

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

APRIL 17, 2012

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, on April 17, 2012, at 9:34 a.m., at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Assemblyman William C. Horne, Chair, Assembly District No. 34
Connie Bisbee, State Board of Parole Commissioners
Senator Greg Brower, District No. 3
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Greg Cox, Director, Nevada Department of Corrections
Lisa Hibbler, Victims Advocate
Phil Kohn, Clark County Public Defender
Assemblyman Richard McArthur, Assembly District No. 4
Senator David R. Parks, District No. 7

COMMISSION MEMBERS PRESENT (CARSON CITY):

Larry Digesti, Representative, State Bar of Nevada
Mark Jackson, Douglas County District Attorney
Brett Kandt, Deputy Attorney General
Richard Siegel, President, American Civil Liberties Union of Nevada
Todd Vinger, Undersheriff, Washoe County Sheriff's Office

COMMISSION MEMBERS ABSENT:

Judge David Barker, Eighth Judicial District Court
Honorable James W. Hardesty, Justice, Nevada Supreme Court, Vice Chair
Jorge Pierrott, Sergeant, Department of Public Safety, Division of Parole and Probation

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel
Angela Hartzler, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Tonja Brown, Advocate for the Innocent
Lawrence Wilgus
Wes Goetz
Dr. James Austin, President, JFA Institute

Chair Horne called the Advisory Commission on the Administration of Justice to order and requested a roll call of members present.

Mrs. Hartzler called the roll. A quorum was present for the meeting.

Chair Horne requested everyone wishing to testify sign the attendance sheets. He opened Agenda Item III, Public Comment. He requested the comments be kept to five minutes if possible.

Tonya Brown opened her discussion concerning the computer glitch. She said she also wished to discuss the materials provided to the Commission regarding her requests for 2013 Legislation, [Exhibit C](#). She said laws needed to be changed and asked the Commission to accept Senator Park's recommendation and bring back the items not passed from the Advisory Commission recommendations from 2010. She asked that her recommendations be considered for future legislation, including DNA testing by prisoners at their own expense. Ms. Brown listed the items she had presented previously to the Commission. She referred to the inmates who did not receive medical treatment at the Nevada Department of Corrections (NDOC). She said the NDOC was not properly treating inmates who had the "super bug," and she said slanderous and false information was provided in inmates files. The computer glitch affected inmates who had false charges and their credits taken away. She said the computer glitch occurred on June 5, 2007. False information occurred during the glitch period.

Chair Horne asked Ms. Brown to get the information from the NDOC concerning the alleged excessive convictions on an inmate's record. He asked her to get the names of inmates who had convictions on their records that were not supposed to be on the record. He said the Commission wanted to look at specific cases of the problems. He said he sent out letters, but he needed more information. Chair Horne said they would deal with whoever was being harmed now in the NDOC.

Lawrence Wilgus said he watched the story on television concerning the computer errors. He said he was a victim of the errors, [Exhibit D](#). He was attacked by officers at the Humboldt Camp who said he was an escapee, and he said his shoulder was broken. He said his custody level was raised due to the errors, he lost work time, and his parole date was postponed by three months. He said he worked as a crane operator and his position was held for him for six months. Due to the computer error, he still did not have a job. He was not allowed to view his information summary, so he did not know there were errors in his documents. He said he wrote 180 pages of grievances over the situation.

Chair Horne asked if there were any questions for Mr. Wilgus. He said the Commission had his documents.

Wes Goetz asked if a person was revoked from parole, was it another crime or was it a technical violation.

Chair Horne said Dr. Austin was present and heard Mr. Goetz's question. Chair Horne closed Agenda Item III and opened Agenda Item IV, approval of the minutes from the March 7, 2012, hearing. He asked for a motion to approve the minutes.

MS. BISBEE MOVED TO APPROVE THE MINUTES OF THE
MARCH 7, 2012, MEETING OF THE ADVISORY COMMISSION.

MR. CALLAWAY SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Horne opened discussion on Agenda Item V, a presentation by Dr. Austin.

Dr. James Austin, President, JFA Institute, introduced himself to the new members of the Commission. He said he did research for a variety of states, including Nevada. The Institute did the population projections for the State. He said he worked with the Nevada Parole Board on its risk guidelines. There were a number of agenda items he would discuss. He opened with charts concerning the current correctional population trends in Nevada, [Exhibit E](#). He said the crime rate chart showed the dramatic drop in the serious crimes reported to police agencies by citizens and discovered by the police. He said it

was a rate of 100,000 per population. Crime rates rose in 1960, peaked in 1980, and then started going down. He said Nevada's crime rate dropped more dramatically than most of the other states. The crime rate in Nevada had dropped to where it was in 1960, [Exhibit E](#). He said the State was much safer than it was 10 or 15 years ago. The chart did not reflect any drug offenses. He said [A.B. 510](#) changed the range and extension of punishment and gave more good time credits and credits to probationers. He referred to the prison population trends in [Exhibit E](#). He said he estimated Nevada was saving between 87 and 90 million dollars a year through [A.B. 510](#) without the crime rate going up, when it actually went down. He said fewer crimes were being committed in Las Vegas compared to 1988 or 1989. He said the accuracy of the projections were relatively accurate. He said their 10-year forecast concerning admissions was flat. He said the State had gone from one of the highest incarceration rates in the country to below the average for incarceration. Nevada was one of the safer states in terms of overall crime rates. The Parole Board was doing a fantastic job in terms of the declining rates. He said there was stability in the leadership of the Parole Board and they adopted guidelines, a validated risk instrument, and a high compliance with their guidelines. He said they paroled low, moderate risk people at their parole eligibility date and they did it with great success. He mentioned Table 1: Parole Release Rates 2000-2011, [Exhibit E](#). He said if the Parole Board lowered the rates, the prison population would go up.

Chair Horne said the parole release rates of males in 2008 seemed to have a dip in the numbers. He asked if there was a reason why it occurred.

Ms. Bisbee said there was a big change in how they did things during that time. She said there was a period of time when they were 1,500 inmates behind in their hearings. During the summer of 2008 they saw the ones most likely to be granted parole, and then they saw the ones delayed who were the least likely to be paroled. It was a catching-up time for the Board. She said it was due to a split population and the changes in the law that caused the apparent dip in numbers.

Dr. Austin said that in 2010 changes were made to the risk instrument and it was revalidated. He discussed the recidivism rates, [Exhibit E](#). He said Nevada had a low recidivism rate. There were three ways to measure recidivism. He said Nevada used the three-year return to prison rate. The national return rate was in the 44-45 percent range. Nevada's rate was a 25-26 percent rate of return.

Chair Horne asked if the transitory nature of Nevada affected the rates.

Dr. Austin said it had some role in the rates. He said approximately 20 percent of the parolees were returned to California. He said the ICE transfers were also a consideration for the lower rate. There were a number of low risk people in Nevada. He said there were deterrents, treatments, programs and maturation effects. He said most people who went to prison did not go back to prison.

Mr. Cox said the female population rate lacked enough data to determine what was actually occurring with the group. He said any increase in the female population looked like a large increase due to the small number of female inmates. The recidivism rate was currently 26.89 percent. The California population did affect the rate because of buses and transportation out of the State. He said the population was getting older and did not come back to prison. There was also a good amount of policing in the State making the State safer. He said he wanted more detail on the recidivism rates.

Dr. Austin said the number of parole violators had increased. He said it was not the rate, but the number, because more people were going on parole. He said if it was a technical violation, they were usually paroled again fairly quickly. Going through the booking process was expensive, and if the numbers were reduced, it would help on expenses. Technical violations typically did not occur just for the failure of one condition of their probation supervision. He said they saw a number of violations occurring and often resulting in an arrest of some kind. They seldom committed a new felony, but they made multiple mistakes. He said a more immediate response to the first violation might lower the rate.

Mr. Callaway said Las Vegas METRO would work with Dr. Austin on his ideas. He said taking on a significant amount of new tasks could be difficult for the Department.

Dr. Austin next referred to the probation population, [Exhibit E](#). He said it was significant in that it had gone down from about 9,200 to 7,500 and was the direct result of A.B. 510. He said it allowed probationers to earn credits off their probation term. The program had been cited nationally and it was working very well. He said the parole population had increased slightly because more people were eligible for parole. There was good success of people terminating off parole. He said it was in the 85-90 percent range and more good news for the State. He said most states were lucky to have a 55-60 percent success rate. He said since A.B. 510 was passed, there was big bump up in the probation success rates.

Dr. Austin showed a chart of the number of Class B felonies being admitted to the NDOC, [Exhibit E](#). He said it was approximately 65 percent of all the prison admissions. After A.B. 510 was passed in 2007, there was a slight drop, and then it went back up. He said the effect of the rise in Class Bs could not be explained by crime or arrest behavior by the police. He said it was something going on in the courts between 2008 and 2009. They escalated the number of people coming into prison for Class Bs. He said the Bs had much higher sentences than the Cs, Ds, and Es and they were restricted on some of the good time credits they could receive. Dr. Austin referenced the chart in [Exhibit E](#) showing the types of crimes Class Bs were receiving.

Mr. Kohn asked Dr. Austin if there was a way to drill further and find out if the increase in Class Bs came from one portion of the State.

Dr. Austin said it could be done, and also they could try to discover where the increases were in relation to the crimes.

Mr. Kohn said he was especially interested in locations and if the increases were from Clark County and from theft-related crimes.

Dr. Austin said he could have an answer within a few weeks. He referred to [Exhibit E](#) and the types of crimes being committed. He said other violent crimes were assault and robbery cases. Drug cases tended to be possession with intent of sale. He said he did an impact study of what might happen if some of the non-violent Class Bs were put into the C and D categories where they would receive more good time credits. They also looked at probation sentences, [Exhibit E](#). He said the State was already taking a large number of Class Bs and putting them on probation. They looked at taking the non-violent cases and putting them into Class C, thus allowing them to earn additional credits. He said the impact was approximately an 800 to 900 reduction in prison population. He said it would take approximately 3 years to get to that level. He closed by mentioning two things that would have impact, including resubmitting [A.B. 136](#). He said he believed it would not have an impact on the crime rate or recidivism. He added there was another group in the prison population that were approved for parole but were waiting for Parole and Probation to approve the release. He said some of the inmates chose not to be released and preferred to finish their time in prison and not have any supervision. He said others might have problems securing suitable housing. He said it was a big number of people and a potential reduction in the prison population of 1,000 to 1,500 inmates.

Mr. Siegel asked if jail population was included, would everything still look as stable in terms of overall incarceration rates in Nevada.

Dr. Austin said nationally there was a drop in the jail populations. He said it was a function of the crime rate and arrests dropping. The federal government estimated that there were approximately 130,000 empty jail beds in the country. He said most of the drop was due to arrests going down.

Mr. Kandt asked if they needed to look at the crime rates relative to other states. He said he understood that over the past 20 years the violent crime rate in Nevada was stable, but it had dropped dramatically nationwide.

Dr. Austin said Nevada's violent crime rate had not dropped as much as the national violent crime rate. He said Nevada historically had a higher than average violent crime rate.

Mr. Kandt said he understood Nevada had the highest crime rate and the highest violent crime rate in the country.

Dr. Austin said he did not know if it had the highest crime rate versus the rest of the country for crime rates.

Mr. Kandt said he had Bureau of Justice statistics and the Census Bureau's statistical abstract for 2010 which had Nevada listed as number one in the country for crime rate.

Chair Horne asked Mr. Kandt if his data showed Nevada as having the highest overall crime rate and the highest violent crime rate.

Mr. Kandt said that was his understanding from the figures he had seen. He said in terms of the numbers in the state incarceration rate, Nevada was under the national average.

Dr. Austin said he was correct.

Mr. Kandt said the 2009 U.S. average was 502, and Nevada was 470 for state incarceration rates. He asked about the state prison commitment rate, the total number of prison commitments for the year divided by the total number of felons convicted in that year. He said it was another key figure used by the federal government. He said the national average was 40 percent. He asked what Nevada's rate was.

Dr. Austin said he did not have the information at this time.

Mr. Kandt said he thought it was an important number and one the Commission should look into.

Dr. Austin said when the Commission was created, one of the things receiving effort was working with a law school to study prison disposition rates. He said they were able to analyze by judge, county, and offense. The national rate was about 40 percent.

Mr. Kandt said he wanted to know what the state prison commitment rate was. He also was interested in the figures for the categories of felons sentenced directly to prison, probation failures sentenced to prison, parolees returned to prison for a conviction of a new crime, and finally, parolees returned for violating the terms of their parole.

Dr. Austin said information about the parolees with a new conviction while on parole would be readily available, as would the information about the technical violators. He said the data was there. He said for many years the Division of Parole and Probation was unable to analyze the information on a regular basis due to lack of resources. He recommended that Parole and Probation be combined with the NDOC so there was one seamless system for information and risk assessments. He said because they were separated, it was difficult to answer the questions.

Mr. Kandt said if parole and probation failures, and not sentences, were driving prison population, they could focus on improving the parole and probation problems as suggested by Dr. Austin.

Dr. Austin said there was a good success rate now in terms of probation terminations and parole terminations. He said they were at the 80 to 85 percent success rates.

Mr. Kandt said when recidivism was measured, it was discussed over all offense categories. He asked if it needed to be broken down and looked at for certain offenses. He understood certain offenses were higher the longer certain offenders were tracked.

Dr. Austin said recidivism rates needed to be broken down by categories. He added Parole and Probation needed the resources to study the offenders for a longer time. He said sex offenders had very low recidivism rates. The longer they were supervised, the higher the rate, but compared to other offenders their rate was usually half of a property or drug offender.

Mr. Kandt said the Commission should look at the average length of a prison stay broken down for the violent and non-violent prisoners.

Dr. Austin said it was not the prison term, but how much time they actually served. He said he would get the information for Mr. Kandt on the length of stay in prison.

Mr. Kandt asked if only a small percentage of felons went directly to prison, and the balance of the prison population was parole or probations failures, did it demonstrate that the sentence length was justified.

Dr. Austin said the State's penal system was designed to incarcerate people who committed violent crimes longer than those incarcerated for drug or property crimes. He said how much time people should serve needed discussion. He said it was not up to him to make those decisions. There was a cost savings, but also a cost.

Mr. Kandt said he would email his questions to Dr. Austin.

Chair Horne requested that Mr. Kandt copy the members of the Commission with the information from Dr. Austin.

Mr. Callaway commented on information in [Exhibit E](#) concerning Clark County and Las Vegas METRO statistics. He said the "More Cops Sales and Use Tax" of 2007 was the year they started hiring officers based on that legislation. He said that in 2007, METRO hired almost 600 officers with the sales and use tax. The result was they were able to do more non-traditional, proactive police work. He said it needed to be factored into the information data concerning the drop in the crime rate.

Dr. Austin said A.B. 510 did not cause the crime rate to go down. He said the work Las Vegas METRO did had much more influence on the crime rates. He said that in New York City they changed the way they policed and started arresting people more for misdemeanor things as proactive police work. The felony arrests dropped although misdemeanor rates went up. The jail population dropped, the probation population dropped, and the prison population dropped in New York City. The changes were attributed to the New York Police Department. The work in Las Vegas had a lot to do with the drop in crimes.

Mr. Siegel said A.B. 136 was a bill vetoed and another vague bill in the Legislature which said judges should attempt to be reluctant to do technical violations. He asked Dr. Austin what kind of legislative proposals the Commission could make that would satisfy people who were right of center as expressed in the Governor's letter on A.B. 136, Exhibit F. He asked if there was an area the Commission had not yet discussed that Dr. Austin might suggest. He said Texas was adopting measures in this area.

Dr. Austin encouraged the Commission to look at the organizational structure. He recommended moving parole agents to the NDOC or under the Parole Board. He said the State was out of step with the rest of the country with respect to organizational alignment of its correctional resources. He said it eliminated the 400 people waiting to get out of prison due to some bureaucratic delay and it also provided a better transition of assessment as they went through the system. The other areas were economic incentives. The states were giving incentives to local governments to manage their problems. California gave most of their short term, non-violent, and non-sexual offenders to the counties to manage. The counties received money to manage a certain portion of people coming to state prisons. He said economic incentives worked in a number of places successfully. He reiterated the need to realign the correctional agencies.

Mr. Siegel asked about aging prisoners. He said Nevada had a lot of prisoners with life or very long sentences. He said many health costs came with the aging prisoners and asked about policy issues from other areas of the country dealing with the problem.

Dr. Austin said it was true there was growth in the aging population. He said they were usually in prison for very serious crimes. He said it was a growing cost issue, but he did not have much information on the subject. One avenue was the faith community coming forward and volunteering their services to provide transition and supervision.

Mr. Siegel asked if any state had tried to use alternative facilities for aging inmates with life sentences. He asked if there were solutions to use something other than a prison facility to house them.

Dr. Austin said it depended on the security of the place. He said the big prisons had created large wards for confinement of the aging population. He said they had to have

access to medical care and Nevada did not appear to have enough numbers to justify a complete unit or ward.

Mr. Cox said the population was aging and every department across the country was looking at the increase in health care costs. He said the older population had significant sentences. Nevada had a program many states across the country had studied. It was called the True Grit Program and was at the Northern Nevada Correctional Center. He said the program placed older inmates into a unit. The regional medical facilities were in the same Northern Nevada Correctional Center. He said the program had been very effective. He said they needed to look at other mechanisms. The older population was a very stabilizing factor in running a prison. He said they did not know if they wanted to concentrate the older population in certain facilities. He said some of the budget problems had to be considered.

Mr. Siegel said he was encouraged that they were working on this issue. He asked if there were things the Legislature could change that would make it easier to handle the problems. He asked if there were barriers in state law.

Mr. Cox suggested expanding the program. They might look at a long-term care facility inside the prison. He said if that occurred, they needed to come to the Legislature for staffing with regard to medical issues and other mental health needs in the inmate population.

Mr. Jackson was concerned about statistics. He asked about the slide in [Exhibit E](#) listing the crimes and the number of admissions and percentages between male and female inmates. He said Dr. Austin said the majority of the drug offenses were sales and possession with intent to sell. Possession with intent to sell, first offense, was a category D felony. He said a third-time convicted felon would have a B felony. He asked if the category B felony drug offenses included Level 1 and Level 2 trafficking drug offenses.

Dr. Austin said his information came from the NDOC database. It said sale of drugs. He said maybe “intent to sell” were his added words. They had previous arrests and convictions which elevated them to the Class B category.

Mr. Jackson said that in the table in [Exhibit E](#), it was broken down including other violent offenses. He asked how each broad category of crimes was considered violent or non-violent.

Dr. Austin said life, murder, and sex would all be in the violent category. The other large category of violent was robbery and assault.

Mr. Jackson asked about the weapons category.

Dr. Austin said weapons were generally put in the “other” category.

Mr. Jackson asked if a person committed a drug offense and they were trafficking and transporting large quantities of drugs and they had firearms in their possession, would that be a violent offense or a non-violent offense.

Dr. Austin said they would be placed either in the drug category or the weapon category depending on the primary offense for which they were sentenced. He said it was what the court determined through the prosecution of the cases as the offense. There was a lot of what was charged and then eventually agreed upon not reflected in the data. He said they were the kinds of cases with a lot of prior arrests that had been on probation before. He said his analysis on the impact removed 25 percent of the potential eligible cases because if a law was passed, he assumed they would not be eligible.

Mr. Jackson asked about looking out for and protecting the public from violent offenders.

Dr. Austin said he was very concerned about public safety. He said it was important to invest in the kinds of functions that had the greatest impact on public safety. What produced a low crime rate in a state was not how many people were locked up, but other things about the state that made it a safer place. He said states wanted to know if they could cut the costs of the correctional system without jeopardizing public safety. That was the job given to him by a governor or legislature.

Mr. Jackson said Dr. Austin's presentation said Nevada was much safer now than it was 10 years ago. He said the Bureau of Justice's statistics showed Nevada ranked number one in crime rate in the nation and number one in violent crimes and that was contrary to the earlier statements made by Dr. Austin.

Dr. Austin said Nevada was not number one in crime rate. The state was number one in violent crime rate, particularly in the area of assaults. He said there was also a lot of movement into Nevada. There was also the effect of the gambling industry. He said it was clear the crime rate had dropped dramatically from 9,000 per 100,000 to almost one-half of that number. He said work was needed in the violent crime rate with emphasis on the assault rate. He said statistics showed actions were coming from certain places. He said there were areas in Las Vegas that were totally safe, but there were also areas that were not safe. The targeted communities were the feeder systems for the police, the jail, and the district attorney. He said if something could be done in those areas, it would have a good impact on making those parts of the communities safer.

Mr. Jackson asked about the projected cost savings of 87 to 90 million dollars a year based on the prison population trends and the impact of A.B. 510. He asked if the closing of the prison in Carson City was the area of the cost savings.

Dr. Austin said prior to the passage of A.B. 510, the Department had submitted plans to increase its capacity by 4,000 or 5,000 beds. He did not take into account the capital costs. He said they were operational costs of approximately \$50 a day. There were

averted costs and there were actual cost reductions also. He said they projected what the State would have had to do if A.B. 510 had not passed.

Mr. Jackson asked about the projected increase of female inmates and possible approaches to mitigate such outcomes. He said he understood the increase was insignificant and there were no approaches to mitigate the possibilities.

Dr. Austin said he was correct.

Mr. Callaway asked Dr. Austin, as a citizen of the community, what his personal opinion was concerning the person who robbed him if he was about to be released from prison.

Dr. Austin said he would be fine with the release of the person. He said there was a lack of the victim and the perpetrator being made whole and the perpetrator recognizing what he did was wrong.

Mr. Vinger said it appeared that there was a pattern showing a large statistical drop in crime rate that was tied to a large recession. He said it also generally meant there were fewer officers on the street. He said protocols were changed, and if it was not a violent crime, they did not respond anymore to take the report. He wondered how many crimes went unreported today, or if it was a reduction in crime. He said that in 2007, Washoe County had over 28,000 bookings and today there were less than 22,000 bookings.

Dr. Austin said recessions had a damping effect on crime rates. However, the crime rate in the United States began dropping in 1994 and there was no recession at that time. He said society was aging and that had an impact on crime rates. Juvenile arrests were much fewer and juveniles were less likely to be using drugs today. He said he did think police had something to do with the drop in crime rates. It was not just one thing, but a complex package of multiple things.

Mr. Vinger said the intake rate on the chart in [Exhibit E](#) stabilized from 2012 to 2022. He asked if more officers are placed back on the street at the end of a recession, would that affect the projection of people being committed.

Dr. Austin said it could have an effect. He said New York City added a lot of officers, but shifted the focus of what the officers did. There were more misdemeanor arrests, and felony arrests dropped. He said prison admissions dropped because there were fewer felons going through the system.

Chair Horne reviewed the agenda items Dr. Austin discussed in his presentation. Chair Horne said Dr. Austin was not presenting an agenda or bill. He came before the Commission with a presentation and answered questions the Commission asked of him. He provided data requested of him.

Dr. Austin said the Pew Charitable Trust funded a Class B study but were no longer involved in the State.

Chair Horne closed the hearing on Agenda Items VII, VIII, IX, and X. He opened the discussion on Agenda Item XI.

Mr. Kohn referred to the court case *Stockmeier v. The State of Nevada*. He said it brought to their attention the inherent problems in the probation reports that may have errors or omissions. He said errors cannot be revisited or revised later in time. He held a subcommittee meeting concerning the Stockmeier issue. He added that approximately two years ago Ms. Bisbee and former director of prisons, Howard Skolnik, held a continuing legal education class on the importance of probation reports to the sentencing judge and the Department of Corrections in deciding how to house an inmate, and on the release of an inmate. He said the Nevada Supreme Court pointed out the federal system and suggested it should be used as a guideline. The current problem was the probation report needed to be given to the defense attorney 72 hours prior to sentencing. He added Parole and Probation had done a good job of getting the report to them within 72 hours. He said the U.S. Supreme Court decided two cases in the past months, *Lafler v. Cooper* and *Missouri v. Frye*. The Court pointed out that 97 percent of all cases were plea bargained. He said in Clark County he expected 99 percent of all cases were plea bargained. He proposed a new NRS section 176 requiring the Division of Probation to provide a report to the prosecutor, counsel, and the court, [Exhibit G](#), 35 days prior to sentencing. He said within 14 days either party should provide to the court and the other side any objections they had to the report. The proposed language was in [Exhibit G](#). He said the number of days could be adjusted based on the discussions and the realities of the Parole and Probation Divisions and their budgets. He said it was critical to have the time to make the corrections as necessary. The PSI report followed people throughout their time in the judicial process and the three days provided now was insufficient. He requested discussion of the proposed legislation by the Commission. He said the Subcommittee missed out by failing to invite Mr. Cox or anyone from Corrections to sit on the Subcommittee.

Mr. Jackson commented on [Exhibit G](#), the proposed conceptual legislation. He said the purpose of the proposal was to streamline the process and have the disputed information corrected before the report went to the judge. He said under Item 6(c) of [Exhibit G](#), disputed items in the PSI report required sentencing judges make a record of the issue. The record was only the PSI report. He said if the sentencing judge made a ruling on a disputed fact, either a legal dispute or a factual dispute, it needed to be in the PSI report or an addendum attached to the report. He said the judge had to make the determination.

Mr. Kohn said he had the same concerns as Mr. Jackson. He wondered how to economically and consistently put the information in the reports and have it in writing. He did not want to have to send it back to Parole and Probation to create an entirely new document. He asked how to add addendums that the NDOC accepted and not make the

job so onerous on the Division of Parole and Probation. He agreed with Mr. Jackson that they had to be findings of fact or conclusions of law and were written down.

Mr. Digesti said [Exhibit G](#) resembled what was occurring in federal court in terms of the PSI report timelines, objections, and findings by the court reduced to writing. He had a lot of experience in federal court and the guidelines were very strict. They placed a burden on defense counsel as well as the prosecutor to abide by the timelines established by the court. He said federal district court judges spent a great deal of time in sentencing individuals. He liked the proposed concepts in terms of the bullet points. He said it was long overdue, but as a practicing attorney, he wondered how it was going to be implemented. It would require effort and acceptance from many different agencies district attorneys, public defenders, private lawyers, and judges. He said that in federal court corrections were often made directly between counsel and the probation department. He said they generated a new PSI report. He wondered how practical the suggestions were, particularly in relation to Parole and Probation, since they were still required to do PSI reports on gross misdemeanor cases. He said the district court judges throughout the State needed to be asked whether they were willing to be part of this proposal.

Mr. Kohn said the proposal used the guidelines of the federal dates. He said he had the same concerns Mr. Digesti had about the proposal. The proposed change would have a profound effect on the judicial process in Nevada. He said Judge Barker endorsed the idea. Some judges would not be happy with the changes, but based on *Stockmeier v. State of Nevada* and the Supreme Court's ruling in ADKT-411, which essentially told the defense attorneys to do the proposed suggestions. He said the proposal mandated a cultural change throughout the process. The change started with a statute which puts the onus back on counsel to make sure they have gone through the report. He said it warranted further discussion and needed to be brought forward to the Legislature adding that 72 hours was not enough time to do the necessary job.

Mr. Digesti said he concurred wholeheartedly in the effort and thought it was long overdue. He said the current system was totally inadequate. His concern was what the Commission could do to get the people and resources behind this proposal so when it was presented in the Legislature it would be taken seriously. He said they needed statewide support from district court judges and Parole and Probation.

Mr. Kohn said one of the discussions in the Subcommittee was to make it a reality the group had to give the Division of Parole and Probation more resources and more support. He said they were not asking that the PSI report become longer, just get to them more quickly. He said the proposal required more support to Parole and Probation.

Ms. Bisbee said Deputy Chief Madris was part of the Subcommittee, and their main concern was that they were not staffed to do this job. She said the Parole Board had no objections and absolutely wanted accurate PSI reports. She said there was concern

expressed on behalf of the Division of Parole and Probation. She said no one had an objection to the proposed legislation.

Senator Brower said he understood Parole and Probation may have some issues. He suggested the Commission continue to work on the issues, but the discussion included Constitutional issues that could not be ignored. He said the federal model was a good model, but it may not be possible to duplicate it in its entirety at the state level.

Mr. Cox said the NDOC accepted Mr. Kohn's invitation to be part of the Subcommittee.

Mr. Callaway asked if they believed it would increase the amount of time an inmate spent in the Clark County Detention Center before they were sentenced. He said it currently cost approximately \$140 a day to house inmates at the detention center.

Mr. Kohn said the issue was addressed in the Subcommittee, and he thought in the beginning it would increase the amount of time. He said that was the reason he was flexible on the amount of days needed. He said he was not asking for a more extensive report, rather for more time to check the facts. Public defenders needed more time to study the PSI reports. He was concerned about his clients spending more time in jail and about the extra cost in terms of time. Mr. Kohn recommended one more meeting of the Subcommittee before they finished.

Chair Horne asked if the meeting could occur before the week of June 4, 2012, and the next Commission meeting.

Mr. Kohn said he wanted to add Mr. Cox or Ms. Foster as a member of the Subcommittee.

Chair Horne said he would take that as a motion.

MR. KOHN MOVED TO ADD MR. COX OR MS. FOSTER TO THE
MEMBERS OF THE SUBCOMMITTEE TO REVIEW THE PRESENTENCE
INVESTIGATION REPORT PROCESS.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED.

Chair Horne opened Agenda Item XII, a discussion on potential topics and dates for future meetings. He said June 4 through June 8, 2012, were possible dates for the next meeting. He said intermediate sanctions, lifetime supervision, and impacts on P&P, coroner's inquest, and review of the measures not passed in 2011 Session, an update on

the PSI Subcommittee, and an update of Victims of Crime Subcommittee were tentatively scheduled for discussion.

Chair Horne said the fifth meeting was scheduled for the week of July 16 through July 20, 2012. Topics for discussion included A.B. 107, weapons and gun laws, a final report on the PSI, a final report on Victims of Crime Subcommittee and solicitation of final recommendations included in the work session document. He said the last meeting was tentatively scheduled for the week of August 20 through August 24, 2012. The July meeting will discuss the recommendations and possible bills to be brought to the 2013 Legislative Session.

Mr. Siegel requested further discussion on the issue of aging inmates. He wanted it on a future agenda. He added one of the things that would affect everything was the budget outlook for the next biennium. He said they needed an update from the appropriate officials on the budget outlook as it affected the criminal justice area.

Chair Horne said the budget issues would still be speculative at this time, as well as how it would impact the corrections and law enforcement area. He said they could have a general idea on where the state was going to be, but they would not have any concrete ideas on how it would affect various departments. The Governor would submit a budget, but the numbers in July of 2012 would be speculative. He said the suggestions from the Commission would be policy-driven.

Senator Brower said the issue in every legislative session was funding. He agreed it was too early to focus on budget issues. He said the Commission needed to be sure they were recommending policies that ensured they were in compliance with the Constitution. Some of the things the Commission agreed with would not have the budget support necessary in the next session.

Chair Horne asked if there were any other questions or concerns. He closed the discussion on Agenda Item XII. He welcomed Lisa Hibbler to the Commission as the Victims Rights Advocate. He opened Agenda Item XIII, Public Comment.

Pat Hines said she was representing Nevada Cure. She said they had started a chapter in Nevada and she was asked to mention things they wanted the ACAJ to do for them. She mentioned the computer glitch. She said there had not been a true investigation on it and it needed to be done by outside personnel. Another issue they were concerned about was quasi-judicial for the Parole Board and if they were subject to the Open Meeting Law. She said another issue was Nevada's lack of a good definition of the meaning of violent and non-violent crimes. She said the most important issue for her was a request for a subcommittee on adult sex offender issues. She asked for the subcommittee with people from the general population sitting on it. The biggest issue was the need for a study on notification, registration, and tier levels. Ms. Hines commented on Dr. Austin's report referring to parole violators from 2000 to 2011. She said the report went to 2011, but year

2007 was noted as "information unavailable." The year 2007 was the year of the computer glitch.

Ms. Bisbee commented about adult sex offenders. She said the Parole Board was able to receive an NIC grant for The Centers for Sex Offenders Management. She said they were sharing the proceeds of the grant with the NDOC. They were looking at psych panel issues, validation issues and addressing all the things that arise over and over again as public concerns. She said they also had it extended to the sex offender registry and the tier levels. She said it should give the public a level of confidence that what they were doing was either the right thing or it was something needing correction.

Ms. Hines asked if there was a time frame for the study and the completion date.

Ms. Bisbee said she did not know how long the grant process lasted. She said it was a priority for the Parole Board and she hoped by the beginning of the Legislature they would have a finalized report.

Ms. Hines asked if she would be presenting at public hearings with the Parole Board.

Ms. Bisbee said she did not know the process as this time.

Mr. Siegel asked who was working on sex offenders at this time. He asked if there was still a group from the Attorney General's office working on it.

Mr. Kandt said there was a statutory committee created to study laws concerning sex offender registration after the 2009 Legislative Session. He said he sat on the committee and it met regularly and Keith Munro, Assistant Attorney General, chaired the committee. He said it submitted a report of its activities during the last interim and they would submit a report again at the conclusion of this interim.

Chair Horne asked if there were further questions.

Ms. Brown referred to Agenda Item XII. She recommended the new commissioners look over the old minutes and agendas from previous meetings. She said the minutes of the ACAJ of June 8, 2008, had a case study on misidentification and wrongful convictions. She requested a change in the law requiring the evidence of a crime be turned over at the time of the arrest to the defense and prosecution. She said evidence had been withheld in earlier cases concerning Nolan Kline, her brother. She was concerned about the computer glitch she had referred to earlier.

Chair Horne requested Ms. Brown get specific inmates' names who had been harmed by the computer glitch and had a conviction placed on their record that was not valid.

Wes Goetz said in an earlier meeting that it cost the State between \$20,000 and \$40,000 to keep one inmate in prison for one year. He said it included medical costs for elderly prisoners and mental problems. He referred to Dr. Austin's comments concerning funding for counties to help people stay on parole besides sending them back to prison for a technical violation. He said it would be good for Nevada to have funding for support networks for people coming out on parole and use the funding to educate the community that the people on parole want their lives back. He said they needed a job and a place to live. If they did not have them, they tended to revert back to crime. He recommended programs be funded for Parole and Probation officers to go to the prisons to prepare people in prison to help them get employment and housing. He said the community was safer when the prisoner on parole had employment and a place to live. He said when he got out of prison, Parole and Probation did not help him find a job. It took a year to get a job.

Chair Horne asked if there was any further public comment. He requested that the members of the Commission let him know about the dates for the future meeting. As there was no further business, he adjourned the meeting at 12:38 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Interim Secretary

APPROVED BY:

William C. Horne, Chair

DATE: _____

EXHIBITS

**Committee Name: ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE**

Date: April 17, 2012

Time of Meeting: 9:30 a.m.

| Bill | Exhibit | Witness / Agency | Description |
|-------------|----------------|-------------------------|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| | C | Tonya Brown | Transcripts-Letters |
| | D | Lawrence Wilgus | Computer Glitch Discussion |
| | E | Dr. James Austin | Materials for Presentation to Advisory Board |
| | F | Office of the Governor | Letter RE: A.B. 136 |
| | G | Phil Kohn | NRS PSI, proposed language |
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