

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

March 17, 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 12:45 p.m. on March 17, 2008, at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada and Great Basin College. [Exhibit A](#) is the Agenda. There is no Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

SUBCOMMITTEE MEMBERS PRESENT (CARSON CITY):

Justice James W. Hardesty, Nevada Supreme Court, Chair
Jeremy Bosler, Washoe County Public Defender
John Gonska, Chief, Division of Parole and Probation
John Helzer, Assistant District Attorney, Washoe County Criminal Division
Phil Kohn, Clark County Public Defender
Richard Siegel, President, American Civil Liberties Union of Nevada, Inmate Advocate
Howard Skolnik, Director, Department of Corrections

SUBCOMMITTEE MEMBERS PRESENT (LAS VEGAS):

Christopher Lalli, Assistant District Attorney, Clark County
Assemblyman David Parks, Clark District 41

COMMISSION MEMBERS ABSENT:

Douglas Herndon, Judge, Eighth Judicial District Court

STAFF MEMBERS PRESENT:

Janet Traut, Senior Deputy Attorney General
Angela Clark, Secretary

OTHERS PRESENT:

James Austin, President, JFA Institute
LaToya McBean, M.A., Council of State Governments

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CHAIR HARDESTY:

The purpose of this subcommittee is to address the issues of the Truth In Sentencing (TIS) statutes of 1995. I have had various meetings with a number of individuals. Dr. Richard Siegel and I have participated in several meetings with members of the University criminal justice staff. I have met with Dr. James Austin and LaToya McBean of the Council of State Governments.

Commissioner Skolnik has provided the Subcommittee with a copy of a report from the Wisconsin Department of Corrections ([Exhibit B](#)) and other jurisdictions ([Exhibit C](#)) regarding TIS.

A study of the effectiveness of the TIS statutes has not occurred until now. The State would benefit from a professional study of various topics related to TIS. We want to focus on the effects of TIS and how it has impacted some of the sentencing statutes. We also need to know if the matrix can be reconciled in some respect to develop a study on the proportionality of different crimes.

Are there any individuals wishing to make a public comment? There being no public comment, we will move to a discussion and approval of a study of Nevada's TIS legislation, including the scope and objectives of the study, the cost, financing and schedule for the study, and appointment of consultants to conduct the study.

JAMES AUSTIN (President, JFA Institute):

The Subcommittee has received a copy of "Scope of Services for Nevada Study." ([Exhibit D](#)) There are three major phases to the proposed study. All phases need to be completed by August 15, 2008, to provide recommendations to the Legislature.

In Phase 1, we will present findings regarding the impact of the 1995 legislation on the correctional population: the number of people entering, length of stay and size of the population. We will also look at crime rates, public safety and the associated costs to the correctional system. Mandatory minimum sentence amendments affected the 1995 legislation; we need to know the impact of those changes.

In Phase 2, we will look at current sentencing practices. This will require looking at court data, disposition of those cases, compliance with the existing matrix and some assessment of disparity in sentencing and the influence of the Division of Parole and Probation's (P&P) presentence recommendations. P&P uses a form to make a recommendation for or against the use of the prison sanction. We want to know the extent judges are using the matrix, and if not, why not. This work will be completed June 1, 2008.

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In Phase 3, we will develop recommendations for the Commission. At that time, the Commission can determine, based on the research, what changes need to be made to the sentencing matrix and the P&P recommendations. We will then simulate the likely consequences to the correctional system of the Commission's proposed changes. As part of our final report, we will also estimate the cost or savings resulting from your recommendations.

We will move quickly to meet the deadlines shown.([Exhibit D](#)). The JFA Institute will take primary lead and oversee the research activities. We are planning to engage the Universities in Nevada at a significant level. Because they have capable and well-versed faculty, the initial thought is the Universities will perform much of the work looking at court processing. The study is too large for one entity working alone. It is a good opportunity for the Universities to become involved in this area of work and analysis on a long-term basis.

MR. KOHN:

I am concerned by Elko District Judge Andrew Puccinelli's comment that 15 to 20 people he sentenced to prison might not have otherwise been sentenced had he had the serious offender program in Elko. In Phase 2, will we look at how many people have gone to prison in the rural areas that might not have if there had been drug court, mental health court, DUI or serious offender specialty courts. Is that true?

DR. AUSTIN:

We will be able to profile who is going to prison and who is not going to prison by geographic area, usually at the county level. For example, we may find a pattern of a certain type drug offender without a prior record. We can look at characteristics because P&P keeps detailed information.

MR. KOHN:

I would like to know, for instance, how many people are in prisons who are not a danger.

DR. AUSTIN:

To measure danger, we can look at prior record. P&P has a classification/risk instrument used to classify inmates in terms of danger within the prison system. We can do that type of profiling.

MR. SIEGEL:

Since I am a go-between for the University faculties, what would be the two or three roles for the criminal justice people?

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DR. AUSTIN:

They would get the court data and detailed information on cases being filed in the courts through disposition. They would analyze that population. Interviews are needed with public defenders, prosecutors and judges to discover their recommendations and concerns to help shape and direct the investigation and also target our recommendations.

MR. SIEGEL:

Will this involve graduate assistants or regular faculty in this study?

DR. AUSTIN:

It will probably be a blend, but top-heavy on the faculty because of the time frame. We need people with existing expertise.

MR. SIEGEL:

Do you see the Universities involved with the Department of Corrections (DOC)?

DR. AUSTIN:

No, but I would see them involved in Phase 1 looking at the 1995 law and helping us understand what should have happened according to the will of the Legislature at the time. This information will be gathered through interviews.

MR. SIEGEL:

If we are looking for the intent of the law, should we include interviews with Legislators and Legislative Counsel Bureau staff?

DR. AUSTIN:

We need to talk to the people involved to determine intent.

CHAIR HARDESTY:

Are there other topics or areas to be added or deleted from the study? The schedule is ambitious. It depends upon other resources, such as the Universities. There may be some financial assistance available to the Commission to fund the study.

DR. AUSTIN:

The Pew Charitable Trust is enthusiastic about what the Commission is pursuing and would like to speak directly with Justice Hardesty regarding assistance needed to complete the study.

CHAIR HARDESTY:

I will do that.

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MR. LALLI:

In terms of the phases and subject matter, it is well done and broad. Before the completion of Phase 1, if there is another issue identified, would we have the ability to request additional research?

DR. AUSTIN:

Yes, this will be an ongoing interactive process. The research will produce questions which will have to be addressed.

MR. SKOLNIK:

Will it also be possible to look at the impact of legislation regarding controlling the inmate population, five/ten, for example, increased time credits?

DR. AUSTIN:

Yes, when looking at current sentencing practices and current laws. We want to get into the position this summer where we are looking at what is happening right now with TIS and all the amendments passed on mandatory minimum, five/ten and anything else. Then we can say where Nevada is headed in terms of sentencing and use of correctional resources.

MR. KOHN:

In discussion with judges today, it was pointed out violent offenders are not allowed the drug court, mental health court, boot camp and re-entry. Will we be able to discuss this to see if we are doing the right thing by keeping out all the violent offenders who could be well-served by these programs?

CHAIR HARDESTY:

I would rather keep that as a Commission item and discuss it within the context of the specialty courts. This study should not get too far afield of the TIS legislation and what it has or has not done.

MR. SIEGEL:

Dr. Austin mentioned we will pay attention to disparity by county. Will we also have data on race and gender among other variables?

DR. AUSTIN:

Yes. One of the analyses done routinely is to look at factors that predict outcomes in courts. Research on gender, race and other factors results in sophisticated analyses to see what is predictive of a certain outcome. I am assuming the State wants sentencing practices which are race and gender neutral.

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MR. SIEGEL:

I want to talk about the dynamics of the research team because I have not been involved in a research project and want to be able to communicate about it. You will have your national people and the University people. Will there be one research team?

DR. AUSTIN:

I need to meet with the senior people at the University. We will have a quick meeting and go forward on a plan of action. We must reach a consensus on the scope of responsibilities. The biggest concern I have is getting through any red tape existing at the University level for them to go forward, accept funds and do the work.

One thing we will be looking at and presenting to you is other state practices which may be of interest. The University would be good at that too, because they can quickly survey the states. Also, the Council of State Governments could help in that area.

ASSEMBLYMAN PARKS:

We should be able to ask the University to expedite any required paperwork.

CHAIR HARDESTY:

How do you go about doing that?

MR. SIEGEL:

Jim Richardson is in a central role. He is not a criminal justice administrator, but he is head of the Center for Justice Studies.

MR. SKOLNIK MOVED TO APPROVE THE SCOPE OF SERVICES OUTLINED BY DR. AUSTIN ([EXHIBIT D](#)); AUTHORIZE JFA INSTITUTE TO PROCEED; AND TO AUTHORIZE CHAIR HARDESTY TO GET FUNDING AND TO GET THE UNIVERSITIES INVOLVED.

MR. KOHN SECONDED THE MOTION.

MR. LALLI:

The appointment of a consultant to conduct the study is Agenda Item III.D. Is that the Council of State Governments?

CHAIR HARDESTY:

No, the consultants would be JFA Institute. The Council of State Governments indicated their preference in this situation to have the study conducted by JFA. The Council will provide support services as appropriate to the project and assist in trying to find funding.

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LATOYA McBEAN, M.A. (Council of State Governments):

We have had discussions with the Pew Charitable Trust regarding the scope of services and the opportunities for Pew to work directly with Dr. Austin's organization and the Commission to provide some funding for the study.

CHAIR HARDESTY:

Is it correct that Pew wants to meet with me?

MS. McBEAN:

That is correct. I will work with you to set up a conversation between you and Dr. Austin.

MR. LALLI:

Has there been any consideration of other potential consultants?

CHAIR HARDESTY:

That is one of the purposes of this meeting. Obviously, if we interview other consultants, we will lose considerable time. The advantage in hiring Dr. Austin is the Legislature's familiarity with him and his work on other aspects of the criminal justice system. Chief Gonska has referred me to a couple of professors to see if they would like to become involved. They have competing viewpoints about criminal justice. Their input could be better used when we get to the recommendations and how the data is interpreted rather than doing the study.

MR. HELZER:

I am unfamiliar with the prior experiences of Dr. Austin in front of the Legislature. Knowing nothing prohibits me from endorsing something today. I did not see any materials to review. I do not know what I have missed. I have seen the agenda and a notice of the meeting. The scope of this project is going to be directed largely from the statutes, what to obtain and then when to return to the Legislature. Someone stated there is a need to meet quickly with the University people and develop a consensus as to the scope. Is the scope something the members of this Subcommittee will determine, or will the University come back to the Subcommittee with the scope?

CHAIR HARDESTY:

No. The scope is to be adopted by this Subcommittee. The scope Dr. Austin is referring to is assigning responsibilities to meet the scope objectives. He is going to conduct meetings with Dr. Siegel, the Grant Sawyer folks, Jim Richardson and others, then report to the Subcommittee on a monthly basis as to their progress.

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MR. HELZER:

I cannot add more to what Mr. Lalli has said as to the selection of Dr. Austin. I do not have information to allow me to make a decision or participate intelligently. You have answered my question regarding the scope.

MR. SIEGEL:

I want to reinforce the Chair's comments about the JFA Institute. The Austin information has been well-received by the Legislature, particularly in the last session. The information created a lot of consensus, at least about how to look at issues and problems. Dr. Austin has a past record of working with at least one of our University of Nevada Reno researchers. Most of you do not realize how difficult this schedule is. I would not want to be responsible for completing this study by August. In the academic world, it will be difficult to mobilize the kind of role from the Universities we would like to have by August.

CHAIR HARDESTY:

We could continue the Subcommittee meeting for a short period of time for Mr. Lalli and Mr. Helzer if they would like to do additional research.

MR. LALLI:

I would like that additional time.

MR. HELZER:

I also would like the additional time. That would give me an opportunity to meet with Kristen Erickson and perhaps include Mr. Lalli in the discussion.

CHAIR HARDESTY:

Can this meeting be continued without further open meeting law notice?

MS. TRAUT:

No, the continued meeting will need to be noticed.

CHAIR HARDESTY:

If this motion is continued for a week, can we still organize a meeting with some of the University people and do some preliminary work?

DR. AUSTIN:

Yes. The Commission could get someone other than me to lead the study. On the funding side, we will go forward with Pew so the funds will be available for whomever the Commission selects.

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CHAIR HARDESTY:

This Subcommittee will reconvene Monday, March 24, 2008, at 12:00 p.m.

We have a pending motion encompassing all of the topics. Is the Subcommittee prepared to vote on the approval of the objectives and time frame of the study?

MR. LALLI:

Yes.

MR. HELZER:

Yes.

MR. SKOLNIK MOVED TO APPROVE THE KEY OBJECTIVES, INCLUDING
OTHER STATE PRACTICES, AND TIME FRAME AS OUTLINED IN [EXHIBIT
D](#) AND TO APPROVE FUNDING NEGOTIATIONS BY CHAIR HARDESTY.

MR. KOHN SECONDED THE MOTION.

THE MOTION CARRIED. (JUDGE HERNDON WAS ABSENT FOR THE VOTE.)

CHAIR HARDESTY:

There being no further business to come before this Subcommittee, this meeting is adjourned
at 1:24 p.m.

RESPECTFULLY SUBMITTED:

Sandra K. Small, Secretary

APPROVED BY:

Justice James W. Hardesty, Chair

DATE: _____

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EXHIBITS

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

Date: March 17, 2008

Time of Meeting: 12:45 p.m.

	Exhibit	Witness / Agency	Description
	A		Agenda
	B	Howard Skolnik, Director, Department of Corrections	Wisconsin Department of Corrections: Offenders Admitted Under Truth in Sentencing
	C	Howard Skolnik, Director, Department of Corrections	ASCA Survey: Truth in Sentencing; Puerto Rico
	D	Dr. James Austin, President JFA Institute	Scope of Services for Nevada Study