MINUTES OF THE
ADVISORY COMMISSSION ON
THE ADMINSTRATION OF JUSTICE

JANUARY 14, 2010

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, at 9:35 a.m. on January 14, 2010, at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3138, 401 South Carson Street, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Assemblyman William C. Horne, Assembly District 34, Chair
Phil Kohn, Clark County Public Defender
Senator Dennis Nolan, Clark County Senatorial District No. 9
Senator David R. Parks, Clark County Senatorial District No. 7
David Roger, Clark County District Attorney

COMMISSION MEMBERS PRESENT (CARSON CITY):

Connie Bisbee, Chair, State Board of Parole Commissioners
Assemblyman John C. Carpenter, Assembly District No. 33
Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims' Rights Advocate
Honorable James W. Hardesty, Justice, Nevada Supreme Court
Richard Siegel, President, American Civil Liberties Union of Nevada
Howard Skolnik, Director, Nevada Department of Corrections

COMMISSION MEMBERS ABSENT:

Raymond Flynn, Assistant Sheriff, Las Vegas METRO
Thomas W. Finn, Chief, Boulder City Police Department
Judge Douglas W. Herndon, Eighth Judicial District Court
Catherine Cortez Masto, Attorney General

STAFF MEMBERS PRESENT:

Nicolas Anthony, Senior Principal Deputy Legislative Counsel
Risa Lang, Chief Deputy Legislative Counsel
Angela Clark, Deputy Administrator, Legal Division, Legislative Counsel Bureau
Olivia Lodato, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Rex Reed, Administrator of the Offender Management Division, Chief of Classification Planning, Nevada Department of Corrections
Tonja Brown, Advocate for the Innocent
Dennis Tupper

Chair Horne opened the second meeting of the Advisory Commission on the Administration of Justice (Advisory Commission) at 9:35 a.m. He requested a roll call of members present.

Ms. Angela Clark called the roll. A quorum was present.

Chair Horne said that in the future all materials and notices for the Commission would be sent electronically to the members and the public who signed up to receive the notices. He updated the activities of the Steering Committee for the Commission members. He said they discussed limiting the number of meetings of the Commission and the subcommittees. He anticipated the Advisory Commission would hold three additional meetings. He said due to the limited number of meetings, some subjects heard in subcommittee last interim may be heard by the full Commission this interim. He anticipated two subcommittees would meet this interim: The Subcommittee on Victims of Crime, chaired by Attorney General Masto, and the Subcommittee on the Reclassification of Crimes, chaired by Phil Kohn. He noted that the Subcommittee on Juvenile Justice overlapped with the Standing Committee on Child Welfare and Juvenile Justice chaired by Assemblywoman Leslie. Therefore the Juvenile Justice Subcommittee will not meet unless it was decided at a later date to convene or have the Commission discuss issues at a regular meeting. He said other topics previously considered by the subcommittees may be considered during the regular Commission meetings. He also said the Steering Committee set tentative schedules for subjects for the March and May meetings. He opened the discussion on Agenda Item II, approval of the minutes from the November 12, 2009, meeting.

> MR. KOHN MOVED TO APPROVE THE MINUTES OF THE NOVEMBER 12, 2009, ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE MEETING.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Horne opened discussion on Agenda Item III, a presentation concerning the Nevada Supreme Court Indigent Defense Commission.

Justice Hardesty gave a PowerPoint presentation, Exhibit C. He said the Nevada Supreme Court entered an order in 2007 establishing a study committee on the representation of indigent defendants. The study was a result of concerns with respect to the processes for providing indigent defense in criminal and juvenile delinquency cases; concerns about the effectiveness of representation; and the caseloads under which indigent defense lawyers worked. He said the Court created the Indigent Defense Commission, (Indigent Commission) chaired by Justice Michael Cherry. The first report of the Indigent Commission was presented in November 2007 and made a number of recommendations and findings. The court also determined further study was needed in some areas. He said in January 2008 the Court accepted the recommendation of the Advisory Commission establishing indigence for the purpose of indigent defense. He said the tracking and verification of indigent status for purposes of appointing counsel needed further study. Next the Court ordered additional study of the requirement that counsel be appointed by the Executive Branch through an independent, court-appointed public defense system and not by the judges. He said the structure was in place in the two urban counties for purposes of qualifying counsel and appointing counsel as well as approval of counsel's fees. He said they also appointed counsel for post-conviction relief and a number of other areas. It created an independent system for the appointment of counsel, qualifications, and payments separately from the judges who heard the cases.

Justice Hardesty said the next major area sent back for review was the adoption of performance standards, Exhibit C. One area of significant concern to the Court was a set of performance standards providing guides to defendants in criminal cases. He said the Court entered an order in October 2008 in which it adopted the performance standards. The other area the Court noted in a May 2007 hearing was a concern about the application of standards and the appointment of counsel in the rural areas. He said the Court directed the Indigent Commission's Rural Subcommittee to re-examine various issues. The Court began the development of training on the standards for judges, public defenders, district attorneys, and appointed contract counsel. He said the performance standards were guidelines and did not overrule *Strickland v. Washington*. The standards established guidelines the Court expected lawyers to consider and evaluate

when undertaking a criminal case. The guidelines addressed standards for capital, felony, misdemeanor, and juvenile case types.

Justice Hardesty next discussed the five recommendations made by the Rural Subcommittee which the Court endorsed. He urged the Advisory Commission to endorse the recommendations also. The first recommendation was that the State of Nevada should accept its constitutional responsibility and totally fund indigent defense services in every county, via reimbursement. He said the Nevada Association of Counties (NACO) developed a bill presented to the 2009 Session of the Legislature, but it did not pass. The second recommendation was that each county's system of delivery should be modeled after what worked in that county with respect to indigent defense services. He said what may work in one county, may not be appropriate in another county. The proposal was that funding would occur with state reimbursement, but the delivery service would be through the counties. The third recommendation was for the State to create and fund an independent indigent oversight board to ensure accountability and independence for public defense. Next, the Rural Subcommittee recommended that the Supreme Court adopt the proposed language regarding the appointment of counsel and payment of fees in rural Nevada. He said the importance of the recommendation had to do with the difference between the accesses to counsel providing indigent services in rural counties versus accesses to those in urban counties. He said the appointment of counsel should be done by the judge, as opposed to the Executive Branch. The final recommendation was that the Nevada State Public Defender's Office must be completely and totally funded by the State, and must be independent from the Executive Branch. The Court was very concerned that the State Public Defender's Office had never been adequately funded, staffed or trained. He said it also lacked necessary independence. It is currently located in state government within the Department of Health and Human Services. He said it became apparent many counties opted out of the State Public Defender's Office because of problems associated with the delivery of indigent defense services, only White Pine County and Carson City used the State Public Defender's services. He said the cost to provide indigent defense allocated between the State and the counties had changed to a point where 20 percent of the cost was borne by the State and 80 percent by the county. Furloughs also have had a serious and negative impact to the State Public Defender's Office. Justice Hardesty said he hoped the Advisory Commission found this to be a continuing problem and a matter of concern and would join in a recommendation to the Legislature that the Public Defender's Office independence be given the appropriate independence in terms of the reporting authority. Funding and staffing also needed significant enhancement to provide the services needed to citizens throughout the State.

Justice Hardesty said that the Rural Subcommittee Report contained a detailed analysis of the delegation of the funding responsibilities to the counties and

several national organizations provided input for the report. He said the report also noted the current delivery of indigent defense services throughout the State was at a cost of $46,000,000, Exhibit C.

Justice Hardesty referred to the Court's original order of January 2008. He said an area of concern was the subject of caseload responsibility for public defenders and contract counsel. He said there were some questions about the calculations of the caseload. At the request of Washoe and Clark Counties, the Court accepted their proposal to conduct a weighted case study of their offices. The Court thought the study would identify what the caseloads were and provide some guidance with respect to what the caseloads should be. The findings in the caseloads in the Public Defender's Office in Clark and Washoe Counties were approximately 360 cases per attorney. It was recommended that a cap be placed on caseloads at approximately 190 cases per attorney. The Counties then commissioned a firm who undertook an extensive review of time records. The firm, The Spangenberg Group, collated the information, Exhibit C, and presented the information to the Court. The report concluded it was clear the public defenders in Washoe and Clark Counties were unable to comply with the requirements of Supreme Court order ADKT 411, which required all attorneys and investigators representing clients in capital cases receive specialized capital case training every two years. He said until sufficient resources were dedicated to the public defender's offices in Washoe and Clark, it would be impossible to measure the additional time necessary to comply with the new performance standards, Exhibit C. Justice Hardesty said the Court did not receive an answer to the question concerning the amount of work today, and what the correct level of work should be. The Court heard a number of presentations from other parties questioning some of the calculations of the Spangenberg report. He said the Court entered an order referring the subject of caseload study back to the Indigent Commission for further evaluation and they were scheduled to meet again on February 25, 2010.

Justice Hardesty said the Indigent Commission also considered other areas. It examined the Nevada Supreme Court's Appeal Fast Track System. He anticipated recommendations coming to the Court and perhaps some suggested rule revisions. The Indigent Commission also studied areas relating to performance standards and modifications to some of them.

Justice Hardesty mentioned another area outside of the scope of the Indigent Commission's work. He said most of the counties in the State awarded attorney's fees and costs in cases involving criminal defense. He said Clark County did not award fees. He said it was a potential source that would help provide revenue for indigent defense and additional counsel fees. Judges in Clark County have agreed to impose fees, and a collection system was in place. Defendants are not placed in jail for failure to pay the fees. It is an effective system, and there are

varying estimates of revenue produced. He said that the last interim, the Advisory Commission made recommendations in the last session to centralize the collection of fines, fees, and restitution. The current system has done a poor job of collecting outstanding fines, fees, and victim restitution. The Division of Parole and Probation of the Department of Public Safety does what it can with the personnel they have, but they were not equipped to be a collector of restitution. The Advisory Commission proposed the collection tasks be centralized and placed under one entity. He wanted the Advisory Commission to again reconfirm its previous recommendation to centralize the collection of the fines and fees.

Mr. Carpenter asked if the study found a lack of representation of indigents in the rural counties. He asked if all the counties had a problem.

Justice Hardesty said the Indigent Commission concluded that the entire State had a problem in terms of adequate funding, excessive caseloads, and accessibility, particularly in the rural counties. He said it was a serious problem. He added White Pine and Carson City were serviced by the State Public Defender's Office. A number of rural counties abandoned the State Public Defender's Office because of service and funding problems. It raised a question of whether the counties were incurring too big a financial burden.

Mr. Carpenter said Elko County had problems with the State Public Defender's Office. Elko County had a special public defenders office. He said the County was paying a substantial amount for indigent defense.

Justice Hardesty said it was one of the issues the Rural Subcommittee noted. He said the threshold question is whether the responsibility for paying for indigent defense is with the State or with the county. The Rural Subcommittee believed the responsibility rested with the State. He said because Elko County had its own public defender system, it received no support from the State with the exception of post-conviction, which is handled by the State Public Defender's Office.

Mr. Carpenter said funding was a problem. He said the State does not have the money to assume the responsibility for indigent defense, but from a county perspective, it would be good if the State funded the indigent defense.

Chair Horne said he was concerned about adopting the recommendations. He said in the last Session, the fiscal note on A.B. 45 was $62 million per year. He wanted further research on the estimated fiscal note if they added the additional caseload study. He said the Advisory Commission needed a general idea of the fiscal impact they were asking the State to adopt.

Justice Hardesty said it could affect the number. He said it was undecided whether a caseload requirement would be imposed, as there was further study

on the issue. A constitutional responsibility rested with the State for the financial responsibility for indigent defense. It was a financial responsibility that was deflected to the counties, and the Legislature needed to evaluate whether it met its responsibility at all. He said a second area dealt with the adequacy of funding for the State Public Defender's Office for the services they provided. He said the Subcommittee's recommendations should be evaluated.

Chair Horne asked about the indigent defense cost being borne by the defendants. He wanted clarification about the constitutionality of the proposal. He asked what sanctions would be in place for compliance.

Justice Hardesty said it would be referred to the county's collection department. The collection department would pursue payment in the same manner it would for any other civil obligation. He said current statutes authorized the judge in a given case to consider awarding attorney's fees and costs where appropriate. There were a number of defendants whose financial status changed or improved and who could afford to reimburse for their own defense. He said people would not be incarcerated for failure to pay the fees.

Ms. Farley asked what the term “indigent” meant, and if there was a criterion.

Justice Hardesty said the definition was in the initial order of the Indigent Defense Commission. He said it was in the October 16, 2008, order and it specified the criteria for indigent defense pursuant to the Commission's recommendation and all the various entities involved. He said he believed it was 200 percent above the federal poverty guideline.

Mr. Kohn said it was 150 percent of the federal poverty guideline. He said there was a formula used by all the courts.

Justice Hardesty added that one of the things driving caseloads for indigent defense was that the judge appointed the Public Defender's Office, or contract counsel to represent a defendant based upon the representation that they were indigent. He said the system lacked verification of indigent status and many judges expressed concern about insufficient data or information to determine whether the defendant was within the guidelines to justify indigent determinations. He said it was an area that needed additional work.

Mr. Kohn said it was a problem for his office. He said the courts were not doing any type of detailed investigation and it was a court responsibility. The current statutes required a defendant to fill out an affidavit under the penalty of perjury. He said that was not being done in all the courts. The Supreme Court order, ADKT 411, made provisions that anyone in custody automatically qualified for a

public defender. He said people out of custody and who had a job were not being sufficiently screened.

Justice Hardesty said that in Clark County, approximately 60 percent of people who are charged with a felony remain in the justice court system. He said another area needing study was the process by which those charges occur. He said if they should have been charged as misdemeanors in the first place, then the public defender's office would not have been involved.

Mr. Siegel asked Justice Hardesty if the additional data needed to work toward a caseload standard was available. He also asked if it was realistic for Nevada to have a single state-funded system when there appeared to be a deeply embedded two-tier system. He said it appeared there was adequate staffing in the two largest counties and in none of the other counties. He asked if the State would do more good or harm if it tried to bring Clark and Washoe Counties into a single statewide system.

Justice Hardesty responded that the Indigent Commission did not recommend rolling the public defender's offices in Washoe County and Clark County into a state system. They proposed a reimbursement mechanism as there were local concerns throughout the State that were different in each county. He said a local delivery system should be maintained. Justice Hardesty said the State Public Defender's Office could be improved and provide a delivery system for some counties if they wished to opt into it. He added that Carson City judges were pleased with the work of the State Public Defender's Office; however, White Pine County was frequently frustrated with lack of lawyers for hearings.

Justice Hardesty said the Court remanded the caseload study back to the Indigent Commission because of the data they had received from a variety of sources. The Indigent Commission was studying the information and making further recommendations. He said they received a lot of input from a number of offices.

Mr. Siegel stated nobody was proposing a fundamental change in the autonomous operation of the Clark and Washoe Public Defender's Offices.

Justice Hardesty replied Mr. Siegel was correct.

Mr. Kohn said in the 2007 Commission, David Carroll, from the National Legal Aid and Defenders Association, recommended a state system. Mr. Kohn said no one thought a statewide program would work in Clark County. He said everyone believed in a statewide oversight commission that would help all public defenders. The oversight commission would make sure the training and

workloads were somewhat consistent throughout the State. He said that only Clark County's Public Defender's Office had a six-week training period.

Senator Parks asked Justice Hardesty about the State Public Defender's Office being located within the Department of Health and Human Services for the past 25 years. He asked if there were any discussions of where the office should be located.

Justice Hardesty said there was discussion on this issue. He said it was suggested the office report directly to the Governor and receive the same level of importance as other cabinet level officers. The State Public Defender's Office being located within the Department of Health and Human Services created internal conflicts depending on the kind of issues that developed involving defendants. He acknowledged there was not a good place within the state system and the office would work best if it reported to the Governor.

Mr. Roger asked what the past practice was for adopting findings or recommendations.

Chair Horne said the Commission would take up the recommendations at the last meeting. He said they would vote for all the recommendations at that time.

Mr. Roger asked if there was a motion to adopt findings of the Indigent Defense Commission. He said the Commission had not heard all the witnesses. He asked if the Commission was inclined to accept other commission's recommendations without being a direct participant.

Chair Horne asked Justice Hardesty what the past practices were for the Advisory Commission.

Justice Hardesty said there were 16 Legislative recommendations made by the last Advisory Commission. The recommendations rested on testimony, exhibits, and presentations made directly to the Advisory Commission on the Administration of Justice. . He did not recall any recommendations that rested upon another commission's findings, except the Advisory Commission's own subcommittees. He said a motion of the Advisory Commission to endorse a recommendation could be made and if another member needed additional information, it could be studied in the future meetings. Justice Hardesty used the example of the Commission ultimately endorsing the recommendation of a statewide oversight committee. He said if there were concerns about a topic, witnesses should be scheduled for the next hearings. He mentioned the question about the location of the State Public Defender's Office and the State's involvement in statewide funding of indigent defense. He said NACO endorsed the funding idea. If more information was needed, the Advisory Commission on

the Administration of Justice should request witnesses and exhibits for further discussion.

Mr. Siegel added he wished the Advisory Commission on the Administration of Justice would endorse, as a matter of principle, the State meeting its constitutional responsibilities in relation to indigent defense. He said the endorsement assumed the specific questions were answered by the Indigent Defense Commission and the Nevada Supreme Court. The Commission needed to give a broad endorsement to the idea the State and the Legislature must act to ensure their constitutional responsibilities were met.

Chair Horne said at the last meeting, the Advisory Commission would take up all the recommendations of the Commission's Body of work. He asked the members to make any requests for further information. Chair Horne opened discussion on Agenda Item IV by Commissioner Connie Bisbee. Chair Horne noted Assemblyman Richard McArthur was present and observing the meeting.

Ms. Connie Bisbee, Chair, State Board of Parole Commissioners, opened the discussion on the concept of aggregated sentences, Exhibit D. She provided information related to the concept of adopting a sentencing framework that aggregated consecutive sentences. She said aggregation meant bringing together and collecting all the sentences as one. Nevada used concurrent and consecutive sentences. Concurrent sentences were those that ran together, and consecutive sentences were served one after the other.

Ms. Bisbee said when an inmate was eligible for parole on a concurrent sentence, the longest sentence was the controlling sentence. She offered an example of a sentence of five-to-life and a concurrent sentence of one to two years. The person would not be eligible until the person served the minimum of the five to life sentence. She said if the person was granted parole, the grant was effective for all the sentences.

An inmate eligible for parole on a sentence with a consecutive sentence was only granted parole into the next sentence. If granted parole, the inmate began serving the minimum sentence on the consecutive sentence. If denied parole, the inmate continued to serve on the original sentence with no time started on the consecutive sentence.

Ms. Bisbee said consecutive sentences were often misunderstood and were problematic with regard to good time credits. She said inmates paroled with multiple consecutive sentences caused questions, such as whether the inmate was on parole for all of the sentences including the ones granted in the institution. She said many people do not understand the concept of consecutive sentences. Ms. Bisbee said some benefits of aggregating consecutive sentences

were that it helps reduce confusion and lack of confidence in the criminal justice system. Ms. Bisbee offered an example of consecutive sentences in the handout to the Commission, Exhibit D.

Ms. Bisbee next discussed aggregating the sentences. She said when a sentence was aggregated all the minimums were combined as one minimum sentence. She said a plus of aggregating the minimum is the victim or the public are informed the inmate is not eligible for parole immediately on any of the sentences. She said it also allows for adjustment and rehabilitation to occur in a more appropriate time frame.

Ms. Bisbee discussed an example of the aggregation of a determinant sentence. A determinant sentence was one with an end. She said the minimum sentence in the example in Exhibit D was not reduced by credits because it was a crime of violence. She said the example showed four to ten years minimum on four different sentences and the inmate would be eligible for parole after four years. She said the inmate became eligible for parole on the final sentence after serving 16 years in prison. Ms. Bisbee said if the minimum and maximum were aggregated, the sentence would appear as the example shown in Exhibit D. She said the inmate would serve 16 years before being considered for release on parole. The inmate would have three and one-half years of parole time. Ms. Bisbee said aggregated sentences may improve rehabilitative efforts.

Ms. Bisbee summarized her presentation. She said there were numerous areas needing further examination if the sentencing framework were to be changed to a system of aggregated sentences.

Chair Horne was concerned about the number of inmates serving consecutive sentences that were Category C, D, or E felonies. He said those inmates were entitled to good time credit on the front end of the sentence. If their sentences were aggregated, would the good time credits be taken away.

Ms. Bisbee said the Commission would have to examine how the credits would apply to the minimum sentences on the Category C, D, and E crimes. She was concerned it might be time-consuming. She said the consideration was whether it could be accomplished on intake without being too cumbersome.

Mr. Skolnik said the Management Information Systems (MIS) people may be able to program it without a great deal of difficulty.

Justice Hardesty noted that there are no four to ten year sentencing ranges for Category C, D, and E felons.

Chair Horne said he did not know how many inmates currently existed who had consecutive sentences.

Justice Hardesty said the prison system received sentencing decisions by the judges and sometimes there were questions as to why sentences were structured the way they were. He said aggregating sentences would allow the system to address inconsistencies and the associated costs to the prison.

Chair Horne recognized the benefits of aggregating sentences.

Ms. Farley asked Ms. Bisbee whether an inmate who is turned down for parole would receive an additional year.

Ms. Bisbee said in one of the examples offered in Exhibit D, where a short sentence was in place, and the only options were to parole or expire the inmate, the short sentence and disciplinary problems would likely mean the inmate would not receive parole.

Ms. Farley questioned whether the inmate waived his parole hearing, if he would receive the year off because he was not denied parole at a hearing.

Ms. Bisbee replied she was essentially correct. She said the difference in the example in Exhibit D was that 14 years later the behavior had been consistently changed. She said it did not mean somebody who was a horrible risk could not be denied parole by the Board. She said it did not punish someone for acting out in the first or second year.

Ms. Farley asked how many parolees were assigned to each parole officer. She asked if a person with a drug problem had to have mandatory drug tests.

Ms. Bisbee said conditions of parole for somebody with a substance abuse history included assessment and treatment.

Mr. Curtis said the Division of Parole and Probation supervises 2,300 parolees of the 12,000 parolees on paper with his Division. He said there are also approximately another 2,500 fugitives. Mr. Curtis said probationers and parolees were treated in the same manner.

Ms. Farley asked about the caseload for parole officers.

Mr. Curtis said an ideal situation was 70 parolees to 1 officer, but it was higher due to averages from the southern part of the State. He said the ratio was 45 to 1 for sex offenders, and 30 to 1 for intensive supervision.

Mr. Siegel asked about the subset of prisoners who had petitions for habeas or other appeals and may have a sentence or conviction set aside. He said those inmates may be disadvantaged by the aggregation of the sentences.

Ms. Bisbee said any case set aside was pulled out of the sentence structure. She said if a 15-year minimum was set and the murder was set aside, the person was immediately parole eligible.

Mr. Siegel was concerned about combining sentences and the person not having a parole hearing on a minor charge as early as he might if sentences were not aggregated.

Ms. Bisbee said if an inmate served 10 years on concurrent sentences, one sentence of 4 years to 20 years and the other 10 years to life, they were not eligible for parole for 10 years. She said if the 10-to-life was overturned and the inmate had served 8 years, there was nothing that could be done about the parole eligibility on the 4-to-20 sentence.

Senator Nolan asked Ms. Bisbee if she had calculated the number of hearings and the related costs in enacting her proposals.

Ms. Bisbee said if the Commission wanted her to go forward with the proposal, she would do so. She had a small staff and it was not cost effective unless the Commission wanted them to go forward and propose legislation. She said all the information would be available for the next Session if it was needed.

Senator Parks asked Ms. Bisbee if her ideas were something proposed as prospective or could it been done retrospectively with existing inmates coming before the Board. He also said he and Ben Graham worked on an amendment last Session which passed. He asked what had occurred with the amendment.

Ms. Bisbee said it was the portion of A.B. 474 which aggregated life to life. The amendment allowed inmates to retroactively opt into it. She said it was part of the bill where inmates who had never had a previous hearing before the Board, and chose to aggregate their life sentences, could do so. She said it was a way of testing the success of aggregating sentences. It appeared to be successful. She said in terms of applying the "opt-in" to the existing consecutive sentences that met the same criteria, it would be much more cumbersome than the life to life sentences.

Mr. Carpenter asked when the decision would be made regarding when sentences were aggregated.

Ms. Bisbee said if it became law, it would be whenever the law was implemented. She said the original portion of A.B 474, dealing with life to life sentences, became effective July 1, 2009. People already serving multiple life to life sentences had the choice to opt-in to it. She said the Legislature would decide whether it was retroactive or not.

Mr. Curtis said it appeared the time of parole was extended approximately ten times the current amount. The initial sentence, although much clearer, would have an impact on the Department of Corrections for lengthening the time served.

Ms. Bisbee said he was correct. The plus was that s less costly to have someone on probation or parole than having them incarcerated. She said it would impact the amount of time for supervision.

Mr. Curtis said it added offenders to the rolls and had an impact on the Department of Corrections. He said it added approximately 20 percent to the length of stay in custody.

Ms. Bisbee said aggregation lessened the time in custody.

Mr. Curtis agreed but it lengthened the time on probation.

Ms. Bisbee said it would take a period of time before it would begin to impact the Division of Parole and Probation. It would impact them in a manner they could plan for and be ready when it occurred.

Mr. Curtis asked if the proposal would lessen the number of hearings required by her Commission.

Ms. Bisbee said the hearings would decrease. She said an inmate serving four consecutive sentences was seen a minimum of four times, and potentially seen eight or nine times before parole. If the sentences were aggregated, the inmate would be seen one time when eligible for the street. She said it would reduce the 800 hearings a month to a lesser amount.

Mr. Curtis noted that it would increase the workload on his Division.

Ms. Farley said Ms. Bisbee's presentation was very clear. The proposal was better for the victims. She said frequent parole hearings were devastating for the victim's survivors.

Justice Hardesty said Ms. Bisbee expressed concern about the proposal being a priority. He urged the Commission to offer direction to Ms. Bisbee and indicate a general expression of support for the concept.

Chair Horne said it was a good idea. He asked Ms. Bisbee when the information could be available for the Commission.

Mr. Skolnik requested time for discussion with their staff members.

Senator Nolan said based upon personnel restraints, the Commission should ask Mr. Townsend and the Legislative Audit Division if they have resources available to assist Ms. Bisbee in collating the information.

Chair Horne asked Senator Nolan if he anticipated a Special Session in February 2010, and did he want the Research Division to assist Ms. Bisbee and Mr. Skolnik in their task. He said they were approving the recommendation to go forward, but were not adopting the recommendations.

Senator Nolan said he understood the Legislative Counsel Bureau (LCB) was already providing assistance to the Commission and that it was potentially within their purview to assist in this area. He said if it were some simple accounting procedures, and making a determination of the cost savings, the State might realize it would be an issue for Special Session.

Chair Horne said his concerns were the other issues the Audit and Research Departments were dealing with during the Special Session. He said they could instruct Ms. Bisbee and Mr. Skolnik to go forward and meet with the LCB staff with a request for assistance.

Mr. Carpenter said the proposal needed studying, but the entire Legislature should study the proposal. It was not realistic for a Special Session, but it was worth gathering the information so it could be presented in the next Legislative Session.

Chair Horne said it was important to gather the research in advance of the 2011 Legislative Session.

Mr. Skolnik said in accordance with the Governor's new requirements on providing data, he needed clearance with the Governor's office.

Chair Horne asked if he needed to request a letter to the Governor. He opened the discussion on Agenda Item V.

Ms. Bisbee presented a discussion on the Psychological Review Panel (Psych-Panel) Evaluation. She said the Psych-Panel was a public body that reviewed certain offenders to determine their risk to re-offend in a sexual manner if they are released on parole, (Exhibit E). The Panel provided certification information to the Parole Board on eligible offenders at parole hearings. The Psych-Panel consisted of the Administrator of the Division of Mental Health and Developmental Services of the Department of Health and Human Services, or his designee; the Director of the Department of Corrections or his designee; and a psychologist licensed in Nevada, or a psychiatrist licensed to practice medicine in Nevada, Exhibit E. Ms. Bisbee said the current panel consists of two psychologists and a psychiatrist. She said the Director of the DOC had chosen not to be on the panel.

Ms. Bisbee said a prisoner who was subject to the requirements and was not certified might be denied parole. She said until recently, the Parole Board relied on the Psych-Panel to provide assessments on sex offenders eligible for parole, She said ambiguous wording in NRS 213.1214 had resulted in narrowing the scope of the Psych-Panel. Ms. Bisbee said Nevada law states that a sex offender is someone who is or had been convicted of specific sexual offenses. The Psych-Panel is limited in its role and is no longer able to evaluate all sex offenders being considered for parole.

Ms. Bisbee said due to a recent Supreme Court case, the Psych-Panel was only used when the inmate was serving the last sexual offense in the sentence structure. She said inmates serving consecutive sentences and had a non-sexual sentence to serve would not be considered high-risk to re-offend at that time. She said when the inmate was on his final non-sexual sentence, the Parole Board was left without adequate information relative to the risk of the sex offender being considered for release to the community.

Ms. Bisbee said specific areas of concern regarding the Psych-Panel include no clear provision as to which agency oversees Psych-Panel. She said the NDOC has become the de facto administrator for the Psych-Panel.

The statute is not specific with regard to the manner in which an inmate should be evaluated. The Psych-Panel has psychologists at various institutions prepare two different sex offender assessments to assist them in their evaluations.

Ms. Bisbee recommended the Legislature make a change to Chapter 213 of the NRS and establish which agency is responsible for adopting regulations with regard to the operation of the Psych-Panel. She said the current parole guidelines are not able to predict recidivism for sex offenders. Sex offenders were a separate type of offender, and often the parole risk assessment placed sex offenders as a low risk for recidivism.

Ms. Bisbee said previously there were no problems with the Psych-Panel making an assessment. She said it was not the same assessment in terms of what the law required as to whether the person was a high risk to re-offend and the Psych-Panel was able to give the Board some insight. Ms. Bisbee advocated a change in the statute to allow the Board to receive risk information from the NDOC psychologists for sex offenders who were not subject to the provisions of the Psych-Panel. She said it had been the practice for years and should not cause a fiscal impact.

Ms. Bisbee said an odd aspect related to the Psych-Panel was that they are required to evaluate prisoners convicted of abuse or neglect of a child. She said NRS 176.139 requires psychosexual evaluations on cases involving abuse or neglect of a child and omits the wording saying the abuse was sexually motivated. She said it did not make sense to the Psych-Panel or the Parole Board for an inmate to go through a Psych-Panel without sexual motivation in the abuse or neglect conviction. Ms. Bisbee said Kidnapping with Intent to Commit Sexual Assault was not an offense currently requiring an assessment by the Psych-Panel. She recommended that crime be listed under the applicable offenses.

Ms. Bisbee asked the Commission to consider modifying NRS 213.1214 so it applies to the last sentence in an inmate's sentence structure, even if the last sentence is not a sexual offense. She recommended the statute be changed to specify that the failure to become certified or maintain certification is sufficient to detain and revoke parole.

Mr. Digesti asked if the sentences were aggregated whether it would address Ms. Bisbee's concern about the Psych-Panel.

Ms. Bisbee replied affirmatively. She said if the sentences were aggregated, the inmate would come to the Board for the first time and a Psych-Panel evaluation would be done at that point.

Mr. Siegel said it was a complex proposal. He said it should be considered by the Commission and some kind of working group. He asked the Chair if there was a way to form a working group given the budgetary restrictions.

Chair Horne said it was not possible without adding another hearing or another subcommittee; they had to abide by the open meeting laws. He said they had limited the number of hearings for this interim.

Mr. Siegel said in some ways the scope of the Psych-Panel was too narrow and in other areas it was too broad. The proposal did not have a rationale for applying the Psych-Panel to particular offenders or crimes having nothing to do with

sexual offenses. He said the Commission also did not know how appropriate the expertise of the Psych-Panel was for the things it currently does or may do in the future. He said the Commission needed further information.

Chair Horne said it appeared Mr. Siegel needed more information than was provided in the presentation.

Mr. Siegel said input from national organizations concerning the appropriate use of a psych-panel for a parole board would be helpful.

Chair Horne said the Commission could request research on the use of panels in other jurisdictions. He said they could limit it to the western region of the United States if they wished, or similar-sized states. He said they could also identify the experts who could provide information and possibly make a presentation to the Commission.

Ms. Bisbee said she could ask the Association of Paroling Authorities International, which included each parole board of the United States, if they were willing to provide information concerning what other parole boards do under the same circumstances.

Chair Horne asked if the information could be available for the May meeting of the Commission. He opened the discussion on Agenda Item VI concerning good time credits for prison inmates.

Rex Reed, Administrator of the Offender Management Division, Chief of Classification Planning, Nevada Department of Corrections, discussed the procedures and policies involved in good time credit calculations. He defined the four types of credits state statutes give to the Director of the NDOC to manage. The types of credits include flat time, good time, work time, and merit credits. He said inmates received other kinds of credits, but he discussed the credits managed by the NDOC.

Mr. Reed said flat time credit is a credit for the days an inmate sits in a cell. The good time credits are issued under statute for good behavior. Work time credit is awarded for inmates involved in education or working in some sort of capacity for the NDOC. The last credits are merit credits which are all the credits the NDOC managed, awarded, and took away, Exhibit F.

Mr. Reed listed the other names used to refer to good time credits such as statutory good time or stat time credit. He said those credits are automatically earned and manually taken away or lost. He said inmates earn good time credits and can also lose the credits. Mr. Reed said there are numerous procedures that have to be followed before an inmate loses credits. Uniformity is required for

forfeitures, and a matrix is used to determine how many credits are forfeited. He said one good time credit is the same as a one day credit to an inmate's sentence. It means taking one day off the required sentence length per credit. He said the credits are automatically awarded by the computer system.

Mr. Reed mentioned other facts about good time credits. He said the department is required by law to keep track of good time credits for inmates sentenced to life without parole and death. He said A.B. 510 changed good time credits from 10 days to 20 days per month and when parolees are returned to custody, they earn good time credits under the NDOC schedule. Good time credits are for inmates sentenced for crimes on or after July 1, 1985, Exhibit F.

Mr. Reed showed the Commission a form detailing how good time credits are awarded, Exhibit F. He explained how the credits are accrued and managed. He discussed the items shown in the example. Mr. Reed discussed the credit history by sentence. He said the NDOC did not calculate good time credits, but tracked and subtracted them from the inmate's sentence requirements. He said the next three pages of Exhibit F discuss programs that allow inmates to earn merit credits. He said an inmate going to education courses earn good time and merit credits at the same time. The last item Mr. Reed discussed was the calculation of sentence dates such as projected expiration dates. He said the NDOC provides a service for inmates by giving them their projected expiration date. The inmate will not have yet earned all the credits, but is expected to earn the credits.

Ms. Bisbee asked if someone was listed as having 265 good time credits, did that mean 265 24-hour days.

Mr. Reed said if they received credits, it equaled a day. He said it also depends upon whether they were medium custody or minimum custody.

Mr. Siegel asked Mr. Reed, if as a result of A.B. 510 or any other regulations, what kind of distinctions are made among inmates in terms of the allocation of flat time or other credits.

Mr. Reed said there were distinctions dependent upon when an inmate was sentenced, when the crime was committed, whether it was a Category A or B felony, or a Category C, D, or E felony. He said an A or B felon does not receive credits that are applied to the minimum, only to the maximum. Mr. Reed said in 1985 the good time credit system changed. A minimum custody inmate earns more work credits than a medium or above custody inmate. He said someone on the condemned men's unit does no earn program credits.

Mr. Siegel contended it was the Commission's responsibility to advise the Legislature about the rationality and soundness of the distinctions they made in

2005. He wanted testimony about the rationality of what was involved. The Commission had a recommendation for Category B felonies to be reviewed by a subcommittee. He said it would have an effect on the credits involved and it was an important part of what the Commission had to do. Mr. Siegel said the Commission should be making recommendations to the Legislature of what they believed was rational, fair, and effective.

Chair Horne agreed with Mr. Siegel and said clarification was needed from the Legislature on the intent in A.B. 510. Some district court judges expressed a concern when they learned the good time credits were calculated off the minimum on the Category C, D, and E felonies. Upon learning that, some judges said they would reconsider how they would sentence individuals. He said a rationale for specifically excluding A and B felons was needed. The Commission could formulate recommendations to the Legislature to provide some clarity to the statute.

Senator Parks asked Mr. Reed about merit credits being reduced due to disciplinary forfeiture. He asked if it occurred.

Mr. Reed said merit credit and work credits were earned and by law cannot be taken away. He said the only credit that can be forfeited is statutory good time credits.

Chair Horne said the next agenda item was a discussion of future topics for meetings. He said additional information on the Psych-Panel had been discussed for the May agenda.

Mr. Siegel said he wanted the issue of the current policy on good time credits added to a future agenda. He said the existing distinctions needed further discussion by the Commission.

Chair Horne reiterated Mr. Siegel wanted a policy discussion of Mr. Reed's presentation.

Mr. Siegel replied that Chair Horne was correct. He wanted to determine if the Commission agreed or disagreed with prior legislative action and any regulatory action that affected good time credits.

Chair Horne asked about tentative agenda topics for the future meetings.

Mr. Nicolas Anthony, Senior Principal Deputy Legislative Counsel, Legislative Counsel Bureau, said the Steering Subcommittee had tentatively scheduled presentations for the March meeting by the NDOC: concerning programming and the HOPE program; moving prisoners who were under restricted access to

camps and transitional housing; and the OPEN program. He said the Chair also indicated the Commission would hear testimony on DNA testing of all felony arrestees at the March meeting. Finally, the Commission was scheduled to hear the final report of the Advisory Commission on the Administration of Justice from the last interim.

Mr. Anthony said for the May meeting, the Steering Committee advocated considering the possibility of having the Grant Sawyer Center continue studying the sentencing of felonies if funding was available from the PEW Trust. The May meeting would also have presentations from NDOC and Parole and Probation concerning the current budgetary constraints they were facing. The final agenda item for the May meeting was an update on the use of presentence investigation reports. He said at the last meeting in June or July, the Commission would vote on recommendations for future legislation.

Chair Horne said the March meeting would be the best time to schedule the hearings Mr. Siegel wanted discussed. He requested Mr. Reed's presence for the March meeting.

Justice Hardesty asked the Commission to revisit some of the previous recommendations the former Commission made, including the collection issue and centralizing the collections. He asked if it was something the other Commissioners were interested in pursuing further and if they needed more information concerning the topic.

Chair Horne said the May meeting was an appropriate time to schedule those discussions.

Mr. Siegel asked if the Grant Sawyer Center and PEW could start sooner than the scheduled May meeting. He asked if there was any information about the possibility of them starting earlier this year.

Justice Hardesty said he was still working with them, but did not have any solid information at this time. He hoped grants might be available to help fund the effort.

Mr. Siegel said if there was information about resources for the Grant Sawyer Center they could act sooner than the May meeting.

Chair Horne said he was not inclined to move the discussion from the May meeting. He said further information could be shared electronically and through LCB if necessary.

Mr. Siegel said his concern was activating any resources that might become available before the May meeting.
Chair Horne opened the meeting for public comment. He said he had received an email from Ms. Constance Kosuda requesting her comments be placed in the record, Exhibit G.

Tonja Brown, Advocate for the Innocent, asked the Commission to continue a case study on wrongful convictions based on eyewitness testimony. Ms. Brown requested the Commission recommend to the 2011 Legislature Nolan's Law, Exhibit H. Ms. Brown recounted previous testimony concerning her brother Nolan Klein. Ms. Brown said Mr. Klein died on September 21, 2009. She notified his attorney of his death and will file a motion for exoneration. Ms. Brown attached numerous documents to her written testimony and requested the Commission review minutes from the June 9, 2008, meeting. She said Nolan's Law would reduce costs for the State. She added more transparency was needed in government. Ms. Brown commented on the Psych-Panel, stating when someone maintained their innocence and was on appeal, their lack of admission of guilt must not be considered for parole. She said Mr. Klein was repeatedly denied parole because he would never admit guilt for a crime he did not commit. She asked the Commission to reconsider the case study for the 2009 Legislature concerning Nolan Klein's case. She provided additional documents to the Commission, Exhibit H; Ms. Brown noted that if Mr. Klein had received proper medical treatment, he would still be alive. She said she has filed a wrongful death suit.

Dennis Tupper said he resided in Reno and was at the meeting in support of Ms. Brown and her efforts to secure the recommendation of the Commission for her proposed recommendation to the 2011 Legislature in support of Nolan's Law. He hoped the Commission weighed the positive nature of Ms. Brown's efforts and recommended action be taken in the next Legislative Session.

Chair Horne asked if there were any further questions or comments. As there was no other business, the meeting was adjourned at 12:46 p.m.

Submitted by:

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Olivia Lodato, Interim Secretary

APPROVED:

_____
William C. Horne, Chair

DATE:_____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice
Date: January 14, 2010 Time of Meeting: 9:30 a.m.

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Justice Hardesty	NV Supreme Court Indigent Defense Order-PowerPoint
	D	Ms. Bisbee	Discussion of Aggregated Sentences
	E	Ms. Bisbee	Psych-Panel Evaluations
	F	Mr. Rex Reed	Discussion of Good Time Credits
	G	Constance Kosuda	Remarks in an email
	H	Tonja Brown	Case Study on Wrongful Convictions