

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

MARCH 30, 2010

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, at 9:31 a.m. on March 30, 2010, at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconferences at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and Great Basin College, Greenhaw Technical Arts Building, Room 118, 1500 College Parkway, Elko, 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 (CARSON CITY):

Assemblyman William C. Horne, Chair, Assembly District 34
Connie Bisbee, Chairman, State Board of Parole Commissioners
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
Rebecca Gasca, American Civil Liberties Union of Nevada
Howard Skolnik, Director, Nevada Department of Corrections

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Thomas W. Finn, Chief, Boulder City Police Department
Phil Kohn, Clark County Public Defender
Senator Dennis Nolan, Clark County Senatorial District No. 9
Catherine Cortez Masto, Attorney General
Senator David R. Parks, Clark County Senatorial District No. 7
David Roger, Clark County District Attorney

COMMISSION MEMBER PRESENT (ELKO):

Assemblyman John C. Carpenter, Assembly District No. 33

COMMISSION MEMBERS ABSENT:

Raymond Flynn, Assistant Sheriff, Las Vegas METRO

Judge Douglas W. Herndon, Eighth Judicial District Court

Richard Siegel, President, American Civil Liberties Union of Nevada

STAFF MEMBERS PRESENT:

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel

Risa B. 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:

Lauren Denison, Bring Bri Justice Foundation

Bridgette Zunino, Bring Bri Justice Foundation

Teri Boland, Bring Bri Justice Foundation

Adam Van Antwerp, Bring Bri Justice Foundation

Valerie Van Antwerp, Bring Bri Justice Foundation

Renee L. Romero, Director, Washoe County Sheriff's Office, Forensic Science
Division

Katherine Loudon, Chair, Northern Nevada Secret Witness

Tonja Brown

Tosh Dawson

Chair Horne opened the meeting at 9:31 a.m. He requested a roll call of members present.

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

Chair Horne requested a motion on the minutes from the January 14, 2010, meeting of the Commission.

MR. CURTIS MOVED TO APPROVE THE MINUTES OF THE
JANUARY 14, 2010, ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE MEETING.

MR. SKOLNIK SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Horne said the first item for discussion was a presentation on DNA testing of persons arrested on felony charges. He said the Bring Bri Justice Foundation would make the presentation.

Bridgette Zunino, Bring Bri Justice Foundation, said she was Brianna Denison's mother. She said her daughter was abducted, raped and strangled two years ago. Her body was left in a field for three weeks before being found. She wanted to prevent such a thing from occurring to anybody else.

Lauren Denison, Bring Bri Justice Foundation, said in addition to working on Brianna's Law, the foundation developed and worked on Brianna Kits. She said they assisted other families with missing loved ones. She presented a packet of information for the Commission, [Exhibit C](#). Ms. Denison gave a brief overview of the work the Bring Bri Justice Foundation was doing. She introduced other board members: Teri Boland, Amy Waddell and Katherine Loudon from the Secret Witness program.

Adam Van Antwerp, Bring Bri Justice Foundation, went to preschool with Briana. He discussed the way DNA was currently used in Nevada's system. He said thirteen markers were used from non-coding DNA. He said it did not reveal anything about the donor of the DNA except gender, [Exhibit C](#). He said the unique patterns were entered into a national database, Combined DNA Index System, known as CODIS. CODIS was an efficient system. Nevada sends someone's DNA to CODIS when convicted of a felony. The person is charged \$150 when the DNA is taken. He said the majority of the felons do not pay the fee, thus the system has a huge backlog of cases to be processed and an annual shortfall of money. Federal grants made the payments at the end of the year. It takes more than six months, on average, to process the DNA of a convicted felon. He said Brianna's Law proposed to add the DNA samples of all felony arrests to the database, [Exhibit C](#). He said currently 22 states plus federal law required DNA samples upon felony arrests.

Valerie Van Antwerp, Bring Bri Justice Foundation, said there were two reasons for DNA samples from felony arrestees. She said it saved lives by slowing the number of preventable crimes, and it saved the State money by decreasing money spent on investigations. Preventable crimes were those that occurred between a person's first felony arrest and the time when their DNA was entered in the database and a hit was registered. At this time DNA was only taken after a felony conviction. She said there were hundreds of examples showing where repeat offenders were taken off the streets, [Exhibit C](#). The packet gave examples of different situations. She offered an example of a situation in California where a person was arrested 19 times before his DNA was taken and matched to 12 rape and murder victims. Ms. Van Antwerp said studies showed 70 percent of the

crimes were committed by six percent of the criminals. She said putting serial criminals behind bars prevented seven to eight future crimes.

Chair Horne asked what the procedure was for the 22 states that took DNA samples for testing. He asked if the sample was taken in the field or at the time of booking. He also asked if there was an estimate of the cost of the testing per arrest.

Renee L. Romero, Director, Washoe County Sheriff's Office, Forensic Science Division, said she worked in the DNA section prior to her current position. She had researched the cost of arrestee sampling for several years. She said they did not have the number of felony arrestees in the State. They had looked at the 2007 U.S. Crime Report and the number was approximately 89,000 potential felony arrestees. When the number was compared to other states it seemed inflated. Last week they met with a group which said Colorado had 60,000 felony arrestees, but the U.S. Crime Report from 2007 would have had a much greater number of arrestees. She said they researched other states and looked at their costs for analysis and their staffing levels. They also looked at laboratories that out-sourced the samples by sending them to private laboratories and ones that did the analysis in-house. She said the evaluation showed the cost per sample was in the range of \$60 to \$75 per sample, and she said the cost was less when the laboratory was highly automated.

Chair Horne asked Ms. Romero if the cost included the kit used to take the sample to submit to various laboratories.

Ms. Romero replied the estimate included the cost of the kit.

Mr. Van Antwerp said the DNA sample was currently taken at the time of booking. He said most states, including Nevada, used a cheek swab for the sample.

Ms. Romero replied that he was correct. She said it was a Q-tip swabbing the inside of the mouth and it could be done at booking with minimal training of the staff.

Chair Horne asked Ms. Romero how she proposed finding the primary number of felony arrestees in Nevada.

Ms. Romero said they sent a request to the Central Repository to provide the number. She said they were doing research to find the number.

Justice Hardesty said all the sheriff and police departments in the State have monthly statistics on the number of arrests. The Commission was provided with

that information last year. He said each department was polled every month. The information should be easily obtainable. He suggested the Bring Bri Justice Foundation request the information from the departments. He asked Ms. Romero what the backlog was for testing in the State and about her concerns regarding judges failing to order testing in a number of cases.

Ms. Romero responded the backlog in Washoe County of convicted offender samples was approximately 4,000. She said they had received a grant from the National Institute of Justice (NIJ) to use for sample analysis at a private laboratory. She said the grant allowed them to test samples from March 30, 2010. She was unsure of the backlog in the Las Vegas laboratory.

Ms. Romero said regarding the status of judges ordering samples from convicted offenders, the initial law as written stated the judge shall order a sample be taken from the convicted offender, however, during the last Legislative Session the requirement was removed and the burden to order the sample was no longer on the judge. She said the law now stated if they were convicted, the sample would be collected at the Department of Prisons or the Division of Parole and Probation.

Justice Hardesty asked if people placed on probation were having their DNA collected. He said approximately 70 percent of the defendants in Nevada were placed on probation.

Ms. Romero said some DNA was collected at the court house and some was collected at the site of the Parole and Probation office and delivered to the labs.

Justice Hardesty asked her if she believed it was close to a 100 percent collection rate for convicted felons and gross misdemeanants in Nevada.

Ms. Romero said she did not know and did not have a number of the total expected samples. She said if she had the number of convicted felons in the State for 2009, then she could tell the number collected that year.

Justice Hardesty said each of the District Courts could provide statistics on the number of felony and gross misdemeanor convictions and compare it with the number of swabs collected through the Department of Corrections and the Division of Parole and Probation. He said it would be worthwhile to know if the State was in compliance with the biological specimen statute, but he doubted that it was.

Ms. Romero said the State had progressed over the years and she was receiving more samples than previously. She agreed the State was probably not at 100 percent for collection of swabs.

Justice Hardesty said he would address his concerns about the problems associated with the collection of fines, fees and administrative assessments and restitution. He wanted the Bring Bri Justice Foundation to be aware of an audit report from Washoe County ending June 30, 2008. The report showed the uncollected DNA fees ordered by judges from 2000 to 2008 totaled \$1,182,669. He said there were 12 years total to collect the fees. He hoped the Foundation would urge the Washoe County Commission to complete a Memorandum of Understanding that would cause the collection department to start collecting on the court judgments.

Mr. Digesti said he reviewed the proposed bill draft included in the packet from the Bring Bri Justice Foundation. He said anyone arrested for a felony would be required to give a DNA sample. If convicted of a felony, the DNA sample would be maintained. However, there were circumstances when individuals were arrested for felonies and the felonies were later dismissed or reduced. He asked what happened with the DNA testing if the charges were reduced to something less than a felony. He said it was a potential pitfall for the bill draft. He supported the concept, but said it needed more work and consideration.

Mr. Horne said during the 2009 Session he heard a similar bill. He said it was a question of whether the DNA material should be expunged because the case was pled down to a misdemeanor for lack of cooperating witnesses or other problems. The Attorney General had contacted him and he was helping construct a bill for the next legislative session.

Mr. Skolnik suggested they contact Frank Adams, the Executive Director of the Sheriffs' and Chiefs' Association as a single source for the arrest data.

Ms. Gasca said she wanted the record to reflect that the courts generally agreed that convicts' DNA samples could be maintained because they had a diminished right to privacy. She said the cases in the courts had returned inconsistent results about whether keeping an arrestee's DNA profile was constitutional. She also wanted the record to reflect that Congress had expanded DNA collection in the Violence Against Women Act in 2005. The act required DNA samples be taken from anyone arrested for a federal crime. The ACLU held the position that taking DNA profiles from arrestees was against the system of criminal justice. She said some issues concerning the proposed Brianna's Law would intensify racial bias. Studies had shown individuals arrested for felonies were more likely to be of a racial or ethnic minority. It would seem the number of DNA profiles collected for felony arrests would be higher for racial and ethnic minorities.

Mr. Van Antwerp said he was interested in creating a bill that allowed people arrested, but not convicted, to remove their DNA from the system. He said the burden was on the arrestee to remove the DNA sample. Mr. Van Antwerp said

the Bring Bri Justice Foundation had no interest in the race of the arrestee. When DNA was present at a crime scene, it did not matter what the race was that committed the crime; their goal was to not have those people hurting others and causing problems.

Ms. Van Antwerp said there were 13 markers in the DNA that had nothing to do with race. If the DNA matched the crime scene and the person did the crime, it did not matter what the race was of the person. She said of the 13 markers used by CODIS, the only genetic material was the gender of the person.

Ms. Gasca said the DNA evidence maintained was a blind, racially neutral sample aside from whatever else occurred in the criminal justice system.

Ms. Van Antwerp said the Foundation would like every baby tested and the DNA sample placed in a data base. She would like every person tested and in the database.

Ms. Gasca said the ACLU was against the DNA codification of every citizen for privacy reasons. She asked about the preliminary Brianna's Law as listed in the packet. She had the impression the State did not have the right or ability to expunge DNA records; only the federal system had that right. She said it was an issue addressed in the last Legislative Session in A.B. 46.

Ms. Romero said in regard to DNA profiles, each state uploaded their state data base of profiles eligible to be held at the federal level. She said if the state removed a profile from their database, then at the next upload it was also removed from the national database, each state controlled what profiles were in the national database.

Ms. Gasca asked if the federal system backed up the information once a month.

Ms. Romero replied she expected the national database was updated at least once a month. She said there may be a gap where it was removed from the state's system, but still in a backup tape at the federal level.

Ms. Farley asked if the Foundation had looked at all the models of the states that passed the DNA test requirement after arrest and how it was handled by the various states. She inquired about a felony case reduced to a lesser charge and the DNA sample expunged due to the lesser charges.

Ms. Van Antwerp said the Foundation had the impression the best way to take the DNA was at the arrest site along with the fingerprints. The information would be uploaded into a database at that time. She said it would not put a big burden on the arresting officer or the officer who took the fingerprints. The packet

contained the costs and fees of how other states funded the processing fees, [Exhibit C](#). She proposed an additional public safety fee.

Ms. Farley asked what occurred to the DNA sample after the arrest if the person was not convicted of the crime.

Ms. Romero responded that every law with arrestee legislation had an expunging policy in it. She said it was part of the national DNA database and they reviewed each state's law and approved the expunging policy before they accepted the arrestee samples.

Mr. Carpenter said when the situation was discussed at an earlier Commission meeting, there was a concern about where the data was stored and the cost involved. He asked if that was still a problem.

Ms. Romero said it was not an issue in Washoe County or in Las Vegas. She said there were two separate databases. One was an informational database with identifying information of who the DNA sample was from, and then there was the State DNA data base. The State database had no identifying information, and the information was uploaded to the national levels. She said the costs overall would be \$60 to \$75 per sample.

Chair Horne said there had been a possible storage issue with tangible evidence containing DNA material on it. He said the issue involved those types of materials.

Mr. Carpenter replied it did not seem to be a problem with sample storage.

Katherine Loudon, Chair, Northern Nevada Secret Witness, said the Board of Directors stood beside the Bring Bri Justice Foundation on the bill for the purpose of making Nevada a safer place to live, work and visit. She said the bill also had the ability to exonerate the innocent and many other community agencies also supported the proposed bill.

Chair Horne thanked everyone for coming today and said there were efforts being made to present a bill next Session.

Justice Hardesty said the Commission had heard a number of proposals. He said he understood the Chair had deferred voting on recommendations by the Commission to the Legislature on all of the measures. He asked if the Chair intended to have the various measures that had been discussed and presented to the Commission become the subject of a recommendation by the Commission to the Legislature.

Chair Horne said the Chair's position was that even if this Commission were to vote to not make a recommendation on the issue, he personally, as a Legislator, would submit a bill. He said he would discuss the issues with the stake holders.

Justice Hardesty said his point was that the Commission had not yet recommended anything because they deferred voting on a number of measures. He said the Commission should discuss the merits and consider whether it intended to recommend or not recommend the various propositions. He hoped that the current issue would be vetted and commented on before the next Session of the Legislature.

Chair Horne said the Commission will do that and hopefully all the members who sit on the Commission would be present to vote. He said today there were significant members who were absent, including Attorney General Masto.

Justice Hardesty asked if it was the intention of the Chair to include this proposal on the list the Commission would eventually vote on and recommend to the Legislature.

Chair Horne replied it was his intention to include the proposal. He opened the hearing on Agenda Item IV, a presentation concerning the HOPE program and other intermediate sanction programs.

Mr. Skolnik offered a brief history on the Casa Grande prison. He said it was opened as a re-entry center in December 2005. It was proposed for 400 male inmates. He said due to the limitations on eligibility of who could reside in the facility, it was never fully populated. A pod of the facility was converted to a re-entry facility for female inmates in 2007, which allowed them to operate at approximately 75 percent capacity. He said Senator Horsford created a bill that was not approved, but the bill discussed intermediate sanction programs during the last Session. He said they contacted the National Institute of Corrections (NIC) and they funded several people to go to Hawaii and see the program started by Judge Steven Alm called Hawaii Opportunity Probation with Enforcement (HOPE). HOPE was done without a budget and in conjunction with the local courts, law enforcement and prosecutors. They also discussed the program with Mr. Roger, Sheriff Douglas Gillespie and Judge Jackie Glass. The program was just beginning. The University of Nevada Las Vegas Criminal Justice Program agreed to oversee the data of the program and they anticipated no funding for the program over the next four years. He said 1,700 probation violators come to his department every year and stay for an average of 18 months. The Nevada program was named OPEN, (Opportunity for Probation with Enforcement in Nevada). He said instead of referring violators back to probation without any kind of sanction, the program provided the court with a viable option. The judge would be able to send an individual to a pod at the Casa Grande

Transitional Housing facility which had been made extremely austere. Mr. Skolnik said initially the housing would be all single units and ranged from a three-day visit to as long as six months. He said everyone had a copy of his Power Point presentation, [Exhibit D](#). Casa Grande had an occupancy potential of 390 beds. There were two short-term holding cells for offenders who did not follow the rules of the facility. Current occupancy was at 190 people. Participants in the program would be chosen by Judge Glass and Parole and Probation. Mr. Skolnik referenced the flow chart, [Exhibit D](#). He said the judge determined the participants for the program and conducted the hearing to set the length of time at Casa Grande.

Mr. Skolnik stated the parole officer's involvement was the primary point of contact for the NDOC. The parole officer supervised all the offenders. The primary contact for the NDOC was the on-site probation officer. They set up a urine analysis call system to randomly select offenders to report for a urinalysis. He referenced the assessment protocol for receiving new probation violators. He said they hoped a three or four day stay would change the behavior of the offenders. Groups were scheduled Monday through Saturday. Groups were offered various help in managing personal problems. He said offenders could continue programming at Casa Grande regardless of whether or not they were housed at the facility. He discussed the disciplinary issues and said Parole and Probation would complete a matrix system for handling disciplinary issues. He said Judge Glass determined if the offender could have visitors. The proposed visitors must fill out an application and obtain their arrest report from Metro prior to approval and the report must be no more than 30 days old. He added his department had a policy of not allowing felons to visit without the direct approval of the Director of the NDOC. He said mail was received following the same schedule and procedure as the Casa Grande inmates. He said offenders will not be able to go to sick call; in a medical emergency a 911 call will be made and the parole officer will be contacted. He said the parole officer would make telephone calls to the family to arrange for medical treatment. Director Skolnik said they were not funded, nor were they obligated to provide medical treatment for probationers.

Mr. Digesti asked if the OPEN program was only available to probationers from Clark County.

Mr. Skolnik replied at this time yes, and only for probationers in Judge Glass's courtroom. He said it was a pilot program with a projected four year study and they would come to the Legislature at the end of the pilot to request money for the program if the success was what they anticipated.

Chair Horne asked Mr. Skolnik at what level the Attorney General was included in the proposed program.

Mr. Skolnik said the Attorney General was not brought in, however the Board of Prison Commissioners was advised of their intent and Ms. Masto was a member of that Board. He said there was no cost to the State involved in the program and there was a potential for significant benefit to the offender and the State. He said the Pew Institute was seeking funding for replication of Hawaii's HOPE program and Nevada was ahead of other states because they had implemented the OPEN program.

Ms. Gasca asked for the reasons an ex-felon might be denied visitation.

Mr. Skolnik said it was a regulation of the NDOC. He stated they would be denied unless they were family members.

Justice Hardesty congratulated Mr. Skolnik for initiating the OPEN plan. He said one of the goals was to address violations quickly and asked what the time span was from violation to the time they saw a judge.

Mr. Skolnik said the intent of the program was to be quick, but he did not know the actual length of time the violator could be held at Casa Grande or the county jails. He said part of the objective was allowing those offenders who were gainfully employed but showed slippage to continue to be employed and not go to prison.

Mr. Kohn asked if there was a right to counsel in the Hawaii program.

Mr. Skolnik replied there was not. He believed it was an issue of a person already sentenced and placed on probation; the judge found the person had either violated or not violated.

Mr. Kohn inquired about visitations by prior felons and whether the age of the felony factored into the denial of access.

Mr. Skolnik said there was not a limit; it depended upon the seriousness and the nature of the offense. He said a felon with an offense from 15 or 20 years ago would still have to go through the application process.

Justice Hardesty asked if counsel was notified for the people currently in the program. He thought the practice was to notify counsel, but he wanted confirmation that was true.

Mr. Skolnik opened discussion on the PRIDE program. He said PRIDE stood for Purpose, Respect, Integrity, Determination and Excellence and it was a program for parolees and re-entry people, [Exhibit E](#), in cooperation with the Nevada Department of Employment, Training and Rehabilitation (DETR). He said DETR

had funds from the 7B Wagner-Peyser Federal Dollars. The purpose of the program was to put offenders and parolees into vocational training to assist them in job development. He said the funds were divided between three parties: the Department of Corrections; the Department of Public Safety-Division of Parole and Probation; and a community group which provided some type of community support. Mr. Skolnik said this was another intermediate sanction program for parolees who technically had violated their parole but did not need to be incarcerated. The program was modeled after the Second Chance Prisoner Re-entry Program in San Diego, CA and it was recognized nationally as a model program. He said the program was a tough-love program. The grant would pay for the room and board of the individuals in Casa Grande. Historically inmates were charged room and board two weeks into the program. He said that caused failure for the parolees because they left the program with a debt of two to three thousand dollars. He said they changed the rules so the inmate was no longer building up debt that was uncollectible, and they started placing the parolees in a training or education program until the economy improved. He said they hoped the two intermediate sanction programs would help fill beds and not have people come to the DOC as permanent or long-term residents.

Mr. Skolnik next referenced the "NDOC INMATE PROGRAMS OVERVIEW" [Exhibit F](#). He said the exhibit described, in depth, all of the programming within the Department including the Boot Camp Programs, Conservation Camps, Restitution Programs, Silver State Industries, and a Transitional Housing Program. He said there was detailed information in [Exhibit F](#). There were a total of 34 programs provided by the DOC. The programs had measureable results. He said the packet was self-explanatory.

Mr. Carpenter asked what effect the budget reductions had on the programs.

Mr. Skolnik said at this point the impact was minimal. He expected it to change. He said the correction officers were exempt from furlough for this fiscal year, but they still had problems with staffing. The NDOC never received funding for overtime. He said at the beginning of the fiscal year a percentage of the NDOC wages were taken and reverted to the General Fund based on vacancies existing in the Department prior to the fiscal year in question. Medical costs had also gone up and the cost of medication had increased over \$1 million this year. He anticipated approximately a \$3.5 million shortfall in terms of budget versus expenses this year. He reiterated there had never been any overtime costs budgeted for the NDOC. He said the department averaged between \$4 and \$6 million in overtime costs, and currently they were down to \$2 million for this year. Overtime would only be used for life-threatening situations. He said visitation was closed for the last three weekends at the Nevada State Prison due to lack of staff. Mr. Skolnik said he had nothing left to cut from the budget this year. He

said when officers were furloughed at the beginning of July, there would be problems.

Ms. Farley asked why domestic violence and victim awareness classes were not offered at the Ely prison and whether that was due to the budget.

Mr. Skolnik said the vast majority of the inmates at the Ely State Prison did not get out of their cells except for five to seven hours of exercise a week and a shower every third day. He said they were the "worst of the worst" and were in general lockdown status. The only programs at that facility for inmates were provided through a closed-circuit television system, and only the inmates who could afford a television could access the programs. Mr. Skolnik said it was a less than ideal situation, but was necessary due to the nature of the inmates incarcerated there. He said some inmates could work their way into a medium security prison if they acted properly. If they had a death sentence there was not much the NDOC could do for the inmate.

Mr. Skolnik gave his final presentation, the NDOC Movement/Transportation of Inmates, [Exhibit G](#). He said there were a series of charts that identified mileage, number of inmate movement, short or long distance transfer, medical transfer or a court transfer. He said the charts did not have the budget included in the materials. However, the transportation budget was \$221,731 and the salary for the transportation unit was \$2,426,606. The Department had a mandate to pick-up inmates from the local jurisdictions where they were housed after sentencing. The statute said if the NDOC did not pick up inmates five days after the request, they had to pay the county housing costs. They are mandated to take inmates to court. He said they were not funded for transporting individuals to court, but they had to take inmates to hospitals if necessary. The primary funding for transportation was to allow the NDOC to move inmates between facilities as necessary. He said transportation was a significant area of overtime pay and a problem for the NDOC. The Department asked for 11 extra positions at the Northern Nevada Correctional Center in an effort to save money by reducing overtime for transportation. He said medical runs occurred most often at the Northern Nevada Correctional Center and runs from the High Desert State Prison to the courts. Without a full complement of staff, they had to use overtime to transport the inmates. He moved 15 vacant positions from Ely State Prison. Ten of the positions went to the Northern Nevada Correctional Center and five went to the Southern Desert Correctional Center. Mr. Skolnik said transportation had never been adequately staffed.

Chair Horne asked Mr. Skolnik the age of his transportation fleet.

Mr. Skolnik said no new equipment had been received for four years and the equipment was old and tired. The buses were newer and had a longer life

expectancy than the vans. He said the 15-passenger vans transported up to 13 inmates plus two officers. He did not anticipate asking for equipment money in the next budget.

Chair Horne asked if maintenance costs were included in the \$221,731 sum.

Mr. Skolnik replied the costs were included in that number.

Ms. Gasca asked about transportation of pregnant inmates. She wondered if there were specific regulations or procedures set for such transfers.

Mr. Skolnik said they eliminated any kind of restraints on pregnant inmates unless there was cause.

Justice Hardesty asked Mr. Skolnik what the current prison population was.

Mr. Skolnik said there were approximately 12,700 in-house inmates. They had a stable population with an actual drop in inmates. He said a Pew Report identified Nevada as one of the states that exemplified what could be done to control population. He added that he was concerned about staffing and program areas that were not mandated as posts that had to be manned, stating the consequence of losing program time was inmates lost time credits and extended their incarceration. He said the department had a primary responsibility to provide a safe and secure environment for the inmates, public, and staff. The secondary responsibility was to provide meaningful programming. Without enough staff, the secondary responsibilities suffered.

Justice Hardesty asked Mr. Skolnik to comment on the grant obtained for re-entry.

Mr. Skolnik said the governor had appointed a re-entry task force comprised of the Director of Public Safety, the Director of the Department of Health and Human Services, the Director of the Department of Employment, Training and Rehabilitation, the Chairman of the Criminal Justice Program at the University of Nevada Las Vegas, the Director of the Department of Administration, and himself. He said a subgroup would be appointed by the task force and would do the majority of the work. He said the NDOC was tasked with staffing the task force.

Senator Parks asked Mr. Skolnik about the number of miles in the report. He wondered if the miles were vehicle miles or inmate transportation miles.

Mr. Skolnik replied they were vehicle miles.

Chair Horne opened discussion on Agenda Item VII.

Justice Hardesty gave a presentation concerning centralizing the collection of fines, fees and restitution. Justice Hardesty said the topic had been discussed at earlier Commission meetings. He said the Commission recommended to the Legislature an effort to centralize the topic in the form of Assembly Bill (A.B.) 271, which did not pass in the Senate. He hoped the current Commission would address the question again. He presented a Power Point of the discussion, Exhibit H. He said no single entity in Nevada was assigned the primary responsibility for collecting the amount of money imposed when a person was sentenced. There were many in the criminal justice system who could not afford to pay fines, fees, and restitution, but there were also a significant number on probation that could pay the amount owed. He recommended a systemic, structural change in the way the funds were collected. He mentioned various fees ordered by the court. Justice Hardesty said if there was a victim, restitution fees may be ordered to be paid to the victim. Each of the fees and fines go to different people, so there was not a centralized entity or person collecting the money. He said there was also an incorrect assumption that the court system had the capacity, staff, or capability to collect the funds it had ordered. Justice Hardesty said fines were payable to the Permanent School Fund, fees benefitted local governments, and restitution was payable to victims of crime. He said no agency had the specific responsibility to collect fines or administrative assessments fees. He added a certain portion of money was designated for the Victims of Crime Funds, but if the amount actually collected exceeded the amount budgeted, the excess money reverted to the State General Fund and not to the Victims of Crime. Currently, between \$350,000 and \$400,000 per year was reverted to the General Fund. He said funding from administrative assessments that were collected in excess of what was budgeted should remain in the Victims of Crime fund. He said they were dependent upon the courts, through their collection mechanism, to collect the funds and no one agency or person was responsible for collecting the funds.

Justice Hardesty said administrative assessments for felony and gross misdemeanor cases were payable to the State Controller for the benefit of the Attorney General as authorized by the Legislature. He said in every case the district judge orders a \$25 administrative assessment fee. The Grant Sawyer Center did studies for the Commission which showed approximately 70 percent of those charged were placed on probation, yet once again, there was no single entity to pursue the collection of the fees. He highlighted three fees that a judge could impose upon convictions: public defender fees, a biological specimen DNA fee, or a chemical analysis fee. Those fees benefitted local government, not the State however; there was a failure on the part of the counties to collect the funds. Finally, restitution was ordered where there were victims of crime. He said in that case Parole and Probation was responsible for collecting payment for restitution. The Division of Parole and Probation exercised a budget process in which it

charged supervision fees of the same defendant placed under probation. It caused conflicts and problems for collection of the other fees imposed on the probationer. He said the collection statutes make it clear the defendant was liable and remained liable for all the fines, administrative assessments and fees, but no single entity was assigned a statutory responsibility to collect the money. The NDOC effectuated collections and there was a substantial record on the collection process, including federal laws and priorities to which the money was assigned. He said most inmates expired their terms still owing significant amounts of money. He added most people placed on parole still owed money in fines, fees or restitution.

Justice Hardesty discussed NRS 176.064. He said it was the statute which allowed for collection. He reiterated there was no designation of any entity that was responsible for collecting a fine or fee. The defendant, on order from the court, could have their driver's license suspended until they pay their fines and fees. He did not know if there were any orders holding up licenses or suspended licenses over the issue. He asked if that were the best remedy. He said without a driver's license they could not get a job. None of the courts had the staff to track all the orders to see whether they were paid or not paid. The statutes set priorities, but there was almost no direction. He said in the case of restitution, the length of probation was too short to collect the entire amount ordered. He added any amount remaining constituted a civil liability and the defendant was not relieved of the financial obligation, [Exhibit H](#). The judgment ordered at sentencing was a lien that could be used for the collection of amounts owed. He said lack of clarity as to who was responsible for collecting the money made it even more difficult to pursue.

Justice Hardesty said on October 2, 2006, the Nevada Supreme Court ordered all district, justice and municipal courts to follow the Minimum Accounting Standards (MAS) that the Court enacted in 1997 and updated in 2006. He said the standards required triennial reporting beginning in fiscal year 2008. All but five courts had reported their triennial reports. The MAS Audit Report for Washoe County showed the amounts uncollected in Administrative Assessment Fees from 2000 to the present was \$350,478; the Public Defender fees had \$6,684,714 in uncollected funds; \$285,573 in fees for chemical analysis fees were not collected; \$1,182,669 in DNA and biological specimen fees were uncollected; and finally, \$10,749,350 was not collected in fines since 2000 to present. He added fine amounts were often the most difficult to collect. Justice Hardesty reiterated the Advisory Commission recommended [A.B. 271](#) to the Legislature, which would have centralized the responsibility for the collection of fines, administrative assessments, fees and restitution. The measure did not pass, [Exhibit H](#). He recommended the Advisory Commission examine NRS 353C as an alternative to the bill. He said it centralized the collection of State debts with the State Controller and the assistance of the Attorney General. He said the

statute would require a number of amendments in order to collect the fees, fines, and restitution. He believed the State Controller's office was the best place to make the collection possible.

Chair Horne asked Justice Hardesty if there were any estimates on how much money he anticipated collecting if the changes were imposed on the outstanding obligations.

Justice Hardesty said he did not have that data available. He did not know how much could be collected until collection efforts were effectuated.

Chair Horne said a number of the estimated amounts that may be collected was important. He said if there was a feasible way to collect the funds he was in favor of it. He mentioned a person with an 8th grade education may never have the means to pay back the imposed fees and administrative costs.

Justice Hardesty said he suggested amendments to NRS 353C because the State Controller had the ability to collect the funds and utilize collection services to collect the fees. He appreciated the fact that a number of defendants lacked the ability to pay, but a number of persons did have the ability to pay.

Chair Horne asked Justice Hardesty if he had spoken to the State Controller about her office's ability to take on the larger role.

Justice Hardesty said he had spoken to her and the Attorney General prior to the last Session. He said the State Controller's staffing capability needed augmentation, but Ms. Wallin was enthusiastic about taking on the challenge.

Chair Horne asked if Justice Hardesty recommended probationers have their probation extended if their financial obligations were not met.

Justice Hardesty said that was the proposal in A.B. 271. He did not believe that should be pursued and it was a mistake to propose that. He said if an effective collection method was in place there was no reason for the State to continue to supervise the people.

Ms. Masto commented there was merit to Justice Hardesty's recommendations. She said they had never identified a specific amount uncollected at the State and local level but there was an amount that could be collected. When the issue was addressed before the last Legislature session, she had conversations with the State Controller. Ms. Masto said Ms. Wallin collected for all the State agencies. She suggested Ms. Wallin come to the next meeting and discuss what was possible.

Mr. Kohn said one of the most difficult things was to be transparent. He agreed with Justice Hardesty that the amounts of money that should be collected first were probation fees. He said if there was only a certain amount of money to be obtained, priorities had to be set as to where the money went after it was collected.

Ms. Gasca asked if the collection of fees was unique to Nevada or were other states using the State Controller to collect fees and were they successful.

Justice Hardesty said he did not know what other states were doing in their collection efforts. He said prioritizing the amounts received and designating a single person or entity with the responsibility to collect would improve collections from those who could afford to pay. It benefitted the State, local government, the court system, and victims of crime through restitution.

Ms. Gasca said A.B. 271 included several sections that separated the delinquency in paying the fees from other probationary infractions. She asked if his proposal also included release for indigent parolees who could not pay.

Justice Hardesty said NRS 176.064 gave a judge the power to incarcerate someone who had not paid for their delinquent fines and assessments. He said it was counter-productive to incarcerate someone for a small fee, and it imposed a huge financial obligation on the county jail. However, there was another statute in the same section allowing defendants to request jail time for the amount they owed in fines and fees. He said that did not make sense, so they should try to find alternative means for collection. The statutes also allowed district courts to absolve a defendant who cannot afford to pay. He added many fees were not imposed or were waived if the defendant was unable to pay them.

Ms. Gasca asked Justice Hardesty if he suggested the State Controller set up an administrative code or regulation as to how to effectuate the collection of fees.

Justice Hardesty said Ms. Wallin was a wonderful controller, and she was in a position to effectuate appropriate standards and business methodologies to be used in the collection of funds and it should include using collection agencies. He said he was told many defendants in the criminal justice system would rather deal with their probation officer than a collection agency.

Mr. Curtis said there was a lack of incentive for the payment of their fees. The State required Parole and Probation to collect the fees and it became a part of their budget. He said when they failed to collect 100 percent of the fees, they had to make up the amount in some other manner.

Ms. Bisbee said the issue before the Parole Board was a parolee with only four or six months of supervision who owed \$75,000 in restitution. She said they were not paying more than \$100 a month on the sum. The Parole Board received telephone calls from victims asking about payments from parolees. Her department told the victim the restitution converted to a civil liability. She said when they asked her what they were supposed to do, she did not have an answer for them.

Justice Hardesty said the victims were left with little or no answers. He said the State made a policy of reimbursement to victims. However, money was diverted from the Victims of Crime Fund to the General Fund even though excess was collected and no mechanism was in place for the collection of victim's restitution.

Ms. Bisbee asked if the victim was responsible for filing a civil suit.

Justice Hardesty said most lawyers would say under the current statute, the victim had to effectuate collection on a criminal judgment. However, he had never seen anybody do that.

Ms. Bisbee said victims did not know how to effect collection on a criminal judgment and there was nobody they could call for direction.

Justice Hardesty said the victim would have to hire a lawyer and get legal advice about how to proceed.

Senator Nolan said it seemed impossible for an individual to pay any type of restitution or fees because they lacked the means to do so. He asked if there was a program that would put the parolee in current community programs while they were looking for gainful employment. Once they were making some kind of wages, perhaps Parole and Probation could reassess the fees. He said the victims of crime wanted to be made whole in some sort of monetary way and the penalties should not be waived.

Justice Hardesty said it was not as complicated as it appeared. He did not accept the notion that a substantial portion of people going through the criminal justice system cannot eventually afford to pay. He said statutes allowed a period of five years for collections which can be extended for another five years. If it was collected under civil statutes, there was six years to collect and it could be renewed for another six years. He said a condition of probation was employment. He recommended centralizing the collection under a single entity and letting them exercise the appropriate business discretion necessary to collect those obligations. He recommended prioritizing the amounts recovered from the judgment of conviction and directing the money to those entitled to receive it. He

said, get rid of the collections that were hopeless and write them off as bad debts.

Chair Horne opened the discussion to Agenda Item VIII, additional topics for future meetings and scheduling.

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel, said possible topics the Commission may want to consider for the May meeting included a presentation on the PSI reports; an update on economic and budget impacts on the NDOC and Parole and Probation; a continued Psych Panel discussion including a review of other states and their psych panel process; a report on the final chapters from the 2008-2009 Advisory Commission; an update on a Pew study about funding for future study options; additional policy discussion on inmate good time credits; final reports of the subcommittees; and recommendations for final consideration at the work session. He said a work session would possibly be scheduled in June or July.

Ms. Bisbee said the May agenda was also to include the continued discussion on aggregated sentences.

Chair Horne asked Mr. Kohn if his information would be ready for presentation at the May meeting.

Mr. Kohn replied his meeting was scheduled for April 15, 2010.

Chair Horne said the Commission would have a work session after the May meeting to discuss which issues the Commission would recommend to the Legislature. He said one suggestion was a recommendation on the DNA legislation.

Ms. Masto said at the next meeting she would present an update of the Victims of Crime Subcommittee.

Chair Horne asked if there were further suggestions for the May meeting.

Justice Hardesty said he assumed the Commission would not be voting on various proposals in May because they were still taking information.

Chair Horne said he anticipated a work session in July to vote on the proposals. He opened the discussion on Agenda Item IX, Public Comment.

Tonja Brown made a suggestion to the Commission concerning the upcoming DNA issue and submitted a list of points for consideration, [Exhibit I](#). She wanted inmates to be able to have DNA testing at their own expense. She said Mr. Kline passed away and left DNA from 22 years ago which she was going to submit to

the Courts for testing. She could be denied testing due to the law not passing. Ms. Brown suggested further consideration of Nolan's Law for a proposed bill to the Legislature. She said wrongful case studies should also be considered. She asked for oversight of the NDOC. She asked under the Nevada Supreme Court regulations ADKT 427, Order Rule 215, that Judge Herndon and Chair Horne file complaints against everyone she named, including members of the Pardons Board. She filed the complaint with Mr. Digesti who was the representative of the State Bar. The complaint concerned concealing a crime. She asked Mr. Digesti to work on her complaint quickly and that the named individuals be permanently disbarred from ever practicing in the State of Nevada. She said the named persons conspired to conceal a crime.

Chair Horne asked if there were any questions for Ms. Brown.

Mr. Digesti said he was not in charge of the State Bar; he was a member of the Commission and an elected member of the Board of Governors of the State Bar of Nevada. He said he could outline the proper procedure for her complaint against any member of the State Bar of Nevada for any ethical violation which she believed existed, but the proper protocol would be for her to contact the Office of Bar Counsel in Las Vegas and initiate the complaint process through that office.

Ms. Brown thanked Mr. Digesti. She said she was referring to a new regulation that just went into effect, ADKT 427. She said it stated the appropriate authority should be informed and she read some of the points of the Order, [Exhibit I](#). Ms. Brown said it did not state she could not bring it to the Commission as part of the case study, or not ask Judge Herndon to file the complaint as ADKT 427. She asked the Commission to follow the new regulation and report to the State Bar, as well as the information provided, and that the case was pending in the 9th Circuit Court of Appeals. She said the Attorney General's office had been given the documents. Ms. Brown stated the Commission members were required to follow the new regulation, file the complaint, and notify the proper authorities, bodies, and agencies. She said she could not file the complaint with the State Bar and since the Commission accepted the official minutes of the documents presented on January 14, 2010, they were required to file the complaint.

Tosh Dawson offered her suggestions for the Commission in written form, [Exhibit J](#). She said during the Session it was puzzling to her to hear frequent mention of a budget problem because the issues presented two years ago in an audit on the NDOC made many recommendations that were not followed. She said the establishment of an oversight committee was one of the recommendations and it was never discussed. She suggested instead of making unilateral decisions based on a few people, making decisions that affect everybody. She requested more input on things designated as necessities.

Chair Horne asked if there was further business for the Commission. As there was none, he adjourned the meeting at 12:59 p.m.

Submitted by:

Olivia Lodato, Interim Secretary

APPROVED:

William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice

Date: March 30, 2010

Time of Meeting: 9:30 a.m.

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Lauren Denison	Bring Bri Justice Foundation
	D	Mr. Skolnik	OPEN. Program
	E	Mr. Skolnik	P.R.I.D.E. Program @ CGTH
	F	Mr. Skolnik	NDOC Inmate Programs Overview
	G	Mr. Skolnik	NDOC Movement/Transportation of Inmates
	H	Justice Hardesty	Collection of Fines, Fees & Restitution
	I	Tonja Brown	Points and Authorities
	J	Tosh Dawson	Letter