

**MINUTES OF THE
JOINT MEETING OF THE ASSEMBLY COMMITTEE ON
CORRECTIONS, PAROLE, AND PROBATION
AND THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Fifth Session
February 12, 2009**

The Joint Assembly Committee on Corrections, Parole, and Probation and the Senate Committee on Judiciary was called to order by Chairman William C. Horne at 8:09 a.m., on Thursday, February 12, 2009, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4412 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/75th2009/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

ASSEMBLY COMMITTEE MEMBERS PRESENT:

Assemblyman William C. Horne, Chairman
Assemblyman Tick Segerblom, Vice Chair
Assemblyman Bernie Anderson
Assemblyman John C. Carpenter
Assemblyman Ty Cobb
Assemblywoman Marilyn Dondero Loop
Assemblyman Don Gustavson
Assemblyman John Hambrick
Assemblyman Ruben J. Kihuen
Assemblyman Mark A. Manendo
Assemblyman Richard McArthur
Assemblyman Harry Mortenson
Assemblyman James Ohrenschall
Assemblywoman Bonnie Parnell

SENATE COMMITTEE MEMBERS PRESENT:

Senator Terry Care, Chair
Senator Valerie Wiener, Vice Chair
Senator David R. Parks
Senator Allison Copening
Senator Mike McGinness
Senator Maurice E. Washington

COMMITTEE MEMBERS ABSENT:

Senator Mark E. Amodei

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Linda Eissmann, Senate Committee Policy Analyst
Nicolas C. Anthony, Committee Counsel
Bradley W. Wilkinson, Senate Committee Counsel
Katherine Malzahn-Bass, Committee Manager
Sean McDonald, Committee Secretary
Kathleen Swain, Senate Committee Secretary
Nichole Bailey, Committee Assistant

OTHERS PRESENT:

The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court; Chair, Advisory Commission on the Administration of Justice
Dr. James Austin, The JFA Institute, Washington, DC
The Honorable Douglas W. Herndon, Judge, Eighth Judicial District Court, Clark County; Member, Advisory Commission on the Administration of Justice
Catherine Cortez Masto, Attorney General
Tonja Brown, Advocate for the Innocent, Carson City, Nevada
Donald Hinton, Director, Spartacus Project of Nevada, Las Vegas, Nevada
Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada

Chairman Horne:

[Roll taken.] This is the Joint Meeting of the Assembly Committee on Corrections, Parole, and Probation and the Senate Committee on Judiciary. Today, we will have a presentation, "Report of the Advisory Commission on the

Administration of Justice," from the Honorable James Hardesty, Chief Justice, Nevada Supreme Court; and Chair of the Commission. We also have Dr. Austin on the telephone.

[Remarks on protocol on testifying before the Committee.]

**The Honorable James W. Hardesty, Chief Justice, Nevada Supreme Court;
Chair, Advisory Commission on the Administration of Justice:**

It is a privilege to provide you with an overview of the actions, recommendations, and work of the Advisory Commission on the Administration of Justice. I trust all of you have received this booklet [printed copy of PowerPoint presentation ([Exhibit C](#))]. It is a slide presentation on the activities of the Commission. I would like to acknowledge two people who have been invaluable in preparing the presentation today: Ms. Risa Lang, of the Legal Division, and Angie Clark.

I will present the various aspects of the Commission's work. I have asked Dr. Austin, who is joining us on the phone from Mississippi, to weigh in on some of the slides and augment some of my comments. Dr. Austin and the Grant Sawyer Center for Justice Studies at the University of Nevada, Reno, have been very helpful to the Commission in doing a lot of groundwork that you are going to hear about in what has been developed.

I also want to acknowledge the Pew Institute. This state owes the Pew Institute a great deal of thanks. The Pew Institute contributed a lot of money to provide support for the detailed review that was done in support of the Commission's work. We are very fortunate to have received this financial support from the Pew Institute. They continue to maintain interest in what we are doing and to provide support to the Commission on further work that it would undertake.

To begin with the slides [slide 2], the Advisory Commission met in July 2007 as directed by Assembly Bill No. 508 of the 74th Session. I would like to acknowledge the various people who served on the Commission. They all worked very hard and contributed a great deal, but I think what is significant about the membership is the breadth of experience and background in the criminal justice system. Senator Mark Amodei was one of the Senate designees. Assemblyman John Carpenter, who attended every meeting, was one of the Assembly designees. Senator Steven Horsford was the other Senate designee. Assemblyman David Parks, who also attended every meeting, was an Assembly designee. The Attorney General of the State of Nevada also attended every meeting notwithstanding her very busy schedule. Bernie Curtis, who is

the current chief of the Division of Parole and Probation, was added to the Commission when John Gonska retired. Larry Digesti represented the State Bar of Nevada. Gayle Farley represented victims' rights. Raymond Flynn, Assistant Sheriff of the Las Vegas Metropolitan Police Department, was also a major contributor to the Commission.

The Honorable Douglas Herndon, Judge, Eighth Judicial District, is in Las Vegas and will be making some presentations to you about the subcommittee that studied mandatory drug trafficking issues. Phil Kohn is the Clark County Public Defender. Arthur Mallory, from Churchill County, was the representative of the Nevada District Attorneys Association. James Miller, Sheriff, Storey County, represented the Sheriffs' and Chiefs' Association. These three were wonderful contributors, as well: Dorla Salling, who was the chair, until her recent retirement, of the State Board of Parole Commissioners; Richard Siegel, president of the American Civil Liberties Union of Nevada; and Howard Skolnik, director of the Department of Corrections.

I ask you to note a very significant thing coming out of the recommendations of the Commission. Except for three votes, every recommendation that you will receive was the unanimous vote of the Commission. I am really proud of the fact that after all of the multiple testimony that the Commission heard, the evidence pointed toward a unanimous recommendation for your consideration and for the Legislature's consideration.

I would like to quickly give you an overview of activities. [Slide 3] The goal of the Commission, set up in A.B. No. 508, was to provide a comprehensive review of the entire criminal justice system and make recommendations for improvements where indicated. This system is so complex and so detailed, it would be impossible to complete that process in a year and a half, and it is the view of the Commission that the Commission should continue its work, even during the course of this legislative session and beyond.

This Commission was very active as a legislative commission. We held 17 meetings from July 2007 to December 2008. I received a lot of complaints from my commission members about the length of the meetings, but I think we got a lot done in meetings that took 8, 9, and sometimes 10 hours.

We created various subcommittees. A steering committee was created to provide a general direction and organization for topics. A subcommittee was established to study the effect of the 1995 "Truth in Sentencing" legislation, Senate Bill No. 416 of the 68th Session. A subcommittee was also created to study the effects of the criminal justice system on juvenile justice. We studied

the rights of victims and the source of funding for victims of crime. A study was done concerning the mandatory drug sentencing statutes and the substantial assistance statute. We have created a subcommittee to study data collection, which is a major issue impacting the Commission, and frankly, the Legislature's ability to make informed decisions on various issues. We created a subcommittee to examine alternatives to incarceration and intermediate sanctions; one to study the burglary statutes; and finally, one to study reentry issues. These subcommittees, some of which are actually in the early stages of their work, will probably generate additional recommendations to be considered in future legislatures.

On the next page [slide 4] is an overview of topics that the Commission considered. There were two I felt that had high priority. One dealt with inmate population: tracking it, determining the basis for it, and discussing the consideration and impact of Assembly Bill No. 510 of the 74th Session, which was the early release statute that was adopted in the 2007 Session of the Legislature, to address the critical prison overcrowding problem that we were confronted with at that time. The second area that I thought had high priority is a couple of bullet points down entitled, "Intensive Review of Sentencing Options and the Effect of Truth in Sentencing." Why was that a high priority? In 1995, when the Sentencing Commission was created, the Legislature had requested a study that would examine the effect of the 1995 "Truth in Sentencing" legislation, and would give the Legislature advice on how it was working and what consequences it was having. In the 12 years since that legislation had been adopted, no examination of the "Truth in Sentencing" statutes had ever taken place. So, that had a high priority for our Commission.

We also examined prison facilities. We even had one hearing—we did walk-throughs at High Desert State Prison and Southern Nevada Correctional Facility—at High Desert. We examined the budgets and some of the activities of the Department of Corrections, programs available for offenders, reentry programs, and the Parole Board and potential efficiencies for them. We looked at the Division of Parole and Probation, their workload, and activities that they undertake. We looked at the State Board of Pardons Commissioners and some potential efficiencies that could be created there. We looked at specific crimes in sentencing. We looked at sentencing issues, including sentencing patterns.

We also looked at the effectiveness—or ineffectiveness—of data collection and reports that can be generated from the data that exists in the criminal justice system. We did a thorough review of specialty courts, which was specifically requested in A.B. No. 508, and have a number of recommendations dealing with specialty courts. We identified a serious problem concerning the collection

of fees, fines, and restitution, and have recommendations on that subject. As I mentioned, we examined the juvenile justice system through a subcommittee. On that topic, we examined legislation and funding dealing with victims and programs for victims, and we are recommending preservation of biological evidence for your consideration, and we will talk about that, as well.

One of the interesting dynamics that came out of the Commission, particularly in the areas of juvenile justice and victims of crime, was that those two subcommittees have allowed, for the first time, interested parties throughout the state to come together and coalesce around issues of mutual concern. I think you will hear from the Attorney General and from Senator Horsford this morning, as part of their presentations to you, that groups who have not communicated in the past have now been brought together under a subcommittee and are having significant interchanges about how to improve their respective systems or relationships. This is also true with regard to prison reentry. You are going to hear groups that are concerned with that subject coalescing to develop some significant public-private partnerships that will allow us to deal with new reentry programs for inmates who are released from prison but have no safety net to acclimate to the community.

[Read from slide 5.]

[Slide 6] The first major area that should be examined, and was examined, is the Subcommittee to Consider Issues Related to a Study of "Truth in Sentencing," which was one of the primary issues that was sought in the 1995 legislation. I chaired the subcommittee. The Commission reached out to involve other people who had a lot to offer. This is an example. [Read from slide 6.]

Before I get into the "Truth in Sentencing," the one thing I hope the Legislature will do is have this Commission continue on its work into the future. I think it is a vital component of the review and ongoing examination of the criminal justice system, and quite frankly, there are a number of topics that the Commission wants to review but could not get to because of a lack of time.

I also want to mention, all of the minutes of the Commission are on the Legislature's website. Every exhibit that was presented to us is also on the website. A quick review of the various minutes will show that there were many witnesses who testified and offered public comment during the course of the Commission's work.

[Read from slide 7.] The Grant Sawyer Center for Justice Studies at the University of Nevada, Reno, was helpful. Dr. James Richardson and

Dr. Matt Leone were very helpful to the work of the Commission, as were professors from the University of Nevada, Las Vegas, whose assistance we appreciated very much. [Continued to read from slide 7.] Dr. Austin, since you are on the telephone, I am going to stop at this point and ask you if you would like to add any introductory remarks before we begin discussing the slides beginning with population trends.

Dr. James Austin, The JFA Institute, Washington, DC:

I think Justice Hardesty has made all of the points I would make, so I have no additional comments at this time.

James Hardesty:

This slide [slide 8] identifies population trends in Nevada. No doubt many of you are familiar with it, but I think it deserves a note because it is a major factor, in the Commission's view, in what has driven our prison population. [Read from slide 8.] Our state's population has had an enormous growth over this seven-year period.

[Slide 9] The state demographer's population projection is important because it gives us some predictors about our criminal justice system and about the potential impact to our prison system. Those projections would indicate a 3.1 percent rate of annual growth through 2018, although last year we slipped to sixth or eighth in population growth compared to other states. It is uncertain what will occur in 2009, but obviously that is impacted by the economy, and we would like to think it is short-lived and we will be back on track as a state attracting population growth. Significant in this area is the demographer's projection that persons aged 20 to 39 would have a population growth of 2.9 percent. Why is that important? That is the major group that contributes to the criminal justice system.

[Slide 10] This slide is very important and very telling about crime rates in Nevada. It is especially relevant when you talk about the impact of the "Truth in Sentencing" legislation. Crime rates had really escalated up to a pretty significant high in the early 1980s and declined since that point through 2007. This is pursuant to the Uniform Crime Reports, provided by the U.S. Department of Justice.

[Slide 11] On the next slide, crime rates in Nevada relating to violent crimes are shown. This is a very important piece of information for the Commission and for the Legislature. The crime rates had fluctuated, but in more recent years, the violent crime rates have begun to escalate. This is of concern because it contributes to the prison population in a significant way.

Assemblyman Anderson:

I think there was a group that reviewed or was supposed to review this after the passage in 1995, to see what the net effect of the "Truth in Sentencing" bill would be, and whether we have seen a spike in the prison population as a result of the "Truth in Sentencing" bill. That was one of the great fears that we had when we passed it, initially, that it would cause an acceleration of prison population. Either to Justice Hardesty or to Dr. Austin, did you see that to be part of your conclusions that you are going to reach here?

James Hardesty:

The short answer is, No. We will demonstrate that in just a moment.

James Austin:

If you look at Figure 2-2 [slide 10], which is the crime rate pattern from 1960 to 2007, that is pretty typical of what is happening in every state. The crime rates in the country peaked and then have gone down. The only exception is on Figure 2-3 [slide 11], on which Justice Hardesty referenced the violent crime rate. It has not had the downward trend that we have seen elsewhere. In fact, there has been an increase in the violent crime rate since about 2001-2002. This is unique not just to Nevada but to a handful of states. Most of the states have continued to have a downturn in the violent crime rate. One of Nevada's biggest problems is probably this violent crime rate. Nevada's property crime rate is pretty much typical of the country, but the violent crime rate is significantly higher than the rest of the country. That is largely in the area of assaults.

James Hardesty:

The violent crime rate issue is very important to understand—and I will have some slides that will talk about this—but before that issue I want to show you this next slide [slide 12]. This matrix is one that was developed for the Commission back in August 2007. The Commission tracked the various components of the criminal justice system that drive the prison, parole, and probation populations. If you are interested, and I recommend it to you, take a look at the monthly exhibits that show the progression of the prison population in this state since the summer of 2007. For those of you who were in the Legislature in 2007, you will recall that in the spring of 2007, we had seen an enormous escalation in the prison population—an alarming escalation, quite frankly—which drove a lot of the legislation that was considered to address that and to address early releases.

When the Commission began its work in 2007, the prison commitments had escalated well above 13,000. It raised some serious concern that we might see record numbers from that point forward; so, we wanted to track where these numbers were coming from. We began to track reported crime, arrests and bookings, court filings, and jail population. These boxes [referring to slide 12] reflect the status of things in December 2007. Those numbers were showing increases. The prison population is the general box. You can see how these various items contribute to the prison population, and to the probation population. There is a box here that reflects admissions for parole and revocation rates. Those also contribute to the prison population. The probation population also contributes to prison numbers through revocations.

This graph became important to the Commission to get a monthly tracking on how we are doing as a system. The criminal justice system is pretty interrelated, so you have to go clear back to reported crime as the source of what is coming through the criminal justice system: what arrests have been made from reported crime, what court filings have actually been made as a consequence of those arrests, what jail population exists, whether the population is increasing or decreasing, and then the dispositions from court filings as to how many people are going to prison and how many people are going to be placed on probation.

Fortunately for the State of Nevada, after we began tracking this, the prison population and all of these numbers began to decline. The fact is, in December, reported crime is now stable. Court filings are stable or have actually declined. In December 2008, you saw a drop in criminal court filings in Clark County for the first time in probably 10 or 15 years. Similarly, there was a drop in court filings in criminal cases in Washoe County. This has affected the prison population. I think this has given the state some breathing room to make some important decisions and given us an opportunity to deal with some subjects going forward. Currently, the prison population is about 12,700, a decline from the numbers in 2007.

Chairman Horne:

On slide 12, it says the backlog of people approved for parole is unknown?

James Hardesty:

That is correct.

Chairman Horne:

Why is that unknown? It seems like we would know who has been approved but is backlogged.

James Hardesty:

One of the problem areas that we have in tracking the criminal justice system is in data collection and in data tracking, and having the personnel to be able to do this. The underfunding and budget cuts that exist have restricted the ability of the three major groups—the Department of Corrections, the Division of Parole and Probation, and the Parole Board—to track various important numbers, such as this, in order for the Commission to make recommendations to you. It is a classic example. If you do not put an appropriate number of people in your information technology departments, if you do not have adequate resources to develop systems, or if you do not have proper statistical data on which you can rely, you cannot make good business decisions.

For the first six months of this Commission's activity, Mr. Chairman, I cannot tell you the frustration that the Commission had with the inability to get statistical data from the various departments. It was not because they were not willing, but the Department of Corrections' problem is classic. At the same time that the Commission is embarking on its work, the Department of Corrections undergoes a complete transition of its computer system. And for the first three months of fiscal year 2007, maybe even four months, their computer system had effectively crashed in the transition. There was no way for the Department of Corrections to be able to track meaningful data for us and to have information for us to be able to use as we progressed in our work.

And this is still a problem that needs to be addressed. It is not that they have not tried. They have people on their prison staff who have worked untold hours trying to get their computer system transitioned and trying to keep track of this data. But they have not had the staff needed to be able to produce the information that would enable us to answer some of these questions.

The first question that the Commission was interested in was how many people qualified under A.B. No. 510? How many of those people had their parole eligibilities accelerated? How many got early parole releases? How many came back? We did not have that data until about October or November of this past year. You would think, as a citizen or a member of the Legislature, these data should be readily available, but it is not. It requires a computer system that is tracking data and an adequate number of staff to provide the input so good management decisions can be made. I think that is one of the weaknesses that we have identified and one of the reasons we created a subcommittee, chaired by Mr. Parks, to look at data collection, and to look at the technology systems. We have made some recommendations in that area.

Assemblyman Mortenson:

Because of our rapid growth in this state, it is important to know: are these decreases on a per capita basis or on an absolute basis?

James Hardesty:

Per capita, and we are going to show you some slides on that, but there are also a couple of other factors that I want to mention, particularly in the area of violent crime. Some of you are familiar with the COPS initiative [More Cops Initiative, Clark County, 2006], and the addition of police officers to the Las Vegas Metropolitan Police Department. It is our view that a significant reduction in violent crime, and a reduction in some of the criminal activity, have been a result of the Las Vegas Metropolitan Police Department's addition of officers to be proactive in going out and avoiding crime in the first instance. They are fighting crime successfully with a number of creative steps they have taken—decoys, operations, and the like—that have been very effective in deterring criminal behavior. It is an example where, if you add officers, you can actually show crime reduction.

James Austin:

The data collection issue is well stated. It was a perfect storm, but it has been resolved. I would just add that on the chart [slide 12], the backlog of people had to do with the cases that the [Parole] Board was trying to process because of A.B. No. 510. That backlog apparently is gone now. We are up to speed now on all those cases that had an accelerated parole hearing.

James Hardesty:

That is correct. We were not certain what the backlog was, and we were trying to quantify it. We reached a point where there was no backlog, so we got to zero without tracking it.

This next slide [slide 13] shows trends in the Nevada criminal justice system since July 2007. I think this is illustrative of what I was saying before. The red line is the prison population that was projected during the 2007 Session of the Legislature. As you can see, through about October 2008, it was projected to be 14,247. At the same time, you can see the actual prison population flattened throughout this period of time and declined to a point of the budgeted projection that took place in 2007. They finally converged by October 2008 to 13,383 people. We are now at about 12,700. This is important because, contrary to what the state was concerned about in 2007 with an escalating prison overcrowding problem, it has actually declined.

Now, that said, this is important: No one should leave the room feeling comfortable that we do not have a prison overcrowding problem. We do. If you go through each prison, you find an overcapacity of prisoners in each of them. A chart provided to the Commission shows every single prison with a prison population percentage over capacity, at least as of November 2008, anywhere from 145 percent to, in a couple of cases, higher than that. I would be happy to provide those charts to you. That configuration may have changed slightly since November.

The reason I am bringing this information to you is, during the course of this legislative session, I think it would be helpful to the legislators to ask the Department of Corrections and the Division of Parole and Probation to give them updated statistics. We have not been able to get that since about November 2008, not because they are not willing, but because the Commission lost its funding source to be able to pay the Grant Sawyer Center and Dr. Austin to track this. I made a request to the Interim Finance Committee to provide \$60,000 so that the Commission could continue to track these statistical pieces of information. That was heard in January—it never even went before the Board of Examiners. It was not considered. The executive branch did not put it on the agenda. The Commission is out of business, and we cannot continue to track these numbers. If you want meaningful information, if you want advice from the Commission and its consultants, through all of the work we have done, we need to be able have this limited amount of resources for these consultants to continue to pull together all of this statistical data and continue to track it for analysis purposes.

I understand the state's finances are very tight, but without this valuable input, we are all going back to a point where I think we have been before: flying blind and making business decisions without good information. I hope that the Legislature will look at this issue and provide appropriate funding to the Commission so that its consultants can track this data. In the meantime, I would urge you to ask the Department of Corrections and the Division of Parole and Probation, and the parole commissioners, when they come before you, to give you updated numbers. They have them within their systems now; they can access them. It is still a little bit difficult because of the time crunch, but they can update these numbers for you as you go through this process. As Mr. Skolnik said this morning, he knows exactly what the count is in his hotel from each day, but I think that there is more to it than that. You need to analyze the underlying data on an ongoing basis. That was the service that Dr. Austin and the Grant Sawyer Center were providing to us.

Chairman Horne:

And if you could get those charts for us, I think it would be helpful for the Committee.

James Hardesty:

We will provide those charts to you by today ([Exhibit D](#)). In fact, those charts are part of the exhibits that were admitted into our evidence in October or November of 2008 and the Legislative Counsel Bureau has on its website.

Assemblyman Anderson:

Justice Hardesty, as you know, I was able to attend some of the meetings of the Commission, and I appreciate the statement relative to the overcrowded condition of the prisons that are open. However, we have closed—Director Skolnik has closed—at least one of the major southern facilities and has reallocated prisoners from one facility to another. In part, by closing that institution does he not create the overcrowded condition, or the opportunity to create an excess need in a particular institution because of the living conditions? Some on this Committee saw some of the deplorable conditions that do exist in some of the facilities. Did you, Dr. Austin, or the people from the Sawyer Center take into consideration the potential bed capacity which is diminished as a result of that closing?

James Hardesty:

When we were presented with the statistical data that showed the capacity breakdowns by prison, we had just started that process last fall. I think there is an important aspect of this issue. You will recall that several pods—I call them pods, that is probably not the correct word, and I do not want to imply that they are not secure or that they are not appropriate, they are—were added as the prison expanded its capacity and added beds. The closure of a prison does not necessarily create a capacity issue; it can actually improve efficiencies where you created these additional beds. The problem is you have a budget crunch, and the director has been, as you all know for the past 18 months, continuously urged to make cuts to the budget. I think that has influenced decisions about closing prisons and shifting inmates to different facilities where their operations could be handled more effectively in one prison. Based on the information we received from the director, it was wise to move a number of those people to the new pods at High Desert because that could be operated more efficiently because of the budget crunch that we have.

You had a capacity problem to begin with, and certainly closing prisons continues to create a capacity problem. You also have prison capabilities that influence this decision. We are in a perfect storm where budget cuts force

reductions and closures in order to transfer people where they can be managed more efficiently, but it does affect capacity. We wanted to get into those numbers in greater detail, but simply did not have enough time to finish that study. That is part of what the Commission would like to continue to do. I think it is a very important evaluation that needs to take place because I think it affects decisions about future prison construction and what is needed, where it is needed, and to what extent it should be built.

The Commission is very concerned about the ability of judges to impose intermediate sanctions before people spend lengthy prison terms. We do not have facilities to address or to house people who are placed in intermediate sanctions, and that is a critical component, I think, to reducing the overall impact on the prison budget and prison costs.

On slide 14, you will see what we have concluded, based on this information, is the impact of the "Truth in Sentencing" (TIS) legislation on the correctional population. Essentially, in response to Chairman Anderson's earlier comment about "Truth in Sentencing" causing a spike, the "Truth in Sentencing" legislation generally accomplished what it was intended to achieve: provide truth to victims and those in the system about the minimum amount of time that a defendant would serve, and the maximum amount of time that a defendant would serve. We do not believe that it created a spike. The substantial increase in the correctional population is correlated with the increase in the overall population of the state.

As you saw from the earlier graphs, we do not believe that the TIS created any spike. However, there is an important part of our analysis that does contribute to prison population and does contribute to prison cost. We do believe that "Truth in Sentencing" caused an 18 percent increase in the length of stay of offenders. By placing that minimum percentage in the TIS, the length of stay for many offenders was extended on the low end. They had to serve a longer period of time before they could qualify for parole eligibility and to get released. That contributed to added days, which added costs to the prison system. One other point that I believe we can conclude: the TIS had little impact on crimes committed. There was an argument made that if you went to the TIS system, somehow it would drive the crime rates down. We believe that the crime rates resulted from what is occurring throughout the rest of the country, and were not a result of the "Truth in Sentencing" legislation. We would not characterize the "Truth in Sentencing" legislation as a deterrent to crime.

On this next slide [slide 15], you will see the substantial increase in the correctional population has been relatively proportional to growth experienced in

the general population. As I said before, the "Truth in Sentencing" legislation caused the length of stay in prison to increase. As you can see on this slide, the population of Nevada experienced a 63 percent increase. The prison population experienced a 65 percent increase. There is a correlation between those two in our view. The increase in incarceration rate per 100,000 was 6 percent. Prison admissions went up 48 percent during this period of time. These last two points are what I think is significant. The average maximum sentence actually declined during this period by 12 percent, but the length of stay went up by 18 percent from 1.7 years to 2.0 years, which is being driven by the minimum sentence that is imposed of 40 percent of the maximum. Dr. Austin, was there anything you would like to add concerning my comments on these two slides?

James Austin:

Yes. There is another point that needs to be made concerning the Parole Board grant rate during this time period. The grant rate has a lot to do with the length of stay. As Justice Hardesty has shown, our data is showing that there has been an 18 percent increase in the length of stay. The prison admissions grew dramatically, and mostly they grew from Clark County in the year 2006. That was when we had this big surge which caused a lot of the problems. The length of stay would be higher were it not for the Parole Board. The Parole Board has taken several steps to increase parole grant rates by using risk assessment tools and revised guidelines. The length of stay probably would have been higher were it not for the actions of the Parole Board, and the Parole Board is a very important control mechanism on the prison system. Overall, I think the "Truth in Sentencing" bill, as Chief Justice Hardesty indicated, did not create a spike. The maximum sentence lengths have actually gone down. The length of stay has increased. That is, in part, due to the "Truth in Sentencing," where you have to serve a certain proportion of your prison term. That length of stay probably would have been higher were it not for the actions of the Parole Board.

Chairman Horne:

Dr. Austin, or Chief Justice, on that average maximum sentence, which is down 12 percent, how does that correlate with equal and consecutive sentences that were imposed? Was that included during the "Truth in Sentencing" legislation? Basically, if you committed a crime with a gun, you got 4-10 years, and then you did a consecutive 4-10 years. The maximum has not increased on the sentencing, but you obviously are doing 8-20 years.

James Hardesty:

Dr. Austin, I think those maximum sentences were measured on each of the sentences and the enhancement was treated as a separate sentence, correct?

James Austin:

Yes, that is correct.

James Hardesty:

Even though it is an enhancement, it is treated as a separate sentence.

The next slide [slide 16] shows the tracking of the correctional population. Beginning back in 1990 and continuing through 2006, the prison population is in yellow, and as you can see, there really is not any spike recognized as a consequence of the "Truth in Sentencing." It progresses upward, but there is not any spike. Parole has been pretty much flat throughout this period of time.

I thought the next slide [slide 17] would be very helpful for people to see what is currently happening in terms of the uniform crime rate for violent crime as of December 2008 and underscores my point earlier about the activity and efforts of Metro in Clark County. This slide shows from January to December 2008 violent crimes that are reported to the U.S. Justice Department. Dr. Austin, I would like to give you an opportunity to comment on this slide, since you had worked with Mr. Lalli in putting it together.

James Austin:

On this slide, I would focus on the fifth column. It is looking at changes in the crime rate for the Las Vegas Metropolitan Police Department, which is largely Clark County—and just by way of reference, Clark County produces about 70-75 percent of all crimes, crime rates, prison admissions, and the work of the criminal justice system. In that column you see negative numbers across the board. Murder has dropped both numerically and in the rate per 100,000 in population in the county. Rapes are down 4 percent, robbery 10 percent, aggravated assault 5 percent, burglary 7 percent, larceny 6 percent, and there was a big decrease in auto theft. Overall the crime rate decreased in Clark County by 13 percent.

The other chart looks at it five years ago. The last column is changes in the crime rate from 2003 to 2008. Basically, what we have seen in Clark County is a drop in the crime rate. That, in turn, has positively impacted the jail population there. It is also, I believe, fueling the decline that Justice Hardesty talked about, which has to do with the drop in court filings, and then that helps lower the use of prison, probation, and parole. The extent to which we can continue these trends would bode very well for the state and the cost of its criminal justice system.

James Hardesty:

Sentencing trends and practices was another important aspect.

Assemblyman Anderson:

On the previous slide where you are comparing prison population [slide 16], I want to make sure I am correctly interpreting the statistical numbers that are presented here. If I draw the correct conclusion, the prison population has been going up, less than what we have been projecting, but it has had a steady increase over time based upon earlier slides. The parole rate, however, has not matched the prison population number because we see a decline in the grant rate until 1995, which is the "Truth in Sentencing" point in time, where between 1995 and 1997, there was a high point in 1998, when the parole rate had gone up. It has kind of leveled out since and then dropped into decline while the prison population as a whole continues to grow at a somewhat predictable rate relative to the population increase; however, we do not see a comparable increase in the parole rate to match that. Am I drawing the right conclusion from this slide? Is there a relationship between the prison population and the parole population, recognizing that the probation question is predicated upon other kinds of principles?

James Austin:

As Mr. Anderson has pointed out, what is interesting about the parole population, and I will focus on the last few years, is that the parole grant rate has increased rather substantially. Typically, if that happens, then you would expect the parole population to increase because you have more people going out on parole sooner. At some point a few years ago, legislation was passed that allowed the good time to be granted to parolees, which diminished the time that they served on parole. In so doing, it reduces their length on parole, and that reduces the parole population. The other very positive thing—and we will start talking about this on A.B. No. 510—was that in addition to lowering the length of stay for the parole population, and thereby lowering the cost of the parole population, we have increased dramatically the success rates of parolees. They are now at the level of about 80-85 percent of the parolees completing their parole period successfully, which is way above the national average.

Part of that is an artifact of: if you have less time to do on parole, there is less time to violate. But we have also produced a carrot to parolees that, if you behave, you will get off parole faster. We do believe there is positive response by the parolees from that carrot that is out there. That knowledge has led also to the application of the principle in A.B. No. 510 to probationers. It is not in the charts we have shown to you today, but it is in our other exhibits. Since we did that, the probation population has dropped by about 1,000, and their

success rate has increased. We are getting some very positive gains out of A.B. No. 510 and previous legislation that is rewarding people for behaving and is reducing their risk time on probation and parole, which is lowering the costs of those systems and improving success rates.

James Hardesty:

I think there is one other factor, though, that you have hit upon, Mr. Anderson which is worth noting. What I believe this illustrates, as well, is a hardening of the prison population. The prison population has gone up as a consequence of the general population, even though the parole grant rate has increased. There are fewer and fewer people who are appropriate for release because of the hardening of the prison population.

Category B offenses are a major contributor to the prison population. And, as you know, those have lengthy prison terms attached to them. I think those inmates, who have committed those crimes, are not amenable to early release, or at least have not been afforded the opportunity for early release, and so you have a hardening of the prison population. The prison population is going up, and the parole grant rate, even though it is increasing, is not keeping up, which has the net effect of increasing the prison population and making it harder. The question is, should it be? Is that a result of sentencing ranges that this legislature or past legislatures have imposed? Does it result because there is actually more violent crime? It is probably a combination of all of these things, but I think your observation is very well-taken, Mr. Anderson. The point is, if that trend were to continue, if you did not halt that violent crime, you would continue to see a separation that got worse between parole grants and prison population. So, the relief valve that we have benefitted from in the past will get less and less, even though the parole grant rate has gotten bigger. Dr. Austin, do you disagree with that?

James Austin:

No, I agree with that.

James Hardesty:

Let me highlight sentencing trends on slide 18 and the recommendations that finish this area. An overview that the Legislature should be aware of is on sentencing trends and practices. [Read from slide 18.] [On bullet point 1] The point about that is if we address supervision, we might be able to reduce the prison population. Since we have people serving their first prison term, we would like to address that group. [Continued to read from slide 18.] [On bullet point 3] These are people who were sent to prison because of their probation violations. They were put on probation under a category E felony, they violated,

the judge was left with no alternative, so the default position was to send 596 category E's to prison.

The disposition rate for Nevada courts is lower than in other states. What does that mean? Are judges just routinely sentencing people to prison, going at it in a haphazard way? I would like you to take a look at slide 23. This shows you the dispositions, the percentage of people that are being sent to prison by judicial district and by county, by the district court judges. Generally speaking, one-third of the defendants in the criminal justice system are being sent to prison by the judges. Some counties have a higher incarceration rate than others, but in Clark County and Washoe County, the biggest population areas, they are consistent with the state disposition rate, and that is consistent with what is happening in the rest of the country, usually about a third—actually, we are a little bit low from that.

I would like you to take a look at slide 20. This is an important slide because it shows that, as you know, in the "Truth in Sentencing" legislation we placed crimes in categories. Category B and category D offenses drive the numbers for the prison population. Twenty-nine percent of the prison population are category B felons, 27 percent are category D felons.

I would like to turn to slide 24 with regard to certain recommendations that the Commission identified as a result of this study. [Read from slide 24.] [On recommendation 2] Such a reexamination should include a special focus on category B crimes. Category B crimes have become a dumping ground for a plethora of crimes, and yet the sentencing ranges are all over the map in that category. We think that should be examined; even the district attorneys agree that some of the crimes that are in category B could be shifted into C's or even D's in some cases, and we think it appropriate to reexamine those sentencing links in those category B offenses.

The criteria used by the Division of Parole and Probation to determine whether to recommend probation needs to be revised. The Department of Parole and Probation is in the process of doing so, but the instrument that drives the recommendation in the presentence investigation report has not been examined since the mid 1990s. It is in the process of being examined, but it is a critical piece as to whether a person should be recommended for probation or prison.

Subjects such as "honesty" and "motive" should be removed from the presentence investigation report. The judge should be making credibility assessments, not the report writer for the presentence investigation report. [Continued to read from slide 25, recommendation 5.] [On recommendation 8]

As you know, right now probation can be given for up to five years. We think that should be reexamined depending upon the seriousness of the crime. Probation should be considered for longer periods of time in certain instances and shorter periods of time in others. [Continued to read from slide 25, recommendation 9.]

Next, on slide 26, we have made recommendations for improvements concerning information systems and technology. [Read from slide 26.] The *Nevada Revised Statutes* (NRS) should be revised to provide more detailed specification of crimes so that we can adequately track them. The Commission would like to study the Nevada Offender Code (NOC) system. We believe that is a problem that contributes to the data collection and tracking system. [Continued to read from slide 26.]

That covers the "Truth in Sentencing" recommendations, Mr. Chairman. Judge Herndon is in Las Vegas to present some information regarding mandatory drug sentencing statutes and substantial assistance. He has a number of statistics that I think your Committee will find of interest.

Senator Washington:

On your recommendation for number 9 [([Exhibit C](#)), slide 25] dealing with category B felons, you said it needs to be revisited and that it is kind of like the dumping ground for all crimes that may have not been categorized as of yet, and that working on the "Truth in Sentencing" bill in 1995, our primary intent was to provide some consistency and some predictability in those sentencings. I am just wondering if the Commission took that under consideration when making its recommendation for category B crimes: that there would be some consistency and predictability and that the victims of the crimes would be able to determine how long the perpetrator was going to be a felon, at least when the perpetrator is coming up for parole or probation, to provide some resolve or some closure in victims' lives.

James Hardesty:

We do not disagree with that, Senator, but we believe that there are certain crimes that have been placed in category B that should have been placed in C, D, or E, or at least C or D. Because they are in category B, they cannot be considered for any kind of early release. We think the category needs to be revisited; the proportionality of some of the criminal code sections should be revisited and perhaps adjusted out of category B.

Senator Washington:

And with that readjustment, would there be through the Commission that priority to make sure that if they are recategorized in C or D, there is, at least, some consistency for the victims of crime and some predictability?

James Hardesty:

Yes, and as a matter of fact there was a recommendation, and I will try to locate it here in the presentation, but the recommendation is that there be a sheet prepared that calculates a defendant's early parole eligibility for any of these crimes under A.B. No. 510 and that it is provided to any victim of crime at the time of sentencing.

Chairman Horne:

If there are no further questions, we are going to take a five-minute break.

[The Committee stood in recess at 9:34 a.m. and was called back to order at 9:42 a.m.]

The Committee will come to order. We will finish up the presentation. We are going to go down south to Judge Herndon.

The Honorable Douglas W. Herndon, Judge, Eighth Judicial District Court, Clark County; Member, Advisory Commission on the Administration of Justice:

[Slide 27] I am hoping to run through the work of the Subcommittee to Study Mandatory Drug Sentencing Statutes and Substantial Assistance Statute, fill in some other statistical information that you already have, and by all means, if you have any questions feel free to interrupt me.

This subcommittee was set up to bring together some folks from the north, the south, and the rural areas, as well as someone from the local prosecuting agencies, some people with experience in the Attorney General's Office, criminal defense attorneys with both state and federal experience, corrections officials, police officials, as well as our legislative representative, Assemblyman Carpenter. The desire was to get as diverse a group as we could and see what we could get our arms around.

[Slide 28] I have to say in terms of what it was we discussed, there was a lot. As you can imagine, with a group such as I have just discussed, there was not unanimity on many things. These mandatory drug sentencing crimes, including trafficking in a controlled substance, are ones in which there are widely divergent philosophies in terms of the propriety of those crimes and how they

should be enacted, how they should be prosecuted, how they should be sentenced, and so forth. We spent a good deal of time looking at everything that was involved in terms of the narcotics that were involved, the various schedules, the waits that were involved in the various levels of trafficking, and the mandatory nature of trafficking sentences. We also discussed a variety of other issues related to narcotics and the trafficking offenses, to try to move ourselves, in the short time we had, into areas where we thought we could get some agreement and make some recommendations that, hopefully, would address some of the issues. That is not to say that we have hit everything, by any means, and I certainly do not think that the work is done. Nonetheless, I do think we were able to achieve some of our goals and have some recommendations that are going to be very worthwhile.

There are a number of us who looked back at Senator Raggio's comments from 1983 to the Assembly Committee on Judiciary, back when the bills were being discussed about enacting trafficking. I think a lot of what he said back then is still pertinent and meaningful today in terms of his statements about trafficking of controlled substances being a widespread problem in the country, coming in across our borders; the usefulness of enhanced penalties for trafficking types of crimes as a tool and a deterrent; as well as the incentives that substantial assistance provides to those people who have been caught trafficking, to allow them to be probated in their cases, as well as to provide a tool to law enforcement for further investigation. All of those things are absolutely still true, in my mind. Nonetheless, I think we would be remiss if we did not, 25 years later, go in and look at where we are in terms of those trafficking crimes. Have we accomplished what we were trying to in terms of enacting those crimes? Who is being caught in the trafficking nets, so to speak? What are our theories of incarceration today versus back then? We do this so that we have a good idea that we are following the legislative intent and doing justice in a proper and reasonable manner in our state.

In furtherance of that, one of the first things we did was get some information from the Nevada Department of Corrections in terms of the inmate populations and where narcotics offenses, and in particular trafficking offenses, fell in the overall inmate population. Down at the bottom of slide 28 you will see some reference made to 2007. That was the complete year of data that we had for pretty much everything, so that is the year that we used throughout our subcommittee discussions. For the year 2007, the total inmate population was about 13,040. Of that, 1,857, or 13.10 percent of the total inmate population, had been convicted of a drug-related offense. Of those, 532, or 3.96 percent, had trafficking as at least one of the reasons they were in prison. Actually, I think it was about 309 prisoners who were in solely because of trafficking, so

the other 223 or so folks in that group had other offenses that had them in prison, as well. For instance, an inmate may be in on a trafficking of a controlled substance conviction as well as an ex-felon in possession of a firearm and a burglary or some other cases that all had offense codes within the department of prisons. Nonetheless, those are still significant numbers.

Additionally, some of the statistics told us that approximately 38 percent of all the drug offenders had no prior felony convictions and were serving a single sentence at that time. Not to get outside the realm of what my subcommittee was dealing with, but one of the more troubling aspects of everything we were finding, and Justice Hardesty referred to it earlier, was the number of category E drug felons. Those were mandatory probation crimes that were ending up in prison, taking up bed space on cases where the wisdom of the legislative intent was that these should not be people going to prison at all; they were mandatory probation. Obviously, it was a concern that there are some failures in our ability to make people successful on probation, and that was obviously one of the things that stood out in some of the prison statistics.

Some of the demographics that are not really reflected in the slides, but were important for us as we were viewing the inmate populations, were the drug population inmates versus all-offenses inmates. There was a lot of consistency. Fifty plus percent of all the inmates were Caucasians, 47 percent of all drug inmates were Caucasians; 27 percent of all inmates were African American, 30 percent of drug inmates were African American; 16 percent of all inmates were Hispanic, 18 percent of all drug inmates were Hispanic. In terms of age categories, those also mirrored across all inmates versus drug inmates. The largest group comes from the 45- to 60-year-olds, which is 21 percent of all inmates, 20 percent of all drug inmates; 25- to 29-year-olds was the second largest category, with 17 percent of all inmates, 18 percent of all drug inmates. Dr. Austin alluded to this earlier: 65 percent of all inmates come from Clark County courts, 51 percent of all drug inmates come from Clark County courts; 23 percent of all inmates come from Washoe County, and 30 percent of all drug inmates come from Washoe County. Obviously, the Eighth Judicial District Court, Las Vegas, and the Second Judicial District Court of Washoe were of primary importance to us because they account for over 80 percent of all the inmates in the Nevada Department of Corrections.

[Slide 29] After having a good grasp of all the prison statistics, we were then trying to look at those individual districts and figure out some of the numbers and see what trends we could find. One of the things that is not reflected on your slide—I will fill it in for you—is the Washoe County, Second Judicial District, statistics. Unfortunately, we were not able to accumulate those before

my subcommittee ended its work, so they did not get into the recommendation packet. We had a good idea of what those numbers were going to be, based upon our northern representatives, but we did not have the actual statistics.

The statistics bear out what we thought: that there is a greatly different way of handling trafficking offenses in the north versus in the south. In the Eighth Judicial District courts, as you can see on the slide, there were about 950 cases filed in 2007 that involved an original charge of trafficking in a controlled substance. That is out of 10,000 plus total cases that were filed. So, 9.4 percent of the cases that were filed had a trafficking charge in their original charges. Only 11 percent of those 950 cases—72 total—involved a conviction for trafficking. Of those 72 cases, only one involved an individual being placed on probation, who is engaging in substantial assistance. Two hundred eighty-one of those cases were dismissed in packaged negotiations, or 41 percent; 250 cases involved a conviction for a probationable drug offense, or another 37 percent. Almost 80 percent of all the trafficking cases filed in Clark County resulted in either a dismissal or a probationable conviction. That is vastly different from Washoe County.

In Washoe County in 2007, there were 3,300 plus cases filed in their district courts. Of those, 121 involved an original charge of trafficking, or 3.6 percent. There are fewer, on average, trafficking cases filed in Washoe, pursuant to the numbers, but 105 of the 121 resulted in trafficking convictions. So, 95 percent of the cases filed involving trafficking in the Second Judicial District resulted in trafficking convictions. In fact, there were only five, I believe, that involved a reduction to a probationable felony offense. Twenty-nine, however, of their trafficking convicted offenders were placed on probation.

Here is the rub in why these numbers are so different: Neither way, in my mind, is a wrong way to go about business, but they are just different. In Clark County, the law enforcement preference seems to be that when there is contact made with an individual that could be arrested for a trafficking offense, it is at that time that they seek to engage the individual in some type of substantial assistance. The theory being that if you arrest them and put them in jail and convict them, their ability to do anything for you is greatly compromised because other people are going to know about that. They do it before they ever even arrest somebody. They enter into cooperation agreements. If that cooperation agreement bears fruit, then they may not even file charges; if they do file charges, they file reduced charges originally, that do not even involve a trafficking charge; if they do file a trafficking charge, they then allow a negotiation to a lesser offense.

On the other hand, in Washoe County it appears that most of the people arrested for trafficking are made to plead to trafficking and then provide substantial assistance. Obviously, that theory would be: the greatest incentive for the offender to provide substantial assistance is going to occur after he is already convicted and facing mandatory prison time. I do not think either way is a wrong way to go about it; they are just vastly different and result in widely divergent numbers in terms of the average number of cases that go in front of the courts for trafficking a controlled substance convictions and sentences.

Assemblyman Hambrick:

Keeping in the time frame, and the budget limitations you had, near the end of this review, were you able to identify any particular increase of the statistics due to crystal meth?

Douglas Herndon:

We had a presentation from an expert from the Las Vegas Metropolitan Police Department. He was a detective in the narcotics bureau for many, many years. He had expertise in both street-level narcotics use and distribution. One of the things that was good to learn on the front end and maybe troubling on the back end was that from the law enforcement perspective, methamphetamine is not the problem it was several years ago. International, federal, state, and local efforts have greatly curtailed, in the minds of many law enforcement officials, the methamphetamine problem. But, because of that, heroin has seemed to make a comeback and is a drug that, not only in the larger urban areas but even in Carson City, they are seeing more and more of in trafficking amounts. That is not to say the methamphetamine problem is solved, by any stretch of the imagination, but it does not seem to be at the level it was before, and it seems to be that heroin is coming on strong, so to speak.

Assemblyman Anderson:

Relative to the different approaches between the Clark County District Attorney and the Washoe County model of drug court—it is really not by judicial district, it is really the district attorney approach—would it be correct to make the following comparison: the result of anybody failing to follow the regimen in Washoe County, and failing with their treatment program or diversion program, will be immediate incarceration and prison, as compared to the Clark County program where they still have to come back to be adjudicated at the district court level. Is that a fair analysis of the difference between the two approaches?

Douglas Herndon:

I think, if I understand it correctly, you are referring to more of what happens in diversion programs in drug courts as opposed to what I was talking about in terms of differences in how trafficking cases are approached. Am I correct in that?

Assemblyman Anderson:

I am just trying to figure out what the net effect would be of the approach that is used in Clark County by the Clark County District Attorney (DA), where an opportunity for interdiction takes place prior to conviction, whereas the Washoe County model says it is after conviction, if I am focusing on the right issue here.

James Hardesty:

Assemblyman Anderson, I believe you are comparing two separate subjects. What Judge Herndon's subcommittee dealt with and what he is talking about is a different model in prosecution for drug trafficking offenses. Those offenses are not going to result in diversion court in the absence of substantial assistance being provided. As to your question in terms of someone who fails drug court, they are handled exactly the same in both districts. You are going back to the sentencing judge after there has been a failure, and there will be a reassessment as to whether or not you are going to go to prison. Does that answer your question, Mr. Anderson?

Assemblyman Anderson:

[Nods.]

Chairman Horne:

Please continue, Judge Herndon.

Douglas Herndon:

The net effect, as you referred to it, Assemblyman Anderson, of the differences in how the things are approached is that, I think, in Washoe County you get a greater percentage on average of offenders convicted of trafficking in a controlled substance, based on their overall caseload, and you also have a greatly increased sentencing average in Washoe County compared to Clark County. For instance, we took all 72 trafficking convictions in Clark County for 2007 and I assessed all of their sentences; the average minimum sentence was 19.1 months, and the average maximum sentence was 54.9 months. The only life sentence in Clark County—even though life is a potential sentence for high-level trafficking—was due to a habitual criminal that had multiple prior felony convictions and got a habitual sentence, not a life

sentence because of trafficking. In Washoe County, on the other hand, the average minimum sentence for their 105 trafficking convictions was 35.45 months, and the average maximum sentence was 122.43 months. Additionally, there were three offenders that were sentenced to life with a minimum of 10 years before parole eligibility, and 11 offenders that were sentenced to 25 years in prison with a minimum of 10 years before parole eligibility. I believe that 9 of those 14 were actually put on probation; nonetheless, if they do not pass probation, you are still looking at that very lengthy sentence, so that skews numbers way up in terms of those averages.

We did not neglect the smaller counties. We looked at Churchill County numbers and Carson City numbers to see where they fell in terms of our overall trends. But, as I said, it was really Clark County and Washoe County that were driving the bus in terms of our inmate population, and those were the ones that were of the greatest concern to us in trying to figure out what we needed to do.

One of the things that came up that we were able to get a unanimous opinion on was issues related to the substantial assistance statute [NRS 453.3405]. It was expressed by those folks who worked in both state and federal court that our substantial assistance statute was vastly different than the one used in the federal system, and that there were some inherent flaws in that. The first flaw that I think exists in our substantial assistance statute—

Chairman Horne:

Judge Herndon, if you could briefly explain the substantial assistance statute, as there are many new members on the Committees.

Douglas Herndon:

I will do so. The trafficking offenses, by their nature, are nonprobationable. There is no discretion by the court to put somebody on probation if they are convicted of trafficking in a controlled substance, except for whether they engage in substantial assistance. Substantial assistance is defined at NRS 453.3405 as somebody rendering "assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals or of any other person involved in trafficking in a controlled substance." Basically, the theory is if you get arrested, you have an impetus to try and provide information to the police agencies as to where your narcotics have come from such that they can, so to speak, work up the ladder. If you provide substantial assistance to them in doing that, you could earn probation.

There were two things about our current statute that I think were problematic. First, there are lot of people who cannot provide substantial assistance so they

are never going to have probation eligibility. They may have bought a trafficking amount of controlled substance and been caught with it, but have no ability to find the person that sold them those narcotics, or whatever the case may be. They just may not have information that they can provide. Obviously, there are individuals who refuse to do it, but there is going to be a group of individuals who simply cannot, and therefore, they do not have the same option as others to earn probation.

The second issue—and the one of great importance to me—was drugs go all across our system. Drug offenders do not just have information about other drug offenders. They often have information about everything from murder to misdemeanor offenses. To limit substantial assistance, as our statute currently does, to just providing information about other drug crimes I think is kind of putting things in a vacuum when it should really be much broader. A person arrested for trafficking who is able to provide assistance to law enforcement in solving a homicide, for instance, is of great value, and that value not being considered by the court in trying to decide whether to probate somebody really hamstrings judges, in my opinion.

[Slide 30] The federal version is broader; it does not define substantial assistance as just applying to drug crimes. Therefore, I think it is a much better version. It would provide uniformity between both state and federal agencies and what type of people are going to be eligible for substantial assistance probation. We had unanimity amongst my subcommittee in recommending that the Nevada Legislature adopt the federal version of substantial assistance in place of our current version.

We also discussed along those same lines—and there was not unanimity on this, nonetheless I would be remiss if I did not raise it because I think it is definitely worth a large amount of overview and further discussion—a kind of catchall, if you will: the federal system has some statutory catchalls that allow for judges to consider certain things that would allow them to depart downward from what the standard sentences may be in any given crime. It outlines a number of things that the court may look at, rely upon, and make certain findings upon, in terms of prior criminal history or lack thereof, assistance that was provided, the age of the person providing assistance, their capability to provide assistance—things of that nature.

It basically says that we are not making something probationable right up front, but we are creating this limited exception here, separate and apart from substantial assistance, where the court may have some discretion to do something that it thinks is in the interest of maintaining legislative intent and in

the interests of justice. Obviously, there was opposition to that in the subcommittee because there are opinions that the trafficking statutes, because of their mandatory nature, need to stay exactly in that fashion, and any exceptions to that makes them probationable offenses, which takes away the import of what they are about.

On the other hand, I can tell you, as a representative of the Nevada District Judges Association, we are all about discretion. Every judge wants to have discretion to be able to consider anything and everything possible in formulating what they believe to be an appropriate and just sentence in any given case. It is an artistic endeavor; it is not scientific. It would be real easy to say here is a sentence for every case—crime A equals sentence 1, crime B equals sentence 2—but everybody is different, every case is different, every victim is different, and every defendant is different. Things that grant us discretion are obviously more preferable than things that basically mandate what we have to do without utilizing our discretion.

Even though we did not have unanimity on that second proposal to add the catchall exception, I do think it is important for the court to consider it, especially when you are dealing with those situations that I referred to earlier about individuals who simply cannot provide substantial assistance. There was an example given in our subcommittee by one of the criminal defense attorneys in Reno about people who travel to our state, and maybe bring with them a trafficking amount of controlled substance, and are caught with that. They are not necessarily going to be able to provide any information that is of value to local law enforcement because they brought it with them from whence they came. That is just one example of what was being discussed in that second proposal.

The other thing we had unanimity on in our subcommittee was recommending to the Legislature to impose or create statutorily an additional fee to be imposed on any and all felony and gross misdemeanor cases. Here is the theory behind that. Obviously, as I said earlier, drugs are a part of the entirety of the criminal justice system. You would be hard-pressed to find crimes, whether they are burglary, robbery, narcotics related, or anything else that do not have drug or alcohol or mental health issues as the root, if not the cause, or at least a contributing factor in the commission of those crimes. Because of recognition of that over the years, we have created all these specialty courts, which are doing wonderful things, but with very limited budgets. It seemed very logical to our subcommittee that people who are engaging in trafficking offenses, or for that matter any offense across the criminal justice system, should be contributing to the creation of the courts that were designed to address the

issues to keep them from being repeat customers within the system, to help fund those specialty courts that are providing them assistance to make it on probation, or providing them assistance to make it on parole, and not come back within the criminal justice system.

I am greatly sympathetic to your work this session, like never before in the 18 years I have been here, and with your attempt to extricate our state from where it is with its budget problems. It just seemed logical to me to impose this fee, and to have the people for whom the justice system exists contribute to running it with a minimal fee. Our suggestion, and our agreement, is that it be a sliding scale. It would give judges the discretion to assess an individual's ability to pay, in current economic times, and the ability to review fees without having to go back to the Legislature and ask that the fee be increased. Additionally, with trafficking cases for instance, people who are distributing narcotics and creating all the other problems with people becoming addicts and committing crimes, should be paying a bigger fee to help run the specialty courts and help fund issues that they have created by their distribution efforts. Those were a couple of things that we had unanimity on.

There are a lot of other issues that were discussed: whether each individual drug should be addressed in terms of trafficking, whether the weight level should be addressed to each individual drug, whether they should be raised, whether they should be lowered, and whether there should be sentencing options for each level of trafficking. For those of you that are not aware, trafficking of most major narcotics—cocaine, heroin, methamphetamine—comes in three levels. You could have low-level trafficking, which is a nonprobational 1-6 years in prison; mid-level trafficking, nonprobational 2-15 years; and high-level trafficking, minimum 10 years up to life in prison. There was discussion about whether we should create other sentencing options within each of those levels of trafficking to give the judge some discretion. We had presentations from the American Civil Liberties Union (ACLU) over mandatory versus proportionality in narcotics offenses, and where that has taken us over the years.

So, there are a lot of things that we tried to pull in, but, as I said, I do not know that the work is done, either by us or by you. We are certainly willing to go back and put our heads together some more and see what we can come up with. These were the things we wanted to recommend now that I thought would proactively help the courts in terms of how they view substantial assistance and trying to get people that were appropriate for probation on probation.

I will certainly answer any questions that anybody has, Mr. Chairman.

Chairman Horne:

Thank you, Judge Herndon. That was an excellent presentation and overview.

James Hardesty:

A couple of brief points. Bill Draft Request (BDR) 40-653 (later introduced as Assembly Bill 168) is the bill draft that is the Commission's recommendation of the modification to the substantial assistance statute, if you are interested in that. The second point, concerning downward adjustment or deviation, applies in circumstances where the defendant comes into the state, brings a trafficking level of narcotics with him, cannot provide substantial assistance, and thus cannot qualify for probation, but may not have any crime of violence or criminal history. There may be good reasons why the court, if it had discretion in making findings, could make downward adjustments that would reduce that mandatory sentence from a 10 to life or even a 2-15 years mandatory. This gets back to the point that I made earlier about discussing the consequences and fiscal impact of some of the prosecutorial decisions that are made, and the incarceration decisions. When Judge Herndon gave you the statistics about how many trafficking cases are going to prison, those are dollars that you are having to spend to incarcerate those people where if, depending on the approach that is taken, if they cannot render substantial assistance, then we are going to house them for an extended period of time.

There are a number of those folks who might instead be amenable to some other disposition. The best example of that is the effort that was taken by the pardons board, beginning about a year ago, where we identified 106 of these people who were subject to Immigration and Customs Enforcement (ICE) holds. We made conditional releases, pardon releases, and sent those people back to their foreign countries. These were people that had spent anywhere from 7-1/2 to 8 years of their minimum sentence in some cases. It relieved the taxpayers of this state of the financial obligation to continue to house them until they finished their minimum sentences of 10, or maybe even 11, years after a parole denial and instead deported them to their country of origin. Those are the kinds of options that we would like to see built into a downward adjustment consideration.

Chairman Horne:

Judge Herndon, on the issue of recategorizing the three levels of drug trafficking—low-level, mid, and high, that is up to a life sentence—was there an in-depth discussion, if we explored that, of how it would be broken down? I will ask you to put on your prior hat, and I believe that you were chief district

attorney in Clark County as well before you took the bench. First, how would that be received by the district attorneys offices and second, how would you envision that these levels would be broken up going forward?

Douglas Herndon:

There was a discussion of this, and I would call it a spirited debate, on whether or not to do anything to those levels and, if so, how to adjust the levels. It was really more of a debate on not eliminating any particular level, and how to adjust the weights within those levels, because obviously low-level trafficking begins at 4 grams up to 14 grams, mid-level trafficking is 14-28 grams, and high-level trafficking is 28 grams or over. That is for narcotics such as cocaine, heroin, and methamphetamine. Marijuana, I believe, deals in poundage, beginning at around 100 pounds.

There was a debate, and you are right, I did work in the DA's office prior to becoming a judge. Regarding the hat I would have to put on to go back to narcotics prosecution, for the last eight years before I became a judge, I did not really have anything to do with narcotics issues. Nonetheless, I am going to guess, based upon our debate at the subcommittee meetings, that the district attorneys are pretty staunch in their belief that the way trafficking is set up right now is the way it needs to stay. They were in favor of moving the substantial assistance to the federal guidelines in order to create a little more discretion in the courts.

Representatives of the police agencies gave a pretty persuasive presentation on personal-use levels of narcotics and how you break down 4 grams into about 40-dose units of usage such that the weight levels that are in effect have some logic as to how they were brought about. On the other hand, everything changes. The amounts of narcotics people possess and the reasons for that are really not part of the trafficking statutes; it is a weight-based crime. It has nothing to do with intent. A lot of the debate centered around whether to change the statutes to include intent as an element in the narcotics statutes, that is, intent to distribute or intent to sell. Contrary to that debate was that we have crimes for possession with intent to sell, and trafficking needs to stay as weight-based.

The other problem was how to assess weights based upon individual drugs. Absent some type of presentation by pharmacologists or drug abuse therapists and so forth that could really address those issues, it was really difficult for us to try and figure out how you separate methamphetamine from cocaine and have one weight level for one and a different weight level for the other for trafficking offenses. The one thing that we did not get greatly into, which I

think would be worthy of debate, is multiple sentencing options for each level, and that may have been where you were going originally with your question. That is, for low-level trafficking, could you have sentence A, B, and C options, same thing with mid- and high-level, just like in a variety of other crimes where there are graded levels. Grand theft has graded levels depending on the dollar amount of something stolen. Sexual assault has graded levels depending on the age of the victim, and even options within each particular age. There was some debate on that as well. I think that is worth having further debate on, but I think it is going to meet resistance, and I understand the reasons why, from the law enforcement community, regarding reducing the weight levels down from where they are.

Senator Washington:

Your Honor, I apologize, I may have just caught the tail end of this. If you could just advise me, you said that you mentioned, or you had talked to or may be concerned about the law enforcement community, and the attempt to revise or downsize some of the penalties. Have you spoken to the DA offices, as well?

Douglas Herndon:

One of the representatives of our subcommittee was Tom Carroll, who is Chief Deputy District Attorney in Clark County, and also Gerald Gardner, who is the Assistant District Attorney in Carson City. I also had a number of discussions with Chris Lalli, the Assistant DA in Clark County. I know those folks were communicating with their brethren around the state on the variety of issues, as well. So, yes, that is what I had expressed. I think, from their perspective, there are two issues that they are very staunch on, and the first is the nonprobational nature of trafficking, that the crime of trafficking is designed to have a greatly increased significance to deter that activity. The second part of it is I do not think that they are going to be willing to come down on the weight levels associated with each of those crimes. That is one of the reasons I was trying to move our subcommittee, and we were able to do so, to expand what could be considered for substantial assistance, and to get consideration for expanding it further to involve that catchall exception that I referred to.

Assemblyman Ohrenschall:

Your Honor, on the nonprobational drug trafficking sentences, you said that the intent was to deter the drug traffickers. Is there any evidence that succeeded?

Douglas Herndon:

Assemblyman Ohrenschall, I guess that is determined by who you talk to. There are a number of people, for instance, the gentleman from the ACLU who came and presented to us, who believe the evidence would suggest that the

mandatory nature of drug trafficking offenses or lengthy prison terms are not really acting as a deterrent. That argument really goes across the entirety of the criminal justice system, though. Are lengthy sentences for armed robbery actually deterring people from committing armed robbery? We still see a lot of armed robbery. Does the death penalty deter homicide cases? We obviously still see a lot of homicide cases. Whether a crime in and of itself is a deterrent to committing that crime is really hard to figure out unless you are talking to people who are not committing crimes and kind of assessing why they are not.

My sense is that there are a lot of people who possess amounts of narcotics that are really close to the weight levels, and a lot of the people who are involved in the distribution of narcotics have scales and other types of things in their homes when searches take place. My personal feeling is that people who are engaged in narcotics distribution are cognizant of the trafficking amount levels and possess certain amounts, and maybe keep other amounts in other places, for some of those very reasons.

Assemblyman Ohrenschall:

Do you as a judge, Your Honor, ever wish you had the flexibility to grant probation or a suspended sentence instead of a mandatory sentence?

Douglas Herndon:

Assemblyman Ohrenschall, absolutely. As I said earlier, and I believe my brethren across the state would support me in this, every judge wants the ability to assess everything they can, and then decide what is a just sentence for that particular individual being sentenced, the particular victims who were involved, the desires and goals of the criminal justice system as a whole, and the legislative intent. Mandatory sentencing takes that out of the judge's hand, to be quite honest. I am not saying there are not good theories for mandatory sentencing, but when you look at the crowding issues in prisons and whether drug offenders should play a role in taking up bed space in the prisons, I advocate in favor of discretion.

Chairman Horne:

Thank you, Judge Herndon. Are there any other questions? If there are none, we will move on to tab 4 [beginning with slide 78] if we could, Justice Hardesty, on parole and probation. I do not think we are going to get through all of this, and if that is okay with you, Chairman Care, we will do that. I know that there will be a number of recommendations that are going to be coming before the other committees by way of BDRs, et cetera, in the future. If we could go to parole and probation, I would appreciate it.

Justice Hardesty:

I had asked Senator Horsford to present to you on juvenile justice. Do you want to defer that?

Chairman Horne:

Yes, that is why I jumped there. I saw the majority leader leave, so we will just jump to...

James Hardesty:

And I had asked the Attorney General to address victims' issues, and I believe she is here. I would like to introduce the Attorney General, who chaired the subcommittee studying victims' issues, Catherine Cortez Masto.

Catherine Cortez Masto, Attorney General:

I will be brief. I know you have a lot on your agenda today. Thank you for the opportunity to present. As a member of the Subcommittee on the Rights of Victims and Sources of Funding for Victims of Crime, we were cognizant of another area that most people do not recognize which is related to victims of crime, and the advocacy that is necessary for victims of crime. In this state we have a number of rights for victims, but we also have many advocates out there working on behalf of victims, and we have a victim compensation program. I want to briefly go through those with you and talk a little bit about this subcommittee.

[Slide 47] We were tasked by the Commission with identifying challenges to victims' rights and services and with developing potential solutions to some of those challenges. The subcommittee, as you will see [slides 44-45], is comprised of victim advocates, compensation officers, other criminal justice professionals, and victims themselves. It represents the broadest working group to date to focus on the needs of victims in the juvenile justice system. This is the first time we have really had this type of group come together statewide to address these issues.

In this state, with respect to not only the rights but the services for victims, let me just give you a broad overview. First of all, with respect to the rights, victims have certain rights under our state constitution. They have the right to be informed, upon written request, of the status or disposition of a criminal proceeding at any stage of the proceeding; they have the right to be present at all public hearings involving the critical stages of a criminal proceeding; and they have the right to be heard at all proceedings for the sentencing or release of a convicted person, after trial.

The advocacy on behalf of victims is a relatively new concept, but it is broken down in the state into two areas: you have system-based advocates and community-based advocates. The system-based advocates are those advocates, who work in our district attorneys offices or law enforcement offices, and they are really there to help the victims navigate the justice system, but also to work with the prosecutors to help put on the case, as well. The community-based advocates not only began organizing around the justice system's apparent indifference to the needs of victims, which was a concern of victims, but also began developing a larger scope of services to meet the complex needs of victims.

In Nevada, we have a patchwork of victims' services in most of our counties. Currently, there are approximately 129 full- and part-time, and 189 volunteer community-based advocates. There is not enough money to support advocates, but we have the volunteers, and I have never met a group of more passionate people. They literally are out there to support these victims, give their time and efforts, and do whatever they can to help victims. Along with that, we have 58 system advocates. There are 31 in prosecution offices and 27 in law enforcement agencies. There need to be more, there is no doubt about that. These advocates would love to have more assistance. Unfortunately, oftentimes the funding is just not there to support them. Quite often, if there is a budget cut or a lack of funding, or there is a need to cut funding, it is the victim advocates whose budget is cut. That is why you see so many volunteers across this state.

What these advocates are doing across the state is providing guidance for victims as they navigate very complicated and foreign justice systems, providing a broad range of services to meet complex needs of victims both within and outside the justice system, supporting the right of victims to have a voice in the complicated decisions that will impact their lives far beyond the end of any criminal case, and providing financial assistance to victims as they attempt to recover from their victimization.

There are different types of victims' services and community-based advocates. We have community-based advocates who provide assistance to victims of domestic violence. The victims of domestic violence comprise the largest victim category in Nevada. Just to give you an example [slide 46], statistics for 2007 indicate that 14,613 temporary and extended protection orders were issued for domestic violence victims, while 31,247 incidents of domestic violence were reported by law enforcement in 2005. That is the most recent statistic available for this state. We are in the process of, hopefully, implementing a

new reporting requirement under our statutes so that we have more comprehensive data for domestic violence victims.

There are 15 domestic violence programs serving all 17 counties in this state. These programs rely primarily upon funding generated through marriage license fees to the Account for Aid to Victims of Domestic Violence, created pursuant to NRS 217.420. As of July 1, 2008, these programs experienced a 28.7 percent decrease in state grants from the fund. Supplementary federal funding sources, including the Victims of Crime Act (VOCA), the Family Violence Prevention and Services Act, and the Violence Against Women Act (VAWA) also provide some form of funding, but all of these programs have also experienced a decrease in funding. Just to give you an example, in fiscal year 2007, these programs served more than 37,000 individuals, and those are the individuals we are aware of. There are many individuals and victims who do not come forward that we are not aware of in this state.

[Slide 47] The other category of victims is victims of sexual violence. The state has three programs focusing on victims of sexual violence: the Rape Crisis Center in Las Vegas, the Crisis Call Center in Reno, and the Sexual Assault Advocates based in Carson City. All three agencies rely upon what I just said—the VOCA funding, the VAWA, and the federal funding to support their services—but again, they have experienced funding cuts, including a reduction of services. In 2007, these programs handled 1,323 reports of immediate sexual assault and fielded over 6,200 hotline calls from survivors.

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

So that gives you an example of some of the advocacy programs that are out there. Along with that we have the Nevada Victims of Crime Compensation Program. The Program was established by the NRS in 1969 to provide assistance to persons who are victims of violent crimes or the dependents of victims of violent crimes. The Program is administered under the authority of the State Board of Examiners and provides a broad range of payment for medical services, counseling, lost wages, relocation expenses, and other specific items for victims. The Program is designed by statute and policy to help innocent victims of crime who suffer physical injury, with criteria to ensure an applicant did not contribute to his or her own victimization.

The Program is funded through federal grant monies under the Victims of Crime Act and matched with court fines and assessments. The state contributes no General Fund dollars to this program. To give you an example of how much money is in the Program on a yearly basis and who they provide the services to, in fiscal year 2008, the Program received \$8.4 million in funding. It handled 2,373 applications, with claims totaling \$27 million, approved 1,314 applications, and paid out \$7.2 million in claims.

When we came together as a group, there were a number of challenges and areas that we focused on that we wanted to, at least, start to address this first year. Some of the challenges for the group—and I will go through them very briefly—involved a lack of resources. Examples of the resource shortage areas, not just in funding though, are in the limited services areas that are available. For instance, victim advocates and victim service agencies cover multi-jurisdictional areas, yet advocates are in short supply whether in rural communities or even to cover the larger urban areas.

Lack of transportation services often stops victims from accessing services or participating in the justice system. For example, there are no, or very limited, public or private transportation services available to communities along the I-80 corridor, as well as contiguous counties adjacent to I-15 and Highway 395. If public transit does not service a community, it is because of a lack of occupancy. And if the public transit carrier is full with passengers, then the carrier will not stop for a passenger who may be waiting for them. Because of that, our victims in those rural communities cannot get to the service that they need in the urban areas, and oftentimes go without any type of service. Mental health services are at a premium, as you know, in the rural and urban areas. That is an issue for them, as well.

Uneven access is another area that is a challenge in this state. The geography and population distribution in the State of Nevada pose numerous challenges for victims. And then there are systemic barriers for our victims. For instance, most systems in Nevada show a lack of communication, either systems-to-systems or systems-to-victims, or systems-to-communities. Examples of lack of communication include victim notification. Oftentimes, the victims are never notified when a case is returning on appeal, or they usually hear about it for the first time in the papers. If it is going before a pardons board, and if they want to be there before the pardons board to testify with respect to the individual who may have committed a crime against their loved ones, oftentimes they are not notified regarding that type of activity, and they find out about it in the papers. So, we were in the process of hopefully putting a system in place that provides notification to victims on various aspects of court proceedings that

occur in this state. We do have a victim notification network, we call it VINE (Victim Information and Notification Everyday), but it only exists in Clark and Washoe Counties. We are looking to implement something statewide with some grant funding, if we are able to get it from the federal government.

That gives you kind of a broad-based view of what we have been working on as the victims of crime subcommittee. We have come together and have addressed a number of areas, one of them, which is not really on your PowerPoint presentation, is the Victims of Crime Compensation Program. We literally had the ability for these victim advocates to sit down with the compensation officers and redefine the guidelines and the protocols for providing funding to these individuals, as well as the application process, which oftentimes was too tedious or the victims did not want to walk through that process. Because we were able to come together, we have already started to address a number of areas. However, there were several recommendations for changes in the law that Justice Hardesty is presenting to you today that came from our subcommittee.

James Hardesty:

Those recommendations are under the final recommendation tab [beginning at slide 85]. They have been the subject of BDRs and filed bills presented to you. They essentially address three areas: (1) some modification to the budgeting process of funding of administrative assessments into the Victims of Crime Fund; (2) a change with respect to the statutory provision about the degree of fault of a victim as impacting their ability to recover; and (3) some modification of the statutory deadlines dealing with when one can submit a claim for a victim of crime. This area is very unique. It has never really been examined in any degree before, and I think the subcommittee has done a tremendous job in addressing this issue.

What I found interesting, though, is a policy statement contained in NRS 217.010. The policy of the State of Nevada is to compensate victims of crime, yet the State of Nevada contributes not one dime from the State General Fund to the policy it has declared.

Chairman Horne:

Thank you, General Cortez Masto, for your presentation this morning.

Assemblyman Anderson:

General Masto, the VINE question is troubling to me relative to the other jurisdictions in the state. We require by state statute, I believe, that if you are a victim of a crime, you have the right to be informed of what is happening to the

prisoner and to the people who are incarcerated. That particular part of the statute is being followed regardless of whether they are in Washoe County or Clark County. For the VINE question, I need a little bit of clarification of what is substantially different in terms of aiding victims of crime. Recognizing the Chairman's admonition on time, if you want to do that in writing, that would be acceptable to me.

Chairman Horne:

Could you answer his question briefly?

Catherine Cortez Masto:

Yes, actually, we will provide that in writing to you. The other side to that, also, is keep in mind there were victims on our subcommittee, so this was part of their concerns, not necessarily concerns of the advocates, but of the actual victims who were on our subcommittee who do not get that notification, so we are attempting to work with them, as well. I will provide the answer to your question in writing, and that might hopefully expand on some of the concerns.

Assemblyman Manendo:

There is a cap on the Victims of Crime Compensation Program of \$50,000, if I am not mistaken?

Catherine Cortez Masto:

There are actually two. The Board of Examiners' cap, under the guidelines for the victims of compensation, is \$35,000. What that means is the victims compensation officers try not to pay more than \$35,000 per victim, but under the statute, yes, there is a \$50,000 cap. That is my understanding.

Assemblyman Manendo:

Any thoughts about removing the cap?

Catherine Cortez Masto:

Yes, actually that was one of the recommendations that came out of our subcommittee. We discussed it, but not everybody was in agreement that the cap should be replaced, or taken away. I am not sure if we ever, as a commission, voted on that.

James Hardesty:

The Commission did not vote on that point, but here is the practical reality. I think the subcommittee agrees, and the Commission agrees, the cap should be removed. But if you are not going to adequately fund it, then you create increased competition among victims of crime for compensation. So you have

victims competing with each other for compensation, which only exacerbates an already insulting operation.

Assemblyman Manendo:

I understand that maybe some people have more catastrophic situations than others, so there could be some flexibility and, without the removal of the cap, it would be difficult to do that under the current statute.

Chairman Horne:

Also, in your written answer to Mr. Anderson, if you could get some more information on monies that actually do revert back to the General Fund; I find that curious.

James Hardesty:

If I could augment on that point, as I mentioned yesterday, the state budgets a certain amount for the Victims of Crime fund for what administrative assessments will contribute to. If the administrative assessments are over-collected, that amount of money goes to the State General Fund. It does not stay in the Victims of Crime fund. One of the bill drafts that the subcommittee and the Commission have presented to the Legislature asks you to stop that process, not only with respect to the victims of crime but across the board for all who get funds from the administrative assessments. I asked the Administrative Office of the Courts' budget officer to address that amount for June 2008. We will get you a specific sum, but it is approximately \$400,000 for that one fiscal year that would have gone to the Victims of Crime fund instead of going to the General Fund.

Catherine Cortez Masto:

Just to add to what Chief Justice Hardesty spoke of, the bill he is referring to is Assembly Bill 114.

James Hardesty:

[Slides 78-84] I am just going to highlight some points about parole and probation, if I may, with some general statements. First of all, parole and probation is a critical component of the criminal justice system because we place on probation the responsibility for supervising people who are not going to be incarcerated; and parole is a critical function for providing a release valve for people who are appropriately considered for release from the prison under supervision for the remainder of their term of sentence.

You have some schedules that were provided to the Commission concerning their caseload. Those are fluid and have changed because of budget cuts.

Suffice it to say, the Commission's opinion is the Division of Parole and Probation is dangerously understaffed, preventing adequate supervision of many probationers. This circumstance should be addressed by both your budget committee and your policy committees. You cannot expect the Division to give the kind of supervision that is appropriate and necessary without adequate staffing to do so.

We also made several points with regard to probation, beginning with its organization. I want to mention the recommendation of the Commission is a significant change and is that you consider where the Division of Parole and Probation reports to. In many states, the division of parole and probation does not report to law enforcement, or in this case the Department of Public Safety, but instead reports to the court system. It is courts that interface with the probationers, and it is our recommendation that the Legislature consider altering the organizational assignment of the Division of Parole and Probation away from the Department of Public Safety and instead to the courts.

Another area that is of concern to the Commission in this area is the absence of intermediate sanctions, which would enable the probation department to identify intermediate sanctions that can be imposed short of a violation that sends someone to prison. It is important to have resources to be able to accomplish those intermediate sanctions, and the Commission heard reports from Hawaii about a HOPE (Hawaii's Opportunity Probation with Enforcement) court, a judge designated with a specific responsibility for reacting immediately on any parole or probation violation, imposing consequences immediately on the probationer's life sentence, but short of a full revocation. That has been very successful in Hawaii; we believe it would be very successful in Nevada.

Another area that is of enormous concern is the fact that there is simply no reentry program in Nevada at all. A major step forward for the State of Nevada is a public-private partnership that has been advanced by the Religious Alliance in Nevada, and is the subject of two bill drafts that have been presented to you: BDR 14-903 (later introduced as Assembly Bill 271) and BDR 40-521 (later introduced as Assembly Bill 252). These accomplish two things. These provide a source of funding for reentry of inmates back into the prison system in cooperation with the provider groups that have organized to provide that assistance and to provide housing and job location for those who reenter society after their terms have expired. This would also be of assistance to parolees, as well.

Specifically, on slide 82, we are concerned, as well, about the state's correctional services being reorganized. I talked about that before. We have

also recommended the need for additional staff to enhance the assessment of offenders and the supervision capabilities of the Division of Parole and Probation. As you all know, under the statutory sentencing provisions, a presentence investigation is to be provided to the district court judge within 45 days to aid the judge in sentencing that particular defendant. In Clark County today, it takes at least 90 days to get a presentencing investigation report (PSI). This is causing a clog in our jails, a delay in the system for both victims and defendants. This is a direct result of the need for staffing to accomplish presentence investigation reports. Additionally, the presentence investigation report format needs to be revised. It has not been examined since the mid-1990s, and it directly impacts the factors that are considered by the Division of Parole and Probation, and the factors that are considered by the judge in sentencing an individual, or granting him probation. That is in process, and the Division of Parole and Probation is working on a new model for that purpose.

Next, we proposed an independent and monthly monitoring capability for the state's criminal justice system. I mentioned earlier that we need, as a Commission and you as a Legislature, a monthly tracking of what is taking place there.

In the area of the Parole Board, we have offered three pieces of legislation for your consideration that we believe would streamline the process in front of the Parole Board. This directly responds to the issue about public hearings and notices. It does not make sense to have public hearings in cases in which the Parole Board is going to grant parole in the first place and there are no victims involved. So, we have offered some legislation that would streamline the parole board process in that area.

The final recommendations are contained starting with slide 85. I will not repeat them all; you can read them. I will tell you that the final report of the Commission has been undergoing several weeks of drafting and editing. I hope, after it has been circulated to the Commission members, it will be available for release to the Legislature next week. This has been a huge undertaking, a lot of effort by a lot of people, and I want to thank everybody for their participation. I urge the Committee to take a look at the slides on the specialty court. They are extraordinarily detailed, very revealing about the specialty court services that are and are not available, and quantify the dollar amounts needed to enhance the specialty courts within our state, both mental and drug court.

Chairman Horne:

Thank you, Chief Justice Hardesty, for all your hard work on this advisory commission, and to all the members on that commission. I know you guys put in countless hours and days last year in accomplishing this. I urge all the members here, when you have your free time, to go through these, and particularly these bill draft requests that will be coming before your various committees—Corrections, Parole, and Probation and the respective Judiciary Committees. Seeing no questions, thank you. I know, as always, you will be available for questions, and probably will be before our committees throughout this session.

Tonja Brown, Advocate for the Innocent, Carson City, Nevada:

Thank you to the Commission for all of its hard work. With regard to the Advisory Commission, during the last hearing that we had in December, on the agenda was an oversight committee overseeing the Parole Board Commissioners. I believe that the bills that are going to go before you may be thrown out the window based on one thing that the Parole Board has a tendency to do. That is, the Parole Board sometimes will cite for a denial that the inmates are a threat to society, a danger to society, and a risk to society without ever specifying what a threat is. And if they do not define what a threat to society is, everything that we have worked hard for will be thrown out the window, because that is what they deem. I believe that the Parole Board should, in fact, put in place what a threat, danger, or risk to society is in order to grant or deny a parole.

I recently attended a Parole Board hearing. During the 2007 Legislature A.B. No. 510 was passed, which prohibits the Parole Board from asking an inmate if he is considering an appeal. Well, on January 26, I did attend a hearing in which one of the commissioners did, in fact, ask an inmate about his appeal, which clearly is defined in A.B. No. 510, and it is prohibited. So, if they are not considering it, they do not need to be asking an inmate if he is appealing. This is another reason why we would need an oversight committee over the Parole Board, also in Department of Corrections (DOC), and in the Division of Parole and Probation (P&P).

There are a lot of areas in which people are being written up for no reason whatsoever. In DOC, you are being written up for infractions, and it applies when you are going to be considered for parole. If it happens that a prison guard or an administrator does not like you for whatever reason, they can add more time to your sentence, and you are going to be less likely to be eligible for parole. So, all in all, I think an oversight committee should be considered, and this was being considered and discussed during the Advisory Commission;

however, we have not made it that far. I ask that you consider all of this, and let them continue on with the Advisory Commission on the Administration of Justice.

Chairman Horne:

Mr. Hinton, we do have the briefs that you have submitted to the Committee ([Exhibit E](#)). They have been passed out to the Committee members.

Donald Hinton, Director, Spartacus Project of Nevada, Las Vegas:

Let me just explain, first of all, that I am a 12-year secretary-treasurer, business manager, from a heavy steel construction union here in town, so my position here is an advocate for the prisoners. On some of the discussions that I heard this morning, I did not hear anything about the conditions in prison. I did not hear anything about medical in the report made by the ACLU to the State of Nevada. The second page there, it was kind of derogatory, in fact it was derogatory all the way through that 21-page report, but on the second page it actually said inmates were left to rot to death.

We really have terrible conditions inside of these prisons. I am not going to complain about the food, but I am going to complain about the medical, and I am going to complain about men being in solitary confinement 24/7 for years, which I think is totally unnecessary. In the comments this morning, we heard about the victims having advocates, and I agree with that, but we do not have an advocate on any of these committees for the other side. They were not good guys when they wound up going there, but after spending X-number of years there, they are not really the same people coming out. I have heard almost no reporting from probation or parole to help these men get a job once they get out of prison. I have been doing that for years, and never charged the state a penny. I put them into apprenticeship jobs where they start at \$18 or \$20 an hour and go to \$40-plus after they finish their programs. In fact, this month I have my first parolee buying his home and he is the proud father of a set of twins.

All of these guys coming out of prison are not bad guys. They might have been a little stupid when they got themselves in a position where they go to prison, but do not write them off. I think that everything today that you are talking about concerns how you are going to make the sentencing more complete, before they get into a prison system. That is only part of it. The guys in the suits and the ties discuss how the rest of the people's lives are going to be lived, but they are not addressing the abuses in the prison and the lack of educational programs. We really need to do something about that.

Chairman Horne:

Mr. Hinton, I am sorry, I am going to have to stop you there. We have been called to the floor, and I have Ms. Hines sitting up here patiently. Thank you, Mr. Hinton. I know we will hear from you again, and you will have other opportunities before the Committee, particularly on specific bills dealing with those issues. Thank you for your time and patience today, but we have been called to the floor.

Donald Hinton:

I am not going to call for the Parole Board to have an oversight committee; I think we need to abandon the Parole Board.

Pat Hines, Advocate for Criminal Justice Reform, Yerington, Nevada:

There is one area that I have not heard anything about that has a good impact on the overcrowding of prisons and people being incarcerated when they should not be because there are no alternative sanctions. I would just like to say that before this Legislature is over, I hope there is some interest in parole violations. There are no statistics being kept on how much the increase has been in parole violations, but I get a report from the Parole Board every month of all the parole violations, and they have certainly increased. I hope you will look at this and what happened with the Parole Board. What they tried to do through the Legislative Commission with Administrative Regulation 08-1808 should not have been allowed. They did one thing that I think you should know about. They set up a new severity code, which was accepted as the severity code used by the Department of Corrections. Now they are not abiding by what they adopted in that, because instead of using the severity code listed for parole violations, they have taken it upon themselves to take the parole violation severity level back to the original crime. If you think that is acceptable, I would like you to do some discussion on it, and change your mind. Please do some investigating on parole violations.

Chairman Horne:

My apologies for having to cut public comment short. I take responsibility for that.

Having no more business before the Committees, and thank you, Senator Care, for the joint committee meeting, we are adjourned [at 11:07 a.m.].

RESPECTFULLY SUBMITTED:

Sean McDonald
Recording Secretary

RESPECTFULLY SUBMITTED:

Katherine Malzahn-Bass
Committee Manager
Editing Secretary

APPROVED BY:

Assemblyman William C. Horne, Chairman

DATE: _____

Senator Terry Care, Chair

DATE: _____

EXHIBITS

Committee Name: Assembly Committee on Corrections, Parole, and Probation/Senate Committee on Judiciary

Date: February 12, 2009

Time of Meeting: 8:09 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance rosters
	C	James Hardesty, Advisory Commission on the Administration of Justice	PowerPoint presentation (printed copies)
	D	James Hardesty, Advisory Commission on the Administration of Justice	Exhibit from Commission, a presentation entitled "Nevada Truth in Sentencing Commission: October Update"
	E	Donald Hinton, Spartacus Project of Nevada	Letters from inmates