcement.

DR. AUSTIN:

We will develop an estimate for the Subcommittee of how many beds would be needed in a detox facility in northern and southern Nevada.

MR. BOSLER:

I echo Mr. Lalli's suggestion on the Nevada probation comparison, to have a separate column for the arrestee population. Also, a disparity from 23 percent to 58 percent, as indicated in "Prison Disposition Rates by Judge" ([Exhibit D](#)), is fairly significant. Can you give us the recommended prison rate with the actual prison rate?

DR. AUSTIN:

We could have both "recommended" and "actual" within the district then show disposition rates within the district.

MR. BOSLER:

Are you comfortable with the statistics using 100 qualifying cases?

DR. AUSTIN:

We could list all of the judges and the number of cases handled by each judge.

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 18

MR. BOSLER:

In Washoe County, there is a random assignment of cases. One would expect a random disposition of Category A, B, C, D, E and F felonies.

DR. AUSTIN:

It will be an interesting table. It will show district, judge and recommended versus actual prison disposition rate.

Another meeting needs to be scheduled to provide answers to questions the Subcommittee has asked. I will be talking directly to Chair Hardesty about the data issues which exist.

CHAIR HARDESTY:

The Subcommittee will attempt to meet the week of July 28, 2008; the best date for the collective group will be selected.

There being no further business to come before this Subcommittee, this meeting is adjourned at 2:57 p.m.

RESPECTFULLY SUBMITTED:

Sandra K. Small, Secretary

APPROVED BY:

Justice James W. Hardesty, Chair

DATE: _____

Advisory Commission on the Administration of Justice's Subcommittee to Consider Issues
Related to a Study of "Truth in Sentencing"

June 16, 2008

Page 19

EXHIBITS

**Subcommittee to Consider Issues Related to a Study of "Truth in
Sentencing"**

Date: June 16, 2008

Time of Meeting: 1:14 pm - 2:57 pm

	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Dr. James Austin, President JFA Institute	Nevada Court Disposition Summary, USA v. Nevada
	D	Dr. James Austin, President JFA Institute	Prison Disposition Rates by District and County
	E	Dr. James Austin, President JFA Institute	Nevada Probation Comparison
	F	Dr. James Austin, President JFA Institute	Jail Populations by Legal Status