

Chapter 4

Analysis of Current Sentencing Practices

A. Overall 2007 Trends

This chapter reviews in detail the current sentencing trends and patterns of the Nevada criminal courts based on the data provided by the Division of Parole and Probation of the Department of Public Safety for persons sentenced in 2007 for either a felony or gross misdemeanor in 2007. A total of 10,871 sentences were imposed by the Nevada criminal courts in that year. For each case, information was provided by the data system of the Division of Parole and Probation that showed the demographic attributes of the offender, the offense(s) for which the offender was convicted, any prior adult criminal record, the pre-sentence report assessment scores, the recommended disposition, the final disposition, the sentence length, and the judge and District Court that imposed the sentence.

In examining a sentencing decision there are two major decision points – the disposition of the case and the sentence length (or duration). The three major disposition types for Nevada are: 1) probation, 2) jail, and 3) prison. Table 4-1 shows the disposition rates for these 2007 cases and compares them with similar rates for nation's state courts as published by the U.S. Department of Justice.

The prison disposition rate is lower than the U.S. state court rates, but the same for large urban courts with about one-third of the felony cases receiving a prison disposition. The U.S. state courts reported a 40 percent prison disposition rate, while the 75 largest urban courts reported a rate of 32 percent. The latter statistic is probably more comparable since the majority of court dispositions in Nevada are from its two urban centers of Reno and Las Vegas.

Table 4-1
. Nevada Court Disposition Summary
USA v. Nevada

Sentence	USA*		Nevada
	Large Urban Courts	State Courts	
Prison	32%	40%	33%
Jail	40%	30%	6%
Non-Incarceration	28%	28%	61%
Probation	25%	24%	59%
Other (e.g. fines, restitution, etc.)	3%	1%	2%

Source: *Felony Defendants in Large Urban Courts, 2002*. Bureau of Justice Statistics, US Department of Justice, February 2006, and, *Felony Sentences in State Courts, 2004*. Bureau of Justice Statistics, US Department of Justice, July 2007

The table also suggests that Nevada is much less likely to impose a jail term. This results in a higher proportion of offenders receiving a probation term (59% versus 24% for the US). The comparisons on the jail and probation disposition rates are somewhat problematic because it is possible that the U.S. Department of Justice data masks the use of the probation and jail terms with credit for time served by the courts. Therefore, the most reliable measure for making such comparisons is in the prison disposition rate.

Table 4-2 provides more detail on these disposition rates by separating them by the five crime categories (A through E) and gross misdemeanors. This table shows that the vast majority of the sentences are for category B and D felonies. For the prison disposition, the category B crimes dominate (53% of all prison dispositions). The table also shows a very strong, as is expected, association between the prison disposition rate and crime categories. Category A, B, and C felonies have prison disposition rates well above the overall 33% prison disposition rate. Yet, one must also note that a large number of the category B and C felonies also receive probation terms.

Table 4-2
Nevada Felony Court Dispositions by Crime Category - 2007

Disposition	Crime Category						
	A	B	C	D	E	Gross Misd	Total
Prison	175	1,922	652	644	183	65	3,641
% of All Prison Dispositions	5%	53%	18%	18%	5%	2%	100%
Probation	11	1,205	893	2,055	1,160	1,043	6,367
Jail	0	19	16	144	55	363	597
Other	0	4	5	41	28	188	266
Totals	186	3,150	1,566	2,884	1,426	1,659	10,871
% of Total	2%	29%	14%	27%	13%	15%	100%
Prison Rate	94%	61%	42%	22%	13%	4%	33%

Table 4-3 presents the sentence lengths for the three major dispositions. Both the median and mean (or average) sentences are shown. In general, the median sentence length reflects the more typical sentence as it is not affected by extremely high “outlier” sentences that tend to skew the mean to a higher value.

For prison dispositions, the median maximum sentence is 48 months with a median minimum sentence of 14 months (or 29% of the maximum). The current law requires that the minimum sentences not exceed 40% of the maximum and it appears the courts are following this requirement. For probation dispositions, there is only one sentence imposed with the median being 36 months.

Table 4-3.
Nevada Felony Sentence Lengths by Disposition -2007

Disposition	Minimum Sentence In Months		Maximum Sentence In Months	
	Average-Mean	Median	Average-Mean	Median
Prison	28 mos	14 mos	83 mos	48 mos
Jail	9 mos	9 mos	10 mos	9mos
Probation	NA	NA	67 mos	36 mos

Table 4-4 shows these same data by category of offense. For the prison cases there is a natural progression of longer maximum sentences based on offense severity. For the minimum sentences, there is virtually no variation in the imposed minimum sentences – especially for the category C, D, and E cases. The category B crimes have a median minimum sentence of 24 months, which is twice the minimum terms for the other crime categories, but well below the median maximum sentence of 60 months. The wide variation in the imposed maximum and minimum sentences clearly underscores the importance of the State Board of Parole Commissioners decision-making process. For probation terms, with the lone exception being the small number of category A crimes, the typical (median) sentence is a 36 month term, with an average sentence of a 67 month term, reflecting a small percentage of offenders receiving lengthy probation terms.

Finally, the Commission was presented with an analysis showing differences in the prison disposition rate by the District Courts and among judges. Table 4-5 shows that the Second and Eighth Judicial Districts, which represent the urban areas of Washoe and Clark Counties, respectively, have the greatest volume of cases and have very similar prison disposition rates. The remaining judicial districts have much lower volumes of cases, but have very different prison disposition rates. For example, the Fifth and Sixth Judicial Districts have the lowest prison disposition rates (26% and 27%), while the other judicial districts generally have higher prison disposition rates (39% - 41%).

Following is an examination of the factors contributing to the differences in prison disposition rates and sentence lengths.

Table 4-4
Nevada Sentence Lengths by Dispositions by Offense Class - 2007

Offense Class	Minimum Sentence In Months		Maximum Sentence In Months	
	Average-Mean	Median	Average-Mean	Median
Prison				
A	123	108	318	240
B	28	24	85	60
C	18	12	53	47
D	23	12	81	40
E	15	12	44	36
Probation				
A	NA	NA	181	54
B	NA	NA	74	36
C	NA	NA	66	36
D	NA	NA	61	36
E	NA	NA	91	36

Table 4-5
Prison Disposition Rates by District and County

District	Dispositions	Prison Rate	County	Dispositions	Prison Rate
1	209	39%	Carson City	188	38%
2 - Washoe	2,789	33%	Churchill	34	38%
3	196	43%	Clark	7,009	33%
4	203	41%	Douglas	116	42%
5	156	26%	Elko	203	41%
6	220	27%	Humboldt	50	28%
7	73	37%	Lyon	152	47%
8 - Clark	7,009	33%	Nye	156	26%
9	116	42%	Pershing	70	26%
			Storey	21	43%
			Washoe	2,799	33%
			White Pine	73	37%

B. Explaining Disparity in Sentencing.

The data base of the Division of Parole and Probation contains a large array of information that can be used to determine what factors judges rely upon in reaching a decision to incarcerate an offender and the length of the incarceration. It also contains the assessment instrument that is used by the probation officer to make a formal recommendation for either probation or parole. This instrument is a scoring system that assesses the person on a number of risk factors and needs based on 35 items. The total score then produces a number which is transferred into the following three possible recommendations to the judge:

- 0-54 points – Deny Probation;
- 55- 64 points – Borderline Case -- Probation or Prison; or
- 65 points and above – Recommend Probation.

It is clear from the data provided to the Commission that this scoring document has a large influence on the court's final decision. As shown in Table 4-6, the courts followed the recommended sentence in 8,755 of the 10,578 dispositions (or 83% of the cases). However, the courts disagreed with the recommendation of the Division of Parole and Probation in 1,147 of the 4,571 recommended prison dispositions (or 25% of the cases). Conversely, there were only 333 cases in which the Division recommended probation where the court imposed a prison term instead. Thus, the net result is 814 cases where the court granted probation rather than imposing a prison term.

These are significant findings in that if the court had followed the recommendation of the Division of Parole and Probation in these 814 cases, it would have increased the NDOC prison population anywhere from 800 to 1,600 above its current population level. This assumes the persons would have served one to two years in the NDOC. Currently, the Division is having its assessment instrument re-evaluated by the National Council on Crime and Delinquency whose recommendations for changing the current assessment process will be made in the early part of 2009.

Table 4-6
DPP Recommended versus Actual Court Disposition

Recommended Disposition	Actual Disposition			
	Prison	Probation	Jail	Total (%)
Prison	3,288	1,147	136	4,571 (42%)
Probation	333	5,138	118	5,589 (52%)
Jail	18	71	329	418 (4%)
Total (%)	3,639 (34%)	6,356 (59%)	583 (6%)	10,578 (100%)

Tables 4-7 and 4-8 summarize some of the key socio-economic and criminal history attributes of the 2007 cases by disposition. Many of these attributes are used by the Division of Parole and Probation to make its formal recommendation to the court. Table 4-7 shows the column percentages which can be used to summarize the attributes of these populations. Table 4-8 uses the row percentages which can be used to identify which factors are associated with a specific disposition.

In terms of the descriptive attributes, this population largely consists of young males who have been convicted of property or victimless drug crimes. A significant number have a drug use/abuse problem. A significant number of this population has not been previously placed on formal supervision and has not been previously incarcerated in state prison. The vast majority of the population has had his/her sentence positively impacted by plea bargaining.

The outstanding question is the extent to which these legal and background attributes explain the variance in the court's disposition decisions (principally probation versus prison). To address this issue a number of statistical tests were made. The first were a series of bivariate tests to determine whether items were associated in some manner to the probation versus prison disposition. The results of this first assessment are shown in Table 4-9. In that table, one can see some 30 items that are statistically associated with the probation versus prison disposition. Many items are as would be expected such as prior record, nature of the crime, and impact on the victim. Other items are not "legal" factors, but rather factors that are known to influence the court such as gender (females more likely to be receive probation) and age (younger offenders more likely to receive probation). It is also noteworthy that the court is more likely to issue a prison term for persons who have failed treatment or have a persistent problem with alcoholism. There are also items that are counter-intuitive, such as the fact that persons are more likely to receive a prison terms if they have good financial support.

To better understand the relative effects of these items and their relative strengths in explaining the disposition decisions, a series of multi-regression statistical tests were conducted by the GSCJS. Multiple regression tests are designed to better understand which set of factors explain the greatest amount of variance, in this case in the court's decision. This analysis also negates

the marginal effects of some items that are closely associated with one another. For example, a prior prison term may be a better predictor than prior misdemeanor convictions, even though they both reflect the "prior record" concept. In this sense, the regression analysis attempts to control for the relative effects of other items listed in Table 4-9 to determine which items have an independent effect on the disposition decision.

There are various forms of regression analysis that reflect the type of data being analyzed. The purpose here is to simply synthesize the results of the various analyses performed by the GSCJS for policy makers. One final point is that these analyses also tested the relative effects of the district court location since there was a strong bivariate analysis shown in Table 4-5.

Table 4-7
Attributes Of Sentenced Offenders by Deposition in 2007 – Column %

Characteristic	Jail	Other	Prison	Probation	Characteristic	Jail	Other	Prison	Probation
Total	624	246	3,597	6,407	Total	624	246	3,597	6,407
Race					Age				
White	73.4%	73.6%	68.9%	71.4%	Under 25	28.2%	28.9%	19.8%	31.3%
Black	20.8%	17.1%	25.2%	22.4%	25-39	40.2%	40.2%	45.9%	42.3%
Indian	1.6%	1.2%	1.3%	1.2%	40 or more	31.6%	30.1%	32.4%	25.8%
Asian	2.2%	5.7%	2.1%	3.2%	Certified A	0.0%	0.4%	1.9%	0.7%
Sex					Motive				
Female	15.4%	28.5%	11.2%	26.0%	Deliberate	68.4%	49.6%	65.5%	65.3%
Male	84.3%	70.3%	88.6%	74.0%	Situational	11.7%	31.3%	6.1%	12.5%
Prior Jail Sentence					Under influence	17.3%	11.8%	25.6%	19.2%
None	26.4%	68.3%	30.4%	54.2%	Unintentional	2.6%	6.9%	2.8%	3.0%
2 or less	28.8%	19.1%	29.5%	27.2%	Family Situation				
3 or more	44.7%	12.2%	40.1%	18.7%	Constructive support	13.1%	43.5%	13.0%	26.1%
Prior State Prison					Disruptive	7.2%	2.4%	7.3%	4.9%
None	63.0%	88.6%	48.8%	85.3%	Moderately supportive	51.4%	41.9%	56.9%	55.8%
One	16.8%	4.5%	17.6%	7.3%	Non supportive	28.2%	11.8%	22.8%	13.2%
2 or more	20.2%	6.5%	33.6%	7.4%	Substance Abuse Alcohol				
Juvenile Commits					Excessive	17.3%	6.1%	18.1%	8.0%
None/or over 24	94.7%	98.0%	95.4%	96.5%	Non problematic	59.5%	77.2%	61.1%	75.2%
One	3.0%	0.8%	2.1%	1.9%	Problematic	23.2%	16.3%	20.7%	16.9%
Two	2.2%	0.8%	2.5%	1.7%	Substance Abuse Drug				
Years Free of Conviction					No use	32.4%	57.3%	28.5%	38.2%
Less than 3	66.0%	23.6%	63.4%	38.8%	Occasional	16.0%	15.9%	12.7%	15.7%
3-5 years	7.7%	7.3%	11.4%	9.7%	Regular use	25.5%	13.8%	23.0%	24.4%
Over 5 years	26.3%	68.7%	25.3%	51.6%	Serious abuser	26.1%	12.6%	35.8%	21.7%
Prior Formal Supervision					Honesty				
None	37.8%	77.6%	31.6%	65.8%	Candid	50.8%	77.6%	59.0%	68.6%
One	25.2%	8.1%	23.2%	18.4%	Deceptive	21.0%	6.9%	15.5%	10.0%

Characteristic	Jail	Other	Prison	Probation	Characteristic	Jail	Other	Prison	Probation
More than 1	37.0%	13.8%	45.1%	15.8%	Reluctant	28.2%	15.0%	25.5%	21.4%
Type of Offense					Attitude to Supervision				
Multiple Person (3 +)	0.8%	1.6%	3.7%	1.6%	Indifferent	26.6%	9.3%	27.1%	16.5%
Multiple Person (2 or less)	1.9%	0.4%	3.6%	1.7%	Negative	18.3%	4.5%	10.0%	5.5%
Person	18.8%	13.4%	28.7%	17.5%	Positive	55.1%	85.8%	63.0%	78.0%
Property	55.8%	54.5%	33.1%	45.4%	Plea Bargain Benefits				
Sales	1.8%	2.0%	7.9%	7.5%	High	35.4%	22.4%	31.2%	30.4%
Victimless	21.0%	27.6%	23.0%	26.4%	N/A	11.5%	16.7%	19.6%	14.7%
Sophistication Premeditated					Somewhat	53.0%	60.6%	49.3%	54.8%
High	48.6%	35.0%	57.0%	48.9%	Weapon				
Moderate	33.7%	43.5%	27.0%	33.5%	Brandished	4.2%	3.7%	8.1%	3.5%
None	17.8%	21.1%	15.9%	17.5%	Implied	3.7%	4.9%	4.0%	3.9%
Average Total PSP	54.3	71.3	51.0	63.3	N/A	88.6%	87.0%	77.6%	88.8%
					Used	3.5%	4.1%	10.3%	3.8%

**Note: Missing cases excluded*

Table 4-8
Key Attributes of Sentenced Offenders by Deposition in 2007 – Row %

Characteristic	Jail	Other	Prison	Probation	Characteristic	Jail	Other	Prison	Probation
Race					Age				
Asian	4.5%	4.5%	24.8%	66.1%	Under 25	5.9%	2.4%	24.0%	67.6%
Black	5.2%	1.7%	36.1%	57.1%	25-39	5.3%	2.1%	35.1%	57.5%
Indian	7.4%	2.2%	34.8%	55.6%	40 or more	6.4%	2.4%	37.8%	53.5%
White	6.0%	2.4%	32.2%	59.4%	Certified A	0.0%	0.9%	60.9%	38.2%
Sex					Motive				
Female	4.3%	3.1%	18.0%	74.6%	Deliberate	6.0%	1.7%	33.2%	59.0%
Male	6.1%	2.0%	37.0%	54.9%	Situational	6.3%	6.6%	18.9%	68.2%
Prior Jail Sentences					Under influence	4.7%	1.3%	40.2%	53.8%
None	3.4%	3.4%	22.3%	70.9%	Unintentional	4.9%	5.2%	30.3%	59.6%
2 or less	5.9%	1.6%	35.0%	57.5%	Family Situation				
3 or more	9.5%	1.0%	49.0%	40.5%	Constructive support	3.5%	4.6%	20.1%	71.8%
Prior Incarceration					Disruptive	7.2%	1.0%	41.7%	50.2%
None	5.0%	2.8%	22.4%	69.8%	Moderately supportive	5.3%	1.7%	33.9%	59.1%
One	8.6%	0.9%	51.9%	38.6%	Non supportive	9.4%	1.5%	43.8%	45.3%
2 or more	6.9%	0.9%	66.4%	25.9%	Substance Abuse Alcohol				
Juvenile Commits					Excessive	8.4%	1.2%	50.7%	39.7%
None/or over 24	5.7%	2.3%	32.8%	59.2%	Non problematic	4.9%	2.5%	29.0%	63.6%
One	8.8%	0.9%	35.5%	54.8%	Problematic	7.2%	2.0%	37.1%	53.8%
Two	6.6%	0.9%	42.5%	50.0%	Substance Abuse Drug				
Years Free of Conviction					No use	5.7%	1.1%	44.8%	48.4%
Less than 3	7.9%	1.1%	43.6%	47.5%	Occasional	6.2%	1.3%	32.0%	60.5%
3-5 years	4.4%	1.6%	37.4%	56.6%	Regular use	6.2%	2.4%	28.5%	62.8%
Over 5 years	3.6%	3.7%	20.0%	72.7%	Serious abuser	5.3%	3.7%	26.9%	64.1%
Prior Formal Supervision					Honesty				
None	4.1%	3.3%	19.7%	72.9%	Candid	4.5%	2.7%	30.2%	62.6%
One	7.2%	0.9%	38.1%	53.9%	Deceptive	9.8%	1.3%	41.4%	47.6%
More than 1	8.0%	1.2%	56.0%	34.9%	Reluctant	7.0%	1.5%	36.7%	54.8%

Characteristic	Jail	Other	Prison	Probation	Characteristic	Jail	Other	Prison	Probation
Type of Offense					Attitude to Supervision				
Multiple Person (3 Plus)	2.1%	1.6%	55.1%	41.2%	Indifferent	7.5%	1.0%	43.9%	47.6%
Multiple Person (2 or less)	4.8%	0.4%	51.2%	43.6%	Negative	13.6%	1.3%	42.8%	42.3%
Person	5.1%	1.4%	44.9%	48.6%	Positive	4.4%	2.7%	29.0%	63.9%
Property	7.6%	2.9%	26.0%	63.5%	Plea Bargain Benefits				
Sales	1.4%	0.6%	36.3%	61.6%	High	6.6%	1.6%	33.5%	58.2%
Victimless	4.8%	2.5%	30.5%	62.2%	N/A	4.1%	2.3%	40.0%	53.6%
Sophistication Premeditated					Somewhat	5.7%	2.6%	30.7%	60.9%
High	5.5%	1.5%	36.8%	56.2%	Weapon				
Moderate	6.1%	3.1%	28.3%	62.5%	Brandished	4.7%	1.6%	53.1%	40.5%
None	6.0%	2.8%	30.8%	60.4%	Implied	5.3%	2.8%	33.3%	58.6%
Average Total PSP	54.3	71.3	51.0	63.3	N/A	6.0%	2.3%	30.2%	61.5%
					Used	3.4%	1.6%	57.2%	37.8%

Table 4-9
Summary of Key Factors Associated with the Prison versus Probation Disposition

Factors	Disposition	
	Prison	Probation
Demographic Factors		
Current Age	-	+
Offender is female	-	+
Prior Record		
Pending felony	+	-
Prior state incarceration	+	-
Conviction-free for less than 3 years	+	-
Conviction-free for 3 to 5 years	+	-
Prior supervision (probation)	+	-
Current Offense		
Crime random or decreasing in severity	-	+
Offense was against a person	+	
Offense was against property	-	+
Psychological / medical impact: death	+	-
Psychological / medical impact: disability	+	-
Psychological / medical impact: medical treatment	+	-
Psych. / medical impact: minor / no treatment	+	-
CS possession for sale, smuggling, manufacturing	+	-
Controlled substance possession	-	+
Motive was deliberate	-	+
Under the influence of alcohol or drugs	-	+
Motive was situational	-	+
Premeditation high	+	-
Indifferent attitude toward offense	+	-
Past Treatment and Alcohol and Drug		
Failed Program	+	-
Currently enrolled in program	-	+
Alcohol use excessive or problematic	+	-
Resources Available	+	-
Commitments in State	-	+
Financial Support	+	-
Employment	-	+
Family Not Supportive	+	-

“+” indicates positive association and “-” indicates negative association. All relationships are significant at the .05 level or higher.

C. Special Studies

During the course of the Commission's work a number of questions were posed by the members on topics that pertain to sentencing by the courts and Nevada's correctional system. In this Chapter, the answers to some of those questions are summarized.

1. *Persons Being Sentenced to Prison for the First Time*

Contrary to public perception, each year a large number of people are sentenced to state prison in all of the states. Some portion of those prison admissions include first time offenders.

Although national data does not exist on this topic, it is not uncommon for states to report that 30 -50% of their prison admissions are serving their first prison term. In Nevada, 49% of prison admissions in a given year are first time offenders (or 1,809 out of 3,641). The sentencing policy that arises from this statistic is whether some portion of these first prison admissions could have been diverted to probation.

To better understand this question, a more complete analysis was conducted with the results summarized in Table 4-10. The important facts are as follows:

1. A significant number of offenders sentenced to serve time in prison had no prior felony conviction (74%), prior misdemeanor conviction (37%), prior jail sentences (24%), or a prior period of probation supervision (57%).
2. A significant number of such offenders were convicted of either a crime against a person (44%) or a category B felony (38%). Both of these types of crimes result in higher prison disposition rates.
3. About one-half of these cases were assessed by the Division of Parole and Probation to deny probation, while only 18% suggested a probation recommendation which was later rejected by the courts.
4. Despite the large number of assessments by the Division of Parole and Probation suggesting either probation or a borderline recommendation, the Division made a formal recommendation to deny probation.
5. The average minimum sentence is 28 months with an average maximum sentence of 85 months.
6. Based on these figures, it can be estimated that 3,000 to 4,000 prison beds are occupied by these first time offenders at an annual cost of \$77 to \$88 million per year.

Collectively this data suggests that most of the first time offenders are people who either have a number of prior misdemeanor convictions and prior jail sentences but do not have a serious felony record. It is also the case that some portion of the population has committed a serious crime against a person. However, some portion of this population may still be well-suited for a probation term in lieu of prison.

Table 4-10
Analysis of Nevada First Time Prison Admissions - 2007

Attribute	N	%
Total Prison Admissions	3,641	51%
Those with No Prior Prison Commitments	1,809	49%
Prior Misd Convictions		
None	661	37%
1-3	643	36%
4 or more	505	28%
Prior Jail Sentences		
None	437	24%
1-2	530	29%
3 or more	842	47%
Prior Probation Supervision		
None	1,035	57%
One	432	24%
Two or more	342	19%
Prior Felony Convictions		
None	1,345	74%
One	289	16%
2 or more	175	10%
Type of Crime		
Person	793	44%
Property	498	28%
Sales	151	8%
Victimless	367	20%
Offense Class		
A	128	7%
B	686	38%
C	740	41%
D	249	14%
PSP Recommended Score		
0-54 –Deny Probation	886	49%
55-64 – Borderline Probation or Prison	592	33%
65 and above – Probation	325	18%
Recommended Prison	1,523	84%
Average Minimum Sentence	28 months	
Average Maximum Sentence	85 months	
Possible Prison Population	3,000 minimum	4,000 maximum
Estimated Annual NDOC Costs	\$77 million	\$88 million

2. *Mandatory Prison Sentences*

A second special topic concerned the application of laws that require a prison sentence regardless of the other attributes surrounding the case. These are what are referred to as "mandatory prison" laws. The Commission identified 38 such laws, all but 8 of which pertain to category A and B felonies. The offenses range from murder to DUI (third time within 7 years mandates a 1-6 year prison term). A large number of these laws are designed to incarcerate persons who have had prior prison sentences imposed or who have trafficked controlled substances.

One of the issues that emerged in conducting this analysis was the fact that the Division of Parole and Probation data base (as well as the NDOC data base) does record the detailed NRS statute that would allow one to readily identify mandatory prison sentences. For this reason, an initial sort was made of the data base. This initial analysis revealed the following information (Table 4:11):

1. Only 909 (8%) of the 10,874 may have been convicted of a crime that qualifies for a mandatory prison term.
2. Of the 909, 170 definitely are mandatory prison cases and another 739 may be mandatory prison terms.
3. Of that 909, 434 (47%) received a probation term.
4. The most frequent mandatory prison term that received probation is for a second offense crime against child, home invasion and drugs with intent to sell.
5. The possible implication is that mandatory prison terms are infrequently used and may be plea bargained to non-mandatory sentences.
6. For the 1,809 sentenced prisoners who had no prior prison term, only 270 were possibly mandatory prison terms.
7. For the 1,809 sentenced prisoners with no prior prison term, only 392 also had no prior jail sentences.

The second phase of work entailed an audit of 25 cases randomly selected from the pool of 434 persons who received a probation term. For each case selected, the Division of Parole and Probation provided the original pre-sentence investigation report and the final court disposition. The audit showed that each case was properly sentenced by the courts under provisions set forth in the NRS.

Table 4-11
Possible Mandatory Sentences by Actual Disposition - 2007

Crime	Prison	Probation	Jail	Total
179.5500 Crime Against Child	38	61	5	104
193.1650 Use of Weapon	1	0	0	1
200.0300 Murder	41	0	0	41
200.0300 Kidnapping	3	0	0	3
205.0670 Home Invasion	9	13	0	22
207.0100 Habitual Criminal	5	0	0	5
453.3160 Drug Trafficking	1	2	0	3
453.3210 Drug Trafficking	1	0	0	1
453.3370 Drug Trafficking	112	321	0	433
453.3385 Drug Trafficking	214	36	1	251
DUI 484.3792 484.3995	44	1	0	45
Totals	469	434	6	909

3. *Category E Felony Sentences*

As part of the 1995 “Truth in Sentencing” legislation, it was determined that category E felonies would not be allowed to be sentenced to prison based on the low severity of the crimes that are associated with that category of offense. However, because several exceptions allow such felons to be sentenced to serve a term of imprisonment, several hundred people convicted of a category E crime are admitted to the prison system. Although their prison terms are relatively short, they occupy 200 – 250 prison beds on any given day.

Table 4-13 is based on data provided by the NDOC and represents the category E felon population as of October 11, 2008. The population total was relatively low (193 prisoners) and is lower than previous numbers provided by the state. But even at the 193 level, the population costs the NDOC approximately \$4.2 million per year

What is clear from the table is that most of these category E offenders were originally sentenced to probation as required by law. Because they failed to adhere to the conditions imposed by the court, however, they had their probation terms revoked and were sentenced to prison for the original suspended sentence. The data also shows that the majority of these offenders committed offenses related to the possession of drugs.

An audit of 30 cases of these prisoners revealed that the vast majority have multiple probation violations that are related to their drug use and abuse behavior. It appears that the Division of Parole and Probation and the judges have become frustrated with the lack of adherence to the probation order coupled with the lack of options for the court to maintain the person in the community on probation. However, it is also true that these

persons are unlikely to receive treatment while in the custody of the NDOC and will be released within one year.

Table 4-13
Profile of Category E Felons Incarcerated as of October 11, 2008

Attribute	N	%
Total	193	100
Gender		
Male	139	72%
Female	54	28%
Offense		
Possession – 1 st Offense	119	62%
Possession – 2 nd Offense	18	9%
Possession – 3 rd Offense	3	2%
Under the Influence of Controlled Substance	30	16%
Property Crimes	15	8%
Other	8	4%
Commitment Type		
Probation Violator – No New Felony	167	87%
Parole Violator – No New Felony	11	6%
Probation Violator – New Felony	13	7%
Out of State	1	0%
Bootcamper	1	0%
County		
Clark	110	57%
Washoe	51	26%
Churchill	8	4%
Lyon	8	4%
Other	16	8%
Maximum Sentence		
30 months	35	18%
32 months	43	22%
34 months	18	9%
36 months	32	17%
48 months	55	29%
60 months and higher	10	5%

Chapter 5

Advisory Commission Discussions on Department of Corrections

Budgetary Issues of the Department of Corrections

The Commission reviewed the budget of the Nevada Department of Corrections (NDOC). As an executive department, NDOC is subject to the statutory requirements of the State Budget Act, NRS 353.150 to 353.246, and operates on a biennial budget cycle. The Executive Department budget is predicated on the Governor's financial policy for the next 2 fiscal years and built upon detailed budgetary estimates both of expenditures and revenues in a manner which sets forth separately the cost of continuing each program at the same level of service as the current year and the cost, by budgetary issue, of any recommendations to enhance or reduce that level of service. Budget priorities are developed in accordance with the State Strategic Plan and Statewide Functional Goals; NDOC's budget is tied to Decision Unit No. E-375: "Reduce the recidivism rate of offenders and reduce the incidence of juvenile violence."

Budget requests are evaluated in relation to a department's statutory authority, mission statement and measurement indicators. NDOC's Program Statement as set forth in the 2009-2011 Executive Budget states:

"The NDOC mission is to protect the public by confining convicted felons according to the law, while keeping staff and inmates safe. Our philosophy is to pursue our mission with integrity, act in a professional and ethical manner, be responsible for our actions, and raise the department to the highest standards. The NDOC provides professional staff to protect the community through safe, humane, and efficient confinement of offenders; provides opportunities to successfully re-enter the community through education, training, treatment, work, and spiritual development; and is sensitive to the rights and needs of victims. Major tasks of the Director's Office include long-range planning, classification of inmates, inmate records, transportation of inmates, investigations, information services, food services, plant operations, safety and health assurance, accounting, fiscal and personnel services, training, contract services, and procurement. Statutory Authority: NRS 209 and the Nevada Constitution Article 5, Section 21."

NDOC's operations and budget are built around the following performance indicators:

1. Average monthly inmate population;
2. Beds available at emergency capacity end of each fiscal year;
3. Number of escapes;
4. Escapes as percent of inmate population;
5. Number of offenders incarcerated with prior convictions; and
6. Percent of offenders incarcerated with prior convictions.

Due to the significant constitutional rights implicated in incarcerating individuals, the Commission concluded that the state budget process is not always conducive to adequately funding NDOC's operations in fulfillment of its constitutional and statutory responsibilities. For instance, the state budget process does not fully account for long range prison population forecasts, even though prison population dictates all components of NDOC's operations and resulting operating costs. **EXHIBIT A [NDOC Male Long Range CIP Projection]; EXHIBIT B [NDOC Female Long Range CIP Projection]**. However, the Commission had no specific recommendations for revising the state budget process as applied to the NDOC.

The Commission made the following specific recommendations requiring legislative action:

- 1. Amend NRS 289.470 to classify the Inspector General and Criminal Investigators as Category II Peace Officers.** The Commission supports Senate Bill 44 (2009), changing the status of the NDOC's Inspector General and criminal investigators to Category II peace officers. Under existing law, a Category III peace officer is a peace officer whose authority is limited to correctional services, including the superintendents and correctional officers of NDOC (NRS 289.480). However, Category III Peace Officers are limited in their authority and power beyond the institution to do investigations.
- 2. Amend NRS Chapter 209 to authorize periodic random drug testing of NDOC employees of the Department of Corrections.** The Commission supports Senate Bill 47 (2009), creating an exception to NRS 284.4062 to authorize the Director to request that correctional officers submit to random drug and alcohol screening tests after the initial hire, and providing that an employee's refusal to submit to such a screening test may result in his dismissal or in other disciplinary action being taken against him. Random drug testing of NDOC employees will serve the State's interest in preserving public and workplace safety.
- 3. Amend NRS 176A.660 and NRS 213.1215 to clarify the placement authority of the NDOC.** The Commission supports legislation to clarify Assembly Bill 510 (2007) regarding the placement of persons pursuant to NRS 176A.660 and NRS 213.1215. Mandating the placement of a probationer in a particular custody or location prohibits NDOC from properly managing the incarcerated population, protecting the public and the safety and security of inmates/probationers, staff and the facilities. Removing the language that directs placement of probationers will allow NDOC classification staff to identify the probationer's needs for custody level, health care, safety and programming.
- 4. Institute, as soon as possible, a conversion of the overtime expenditures to the replacement and hiring of the straight-time NDOC employees.** The Commission determined that with the addition of 70 straight-time employees, approximately \$2 million in overtime could be saved, and recommended that NDOC obtain authority to institute, as soon as possible, a conversion of the overtime expenditures to the replacement and hiring of the straight-time employees as proposed.

5. Modify the "Relief Factor" for the NDOC staffing levels from 1.6 to 1.85.

The Commission recommends the adoption of a 1.85 relief factor for correctional officers and budgeting to that relief factor. Staffing levels are determined by the number of posts and positions necessary to secure each institution, and a "relief factor" is adopted to provide adequate staffing coverage for all positions. The current relief factor of 1.6 does not sufficiently account for vacancies and off-post duties. The number of correctional officers working on a shift is often insufficient to staff all posts and institutional security may be compromised, officers may be pulled to provide necessary security at higher risk posts, lower risk posts may be shut down altogether, or officers may incur overtime. Increasing the relief factor will provide necessary security resulting in net operational savings as set forth in recommendation no. 4 above.

Chapter 6

Issues Relating to the Juvenile Justice System

The Advisory Commission on the Administration of Justice (Commission) appointed a Subcommittee on Juvenile Justice to consider issues relating to the juvenile justice system in Nevada. The Subcommittee was chaired by Senator Steven Horsford, State Senate District 4 (Clark County). Senator Horsford included persons representing different aspects of the juvenile justice system to participate as members of the Subcommittee. Subcommittee members included:

Honorable Frances Doherty, Family Court Judge, Second Judicial District Court, Washoe County; Philip Kohn, Public Defender, Clark County; Teresa Lowry, Chief Deputy District Attorney, Juvenile Division, Clark County; Catherine Cortez Masto, Attorney General, State of Nevada; Mike Pomi, Director, Juvenile Services, Washoe County; Daniel Prince, Deputy Administrator, Division of Child and Family Services, Nevada Department of Health and Human Services; Fritz Reese, Interim Director, Clark County Juvenile Justice Services, Susan Roske, Chief Deputy Public Defender, Juvenile Division, Clark County; Pauline Salla, Juvenile Justice Specialist, Community Juvenile Justice Program, Division of Child and Family Services, Nevada Department of Health and Human Services; Scott Shick, Chief Juvenile Probation Officer, Douglas County; Ryan Sullivan, Chief Deputy Public Defender, Washoe County; Cherylyn Townsend, Director, Clark County Juvenile Justice Services; The Honorable William Voy, Family Court Judge, Eighth Judicial District Court, Clark County; JoLee Wickes, Chief Deputy District Attorney, Juvenile Division, Washoe County.

The Subcommittee met six times from April 2008 through January 2009, receiving testimony on a variety of topics from various stakeholders. This chapter provides a summary of the issues considered by the Subcommittee.

Programs for Juveniles

The Subcommittee received information concerning the most immediate needs for the juvenile justice system. The Nevada Association of Juvenile Justice Administrators has identified three priorities for improving the state's juvenile justice system. These priorities include: (1) improved mental health services for juveniles; (2) alternatives to detention and incarceration for juveniles; and (3) aftercare and re-entry services for juveniles who have been incarcerated or detained. The Juvenile Detention Alternatives Initiative (JDAI) was also discussed by the Subcommittee. Washoe and Clark Counties have participated in JDAI and have sought to address many of the issues present in the juvenile justice system, including developing alternatives to detention, building partnerships with other agencies and reducing racial disparity. JDAI is working to establish a committee to review evidence-based program models, which have been effective in reducing crimes committed by juveniles in other states. The particular need in evidence-based models includes treatment for mental health, substance abuse, youth

with co-occurring disorders, family services and juvenile sex offenders. JDAI is also considering ways to reduce out-of-state placements of children.

Testimony provided to the Subcommittee established that there are a variety of programs currently available to help juveniles; however, services are lacking in the areas identified above and access to services is often difficult. The programs which are currently available also face challenges in maintaining necessary funding. There was consensus among the Subcommittee that evidenced-based programming is necessary throughout the state.

Bart Lubow, Director, Programs for High Risk Youth and Their Families, Annie E. Casey Foundation, testified that Nevada needs to redirect spending from institutions such as detention facilities and prisons to intervention programs that strengthen families and enable juveniles to successfully transition from incarceration back to society. Mr. Lubow recommended investing in multi-systemic therapy, functional family therapy, and multi-dimensional treatment foster care. These programs focus on the family and seek to strengthen the family's ability to deal with children with behavioral problems. Mr. Lubow also indicated that states often do not address juvenile sex offenders appropriately, largely because of a misunderstanding of adolescent sexual behavior. To protect public safety, genuine predatory sexual behavior must be identified and treated differently than predictable adolescent experimentation.

Mr. Lubow also testified that greater periods of detention or incarceration of juveniles do not necessarily increase the safety of the public or improve future adjustment of such juveniles. Rather, the length of detention is solely a policy decision. He further indicated that there is a need to track the outcome of youth who enter the juvenile justice system to determine whether they leave with strengthened connections in four domains that predict successful transitions: (1) connection to caring adults; (2) education and a connection to the labor market; (3) positive social networks and connection an appropriate peer group; and (4) connection to the appropriate services.

The Subcommittee members also recommended the reallocation of funding from the adult criminal justice system to the juvenile justice system to fund evidence-based practices and programs that focus on reducing recidivism and out-of-home placements of juveniles. The collection of data concerning such reallocation is also needed to determine the impact and outcome of any such reallocation of funding.

Juveniles in the Adult Criminal Justice System

The Subcommittee considered various issues relating to juveniles who move to the adult criminal justice system. Issues relating to the certification of juvenile offenders as adults was discussed. Testimony was provided regarding the difficulties with Nevada's "automatic" and "discretionary" certification process. Provisions of the NRS and local court rules provide that charging decisions regarding certification must occur within 30 days of the initial filing of charges against a juvenile. Some prosecutors indicated that additional time is needed to collect the necessary information to make informed decisions

about whether to seek adult certification. However, the Subcommittee was informed that there is a group working to develop rules for the juvenile court to address this concern and therefore, no legislative action was needed.

Eliminating the presumptive certification of juveniles in certain cases was also discussed. Current statutes allow "automatic" certification of juveniles to face adult criminal charges in certain types of cases such as attempted murder and murder. The recommendation was to require juvenile courts to make certification decisions in every case instead. Because of the complicated nature of certifying juveniles to stand trial as adults, the Subcommittee also discussed the possibility of establishing a specialty court to address issues relating to the certification of juveniles.

Another jurisdictional issue was raised concerning a person who commits a crime when he is less than 18 years of age, but who is not apprehended until after he reaches 21 years of age. Because the juvenile court only retains jurisdiction over persons until they reach 21 years of age, and because the district court does not have jurisdiction over crimes committed by persons under 18 years of age, it is unclear which court has jurisdiction over such a person. The Subcommittee discussed various options to address this situation and agreed to continue discussions to reach a resolution.

Juveniles who are treated as adults also present difficult issues for the adult criminal justice system. The Department of Corrections testified about the difficulty of controlling youthful offenders who are sent to adult prison. The Department indicated that more training for its staff is needed in this area. In addition to the difficulties related to incarcerating juveniles in adult prisons, there is difficulty in supervising juveniles who are treated as adults. The Division of Parole and Probation of the Department of Public Safety (Division) uses programs that have not been validated for juveniles. In addition, the Division does not have staff dedicated to working with juvenile offenders. Funding was identified as the largest obstacle to providing juveniles in the adult criminal justice system with the necessary services.

The Subcommittee discussed the need to reduce the future growth of the adult prison population by investing in the juvenile justice system, especially through finding alternatives to incarceration. "Blended" sentencing options were discussed, including consideration of maintaining juveniles in the juvenile justice system who would otherwise be subject to certification as adults until the juveniles reach 21 years of age. After they reach 21 years of age, they could be transferred to the adult system. Other recommendations included providing for long-term structured residential custody. It was further recommended that a data collection protocol be adopted for the state to allow the systematic collection of data regarding juveniles who enter the adult criminal justice system. Finally, early parole for a person who was convicted of an offense that was committed before the person was 18 years of age was also discussed. This would require the State Board of Parole Commissioners to review the status of such a person when the person reaches 24 or 25 years of age to determine whether his conduct and behavior while incarcerated merits release.

Sex Offender Registration

The Subcommittee discussed Assembly Bill 579 which was enacted during the 2007 Legislative Session (A.B. 579) to revise the sex offender laws in Nevada to comply with the federal Adam Walsh Act. A.B. 579 provided for a registry of sex offenders and public notification of the identity of such offenders. It also revised the manner of classifying offenders as subject to a tier I, tier II or tier III level of notification. The subcommittee received testimony that the revisions that were made to comply with the Adam Walsh Act have had unanticipated consequences on juvenile sex offenders, and has been challenged in court.

The Subcommittee discussed various options including a recommendation to remove juvenile sex offenders from the requirements imposed by A.B. 579 and return to the requirements that were in place for juvenile sex offenders before passage of the act. Attorney General Catherine Cortez Masto indicated that her office intended to convene a group of stakeholders to examine the juvenile sex offender laws and would recommend to the Legislature amendments which will increase the effectiveness of the laws. The Subcommittee agreed to support the efforts of the Office of the Attorney General to resolve the issue.

Standardized Risk Assessment Tools for Probation

The Nevada Revised Statutes require mental health screening in determining whether a juvenile should receive probation. The law requires a standardized assessment tool and Nevada uses the Massachusetts Youth Screening Instrument (MAYSI-2).

However, the NRS does not require a standardized risk assessment tool for the entire state. Clark and Washoe Counties have developed and adopted a risk assessment instrument to assist in deciding whether youthful offenders should be detained. The focus of the test used by those counties is whether the youth is likely to flee or commit another crime. Subcommittee members expressed a belief that a standardized tool would be helpful for developing case management plans, however, reached the conclusion that more long-term study of this issue is necessary.

Racial Disparity in Referrals to the Juvenile Justice System

The Division of Child and Family Services of the Department of Health and Human Services (DCFS) tracks data regarding juveniles in this state. Each county is required to report certain information to DCFS for this purpose. In addition, the Juvenile Justice Office of DCFS reports annually to the Federal Office of Juvenile Justice and Delinquency Prevention. The report allows the state to identify the areas where disproportionality occurs and allows jurisdictions to evaluate their systems and develop effective programming. The Minority and Gender Committee of the Nevada Juvenile Justice Commission is also working to identify the training that is necessary to reduce disproportionality of the representation of minorities in the juvenile justice system. DCFS has been working on the development of a curriculum. Washoe and Clark

Counties have developed programming to address the over-representation of minority youth in the juvenile justice system.

In addition to addressing and tracking racial disparity in the juvenile justice system, the Subcommittee noted that there is a need to identify youthful offenders by the geographic location in which they reside.

Sexually Exploited Youth

The Subcommittee addressed the issue of sexually exploited youth in this state. Las Vegas has been identified as a major destination for children involved in prostitution. Fifty to sixty percent of the youth arrested in Las Vegas for prostitution are from other jurisdictions. Reno also faces similar issues. It was noted that Nevada lacks appropriate programming and services to address sexually exploited youth and that youth detained for prostitution are held longer than for other offenses. The Subcommittee determined that further study of this issue was necessary.

Truancy and the Dropout Rate for Juveniles

According to testimony of the Nevada Department of Education, Nevada has one of the highest dropout rates among high school students in the country. The actual number of dropouts, however, seems to differ depending on the source. According to the Nevada Department of Education, the graduation rate was 67.4 percent in 2007. The U.S. Department of Education estimates the graduation rate in Nevada at 57.4 percent, with independent estimates even lower. The Center for Social Organization of Schools at John Hopkins University notes that 26 high schools in Nevada are designated as "dropout factories," where 60 percent or fewer of the students progress to the twelfth grade in 4 years. According to the Nevada Department of Education, the annual dropout rate over the last several years was as follows:

2004-2005: 5.8%
2005-2006: 5.7%
2006-2007: 4.6%
2007-2008: 4.8%

Although Nevada has made significant efforts to reduce the rate of dropouts, the Department of Education notes that the large transient population and rigorous exit exams required in high school make graduation challenging.

Subcommittee members expressed concern that a significant part of this population becomes involved in criminal activity, whereas re-engaging this population could reduce the risk of criminal involvement. Notably, according to Alliance for Excellent Education 2006, Nevada would benefit from a combined crime-related savings and additional revenue of about \$78.4 million each year if the male high school graduation rate increased by just 5 percent. For those who do dropout of high school, the subcommittee

was informed that more alternatives are needed, such as technical training and vocational education programs.

The Subcommittee also discussed the reentry of juvenile offenders into schools. The Subcommittee was informed that more support services to assist students in reintegrating into school is necessary to help them be successful after being detention in an institution. Models to address the needs of students upon release from detention must also be reviewed and there must be adequate alternatives and fewer barriers to reentry.

Truancy was also identified as a challenge in this state. This is especially problematic because, as testimony indicated, children who miss school or are truant are at a higher risk of drinking alcohol, using illegal drugs, performing poorly in school, carrying a weapon and experiencing depression. The testimony indicate that there is a need to find ways to re-engage youth without criminalizing them.

Future Study Recommended

There was a consensus by the Subcommittee that more study is necessary in order to address the various complicated issues raised during the meetings of the Subcommittee. Therefore, the Subcommittee recommended statutorily making the Subcommittee permanent. In addition, the Subcommittee supported the creation of an interdisciplinary committee consisting of various stakeholders in the juvenile justice system to address various issues relating to the juvenile justice system.

Recommendations of the Subcommittee

The Subcommittee presented the following recommendations for consideration of the Commission:

1. Propose a Bill Draft Request to create a permanent ongoing Subcommittee on Juvenile Justice of the Advisory Commission on the Administration of Justice to review issues relating to juvenile justice and report back to the Advisory Commission.

The Commission approved this recommendation, which is contained in Senate Bill 113 (2009).

2. Propose a Bill Draft Request to create an interim study committee of the Legislature for the 2010 interim to consider issues relating to the juvenile justice system, including, without limitation, certification of juveniles as adults, blended sentencing, jurisdiction of juvenile courts, programs available to juveniles, juveniles in the adult criminal justice system and other related topics.

The Commission determined that this was not necessary because the permanent Subcommittee would continue to study these issues.

3. Provide support in the final report of the Advisory Commission for the Senate Bill 3 (2009) submitted by the Legislative Committee on Health Care to create a standing committee on issues related to child welfare and juvenile justice.

The Commission agreed to support Senate Bill 3 (2009).

4. Propose a resolution to encourage reform in the juvenile justice system. This should include encouraging the adoption of the Juvenile Detention Alternatives Initiative statewide and support for the Office of Juvenile Justice and Delinquency Prevention Model Program Guide.

The Commission agreed to provide a statement of support in its final report.

5. Propose a Bill Draft Request to address the jurisdiction of a person who committed a crime while under the age of 18 years, but who is not apprehended until after the person reaches 21 years of age.

The Commission requested the Subcommittee to continue to study this issue and propose solutions.

6. Recommend to the Executive Branch and the Legislature the reallocation of funding that is designated for unused secured detention into programs for juveniles, including parole, regional juvenile justice, community-based programs and programs to address mental health issues of juveniles. Encourage the Division of Child and Family Services of the Department of Health and Human Services to work with stakeholders to develop an alternative funding formula to present to the 2009 Legislature. This alternative funding formula should provide for this reallocation of funds and identify additional funds where possible to make available to the juvenile justice system.

The Commission approved to carry this recommendation as a recommendation of the Commission.

7. Recommend that the Executive Branch increase the budget for the juvenile justice system in proportion to any increase in the budget for the adult justice system, including corrections, and in any amount in which the Department of Corrections budget is reduced because of fewer offenders.

The Commission asked the Subcommittee to continue reviewing this recommendation and the various funding options, including a determination of whether an independent funding formula for juvenile justice could be established.

8. Propose a Bill Draft Request to create an interdisciplinary committee of various stakeholders in the juvenile justice system to address issues relating to juveniles, including, without limitation:

- (a) Best practices and the manner in which to have the greatest impact on recidivism and the adult prison population;
- (b) Continuation of services to juveniles who enter the juvenile justice system;
- (c) Outcomes of juveniles in the juvenile justice system;
- (d) Racial disparity in the juvenile justice system;
- (e) Programs for sexually exploited youth;
- (f) Tracking of information maintained by the Nevada Juvenile Justice Data Collection; and
- (g) The correlation between juvenile delinquency and dropouts and truants.

The interdisciplinary committee would not receive funding and would not have any legislators on the committee.

The Commission supported this recommendation which was submitted as BDR 627.

9. Provide support to the Attorney General in developing a Bill Draft Request relating to the registration and notification of juvenile sex offenders in Nevada.

The Commission agreed to support the Assembly Bill 85 of the Office of the Attorney General submitted to address this issue.

Chapter 7

Issues Relating to Victims

The Subcommittee to Consider Issues Related to Victims, including the rights of victims, relevant statistics and sources of funding for victims of crime in Nevada (“Subcommittee”), was tasked by the Commission with identifying challenges to victim’s rights and services and to begin developing potential solutions to some of those challenges. The Subcommittee, comprised of victim advocates, compensation officers, other criminal justice professionals, and victims themselves, represents the broadest working group to date to focus on the needs of victims in the justice system.

A. Programs for Victims

The pursuit of justice includes, in part, justice for victims of crime. Furthermore, crime victims in Nevada are accorded several constitutional and statutory rights.¹ However, justice cannot be achieved for victims, and these rights cannot benefit victims, without programs to inform them of their rights and assist them in navigating the justice system.

The development of rights and services for victims of crime is a fairly recent development. Beginning in the late 1960s, two complementary but distinct movements were initiated. Studies suggesting that one of the barriers to prosecution was the lack of cooperation of victims as witnesses launched victim/witness programs in prosecution and law enforcement agencies. Advocates employed by these agencies helped victims navigate the justice system, provided referrals to local resources, and assisted victims in having a voice in the process. At the same time, community-based advocates began to

¹ Victims of crime have a constitutional right to be:

- Informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding;
- Present at all public hearings involving the critical stages of a criminal proceeding; and
- Heard at all proceedings for the sentencing or release of a convicted person after trial.

Nevada Constitution Article I, Section 8.

Statutory rights include NRS 178.5698 (right, upon written request, to notice of any release of defendant from pre-trial custody, amount of bail, and disposition of charges); NRS 178.5696(1) (right to secure waiting areas at court separate from those used by jurors, defendants and their families); NRS 178.571 (right to an attendant to provide support in court during testimony); NRS 176.015(3) and (4) (right to notice of the date of sentencing and to be heard at sentencing after the defendant and/or his counsel speaks); NRS 200.601(1) and (2) (right to notice of the disposition of harassment and stalking cases and a certified copy of any no contact order imposed as a condition of sentencing); NRS 205.980(3) (right to notice within 30 days of the defendant’s conviction under and resulting civil liability for damage to the victim’s property); and NRS 213.130(4) (right, upon written request, to notice of the date of any meeting to consider the defendant for parole and to submit documents and be heard at the meeting).

organize around not only the justice system's apparent indifference to the needs of victims but began developing a larger scope of services to meet the complex needs of victims. Both began advocating for changes in the way the justice system interacted with victims of crime.

These developments on the national stage were mirrored in Nevada, and today Nevada has a patchwork of victim services in most of the counties in Nevada. Currently, there are approximately 129 full- and part-time and 189 volunteer community-based advocates, and 58 system advocates (31 in prosecution offices and 27 in law enforcement agencies) statewide, primarily concentrated in Clark County and Washoe County. These advocates:

- Provide guidance for victims as they navigate very complicated and foreign justice systems.
- Provide a broad range of services to meet complex needs of victims, both within and outside the justice system.
- Support the right of victims to have a voice in the complicated decisions that will impact their lives far beyond the end of the case.
- Provide financial assistance to victims as they attempt to recover from their victimization.

Some degree of assistance to certain victims of crime is mandated by NRS Chapter 217, including compensation for certain victims of criminal acts (NRS 217.010-.270), assistance to victims of sexual assault (NRS 217.280-.350), assistance to victims of domestic violence (NRS 217.40-.475), and assistance to victims of sexual abuse (NRS 217.480).

Programs for Victims of Domestic Violence

Victims of domestic violence comprise the largest victim category in the Nevada. Statistics for 2007 indicate 14,613 temporary and extended protection orders were issued for domestic violence victims, while 31,247 incidents of domestic violence were reported by law enforcement in 2005.² Due primarily to the nature of the relationship between the victim and the perpetrator, there are many systemic barriers for most of these victims.

There are 15 domestic violence programs serving all 17 counties in the State. These programs rely primarily upon funding generated through marriage license fees to the Account for Aid to Victims of Domestic Violence created pursuant to NRS 217.420. As of July 1, 2008, these programs experienced a 28.7 percent decrease in State grants from the Fund. Supplementary federal funding sources include the Victims of Crime Act (VOCA), the Family Violence Prevention and Services Act (FVPSA), and the Violence Against Women Act (VAWA); all of these programs have experienced decreased funding.

² Reliable domestic violence data for 2007 is not available due to the continuing implementation of new reporting requirements mandated under SB 202 from the 2007 Legislative Session, codified as NRS 171.1227.

Each program is an independent, private non-profit organization, providing a unique set of services within the parameters of the statute, which may include services for children, specialized counseling, batterer intervention, transitional housing, legal advocacy, and support groups, along with the mandated services of hotlines, shelters, peer counseling, education and outreach, information and referral. In FY 2007, these programs served more than 37,000 individuals.

Programs for Victims of Sexual Violence

The Uniform Crime Report for 2007 indicates law enforcement in Nevada reported 1,094 cases of sexual assault and attempted sexual assault. Of those cases, 20.66 percent were cleared by an arrest or identification of a suspect. These cases do not include statutory rape or other sex offenses. It is estimated that only 40 percent of victims report sexual assaults to law enforcement.

The State has three programs focusing on victims of sexual violence: the Rape Crisis Center in Las Vegas, the Crisis Call Center in Reno, and Sexual Assault Advocates based in Carson City. All three agencies rely upon VOCA, FVPSA and VAWA funding and have experienced funding cuts, resulting in a reduction of services. In FY 2007, these programs handled 1323 reports of immediate sexual assault and fielded over 6,200 hotline calls from survivors.

There are major service gaps, especially in rural areas, where there are almost no services for victims of sexual violence. For example, throughout Nevada there are only 17 nurses certified to conduct sexual assault exams, with none located in rural areas. Sexual assault victims in rural areas must be transported to one of the major metropolitan areas to receive an exam from a certified sexual assault nurse examiner (SANE).

Programs for Victims of Other Crimes

Programs for victims of other crimes include The Solace Tree in Reno and Families of Murder Victims in Las Vegas (serving the family members of homicide victims and funded through private donations), and the Northern Nevada DUI Task Force and STOP DUI in Clark County (serving DUI victims and their families and funded through court-imposed victim impact panel fees).

The Nevada Victims of Crime Compensation Program

The Nevada Victims of Crime Compensation Program was established pursuant to NRS 217.010-217.270 in 1969, to provide assistance to persons who are victims of violent crimes or the dependents of victims of violent crimes. The Program is administered under the authority of the State Board of Examiners, and provides a broad range of payment for medical services, counseling, lost wages, relocation expenses and other specific items. The Program is designed, by statute and policy, to help innocent victims of crime who suffer physical injury, with criteria to ensure an applicant did not contribute to his or her own victimization. The State Board of Examiners' claim limit is set at \$35,000.

The Program is funded through federal grant monies under the Victims of Crime Act (VOCA) and matched with court fines and assessments. [EXHIBIT A] For FY 2008, the Program received \$8,401,101.41 in funding, handled 2,373 applications with claims totaling \$27,244,696.75, approved 1,314 applications, and paid out \$7,239,826.68 in claims. For FY 2007, the Program received \$8,312,652.50 in funding, handled 2,552 applications with claims totaling \$15,568,041.28, approved 1,377 applications, and paid out \$5,051,696.18 in claims. For FY 2006, the Program received \$5,937,597.60 in funding, handled 2,483 applications with claims totaling \$15,844,820.10, approved 1231 applications, and paid out \$4,457,006.06 in claims.

The State contributes no money from the General Fund to the Program; however, Program revenue frequently exceeds budget authority, and excess revenue reverts to the General Fund rather than compensating victims. For the period FY 2006-2008, \$183,442.26 in Program funds reverted to the State General Fund in FY 2006, \$405,184.94 reverted in FY 2007, and \$307,335.12 reverted in FY 2008. [EXHIBIT A]

B. Report and Recommendations

Challenges

1. Lack of Resources – This speaks not only to limited funding but to the limited ability to provide the services even if the funding was available. Many advocates are concerned about the release of inmates on an already overburdened system. Victims of released perpetrators will begin accessing services again and advocates will be trying to keep up with past victims cases as well as current and new victims. Examples of resource shortages include:

- **Victim advocates** - Victim services agencies cover multi-jurisdictional areas. Advocates are in short supply whether in rural communities to cover large geographical areas with a small population base or in urban areas to serve a large population base in a condensed geographical area.
- **Transportation Services** – Lack of transportation services often prevent victims from accessing services or participating in the justice system. For example, there are no, or very limited public or private transportation services available to communities along the I-80 corridor, as well as contiguous counties adjacent to I-50 and Highway 395. If public transit does service a community, it is based on occupancy, and if the public transit carrier is full with passengers, then the carrier will not stop for passengers. In these cases, the victim is literally stranded.
- **Mental Health** – Mental health services are at a premium in rural and urban communities. Even with increased funding, Rural Mental Health was unable to recruit qualified professionals to fill open positions. In Las Vegas, access to affordable mental health services requires at least a six months wait.

- **Legal Services** – Clark County Legal Services, Washoe County Legal Services, Nevada Legal Services and Volunteer Attorneys for Rural Nevada are at capacity. There are either waiting lists for these services or they are not able to take new clients. Most communities lack access to pro bono attorneys that provide services to victims.

2. Uneven Access – The geography and population distribution of the State of Nevada poses numerous challenges for victims in accessing the justice system and services. What services are available are not standardized, with each jurisdiction creating their own. This is true for communities within the state and when victims attempt to access the systems across state lines. In addition, different categories of crime are often treated different in terms of accessing service.

- **Victims of Crime Compensation** – Compensation is not applied consistently to all victims in Nevada. Interpretation of regulations, vague guidelines and an inconsistent application by jurisdiction results in uneven access to compensation for crime victims. Due to limited crime victim compensation funding it appears hearing officers are forced to look for reasons not to provide funds rather than for reasons to approve funding. The ‘innocent victim’ regulation in particular presents problems when the interpretation overly penalizes victims of sexual and domestic violence.
- **Advocacy Services** – The distribution of advocacy services is uneven across the state, in particular the lack of system advocates in rural communities places rural victims at a distinct disadvantage. The enactment of recent funding cuts for domestic violence programs threatens to dismantle one of the few statewide victim services networks in Nevada. Other funding cuts threaten already overburdened and under-resourced victim services.
- **Inter-State Issues**- Nevada has borders with California, Arizona, Oregon and Utah. The interstate issues can make it very difficult to coordinate victim services. Advocates establish rapport with neighboring advocates and agencies in order to effectively assist crime victims. This often means addressing different statutes as well as interstate/tribal/federal crimes.

3. Systemic Barriers – The justice system is like a foreign country to many victims, with a language and culture of its own. Navigating that system is often difficult without assistance and even then, it is not completely without barriers. Communication and process are the two most common systemic barriers. The challenges include:

- **Communication**– Most systems in Nevada show a lack of communication either systems to systems, systems to victim, or systems to communities. Victims are not sure how to navigate the system and systems agents do not understand why victims do not understand their system. Examples of the lack of communication include:

- **Victim Notification** – Victim Notification Network (VINE) exists in Clark County and Washoe County. VINE allows crime victims access to timely and reliable information about criminal cases and custody status of offenders 24 hours a day. VINE is not available in any other county.
- **Victim Notification of Appeals Hearings** – Many victims throughout Nevada find out about their perpetrator's upcoming appeal in the newspaper. There is no standardized process for notification although both Washoe and Clark County District Attorney's office have recently developed forms for victims to complete that will trigger such notification.
- **Victim Cooperation** - In order to promote willing victim participation in the prosecution of cases, victims need emotional support, information regarding the justice system, and referrals to local resources. Early, consistent contact with victims and immediate referral to appropriate support services is critical to enabling victims to make informed decisions. However, victims may be unwilling or unavailable to cooperate at any point in the prosecution process. The burden of prosecuting cases should be placed on prosecutors and not victims. In the event a victim is reluctant to participate, prosecutors must make every effort to proceed without the victim while balancing the goals of prosecution and the interests of justice.

General Recommendations Not Requiring Legislative Action

1. Increase prioritization of victim rights and services within the justice system including increased funding for services - system and community-based advocacy services as well as transportation, mental health and other necessary assistance.
2. Review the Crime Victim Compensation Program for regulations that result in uneven application of the Program, including ongoing training for compensation officers.
3. Establish an Office for Victims of Crime in the State of Nevada to coordinate resource development and monitor access.
4. Coordinate communication systems to insure that victims have access to information.
5. Expand/improve data collection and analysis across all systems to better understand how systems are working.
6. Provide consistent and formal training for all components of the justice system on victim issues.
7. Increase collaboration between systems to discuss and work through system failures and expand system success.

8. Continue Subcommittee meetings to review access to services, compile additional information on current systems and develop more in-depth analysis of the challenges and solutions.

Specific Recommendations Requiring Legislative Action

1. **Provide that all funds collected for the Victims of Crime Compensation Program be paid to the Program or deposited in a reserve account if the proceeds exceed the budget authority in any particular fiscal year.** Revenue for the Victim of Crime Program frequently exceeds the budgeted authority in any given fiscal year. When this occurs the excess revenue reverts to the State General Fund rather than compensating victims, even though the State contributes no General Fund dollars to the Program. Since the Victim of Crime Program is chronically under funded, this would help build a reserve to allow the Program to pay victim claims appropriately.
2. **Amend NRS 217.110 to extend a Victims of Crime Compensation Program applicant's time to appeal a compensation officer's denial of the victim's claim for compensation from 15 days to 60 days.** Currently, NRS 217.110(1) allows a victim of crime only 15 days to appeal a compensation officer's denial of the victim's claim for compensation. This time frame is too short.
3. **Amend NRS 200.591 to authorize a victim of sexual assault to obtain a protection order against his/her perpetrator, even if there is no dating relationship between the two individuals.** Currently, Nevada does not allow victims of sexual assault to seek a protection order unless they have been in a dating or intimate relationship with their assailant. For many victims of sexual assault, the perpetrator is a person who is known to them but is not a person who they have been involved with romantically and they are not a person to whom they are related. Many victims find themselves in a position where their perpetrator is a co-worker or a student at the same school. Without the ability to obtain a protection order, victims in these situations are often unprotected.
4. **Amend NRS 217.180 to clarify that contributory conduct considerations in the Victims of Crime Compensation Program do not apply in cases involving victims of sexual assault and domestic violence crimes.** NRS 217.180(1) provides that, in determining whether to make an order for compensation, a compensation officer "shall consider the provocation, consent or any other behavior of the victim that directly or indirectly contributed to his injury or death, the prior case or social history, if any, of the victim, the need of the victim or his dependents for financial aid and other relevant matters." There are no regulations concerning this statute, although the Victims of Crime Compensation Program has adopted several policies regarding the application of "contributory conduct" in cases involving victims of sexual assault and domestic violence crimes. Recently, changes have been proposed to the policies to address concerns that they inappropriately penalize victims of sexual assault and domestic violence, but

the statute needs to be amended so that “contributory conduct” considerations clearly do not apply in these cases.

5. **Authorize the Victims of Crime Compensation Program access to law enforcement reports.** NRS 219.090(2)(a)(3) requires a compensation officer, in conducting an investigation to determine the eligibility of the applicant for aid, to obtain and review reports of peace officers and statements of witnesses. However, there is no statutory requirement that law enforcement agencies provide reports to compensation officers.

Chapter 8

Issues Related to Sentencing

The Subcommittee to Study Mandatory Drug Sentencing Statutes and the Substantial Assistance Statute ("Subcommittee") was tasked by the Commission with reviewing the following matters.

A review of statutory sentences for criminal offenses involving narcotics, including the range of sentences and a comparison of those ranges to the ranges in federal law for similar offenses.

The Subcommittee reviewed the primary narcotic offense statutes used in criminal prosecutions. The Nevada statutory scheme has two parallel sets of statutes dealing with controlled substances, trafficking statutes and statutes for possession and sales.

In the statutes denominated "trafficking," the penalties increase according to the amount of controlled substance involved. *See* NRS 453.3385 - 453.3395. The three Nevada trafficking statutes share a common structure; the only difference is in the proscribed substance. Nevada requires mandatory minimum sentences when the predicate trafficking amounts are present.

Mandatory minimum sentencing requirements are common in trafficking statutes. Quantities are greater in the federal system to meet mandatory minimums; federal sentences are also subject to the Federal Sentencing Guidelines, a complicated formula that adjusts the actual sentence according to a series of factors.

In the Nevada possession and sales statutes, the penalties increase with the number of times the individual has been convicted of a drug-related offense. *See* NRS 453.321, 453.336, 453.337 and 453.338. First and second time possession offenders receive mandatory probation. In contrast, federal statutes distinguish between possession for personal use and whether there was the intent to manufacture, distribute or dispense a controlled substance.

The Subcommittee reviewed the mandatory drug sentencing statutes to determine if there are an inordinate number of people incarcerated under mandatory sentencing, and if sentences imposed are proportionate, or whether there should be more discretion given to the courts. The Subcommittee concluded that the courts are reluctant to send a mandatory probation drug offender to prison on technical violations. The Subcommittee made no recommendations concerning any modifications to the mandatory minimum sentences or sentencing ranges.

A review of statistical information concerning the population of prisoners convicted of drug offenses in Nevada prisons.

As of June, 2007, of a total in-house prison population of approximately 13,082 inmates, 1,857 were drug offenders, or approximately 13.10% of the total population. Drug trafficking offenders represented 3.96% or 532 of the total prison population. Approximately 38% of drug offenders in Nevada prisons were serving a single sentence and had no prior felony conviction, and were therefore incarcerated on mandatory sentences or discretionary sentencing. The average of all minimum sentences for each drug offender for a specific case or conviction was 3.13 years, with a maximum of 8.66 years.

A review of judicial caseloads involving drug trafficking.

The Subcommittee reviewed data on drug trafficking caseloads for Clark County (Eighth Judicial District Court), Churchill County (Third Judicial District Court), and Carson City (First Judicial District Court) for 2007. In Clark County, out of a total of 10,069 criminal cases filed, 950 cases, or 9.4%, involved a charge of trafficking in a controlled substance. Of this number, 11% of the cases were resolved with a trafficking conviction, while 37% were resolved by a probational drug-related felony offense. In Churchill County, out of a total of 1448 criminal cases filed, 5 cases, or 0.3%, involved a charge of trafficking in a controlled substance. Of this number, 80% of the cases were resolved with a trafficking conviction. In Carson City, out of a total of 554 criminal cases filed, 52 cases, or 9.4%, involved a charge of trafficking in a controlled substance. Of this number, 21.2% of the cases were resolved with a trafficking conviction.

A review of the drug trafficking statutes, including:

- A. The purpose of those statutes;**
- B. The population targeted by those statutes;**
- C. Whether the current minimum and maximum weight designations for the determination of the various levels of drug trafficking offenses is reasonable;**
- D. Whether the current sentencing ranges for drug trafficking offenses is reasonable; and**
- E. Judicial discretion and the reasonableness of mandatory prison sentences for drug trafficking offenses.**

The Subcommittee made no recommendations concerning any modifications to the drug trafficking statutes, NRS 453.3385 - 453.3395. The trafficking statutes seek to punish offenders for possessing an amount of a controlled substance which infers engaging in distribution; discerning trafficking from simple possession with intent to sell is appropriate. The Subcommittee concluded that there did not appear to be any maximum sentences imposed for low-level trafficking convictions. A lengthy mandatory minimum prison sentence is warranted for those who clearly are dealing at the wholesale level. The Subcommittee had no recommendations concerning changing the amounts for narcotic possession but recommends further study.

A review of the substantial assistance statute (NRS 453.3405), including:

- A. The purpose of the statute;**
- B. The practical application of the statute; and**
- C. The statute in comparison to any equivalent statute in federal law.**

Nevada currently mandates the imposition of a prison sentence for trafficking in controlled substances, *i.e.*, probation is not an option for the judge, unless the defendant provides "substantial assistance in the identification, arrest or conviction of ... any other person involved in trafficking in a controlled substance." NRS 453.3405(2). Upon finding the defendant provided substantial assistance, the judge "*may* reduce or suspend the sentence." *Id.* (emphasis added). If there is no evidence of "substantial assistance," then the judge must impose the minimum sentence. The theory behind this requirement is to coerce the offender to provide information relating to his sources, to give "the something additional which will help law enforcement get the higher ups who shield themselves from the vulnerability, usually, of any arrest."¹

There is, however, no statutory definition of "substantial assistance." The Subcommittee recommended making changes in the substantial assistance statute by completely rewriting subsection 2 of NRS 453.3405 to mirror the federal sentencing guideline (5K1.1). **[Exhibit A]** The proposal provides criteria for the court to evaluate substantial assistance and provides offenders with adequate notice of what is expected of them in terms of supplying substantial assistance.

Additional recommendations of the Subcommittee.

The Subcommittee discussed funding issues for the specialty courts. Within the Subcommittee, drug trafficking was a crime viewed as people higher up in the drug subculture and profiting off selling narcotics to people at the street level. The consensus was that drug traffickers should pay in some fashion for the havoc they cause by instituting a fee that helps pay for the diversion and drug court programs related to drug addictions. The Subcommittee recommended that a specialty court fee become an associated part of sentences in felony and gross misdemeanor cases, with the fee imposed on a sliding scale to allow courts discretion as to the appropriate amount.

¹ Sen. Comm. On Human Resources & Facilities, 3/10/83, p. 3.