# MINUTES OF THE
# ADVISORY COMMISSSION ON
# THE ADMINSTRATION OF JUSTICE

## JUNE 23, 2010

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, at 9:42 a.m. on June 23, 2010, at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, 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
Assemblyman John C. Carpenter, Assembly District No. 33
Larry Digesti, Representative, State Bar of Nevada
Gayle W. Farley, Victims Rights Advocate
Richard Gammick, District Attorney, Washoe County
Honorable James W. Hardesty, Justice, Nevada Supreme Court
Donald L. Helling, Deputy Director, Operations North, Nevada Department of Corrections
Catherine Cortez Masto, Attorney General
Richard Siegel, President, American Civil Liberties Union of Nevada
Mark Woods, Deputy Chief, Division of Parole and Probation, Department of Public Safety

**COMMISSION MEMBERS PRESENT (LAS VEGAS):**

Phil Kohn, Clark County Public Defender
Judge Douglas W. Herndon, Eighth Judicial District Court
Senator David R. Parks, Clark County Senatorial District No. 7

**COMMISSION MEMBERS ABSENT:**

Bernard W. Curtis, Chief, Division of Parole and Probation, Department of Public Safety
Thomas W. Finn, Chief, Boulder City Police Department
Raymond Flynn, Assistant Sheriff, Las Vegas METRO
Senator Dennis Nolan, Clark County Senatorial District No. 9
David Roger, District Attorney, Clark County

Howard Skolnik, Director, Nevada Department of Corrections

**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:**

Rex Reed, Offender Management Chief, Nevada Department of Corrections
Tonja Brown
Steve Hines

Chair Horne opened the meeting at 9:42 a.m. He requested a roll call of members present.

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

Chair Horne said there was one Agenda item today, the presentation concerning credits on terms of imprisonment. He said Mr. Helling would be making the presentation on data the Commission heard in January.

Donald L. Helling, Acting Director, Nevada Department of Corrections, asked Rex Reed to make the presentation.

Justice Hardesty said he requested a presentation to this Commission that was given to the District Judges Association, giving an overview of all of the various sentencing credit issues. He said the issue was complicated and uncertain for victims and inmates. It involved multiple statutory sources and the application of multiple decisions by the prison officials.

Rex Reed, Administrator, Offender Management Division, Nevada Department of Corrections, said his Power Point presentation, Exhibit C, was the same presentation given to the judges at their conference. He said he would discuss his presentation in five or six different elements. He would define the types of inmates, then define the terms, and then the five different types of credits. He said the Department of Corrections had five types of credits, and the Parole Board also had credits, but he would not cover those. He would discuss tracking credits, then list the programs that

earned an inmate merit credits, and finally offer examples discussing an issue that was difficult for him.

Mr. Reed defined the type of people in the system, Exhibit C. He said people had the ability to earn different kinds of credits. He defined terms used, such as the PED-parole eligibility date. He said they should assume if the minimum sentence was two years, it was also their PED. The NPED was assigned if an inmate appeared before the Parole Board and was not granted parole. He said MPR meant mandatory parole release date. PEXD was the projected expiration date and it often caused problems. He said it was a service provided to inmates and was an estimate of the projected release date so the inmate could plan ahead.

Chair Horne asked about the MPR and whether it was the mandatory parole release date or was it mandatory parole eligibility.

Mr. Reed said it was mandatory parole review. Mr. Reed defined the five types of credits. He said flat time was awarded for being present in a cell for one day. Good time was awarded if an inmate behaved while in prison. He received either ten or twenty days credited to his sentence requirements. Work time was earned by their job duties. He said it was a prorated credit. Merit credits were awarded if an inmate completed a certain program or earned a college degree. Jail credit was awarded to an inmate if he was in jail while waiting to be sentenced. He said the judge could award credit while the inmate was waiting.

Richard Gammick, District Attorney, Washoe County, asked Mr. Reed if he was going to cover how the different credits were applied, and whether the minimum or the maximum sentence applied to the time the inmate was serving.

Mr. Reed said all credits were applied to the maximum sentence. He said sometimes the work time and good time credits could be applied to the minimum; however, an A or B offender could not have credits applied to the minimum.

Mr. Gammick said he understood if some of the credits were applied to the minimum sentence, some people served less than a year in prison.

Mr. Reed said it could happen and it did. If they received a lot of jail credit they could be released immediately. He said if they served a year of jail time and were sentenced to one year, they were eligible for parole immediately.

Mr. Reed referred to the interstate boarder in Exhibit C. He said they were inmates who came from another state. They did not track their credits or award credits to them. They sent reports to various states giving information about the inmate.

Mr. Reed discussed good time credits. He said it was also referred to as statutory good time or state time credits. It was automatically earned if the inmate stayed out of trouble, Exhibit C. He said inmates who did not behave were not automatically awarded the credits and could lose good time credits. A specific process had to occur to take the credits away. He said credits could be restored if inmates behaved. Good time credits were an attempt to modify behavior in the system.

Chair Horne asked Mr. Reed if the good time credits could be taken away over any period of time. He offered an example of an inmate who had been collecting credits for five years, and then had a major disciplinary issue. He asked if he could lose the entire five years of good time credits.

Mr. Reed said they could, in certain instances, take away all credits. He said there were different kinds of disciplinary actions including general, minors, majors, and work-related. Time could not be taken away for a minor or general disciplinary action. He said mutual combat was a general and they did not take time away, but assault and battery was a major and they did take time away. There were three levels in major disciplinary issues; category C, category B, and category A. He said they could take between one and fifty-nine credits for category C; between sixty and one hundred nineteen days for category B, and all credit for category A. He said in certain majors all credits were taken.

Chair Horne said if someone was eligible for parole in August, but they lost credits in July, it would change their eligibility date.

Mr. Reed said it might affect the eligibility date if he could earn credits applied to his minimum sentence. If he was one that did not get credits applied to the minimum, the time taken would come off the back of his sentence. He said credits can be restored and they can only take credits already earned.

Mr. Reed said they kept a history of credits for people on death row or with life without possibility of parole. He said they were required by law to keep those credits. The idea behind the law was, an inmate could get pardoned. He said A.B. 510 changed good time credits from 10 per month to 20 per month, and the last Session passed a law stating as long as an inmate was in prison custody they earned credits.

Mr. Reed offered an example of how credits were mechanically tracked in Exhibit C. He showed a page from an inmate's actual credit history. He said the first page showed all five different kinds of credits.

Senator Parks asked Mr. Reed about inmates claiming they did not receive credit for a particular activity or event. He asked what process the Department had to correct an error, or explain it.

Mr. Reed said first they made sure there was an error. The next step was to correct the error if one occurred and make the correct entry. If it was not a mistake, they tried to explain to the inmates how they calculated sentences. He said most mistakes were made by inmates or family.

Mr. Reed said the next three pages in Exhibit C were examples of programs offered that were awarded meritorious credits. He next referred to a table showing how credits were earned and lost. He said they provided inmates with projected sentence release dates as a service so they could plan for their release. The prison assumed the inmate would earn good time and work credits. The example showed the inmate earned 31 days of flat time in January, 10 days of work time, and 20 days of statutory good time. He said the inmate was earning two days for every day he was in prison. He expires a one-year sentence in half a year.

Mr. Helling said merit credits were not calculated in projected dates because they had not been earned. He said they were incorporated as they were earned, and the dates often changed. He said people got upset because the dates frequently change.

Mr. Siegel said on the approved merit credits, a bachelor degree was worth 90 credits and an associate college degree was worth 120 credits. He asked if that was statutory or regulatory and how the credit decision was made.

Mr. Reed said it was statutory, NRS 209.446 and 209.4465.

Mr. Siegel said at some appropriate time it needed review.

Mr. Gammick asked Mr. Reed if the prison went back two months if an inmate lost 120 days.

Mr. Reed said if they lost 120 days, their projected expiration date only went back two months.

Mr. Gammick said he did not understand.

Mr. Reed pointed out that the inmate actually loses 120 days and their actual discharge date is 120 days longer. The projected expiration date only moved back two months. He said an inmate earned 120 days in two months of sitting in the cell and receiving his earned credits.

Mr. Gammick asked how these examples differed from before the Truth in Sentencing law in 1995.

Mr. Reed responded it set the parole eligibility date at the minimum sentence. He said before that the parole eligibility date floated depending on where they were in their sentence. The Truth in Sentencing law made the parole eligibility date firm and it did not move. He said last Session changed the parole eligibility date by being able to earn credit off the minimum sentence.

Mr. Gammick said the State was back to 1994 presentencing law.

Mr. Helling said Truth in Sentencing established calendar times. He said C, D, and E felons were divided between the minimum and maximum sentence by two to have a good estimate of their sentence. He said A and B felons divided the maximum, if it was not a life sentence, by two and the minimum sentences did not change.

Mr. Gammick asked if there was a way for victims to find out and understand the sentencing system.

Mr. Reed said the victim needed access to a computer and the internet. The prison had a web site with every inmate's sentence dates, including PED dates. He said it was not easy to read, but they had an issue paper that explained how sentences were calculated. The paper was listed on the web site as well. He said they could also call the offices for information.

Mr. Helling added that there was a victim's service officer who could be contacted for information about an inmate's release date.

Mr. Gammick asked if the information was made available to victims through Parole and Probation or prosecutors' offices.

Mr. Helling said there was an NRS statute regarding victim notification. He said he did not know if it was part of the initial process. He cautioned if release dates changed, the information had to be released quickly.

Mr. Reed reiterated there was an issue paper on the internet. He said it had tables explaining how dates moved. Victims could always call the prison or victim services about the release of specific inmates.

Ms. Farley said she saw nothing about a victims' advocate on the website. She asked if there was one.

Mr. Helling said he did not know, but he would make it available.

Justice Hardesty said the process of computing and allocating credits seemed cumbersome and potentially confusing to everyone in the criminal justice system. He asked if the Division had discussed amendments to the credit structure. He asked for recommendations that would accomplish the dual purpose of trying to maintain behavioral conduct by inmates in the prison system and still have a more understandable credit system.

Mr. Helling replied the various aspects of A.B. 510 had been discussed. One suggestion was merit credits in the last 30 days would not be credited so the expiration date stayed the same and allowed time to notify the victims.

Justice Hardesty asked if similar suggestions had been summarized in a memo or could they be provided to the Commission.

Mr. Reed said they had submitted a BDR giving the Director authority to award credits up to a limit, but not requiring the Director to give credits.

Justice Hardesty asked if other potential changes or improvements were documented and, if so, could they be presented to the Commission.

Mr. Helling said he was unaware of any memo or written instructions. He said it was just verbal discussion between the Director and himself.

Justice Hardesty requested the NDOC submit suggested changes to the Commission. He also requested a continuation of the workshop session beyond the discussion of credits at a future meeting.

Mr. Reed said he agreed with Justice Hardesty that the sitting judges were concerned about the issue.

Chair Horne said he anticipated only one more meeting of the Commission this year. He said the next meeting was mainly concerning the PEW reports. He wanted to finalize the information as soon as possible and get the BDR requests started. He said sponsors were needed for the BDRs.

Mr. Carpenter stated if there was a BDR already, it could be amended when it was in the legislative committee. However, he said the Legislature could make the bill more complicated than intended.

Chair Horne closed the hearing on sentencing credits. He closed the general hearing and opened the work session. He said no new testimony would be heard during the work session. The Commission would make recommendations on particular issues. He said if the Commission wanted a BDR, he would compile a list and assume responsibility for finding the sponsors for the BDRs. He offered the example of his personal BDRs as a Legislator and a member of the Legislative body. He said chair persons also had committee BDRs. He said he may reach out to other members in the Senate or others interested in the issues involved.

He opened the discussion on Recommendation No. 1, Assembly Bill No. 271 (First Reprint) (2009), Exhibit D. He asked Mr. Anthony to review the document.

Nicolas C. Anthony, Senior Principal Deputy Legislative Counsel, reminded the Commission members that a recommendation may indicate that the recommendation was to draft legislation, but the Commission could choose to draft a letter or include a statement or ask that a resolution be drafted. He added the recommendations were not placed in order and each was identified by the Commissioner or Commissioners who made the recommendation, but they do not as yet have the full support of the Commission. He said they would be voted on by the members.

Mr. Anthony said Recommendation No. 1 was brought forward by Commissioner Hardesty. The recommendation was to draft legislation to

provide for the centralized collection of fines, fees, and restitution from convicted persons, Exhibit D. He said it was also a BDR last session in the form of A.B. 271. This recommendation suggested amending Chapter 363C of NRS and placing the collection of the moneys in the offices of the State Controller and Attorney General.

Mr. Gammick asked where or how the funds would be distributed. He asked if the intent was for the funds to be distributed to the entity entitled to receive the fine, administrative assessment fee, or restitution.

Chair Horne said they were not attempting to change any distribution formulas of where the money was supposed to go.

Justice Hardesty said there were statutory provisions addressing where each of the funds went. The purpose of the proposal was to centralize the collection of the funds so the defendant who had an obligation to pay went to one entity. He said the problem was it was unclear who had the responsibility for collecting administrative assessments, or fines, or fees. There were two problem areas in A.B. 271 that should be changed. The first was the concept of continuing some form of administrative probation for those who had expired their terms before they paid their obligations. He said that concept should be abandoned as an unnecessary cost. He said there were vehicles in the statute for a designated agency. He suggested the Controller's office and the Attorney General's office to follow-up in the collection of the obligations once the defendants had expired their term. The collection of the fees was an executive branch function rather than a judicial branch function.

Chair Horne said one of his concerns dealt with the problem of the effect of a "debtors' jail" for those who were not complying after they expired their terms. He said he wanted to go forward with a civil-type collection. He was concerned about a law enforcement or punitive action involved if the fees were collected in the Attorney General's office.

Justice Hardesty said there was a statutory structure in place on "how to collect." He said what was missing was the "who to collect." They were all civil collection processes. He said there was a statute that would allow a judge who still had control over the defendant to exchange out amounts owed for jail time. He said he was not suggesting that be done. He designated the entity that would use already established civil collection remedies. The statutory authority already existed to retain and hire collection

agencies and to pursue executions on the judgments. He said what was missing was the entity with the responsibility to pursue the collections. He added the Attorney General's office was there as a collection agency.

Attorney General Cortez Masto said she was surprised by the language. She was unsure what putting the resources within her offices would accomplish. She said she understood the statute gave local bodies, local governments, the authority to collect the funds. The City of Las Vegas put in place a system using an outside collection agency to collect the fees and fines. She said money collected at the local level went into the local coffers first. Money was taken in by Clark County, and they divided the money up and gave the State the money that was their share. She said the system would be changed if they changed the statute and she would have to put a process in place in her office, hire people for the job and also determine where they went. She asked if it would go to the State General Fund first and then be distributed to the local county governments based upon their fines and fees they were entitled to receive. She was concerned about the change. Her second concern was that her office had the authority to collect some fees and fines based on the defendants her office handled. She said she had contracted with the Controller's office to collect that debt for her office. The Controller's office uses an outside agency to make the collections. She applauded the proposal because a lot of the money went uncollected at the local and state levels.

Mr. Siegel asked if the change to a centralized collection system, which included restitution, had an impact in law or in practice on the restoration of civil rights of an individual. He said restoration of civil rights in most cases was almost automatic and included the responsibility for restitution. He asked if it changed anything in civil rights, particularly in voting rights.

Justice Hardesty said it would not change anything. He asked Ms. Bisbee if restoration of civil rights occurred when the Parole Board requested it if the defendants still owed money.

Ms. Bisbee said they did not qualify for parole unless they had paid all their fines and fees. She said the restoration of civil rights was one of the ways to collect the money owed because without payment, rights were not restored.

Mr. Siegel said he was thinking about the expedited process by which somebody finished their sentence and did not go to the Pardons Board. They had an administrative process for the restoration of civil rights. He said there

was probably a requirement for restitution being completed. He said it was a major barrier to the restoration of voting rights for many people.

Ms. Bisbee said she did not know if it was a major barrier. She said people interested in the restoration of their rights paid their fines and fees.

Mr. Siegel said she was referring to people who go through the Pardons Board. He asked who dealt with the people who did not go to the Board, but got their civil rights restored.

Mr. Mark Woods said Parole and Probation dealt with the people who did not appear before the Pardons Board. He said it did affect them if they had not paid off their restitution.

Mr. Siegel asked if it was an issue of substantial delay in a number of cases.

Mr. Woods said the biggest cases were those with a huge amount of restitution. In those cases they tried to collect the money.

Mr. Siegel was concerned about people being indigent, unable to pay restitution, and not getting their voting rights back.

Mr. Helling said he believed when an inmate was discharged from prison the inmate received his voting rights back under an NRS statute. He said he recalled the inmate signed a form informing him he was entitled to vote and after seven years he was entitled to run for office.

Mr. Siegel asked if it would be different for a parolee versus a prisoner at the end of the term. He said there were loose ends in the proposed recommendation. The impact of the whole system on voting rights was of paramount constitutional importance that required clarity.

Justice Hardesty said his proposal had nothing to do with the restoration of rights, only with collecting the money. He said his premise was that a number of persons could afford to pay and there was no system in place by the State to collect the money. He added that it was never his intent to put the Attorney General's office in an administrative position to collect the sums. He said it was his intent that it be the Office of the Controller, that it was the Controller's office that did the collections or made sure the collections were performed by the agencies that would benefit from the money.

Ms. Cortez Masto asked for clarification. She asked Justice Hardesty if he was still looking at the language of A.B. 271, but changing the Office of the Administrative Court and putting in place the Office of the Controller or the Attorney General. She said page 4, paragraph 5 of the draft still showed the Attorney General's office would have authority along with the other local governments to collect the fines, fees, and restitution.

Justice Hardesty said statute already allowed for that and he was merely substituting the Controller's office for the Office of Court Administrator.

Ms. Cortez Masto asked how the language would change to fit his proposal.

Justice Hardesty said he would eliminate section 2 on page 5 and 6 of the proposed recommendation. He said he would replace the Office of Court Administrator with the State Controller's office and section 2 would be deleted in its entirety.

Ms. Cortez Masto asked if the Controller was at the meetings and agreed to the changes.

Justice Hardesty said he assumed the Controller was still in favor of the proposal and for the collection of the money.

Chair Horne asked if there was a provision in the regulation requiring local agencies to submit quarterly reports of their collections since the Controller was responsible for overseeing the collections.

Justice Hardesty said she could require those accounts be sent to her.

Ms. Cortez Masto said there was an opportunity for her to meet with the Controller's office and Justice Hardesty to put together some proposed language using the existing draft and bring it back to the Commission.

Chair Horne said he anticipated having one more meeting and the regulation could be brought back for discussion at that time.

Justice Hardesty asked if the Commission endorsed the concept subject to the specific language being developed.

Chair Horne said subject to language being deleted and the changes discussed, he was supportive of the concept.

Mr. Carpenter was in favor of the concept. He said the Office of the Controller would have to be part of the regulation and that someone needed to make sure the local communities were collecting the money. He said they were going to need more help in the Controller's office.

Chair Horne asked if there were more comments or concerns about this regulation. He suggested further discussion with the Controller, Justice Hardesty and Ms. Cortez Masto concerning the regulation. He said they would discuss it in the next meeting.

Justice Hardesty said Ms. Lang looked up some information and the right to vote was restored upon honorable discharge from probation or parole, upon pardon, and also when there was a release from prison after serving the sentence. He said a person's indigent status did not affect the restoration of their right to vote.

Mr. Siegel said he was pleased to hear that information.

Chair Horne said they would skip Recommendation No. 2 and open discussion on Recommendation No. 3, drafting legislation to reclassify certain category B felonies.

Mr. Anthony said Recommendation No. 3 was a recommendation in concept to draft legislation to reclassify certain category B felonies. He said during the Subcommittee on Reclassification of Crimes there was discussion about some B felonies being reclassified to C felonies. The Subcommittee discussed B felonies with penalty terms of imprisonment of 1 year to 6 years should be lowered to a category C. Commissioner Kohn proposed the recommendation for discussion purposes. He said behind Tab C of Exhibit D were two different lists of category B felonies, including the B felonies with a penalty of 1 year to 6 years.

Chair Horne said he was of the opinion the Commission should wait to make their decision after they received additional data from Pew Institute.

Justice Hardesty recommended relating the conversation with Pew. He said representatives from the Pew Institute, himself, Chair Horne, Mr. Skolnik, Ms. Bisbee, Dr. Austin and Mr. Woods had a telephone conference. The purpose of the call was to determine if the Pew Institute had an interest in providing financial support for some of the work of the Commission. The Pew Institute confirmed their interest and support of the work being done by

the Commission. They expressed a willingness to provide financial support in some of the areas the Commission was interested in studying further. He said they specifically addressed the question of whether they would provide financial support surrounding A.B. 510 and the use of other additional credits for other categories of offenses. He said Pew expressed an interest in expanding the research to include other steps addressing prison over-population and prison over-crowding. They expected a response soon from the Pew Institute. He agreed the study would be undertaken quickly and the results would provide a factual basis to make decisions.

Chair Horne asked if there were any questions.

Mr. Siegel asked what the time frame was for the completion of the study.

Chair Horne said he anticipated the Commission meeting by the end of August or first of September and Pew would have completed the study at that time.

Justice Hardesty said the Pew Institute needed information from staff and the NDOC.

Mr. Woods said Dr. Austin was going to utilize some interns from UNR to assist in the research.

Mr. Gammick said the last time there was a committee working in this area, Dr. Austin came forward with several statements about the system. Mr. Gammick asked if Dr. Austin had completed what he was doing.

Justice Hardesty said Dr. Austin had provided all the responses to the subcommittee.

Mr. Kohn asked if the discussion with Pew included the BDR he recommended under Tab D of Exhibit D.

Chair Horne said the information being compiled was relevant to Mr. Kohn's bill draft request.

Justice Hardesty said it was specifically addressed as one of the matters before the Commission and whether the study would support, or not support; the recommendation.

Mr. Carpenter said it was great if they got a study, but the changes needed to be approached in small steps. He said A.B. 510 worked well and they were fortunate there had been no major incidents. He said the sentences of 1 year to 6 years may be applied to A.B. 510 if no major recommendations came out of the study.

Chair Horne agreed with Mr. Carpenter. He said there were discussions about whether certain category B felonies should become C felonies or not change categories at all, but allow for certain B categories to be eligible for good time credits on the front end of their sentences. He said the information from Pew would help supply information for the Commission.

Mr. Siegel was pleased with the comments. He said it was "iffy" that a comprehensive report would be available by August for the Commission. He asked if the decision time could be moved forward to September or October if it was needed.

Chair Horne said he was told they could turn the information around quickly. He said they had earlier studies and information to utilize in their reports.

Justice Hardesty said Dr. Austin explained he was putting together a detailed work program for the Pew Institute representatives. He said as an example, he knew there were approximately 2,800 inmates in the prison system with category B offenses. The study group was approximately 250 of those inmates in order to make assessments on a wide variety of topics.

Mr. Woods said several years ago the NDOC worked with Dr. Austin on a similar study concerning technical violators being sent to prison. He said the same type of research was used for the study. The NDOC had built most of the tools required. The UNR interns would also assist in getting the data to the Commission.

Chair Horne said they would move the recommendations to the next hearing date. He opened discussion on Recommendation No. 5. He asked Mr. Anthony to review the recommendation for the Commission.

Mr. Anthony said Recommendation No. 5 was brought forward by Commissioner Bisbee. The recommendation would propose draft legislation to revise provisions relating to the requirement to be certified by a panel before release on parole pursuant to NRS 213.1214, Tab E, Exhibit D. He said it was also known as the psych panel. He said under Tab E there was a

memorandum from Ms. Bisbee explaining the exact functions of her recommendations and some proposed language which would make seven different revisions to NRS 213.1214. He said Justice Hardesty also suggested the recommendation should include that the proceedings under the psych panel were not subject to the Open Meeting Law. That suggestion was also included in subsection 9 under Tab E of Exhibit D.

Ms. Bisbee said she presented the information at the previous meeting on June 9, 2010. The only change in the draft language was the addition of section 9, which addressed the Open Meeting Law and stated it was not applicable to the psych panel. She said the NDOC would provide support as it made the process easier and it made good sense. She wanted the Commission to consider adding language to section 4 that said "as approved by the Parole Board" since they were advocating for an advisory to the Parole Board. It was important that the Parole Board provide input as to regulations adopted by the psych panel.

Chair Horne asked for clarification on the record from Justice Hardesty concerning the proposition of exempting the psych panel from the Open Meeting Law. He said when areas were excluded, people often thought something was being hidden from the public. He requested clarification of what was being exempted from the Open Meeting Law and why it was exempted.

Justice Hardesty said the purpose of the psych panel was to provide an evaluation of certain offenders, mainly sex offenders, certifying they were not a threat to society as a condition for consideration for parole. Elaborate evaluations were done with respect to the individual and the report was passed on to the Parole Board. He said until a Nevada Supreme Court case called Stockmeier, most people in the criminal justice system viewed the psych panel as a recommending group of psychologists who formulated a psych evaluation. He said in Stockmeier, the Court evaluated the content of the legislation or statute that created the psych panel and concluded it was subject to the Open Meeting Law. The problem was, the psych panel was an inappropriate place for the Open Meeting Law. It was an evaluation by three psychologists about the person's certification or non-certification for suitability for consideration for parole. He said the Parole Board was the area where the discussion and deliberation of the individual needed to occur. The psych panel evaluations contained many of pieces of sensitive information. He said it may be a good opportunity for the Commission to address the Stockmeier case. Justice Hardesty said it was a clean up operation. He

added the Legislature created certain exemptions to the Open Meeting Law governing the Parole Board.

Ms. Cortez Masto asked, for purposes of procedure with respect to when the psych panel meets, who usually attended. She asked if there was a lot of participation by the public, or victims' families, or the district attorney.

Ms. Bisbee said the psych panel became a public meeting so anyone could walk through the door. The sole purpose of the psych panel was to determine if the person was a high risk to reoffend sexually and made the recommendation or finding to the Parole Board. She said it seemed a very odd situation to be subject to the Open Meeting Law. Currently victims, family supporters, people pro and con could attend the hearing. It was not an appropriate fit for an open meeting requirement.

Mr. Gammick requested if the Open Meeting Law was not applied to this function, a provision be made that the appropriate prosecuting agency be notified of the hearing so they had the opportunity to give input to the group. He said occasionally there were situations were the added additional input changed the outcome of the recommendation.

Chair Horne asked Mr. Gammick if he was referring to input on the psych panel evaluation or input to the Parole Board.

Mr. Gammick said they had worked with the psych evaluation panel on prior occasions. He did not want the panel meeting without the district attorney knowing about the meeting. He said they did not give input on every case that went to the prison.

Chair Horne said during the legislative hearings on this subject, additional testimony was needed on how it worked with the District Attorneys Association. He said he had the impression the psych evaluation was clinical in nature to make an assessment of an inmate. He said input by the District Attorneys Association to the clinical process seemed suspect to him.

Mr. Siegel said he was advised the ACLU had a very strong interest in privacy matters concerning the psych panel evaluation. The ACLU supported removing the psych panel evaluation from the Open Meeting Law. He was concerned by Mr. Gammick's suggestion that the district attorney's office be involved in the psych panel evaluation. The evaluation should be clinical or open to all sides to put their professional judgment into the evaluation. He

said the ACLU saw this as an area that should be exempted from the Open Meeting Law.

Ms. Bisbee said they notified everyone about the parole hearings and that was an appropriate time for the district attorneys to add their additional comments. She said they were notified of the agenda each and every month.

Mr. Gammick said he appreciated that, but his concern was that the district attorney was not left out of the equation. He said psych evaluations had been changed due to information from the district attorney. And they would continue to participate in the parole hearings.

Chair Horne asked for further questions.

Mr. Carpenter said subsection 2 of Tab E, Exhibit D, it allowed the Parole Board to request a psych panel on any sex offender if the information would assist the Board in determining whether parole should be granted. He asked if that meant the Parole Board had predetermined the inmate would be paroled. He said he did not understand the way that section was written.

Ms. Bisbee said inmates automatically considered under the psych panel did not include all sex offenders. She said that could become very cumbersome for the psych panel if everything was included under the statute. She said the statute had additional sex offenders under it that were not mandatorily required to undergo a psych panel evaluation. She said it would allow the Board to request a professional opinion as to whether they were a high risk to reoffend sexually. The Parole Board was currently being audited. The auditor made a comment asking why the Board was requesting the changes to the psych panel requirement. She said the changes included the Stockmeier Supreme Court decision. She said it was important to make it absolutely clear who received the evaluation. The Parole Board wanted the option of being able to request the evaluation.

Mr. Siegel wanted to make a motion to accept the suggestion from Justice Hardesty.

> MR. SIEGEL MOVED THE COMMISSION ACCEPT THE PROPOSAL FROM JUSTICE HARDESTY CONCERNING THE OPEN MEETING LAW.

Mr. Carpenter said when subsection 2 was drafted, it should read that parole should be granted or denied. The information could be used to grant or deny parole.

Mr. Siegel said he could incorporate the suggestion in the motion that the Parole Board would have the continued discretion on these actions.

Chair Horne said Mr. Siegel had withdrawn his previous motion and issued a new motion to incorporate Mr. Carpenter's suggestion.

> MR. SIEGEL MOVED TO ACCEPT THE PROPOSAL FROM JUSTICE HARDESTY CONCERNING THE PSYCH PANEL AND THE OPEN MEETING LAW AND CONTINUING TO HAVE THE SAME DISCRETION OF THE PAROLE BOARD IN SUBSECTION 2 AS PER MR. CARPENTER'S RECOMMENDATIONS.
>
> MR. CARPENTER SECONDED THE MOTION.

Chair Horne asked if there was further discussion.

Ms. Bisbee said she understood and the suggestion changed the sentence to read: "assist the Board in determining whether parole should be granted or denied." She needed a clarification on the motion as to whether it included adding some language that gave the Parole Board a part of the adopting regulation. She said under section 4, there should be language added concerning the Parole Board as a part of the regulation adoption.

Chair Horne said he was not comfortable with that issue at this time. He suggested further discussion.

> THE MOTION CARRIED.

* * * * *

Chair Horne said he would find a sponsor for the recommendation and have a BDR issued. He opened the discussion on Recommendation No. 6, aggregation of minimum prison sentences.

Mr. Anthony said Recommendation No. 6 was brought forward by Commissioner Bisbee. It proposed a BDR to authorize the aggregation of minimum prison sentences. He said a memo submitted by Ms. Bisbee was behind Tab F, Exhibit D. The memo outlined some of the additional issues concerning aggregating minimum sentences. He said there was also an outline of potential cost savings to the State if aggregated sentences were enacted.

Ms. Bisbee said the memo discussed cost analysis and what it cost when paroles were denied on consecutive sentences. She said by aggregating sentences, and if they only paroled 10 percent at the first hearing after they completed all the minimums, the cost savings was $900,000. She said 1,200 inmates were serving a parole denial to consecutive sentences. She said 817 of those inmates had determinate sentences, and 354 had life sentences. Some inmates were serving longer terms than those who had more serious crimes. She said if all the sentences were aggregated, the inmates knew they had a particular period of time before they were ever eligible for parole. Ms. Bisbee reviewed the costs in the memo. Ms. Bisbee said the marginal actual physical cost for an inmate was about $2,400 year and it included their medical costs, their food and clothing. Those serving determinate sentences had cost the State $4.6 million. The marginal cost of denial for life sentences was approximately $5 million. She said aggregated sentences did not mean people automatically got parole. There were people who were never paroled.

Ms. Bisbee was advocating aggregating sentences for several reasons. One of the reasons was fiscal. She said there was a definite cost savings to the State. Another reason was the cost of staff would be reduced. She said there was opposition to aggregating sentences from some of the prosecutors. Victims know how many years an inmate will serve at the minimum before consideration for parole. She said it was difficult to understand the concept of consecutive sentences with the first parole hearing being held in approximately 4 to 5 years. She said there was not an automatic parole. One of the huge confusions for the process was A.B. 510 and its application to minimum sentences. She recommended the Advisory Commission do a flat minimum reduction.

Chair Horne said one of the concerns with the proposed changes to A.B. 510 and the credits received would be a significant policy change. Secondly, he said if there were three consecutive sentences of 5 years to 10 years with a total of 15 years to 30 years, the person would not come before the Board

before 15 years. He asked what happened if they were denied parole, but they had expired the first sentence and the other two sentences remained. He asked what type of "dump" they would receive, or when would they next appear for a parole hearing.

Ms. Bisbee said it could be from 1 year to 3 years before their next hearing.

Chair Horne said in three years the second sentence was also expired. He asked if there was a difference in the final time when they were down to one sentence when paroled. He asked if there was a difference in that time, or if those sentences would be hanging over a person's head if they were paroled and violated their parole.

Ms. Bisbee said: "... But, it would be you hadn't expired. Let's say it was a traditional and you've been granted on the first sentence, you've been granted on the second and you are now being heard for the third. In the meantime, the first sentence is expired. There is still some time on the second sentence, if you are paroled out on the third and violated, you actually have two cases that you are serving parole."

Chair Horne said: "... If you're paroled on the first one, has it expired because that time has stopped ticking? Say you come up on that 5 to 10, and you are paroled on that first one, you still have a remaining time on that 5 to 10, so you can violate on that first one."

Ms. Bisbee asked if he meant under aggregating.

Chair Horne replied he meant under the traditional method.

Ms. Bisbee said "...Only if you still have time running on it. With consecutives run like that, your 5 to 10 probably isn't a really good example to use. You've got to remember you are still getting the 5 to 10 off the back. It probably would be easier..."

Chair Horne said "...Even after you're paroled, you're paroled on that 5 to 10, you start your next sentence. Let's say you're paroled at 5 years on that 5 to 10 so you have 5 remaining years on that first consecutive sentence. That remaining 5 years, is it still running?"

Ms. Bisbee responded: "...It still runs. So if you come to that next sentence, it very probably has expired."

Mr. Helling said the sentence calculations were estimated at $300,000. He said it was actually lower than that. The vendor had given them the entire sentencing package to manage themselves. He did not know if it was possible to program. He said the vendor estimated $100,000 to implement the plan. A.B. 510 created problems and this proposal would also create some problems. He said if it was passed there would be a delay in implementation of the program.

Ms. Bisbee said there had to be a period of time, up to a year, for the NDOC to implement the plan. She said their sentence structure changes had to be made with notice. The original suggestion said it was imperative the NDOC had sufficient time.

Senator Parks asked Ms. Bisbee what they may have learned from A.B. 474, which dealt with aggregate sentences.

Ms. Bisbee said the bill had not caused a problem for anyone because it was a life sentence to life sentence and did not affect a huge group of inmates. The majority of inmates eligible to opt into the program had done so. She said it was a small group of people and it would be years before it affected those with new life-to-life sentences.

Mr. Gammick said the purpose was to get prisoners out of prison earlier and put them on parole. He asked what impact it was going to have on the Department of Parole and Probation.

Mr. Woods said his department was seeing the people one way or another. The biggest concern was the "bubble." He said the Legislature funded his department, they were case-driven through forecasting and currently the numbers were stable. He said if it jumped by an extra three or four hundred people in a short period of time, they would not be staffed for that increase in people.

Ms. Bisbee said it would not cause a bubble. She said the inmates would be released as they always had been. It would not cause a big group coming out at the same time. The issue they had to deal with was aggregated sentences, as there was a longer parole period. She said they would have people on parole for three or four years.

Mr. Woods said they understood that concept but, if it was retroactive, they might all be eligible for parole at the same time.

Ms. Farley referred to page 3 of Exhibit D under Tab F. She asked if the numbers were correct when referring to a 48-month maximum sentence and only serving 9.6 months of that sentence.

Ms. Bisbee said when you apply category C, D, and E felons to A.B. 510 credits, they were eligible for parole in 9.6 months.

Ms. Farley said if the sentence was aggregated, they would serve less time than that.

Ms. Bisbee said the NDOC could never handle all the different things if the credits from A.B. 510 were applied to the minimum of each of the categories. She suggested the minimum sentence be reduced by 20 percent of the maximum. She said that changed the minimum sentence to not less than six months to not more than 20 percent of the maximum sentence.

Ms. Farley asked Ms. Bisbee if she proposed eliminating the allowance of credit earnings.

Ms. Bisbee said they would eliminate the way A.B. 510 was applied to minimum sentences. She said the examples showed A.B. 510 applied to the length of sentences as the maximum.

Mr. Gammick referred to people who had multiple sentences because they committed multiple crimes. He said the proposed purpose was to reduce the amount of time spent in prison. He asked what the cost would be to the public when the people were released.

Chair Horne said it was not reducing the time they were in prison.

Mr. Gammick asked how the money was saved if the inmate was still in prison.

Justice Hardesty said people did not have to keep appearing before the Board and victims did not have to appear for cases that rolled to the next sentence. He said testimony the Commission received from victims expressed concern about appearing before the Board many times. The cost savings was to aggregate the bottom and the top. He said from a public safety standpoint, it increased the amount of time for supervision. He said A.B. 510 already existed and did not advance their departure from prison.

Ms. Bisbee said money was saved when multiple sentences were not denied every two or three years. The inmate did all the minimums before they were considered for the street. She said after 12 years an inmate may have made changes that made them appropriate for parole. They were not advocating that people not serve the time the court sentenced them to serve.

Mr. Siegel said he understood they were trying to save money through the parole process. He was concerned about the substantially longer parole period for the inmates. He said many of them would come back to prison with revocations. He asked if they looked at the net cost of savings in the parole process versus the cost of recidivism if the parole time was doubled.

Ms. Bisbee said the longer someone was out, the better chance they had of being successful. She said they tended to get in trouble in the first six-month period of parole. The Board worked closely with the Division of Parole and Probation addressing technical violations and finding alternatives rather than bringing them back for incarceration. She said they had a very low recidivism rate and a very successful rate of parole.

Mr. Siegel said he wanted assurance that something positive was happening with how the State dealt with parole revocation.

Ms. Bisbee said they were actively dealing with that question now, even with the shorter parole periods. The Division of Parole and Probation was implementing various changes in July.

Mr. Siegel said they had, without further legislation, flexibility to implement changes now.

Ms. Farley said she could understand implementing the proposed changes with nonviolent C, D, and E categories, but not with the category A and B felons.

Ms. Bisbee said they were already aggregating the category A life-to-life. She said anybody in category A who was not life-to-life would be removed and Dr. Austin said 60 percent of the inmates were category B. She was interested in proactive or positive parole experiences that were logical changes.

Ms. Farley asked if there was a way to explain the policy to the victims.

Ms. Bisbee said it was easier to explain to the victim. She said the explanation was that before the inmate was eligible for any parole, he had to serve the minimum of all of his consecutive sentences before the Parole Board decided to keep him in prison or grant parole.

Chair Horne said if the Commission made a recommendation, Ms. Bisbee would be required to testify to the Legislature.

Judge Herndon asked Ms. Bisbee if the discussion included the Advisory Commission considering a limit on aggregated minimum and maximum sentences. He said it would change what judges did in their sentencing. For example, if a judge decided on a sentence of five consecutive sentences of 5 years to 20 years, it was essentially a 25 to 100 year sentence. He said her proposal would automatically reduce the sentence to 20 years to 60 years and he could not accept that part of her proposal.

Ms. Bisbee said it was part of the proposal, for the reason that it addressed how some sentences became life sentences that were not life sentences. She said because of consecutive sentence structures, some inmates essentially were required to do a life sentence. She said it became a life sentence due to the multiple crimes committed. The cap on a maximum sentence was to prevent a person who was not sentenced to life to doing more time than somebody who was sentenced to life. She said someone could be punished more than in a murder case in terms of their eligibility for parole.

Judge Herndon appreciated the rationale, but said there was a great difference between aggregating sentences for timekeeping purposes in the prison and something that would wholly change the discretion of the district court judge's sentence. He said he based his sentences on what was appropriate for the crimes and he did not agree with a reduction in the sentences he created by the Parole Board.

Chair Horne said he would accept a motion on the proposal.

> MR. KOHN MOVED TO ADOPT RECOMMENDATION NO. 6, TO DRAFT LEGISLATION TO AUTHORIZE THE AGGREGATION OF MINIMUM PRISON SENTENCES.
>
> MR. SIEGEL SECONDED THE MOTION.

Mr. Siegel said the State was facing a $3 billion deficit in the next fiscal period. There was an indisputable savings to the Parole Board process.

Chair Horne called for the vote. He said there were five votes in favor.

THE MOTION FAILED.

* * * * *

Mr. Siegel asked if the Chair would entertain a motion with the elimination of the reference to reduction in total years and the life term elements.

Mr. Horne asked if he meant to move forward with the recommendation with the exception of the cap on the minimum and maximum sentences.

MR. SIEGEL MOVED TO ACCEPT RECOMMENDATION NO. 6 WITH THE REMOVAL OF THE CAP ON THE MINIMUM AND MAXIMUM SENTENCES.

SENATOR PARKS SECONDED THE MOTION.

Chair Horne asked if there was discussion on the proposed motion.

Mr. Woods said on the previous motion, they had not had an opportunity to look at the cost savings. He said the inmates being released may require supervision at an ISU level, which was a 30 to 1 ratio of officer to offender versus a 70 to 1 ratio. He said he cannot discuss the fiscal impact until they saw actual projected numbers.

Mr. Horne said if the motion went forward, Parole and Probation could bring forth their fiscal proposal during the next legislative session. They could inform the Legislature of the cost of supervising that level of parolee.

Mr. Woods said they would work with the prison system to identify the type of offenders being released and determine if they were at the ISU level.

Mr. Helling said Director Skolnik tended to support the concept; however, he had no plans to go to the Interim Finance Committee for additional funding for this purpose. He said the NDOC would not request supplemental funding at this time.

Mr. Kohn asked Mr. Woods if there was any question about someone in supervision being more expensive than if they were prison. He asked what the best way to use the tax dollars was.

Mr. Woods said it was cheaper to supervise them on the street than it was inside prison.

Mr. Kohn said he understood there would be a cost to Mr. Woods' agency and somehow the funding had to be rectified. The Commission needed to decide the best way to spend the few tax dollars they had for the next biennium.

Chair Horne said to keep in mind that it may not be a zero-sum situation. The money saved by the Parole Board did not necessarily mean the saved money would be sufficient to cover the costs for the increased case loads for Parole and Probation. He said the discussion should be held during the Session.

Ms. Bisbee clarified the large cost savings was to the Department of Corrections, not the Parole Board. The minimal savings of $900,000 was to the NDOC if they granted 10 percent at their initial hearing.

Chair Horne said there was a new motion open for the vote.

THE MOTION PASSED.

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Chair Horne said he would find a sponsor for Recommendation No. 6. He said Attorney General Cortez-Masto asked him to hold Recommendation No. 7 until the next hearing as the language was still incomplete. He said she also asked him to hold Recommendation No. 2 if she was not in the Commission meeting. Chair Horne opened discussion on Recommendation No. 8.

Mr. Anthony said Recommendation No. 8 was suggested by Commissioners Parks and Hardesty. He said it asked for a BDR to amend NRS 180.010 to move the office of the State Public Defender. The office was currently housed within the Department of Health and Human Services. The recommendation was to have the State Public Defender office report directly to the Office of the Governor.

Chair Horne said the recommendation was to take the State Public Defender's office and put it under the Executive Branch.

Justice Hardesty said the State Public Defender's office reported to Health and Human Services. He said there were inherent conflicts with having the office located in the Health and Human Services department.

Mr. Siegel said he was in favor of moving the State Public Defender's office. He asked if a state-wide indigent defense commission was planned and whether the indigent defense commission could be added to the recommendation in the BDR.

Justice Hardesty said he preferred not to combine the two issues. He preferred the indigent defense commission be advanced on its own merits.

Mr. Siegel supported the recommendation and hoped for further discussion and support for the indigent defense issue.

Chair Horne asked for a motion on Recommendation No. 8.

MR. KOHN MOVED TO ACCEPT RECOMMENDATION NO. 8.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION PASSED.

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Chair Horne opened discussion on Recommendation No. 9.

Mr. Anthony said Recommendation No. 9 was from Tonya Brown and it proposed drafting legislation establishing an oversight committee for the Department of Corrections. He said Tab I, Exhibit D, was a copy of NRS 176.0125. Subsection 4 of the statute stated this committee was charged with evaluating whether or not such an advisory or oversight committee should be in place. He said the recommendation was to draft a bill to legislate such a committee in statute.

Justice Hardesty recused himself from the discussion and vote on this subject. The issue implicated another issue involving the State Prison Board and the issue could become a subject of litigation.

Mr. Helling said his Department opposed this recommendation. The Nevada Constitution established the Board of Prison Commissioners to do the oversight of the NDOC and that was sufficient oversight in their opinion.

Mr. Siegel said he was asked to say yes or no to the question. The Board of Prison Commissioners had a wide array of functions relative to the discussion. He said the Commission also had a wide array of functions that related to the recommendation. The present Governor appointed a third crime commission that had relevancy to the recommendation.

MR. SIEGEL MOVED TO CONSIDER RECOMMENDATION NO. 9.

SENATOR PARKS SECONDED THE MOTION.

THE MOTION FAILED.

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Chair Horne opened discussion on Recommendation No. 10.

Mr. Anthony said Recommendation No. 10 would draft legislation to amend NRS 217.260 to provide that any money remaining in the Fund for the Compensation of Victims of Crime remain in the Fund and not revert to the State General Fund. The recommendation was from Justice Hardesty. Mr. Anthony referred to Tab J of Exhibit D, and said the bill was a recommendation brought forward from last session under Assembly Bill No. 114. The Recommendation was to redraft Section 2 of A.B. 114 to ensure any money remaining in the Fund was not reverted to the State General Fund.

Chair Horne asked for discussion. He said he would entertain a motion.

JUSTICE HARDESTY MOVED TO ACCEPT RECOMMENDATION NO. 10.

MS. FARLEY SECONDED THE MOTION.

Justice Hardesty said if the bill had been in place last session, the Victims of Crime Fund would have had an additional $400,000 to $423,000 in each of the two fiscal years to apply to victims of crime claims.

THE MOTION PASSED.

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Chair Horne opened discussion on Recommendation No. 11.

Mr. Anthony said Recommendation No. 11 was brought forward by Commissioner Farley. The recommendation was to draft legislation to amend the *Nevada Revised Statutes* to prohibit anyone under the age of 21 years from working in a licensed brothel. The current NRS does not set an age limit in statute, rather it was a county-by-county option to set the age. He said at least two counties set the age limit at 21 years of age. Tab K in Exhibit D was information staff had received after the hearing. He said it was testimony submitted by UNLV professors opposing the legislation.

Ms. Farley said the Commission was addressed by the group called A Scarlet Covering who discussed the number of teenagers who went into prostitution. She said it was a lifestyle choice, not a job. Anyone at the age of 18 should not be doing this in a brothel. She said the child's brain was still developing and they were not old enough to decide to become prostitutes.

Mr. Kohn said he agreed with everything Ms. Farley said. However, his concern with the legislation was it might force a 19-year-old to come to Clark County or Washoe County and act in an illegal manner when the activity was not going to stop.

Mr. Horne said his inclination was to ask if it was better for the women in a brothel rather than on the streets. He said brothels were protective of their licenses and tended to police themselves in regards to illegal activities on their property.

Mr. Carpenter said counties can regulate the age and the statute did not need revision.

MR CARPENTER MOVED TO TAKE NO ACTION ON RECOMMENDATION NO. 11.

MR. SIEGEL SECONDED THE MOTION.

Chair Horne asked if there was further discussion on the recommendation.

Ms. Farley said she was not trying to dispose of the brothels. She said it was part of Nevada. A brothel was an inviting place for a young girl and the streets did not offer the same things as the brothels.

Mr. Siegel said there was testimony at the last meeting that the age difference between 17 years 11 months and 18 years of age was nominal. He said there was an enormous trend to extend both privileges and rights to people between the ages of 18 and 21. He said there were few legal acts that raised the age for employment and voting. The leading experts in the State did not support raising the age.

Mr. Kohn said he had clients involved in prostitution who were women that had been molested or raped as children. He said his concern was people on the street, dealing with a pimp, who were subjected to even more victimization or brutalization. The brothels seemed to provide a certain amount of protection for the women.

Ms. Farley said she had a teenage girl who knew what the streets were like and what it was like in the brothel. She said it was safer than the streets.

Chair Horne asked for a vote on the motion to take no action.

THE MOTION CARRIED.

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Chair Horne opened discussion on Recommendation No. 12.

Mr. Anthony said Recommendation No. 12 was proposed by Mr. Siegel for the Religious Alliance of Nevada. The recommendation was to draft legislation to waive certain fees for the issuance of copies of birth certificates, drivers' licenses and ID cards to persons recently released from prison. Tab L, Exhibit D, had a copy of Assembly Bill 252 from last session. He said the recommendation was to redraft A.B. 252 from the 2009 session.

MR. SIEGEL MOVED TO ACCEPT RECOMMENDATION NO. 12 FOR LEGISLATION.

JUSTICE HARDESTY SECONDED THE MOTION.

Mr. Siegel said it was terrible to send indigent people out of prison with almost no money and no identification. He said the bill did fail in 2009, but they would attempt to achieve a better approach to the fiscal problem. He said it was the right thing to do.

THE MOTION CARRIED.

* * * * *

Chair Horne said the next recommendation for discussion was Recommendation No. 13.

Mr. Anthony said Recommendation No. 13 was proposed by Mr. Siegel. The recommendation would draft legislation to revise the laws governing compassionate release for seriously ill offenders. Tab M, Exhibit D, was a State of Washington House bill recently passed relating to compassionate release. He said Nevada's statute NRS 209.3925 concerning compassionate release was also included. Nevada had a compassionate release statute, but this recommendation amended the statute and granted compassionate release when it resulted in cost savings to the State. He said the current compassionate release statute was at the discretion of the Director of the NDOC.

Chair Horne asked if the fiscal impact on the State was just another criterion to consider.

Mr. Siegel said it was an enabling criterion and would be part of the justification the Director of the NDOC would use. He said there was testimony that compassionate releases were seldom done in Nevada. He said there was testimony from Director Skolnik that a 93-year-old inmate was denied compassionate release. He said it was part of a study by Dr. Austin involving 18 various states. People who were incapacitated were costly. He quoted statistics from California where inmates cost the state more than $200,000 a year in medical costs. There was testimony that Medicare and Medicaid was not available to people in the prison system. He said the evidence suggested to him that millions of dollars could be saved with a more proactive policy in the area of compassionate release. It rejected the idea of allowing people who were deemed violent or dangerous as sexual offenders from consideration of release. The recommendation should be put before the Legislature in a year of fiscal crisis.

Chair Horne said he was unclear on how the current statute did not work to provide compassionate releases.

Mr. Helling said the Nevada statute said, "...to serve a term of residential confinement." He said that brought in NRS 209.481, which limited who could go out to a residential confinement. No sex offender was eligible for compassionate release. The person Mr. Siegel mentioned was a sex offender and was not eligible for residential confinement. The other issue with residential confinement was many families were unable to provide the medical care needed to manage the patient's illness. He said it was difficult to release an inmate when the family was unable to care for them.

Mr. Siegel said he knew what was involved in the critical care of seriously ill people. He was primarily interested in moving certain people into nursing homes under the Medicaid program. He said it was more possible now due to the new health care act. The Washington statute pointed to that kind of action. The current statute did not have the effect of moving people out of the prison system with serious nursing needs.

Mr. Gammick said he did not see anything in the Washington bill that evaluated the risk of the person to the community or who performed the evaluation of the person. He said he did not see a clear reference as to who made the medical determination that the person was seriously ill.

Mr. Siegel said the Director of the NDOC made the decision that the offender was physically incapacitated. The Director also received recommendations from the medical staff to help him make the judgment on the medical side. He agreed there was a public safety side to the issue, and it was already operating in Nevada and will continue to do so. He said they were alerting the Legislature to the health-related element.

Mr. Gammick asked if Mr. Siegel was trying to amend NRS 209.3925 and the State of Washington offered guidance in that respect. Mr. Gammick said the NRS specifically required two physicians licensed pursuant to the Chapter that were not employed by the Department.

Mr. Siegel replied that he was correct. He said Washington enacted a well-considered and constrained bill.

Mr. Anthony pointed out one other difference between the Washington law and the current Nevada statute. He said under Washington law, the offender

was released under electronic surveillance and the current Nevada law released the offender into residential confinement.

Mr. Kohn was concerned that the statute in Nevada required that the offender had to be released to a facility. There was a real limit to the safety net in Nevada, and he did not want people released just to a monitor. He said an institution needed to receive the offender.

Chair Horne said he did not know if it was going to be a cost savings to the State or whether it should come into the evaluation of releasing someone with a grave illness under compassionate release. He said he would consider a motion.

Mr. Gammick suggested a motion that recommended looking at NRS 209.3925 to modify some of the terms in the statute. He recommended looking at the Washington bill for guidance.

Chair Horne suggested Recommendation No. 13 be sent back to have the language modified. He said the Commission could review the bill at the next meeting. Chair Horne opened discussion on Recommendation No. 14.

Mr. Anthony said Recommendation No. 14 drafted legislation to adjust the threshold amount for property offenses to current amounts using the Consumer Price Index. Tab N in Exhibit D was the current theft and larceny statutes. Nevada laws defined a petit larceny as stealing anything with a value of less than $250 and a grand larceny as anything over that amount. He said the threshold for petit larceny was last revised in 1989. Grand larceny was broken into a category C or B felony at the $2,500 level. He said using those figures, the recommendation would amend the current statutes to change the $250 amount to $439.53 and the 2010 value for the $2,500 larceny was $3,395.78.

Justice Hardesty asked if there was discussion on the recommendation.

Mr. Siegel said this recommendation was part of an 18-state review. The recommendation was to maintain the dollar levels of property crime at the effective level at which they were originally enacted. He said people were not paid in 1989 or 1995 dollar amounts, and the change was recommended by the Sentencing Project. He did recommend rounding the numbers of the amounts.

Mr. Carpenter requested the Retail Association give the Commission their thoughts on changing the dollar amounts for the crime of larceny. He said merchants took a large loss every year from theft.

Chair Horne said he had conversations with Lea Tauchen with the Retail Association of Nevada. She went to the Retail Association, and he understood she received an approval from them. Chair Horne said if the Commission wanted to wait for testimony from her, that was also acceptable.

> MR. SIEGEL MOVED TO ACCEPT RECOMMENDATION NO. 14 USING THE ROUNDED-OFF AMOUNTS FOR PETIT LARCENY AND FOR GRAND LARCENY.
>
> MS. BISBEE SECONDED THE MOTION.
>
> THE MOTION CARRIED.

* * * * *

Chair Horne said Recommendation No. 15 was withdrawn. Recommendation No. 16 was discussed earlier concerning the conference call with Pew Research. He opened discussion on Recommendation No. 17.

Mr. Anthony said Recommendation No. 17 was brought forward by Commissioner Siegel. The recommendation was to include a statement in the final report encouraging the State of Nevada to fully fund all indigent defenses. He said the recommendation was included in A.B. 45 as it was introduced in the 2009 Session. He said the bill was attached at Tab O in Exhibit D. Mr. Anthony said there was a lot of committee discussion concerning the costs and fiscal impact to the State. There was testimony estimating the cost at approximately $62 million a year for the State to assume all indigent defense. He said Recommendation No. 17 was to include a statement of support and not actually draft legislation.

Chair Horne said there would be no recommendation for a bill.

Mr. Siegel said the term of A.B. 45 was to fully fund such services. He preferred the language include a statement to meet the federal and State constitutional obligations to fund such services. The Nevada Supreme Court had spoken to that responsibility. He said it was a profound necessity.

Mr. Gammick supported a statement in support of the constitutional requirements. He said if the Commission was considering a support statement for ADKT 411, he did not support it. There were rulings in the United States Supreme Court and the Nevada Supreme Court that did not make mandatory requirements of all indigent defense.

Mr. Horne said Mr. Gammick's statement was for the full funding of the indigent defense costs.

Mr. Siegel said he and Mr. Gammick were agreeing and were emphasizing the federal constitutional obligations that exist for public defense. He said a letter of support was acceptable and a positive thing to do.

Chair Horne said he would take a vote on the recommendation for a statement of support for the funding of indigent defense costs by the State.

The Commission voted unanimously to support the statement.

Chair Horne said the work session was concluded. He said some recommendations would be coming back at the next hearing.

Justice Hardesty said there was another piece of Recommendation No. 16 which included a recognition of the need to continue to investigate and study the Nevada criminal justice system. He wanted that statement approved in the final report.

Chair Horne said the discussion could be held at the next meeting. He said public comment was the next item on the Agenda.

Tonja Brown said she was at the meeting in support of Nolan's Law. She asked the Commission to recommend it to the 2011 Legislature. She said she had received a letter from Gerry Spence, an attorney. She read Mr. Spence's letter to the group, Exhibit E. She read another letter from Robert R. Hager in support of Nolan's Law. She also provided other documents for the Commission in Exhibit E. She said by passing Nolan's Law, the rights of all defendants were preserved and it would save the State money. She also asked for support of the oversight committee.

Steve Hines said he was an ex-inmate from the NDOC. He said he had to appear before the psych panel. Currently there was no written evaluation done by the panel. He said it was a detriment to the Parole Board and to the

inmate. There were errors on the paperwork the panel received, and there was no way to appeal the decision. He said the evaluation needed to be put in writing.

Chair Horne asked if there were further questions. As there was no further business, he adjourned the meeting at 2:20 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: June 23, 2010 Time of Meeting: 9:40 a.m.**

| | Exhibit | Witness/Agency | Description |
|---|---|---|---|
| | A | Agenda | |
| | B | Attendance Roster | |
| | C | Rex Reed | NDOC Sentence Credits |
| | D | Nicolas Anthony | Work Session Documents |
| | E | Tonya Brown | Nolan's Law |
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