

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

JULY 17, 2012

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, on July 17, 2012, at 9:11 a.m., at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3138, 401 South Carson Street, Carson City, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Assemblyman William C. Horne, Chair, Assembly District No. 34
Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department
Greg Cox, Director, Nevada Department of Corrections
Lisa Hibbler, Victims' Advocate
Assemblyman Richard McArthur, Assembly District No. 4
Senator David R. Parks, District No. 7

COMMISSION MEMBERS PRESENT (CARSON CITY):

Connie Bisbee, State Board of Parole Commissioners
Senator Greg Brower, District No. 3
Larry Digesti, Representative, State Bar of Nevada
Mark Jackson, Douglas County District Attorney
Brett Kant, Deputy Attorney General, for Attorney General Cortez Masto
Jorge Pierrott, Sergeant, Department of Public Safety, Division of Parole and Probation
Richard Siegel, American Civil Liberties Union of Nevada

COMMISSION MEMBERS ABSENT:

Judge David Barker
Honorable James W. Hardesty, Justice, Nevada Supreme Court, Vice Chair
Phil Kohn, Clark County Public Defender

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Wes Goetz
Michael Atkinson
Jerod Updike
Tonja Brown, Advocate for the Innocent
Patrick Davis, Reform Sex Offender Laws
Pat Hines
Robert Roshak, Sheriffs and Chiefs Association
Assemblywoman Lucy Flores, Assembly District 28
Tom Ely, Nevada Department of Public Safety
David Helgerman, Nevada Department of Public Safety
David Sonner, Nevada Division of Parole and Probation
Mercedes Maharis

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

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

Chair Horne stated Mr. Vinger had resigned from the Commission. He opened Agenda Item III, Public Comment. He requested the comments be kept to three to five minutes.

Wes Goetz presented detailed information concerning sex offender's recidivism rates, [Exhibit C](#). He said the research had many different reports concerning treatment and therapy concerning sex offenders. He wanted a study done in connection with the University of Nevada concerning sex offender recidivism rates. He said after 10 years a sex offender could go to court and ask to be taken off lifetime supervision. He asked if a person was on lifetime parole, would they be able to be taken off after 10 years.

Chair Horne asked for further public comment.

Michael Atkinson said she lived in Fallon, Nevada, and the judicial system was not working in Fallon. Ms. Atkinson said her son was killed by a truck last year while riding his bicycle. The sheriff's department did a shoddy investigation of the death. She said the

man driving the truck was a local man and was part of “the good old boys system.” He was drug and alcohol tested, but never spent a day in jail. She said nothing was done and she wanted to know why. Ms. Atkinson said she did dog rescue and raised Golden Retrievers. A neighbor had poisoned eight of her Golden Retrievers and shot four of them. They shot a hole through the dog barn and stole a dog. She said the neighbors called and complained about every move she made. When she complained to the sheriff’s department about the neighbor’s actions, she was told they were unable to do anything. She wished the sheriff’s department was held responsible.

Chair Horne requested staff that follow up with Ms. Atkinson and get her contact information and see if there was anyway to find the help she was seeking. He said someone from Constituent Services would contact her.

Jerod Updike talked about lifetime supervision. He had been against the law for the past five years. He said he was 22 years old when he was convicted of using a computer to lure children. He received lifetime supervision and said he was confused between lifetime supervision and sex offender register, [Exhibit D](#). He said he was stuck under supervision by Parole and Probation for possibly the rest of his life. He said the supervision was too much. He said one law for everybody did not fit all the offenders. He continued his discussion via his interpreter and he asked what lifetime supervision really accomplished. Mr. Updike referenced his exhibits concerning Criminal Offenders Statistics, Criminal Procedure-Lifetime Supervision, and Recidivism among sex offenders in Connecticut included in [Exhibit D](#). He said he supported DNA testing for all felony arrests. He requested help in changing the lifetime supervision law.

Chair Horne asked Mr. Updike to remain in contact with the Commission.

Tonya Brown said she had new information for the committee. She said the DNA petition had 135,586 individual signatures to allow DNA testing to be conducted. She said she was pleased to see a presentation on post conviction reports on the Agenda. Ms. Brown supplied copies of information concerning Nolan Klein to the Commission, [Exhibit E](#). Her documents showed the Attorney General’s office withheld evidence in her particular case, [Exhibit E](#). She said her brother was listed as having gang affiliations because of his earth based religion. She reiterated her concern with the computer glitch she had discussed at the previous meetings.

Chair Horne asked if there was further public comment.

Patrick Davis said he was an advocate for Reform Sex Offender Laws from California and Nevada and also for civil liberties. He asked Chair Horne to be allowed to submit letters of rebuttal or misinformation to the committee to be included in the record.

Chair Horne said if he needed additional time to respond, the previous speakers had gone over the recommended time and so could he. He also invited Mr. Davis to provide any information he wanted the committee to consider.

Mr. Davis said many of the issues presented earlier concerning lifetime supervision included the violation of First Amendment rights and various other Constitutional rights. He said at this time an appeal to lifetime supervision cannot go the court or the Board of Parole Commissioners. The Division of Parole and Probation, specifically the supervising officer, made the decision. He said whatever the supervising officer imposed as conditions, the parole board accepted it. He said it took due process rights from the person on lifetime supervision from the court, or the hearings of the Board of Parole Commissioners, and left the decision to the supervising officer who might be unaware of the rights granted to the prisoner. Lifetime supervision was a civil sentence and was meant to be non-punitive in nature. He said lifetime supervision meant they were not allowed to ever attend or be on school grounds. The organization was interested in the transparency and knowledge of lifetime supervision presented today.

Mr. Siegel asked Mr. Davis about the examples of constitutional rights regarding freedom of movement and education in case law. He asked Mr. Davis to provide the Commission with case law that challenged the kinds of restrictions he addressed in his presentation.

Mr. Davis said a 60 page letter was provided to the Nevada Board of Parole Commissioners addressing each condition and the case law involved in the decisions. He said the appeal was sent back to the petitioner and was told to address his supervising officer with the appeal. The Board of Parole Commissioners took all the cases in controversial issues a judge would normally decide or the Board would decide. He said they believed they needed to treat everyone the same way because the officers were not trained well enough to differentiate between a civil sentence and criminal sentence.

Mr. Siegel requested the speaker provide the best legal documents he can provide on what might be unconstitutional.

Chair Horne asked if there was further public comment.

Pat Hines requested information concerning the computer glitch. She said information about the problem was requested in the March meeting and she wondered if there had been a response. She said she had problems trying to find answers concerning the computer problem. Adding it had been five years since it occurred and it should be solved.

Chair Horne said at the last meeting he had expressed concern about the information received or the lack of information. He asked for an audit of the Department of Corrections with special attention paid to the computer problem.

Ms. Bisbee told Ms. Hines the Board had answered her question immediately. She said in terms of criminal history, they used the Presentence Investigation Report exclusively. She said they did not use the blurb from the Department of Corrections, so it had no effect on parole decisions. She said they only used the criminal history in the PSI.

Chair Horne closed Agenda Item III and opened Agenda Item IV, approval of the minutes from the June 6, 2012, meeting.

Mr. Jackson made a correction to the last paragraph on page 18 of the minutes. He said it should read Mr. Jackson said in was not *uncommon*, rather than common.

SENATOR PARKS MOVED TO APPROVE THE MINUTES WITH
THE CORRECTION.

MR. SIEGEL SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Horne opened discussion on Agenda Item VI, a presentation on policies and procedures for the identification of criminal suspects. He said Assemblywoman Flores was present to participate in the discussion.

Robert Roshak, Director, Nevada Sheriffs and Chiefs Association, said with regard to A.B. 107, all the members of the Nevada Sheriffs and Chiefs Association were briefed on the bill and given copies of existing policies that matched the requirements of the bill. He said he offered several examples [Exhibit F](#) and a form that listed a group of agencies using a company called Lexipol which provided police agencies with the best practices and policies. He said at least 10 major agencies in the State had adopted policies and others were working on it.

Mr. Siegel asked Mr. Roshak if there was an available national model from a highly recommended association.

Mr. Roshak said Lexipol did best practices for police agencies and was providing information to the agencies.

Mr. Siegel asked for clarification of what Lexipol was; a private organization or a government organization.

Mr. Roshak said it was a profit organization. He said the State received a grant to assist agencies in working and bettering their department policies. He said Lexipol reviewed

policies throughout the country and then provided them to agencies who contracted with them to use as they wished.

Mr. Siegel asked for a copy of the Lexipol model from Mr. Roshak.

Chair Horne said Assemblywoman Flores was present to answer questions concerning the bill and the policies.

Mr. Callaway clarified model policies concerning the Las Vegas Metropolitan Police Department. He said they had a witness identification policy in place prior to passage of A.B. 107. He said much of their policy was based on best practices, some of which came from the Police Executive Research Firm, PERF, and also from the Rocky Mountain Innocence Project as posted on their Web site. He said after passage of the bill they updated their policies so definitions and terms matched the wording in A.B. 107. He said he met with Katy Monroe from the Innocence Project and as a result of the meeting she asked to use their policy as a model example for other agencies in the State.

Ms. Flores said during the process of getting the bill passed it was understood that everyone worked together to insure the appropriate policies were put in place. She said the policies allowed the rural agencies to develop a policy that was right for them, as well as the urban agencies developing a policy right for them. She was concerned that the dialog was not occurring between the national organizations and the Nevada organizations. She said they did use LVMPD's policy as the best available in the State during the time they worked on the bill.

Mr. Roshak asked if he understood that the various agencies creating the policies were also working with Katy Monroe and others as they each formed their separate policies.

Ms. Flores said the appropriate stakeholder input was something all the parties agreed on and that it was a cohesive and inclusive process so the best policy possible was in place for the law enforcement agencies.

Mr. Callaway said he was part of the many meetings held regarding A.B. 107. He said two key points came out of the discussions. He said due to the differences in some urban areas in the State compared to some of the rural areas, a one size fits all did not work for everyone. He said LVMPD offered their policy as a guide to help develop their own policies. The second item cautioned that best practices change and techniques change in the field of law enforcement. He said specific procedural practices needed to be left in policy so they could be updated as practices changed rather than in law. He said it was difficult to force an agency to adopt specific policies. He said it was up to each agency to be in compliance.

Mr. Jackson said there was a lot of discussion and collaboration not just with law enforcement agencies, but with the Nevada District Attorney's Association and the 17

elected district attorneys. He said one of Mr. Roshak's examples from [Exhibit F](#) was from the Douglas County Sheriffs Department. He said it showed as Policy Number 9.392 Suspect Identification and was actually a four page policy rather than the two pages provided to the Commission.

Chair Horne requested the full four pages be supplied to the members.

Ms. Flores said [A.B. 107](#) required that every law enforcement agency in Nevada have an eye witness identification policy. She said it was her intent to ensure the policies included best practices to ensure they were doing the best possible job in identifying the correct suspect who had committed the crime. She said over 80 percent of the wrongful convictions had a wrongful identification involved. She agreed every law enforcement agency needed to have flexibility to create their own policy. She said she did not know what would occur if some agencies failed to meet the requirements of the law.

Mr. Siegel responded to Mr. Callaway's response to changing best practices. He suggested the Commission put on the work program a discussion of the issue of updating best practices. He suggested legislation could be put into law stating best practices had to be reviewed every three to five years.

Chair Horne asked if there were further questions or comments. He closed the discussion on Agenda Item VI and opened discussion on Agenda Item V.

Tom Ely, Department of Public Safety, Parole and Probation, presented some background on lifetime supervision and discussed the impacts of the program on the Division. He said lifetime supervision was a special sentence included for specific times per NRS 176.0931. The sentence of lifetime supervision began following any term of probation, parole, or release from custody. The special conditions for offenders were set by the Parole Board and the individuals were supervised by the Division of Parole and Probation, [Exhibit G](#). He said the Division supervised over 665 lifetime supervision offenders. The number receiving the sentence and supervised by the Division continued to increase. The Division had noted a 47 percent increase in case load over the past three years. He said more officer resources were devoted to sex offender units for supervision of the high risk case load. The case load was mandated at 45 to 1 officer.

Mr. Ely said compliant offenders may apply for release from lifetime supervision after serving ten years from the date of their last conviction. He said noncompliant offenders and those who continue to commit crimes remained on lifetime supervision. Good time credits did not apply to lifetime supervision. He said per NRS 213.1243, violations of lifetime supervision must be prosecuted as new felony offenses in the county where the original sex offense conviction occurred. He said there had been confusion and inconsistency regarding the prosecution of violation of lifetime supervision new charges. New charges had their own criminal case number and thus did not relate to the original sex offense conviction. He said district attorneys often did not have the details of the

offender's criminal case history when preparing for prosecution. He said there were numerous violations that could be committed by offenders including visiting locations where children were present, use of the internet, and contacting victims and children, [Exhibit G](#). He said parole and probation violations may be handled in a matter of weeks; however, the prosecution of new charges may be many months or a year out. The existing laws create obstacles for the Division and for law enforcement. He said lifetime supervision offenders are not welcome in some states as they cannot arrest, hold, or expedite the offender for violations as they would with a parole or probation offender. He said Arizona was reluctant to accept lifetime supervision cases. The Division proposed the Nevada Legislature establish a new, longer probation and parole term for sex offenders who currently qualify for the special sentence of lifetime supervision. He said they suggested keeping the jurisdiction of the case with the sentencing judge on probation cases and with the Parole Board on parole cases. They recommended the elimination of the special sentence of lifetime supervision by July 1, 2013. He said they desired an understanding of the issues and consideration of all the legal partners. He said there were some benefits to community safety including that the current lifetime supervision laws provided for the offender to serve a minimum of 10 years under lifetime supervision before they are eligible to apply for release. The proposed changes provided the person sentenced under the new law will still be supervised. The proposed new probation lengths shall not be more than 15 years, however, they may be less. He said proposed parole terms for specific sex crimes would increase to a minimum term of not less than 10 years, with eligibility for parole after a minimum of 2 years had been served, [Exhibit G](#). The improvement was related to the Dangerous Offender Notification System, DONS. He said DONS was developed in 1996 to provide notification to Nevada officers and investigators regarding the risk posed by individuals they contacted or may be investigating. He said DONS provided real time, immediate information regarding the parole or probation status and the risk posed by an offender. DONS was also a tool which enabled the parole and probation officers to preset rules and conditions for a hold or the arrest of a parolee or probationer.

Mr. Ely said there were many benefits to the Nevada judicial interest. He said the proposed law empowered judges with discretion at sentencing. It enabled them to apply longer probation terms as they deemed appropriate, [Exhibit G](#). Under the proposed law judges and district attorneys no longer needed to address other attorney requests for clarification of lifetime supervision conditions or constitutional challenges. He said the violation process for probation cases was less burdensome to all parties. Parole conditions would be set by the Parole Board and the completion of additional forms or hearings to set lifetime supervision conditions would not be necessary. He said the changes provided efficiency to the judicial system through the elimination of new felony charges on violation of lifetime supervision for offenders sentenced after July 1, 2013.

Mr. Ely pointed out benefits to the offender also, [Exhibit G](#). The change allowed good time credits to be applied to those serving a parole or probation term. The proposed law provided a fixed duration of not more than 15 years for probation and a fixed term of not

more than 10 or 15 years for parole. He said current lifetime supervision laws provided an indeterminate, or potentially lifetime sentence term. The violation process was simplified and more expedient than the current process for the violation of lifetime supervision charges. He said the Interstate Compact process was improved with the proposed changes. He said the Division filed the request for discharge from Parole or Probation and saved the individual the expense and time of hiring a lawyer to file for a release from lifetime supervision. He added under the proposed changes once parole or probation was completed, there would no longer be travel restrictions.

Chair Horne requested Mr. Ely submit the document he was reading to the committee.

Mr. Ely replied that he would do so.

Ms. Bisbee asked Mr. Ely how many people they were supervising. She asked if it was 665 people.

Mr. Ely replied 1,410 total sex offenders were supervised. He said 665 plus were under lifetime supervision.

Ms. Bisbee asked if any of the people were close to the 10 year point in the sentence.

Mr. Ely said they had provided them all the documentation and they can apply at 10 years from their last conviction.

Ms. Bisbee asked how many were close to the 10-year period. She said the application could also be put through the Parole Board. She said it was an automatic approval if they met the criteria.

Mr. Helgerman said there are 272 lifetime supervision cases that it had been 10 years since their conviction. He said not necessarily all of them were eligible for release from lifetime supervision. He said some of them went to prison, it added 10 years from that date. He said 169 went directly to prison, so they estimated approximately 103 to 170 persons remained.

Ms. Bisbee asked if the officers were aware of the 10-year period when offenders could apply. She said the Parole Board did not see many applications.

Mr. Helgerman stated the officers were aware of the process. They were supplied copies of the packets the Board of Parole Commissioners supplied to his Division to give to the offenders so they were aware of the process.

Chair Horne asked if there was ever a discussion or consideration of a more proactive purging of those who reached the 10 year mark. He said Ms. Bisbee said if they met all the criteria, it was an automatic release from lifetime supervision. He asked if they ever

considered sending a letter to people telling them they had achieved the right to release from lifetime supervision.

Mr. Ely said the officers worked with the offenders and as the time approached, they reminded them they could apply to be released. He said some took advantage of it and others were not in compliance in some areas and their release time changed.

Mr. Helgerman said the offender was informed during the intake process of the length of lifetime supervision. He said they were informed that they had to petition to get off, but there were no actual letters from the Division.

Ms. Bisbee said it needed to be clear that they did not have to be in compliance with the conditions of their supervision. She said it was very specific. If they had not committed another crime, they were eligible for release from lifetime supervision. She said the officers needed to know the person may not have been the most compliant, but there were very specific criteria that prevented them from being eligible to be released. She said some of the officers were excellent, and some were a little confused about the criteria. She said people may not remember what they were told at intake 10 years later.

Mr. Helgerman said the Division could set up something to remind the offenders of the process in the future.

Mr. Siegel asked about the proposed bill in [Exhibit G](#). He asked if Mr. Ely expected a significant change in staffing needs, up or down.

Mr. Helgerman said he did not believe there would be a significant change. Some offenders would be able to get off supervision earlier, so over time the number of sex offenders the Division supervised would go down.

Mr. Siegel said he heard them say they intended to relieve the lifetime supervision group of travel restrictions.

Mr. Ely said once they were done with probation or parole, there would no longer be a travel restriction on them. He said now under lifetime supervision they still carried the travel restriction. They had to ask for approval to travel and there were certain places at certain times that were restricted by the state they wish to attend.

Mr. Siegel asked hypothetically, if Mr. Ely was an advocate for people who were on lifetime parole, would it seem as if they were getting some relief.

Mr. Ely said he could see there were benefits to this proposal over the current system. The proposed system would allow them to receive good time credits and possibly complete their supervision earlier. He said there would be less financial burden. He said

if they did do something wrong, the process to see a judge was much quicker than the process that sometimes required a year wait to get back into court.

Lisa Hibbler asked if the victims are ever notified when the offenders are released from supervision.

Mr. Helgerman said there was a policy that dealt with victim notification providing the victim kept their notification information current with the Division.

Chair Horne asked about the proposals and recommendations sought by Mr. Updike. He had requests on shortening the time from 10 years. He asked for feedback from Mr. Ely or Mr. Helgerman.

Mr. Helgerman said it would not be lifetime parole. He said any violations were not counted as new felonies, and they could get off supervision earlier with good time credits. Some of the problems with a state such as Arizona not accepting Nevada's cases would be alleviated because the person would be on parole or probation rather than lifetime supervision. He said the bill was not retroactive to people currently on lifetime supervision because of problems experienced before with making changes regarding sex offenders retroactive. He said it would affect those convicted after July 1, 2013.

Chair Horne asked about the issue of having difficulty with Arizona accepting lifetime supervision cases, was it a blanket no or just individuals who were residents of Nevada and committed a crime.

Mr. Helgerman said the Interstate Compact for Adult Offender Supervision actually gave an opinion based on similar cases. He said New Jersey used to handle all other violations in a similar manner to Nevada. He said because they could not place a hold on them, the state of New York was reluctant to accept people from New Jersey who were on lifetime supervision. He said one of the things the legislators in New Jersey did to alleviate the problem was to provide an additional option of violating either as a new offense or they violate and could be heard in front of the parole board. He said it seemed confusing to him, but it appeased the state of New York. He said Arizona had to accept lifetime supervision cases; however, there were many legitimate reasons for denial in relation to the lifetime supervision cases. Arizona understood the person violating cannot be placed on a hold.

Mr. Digesti said he heard the comment that any violation was considered a new felony. He asked if that was in the proposed legislation.

Mr. Helgerman said under current lifetime supervision it was considered a new felony. He said for those who remained on lifetime supervision, it was still the violation process they would have to go through.

Mr. Digesti said under the current process, it was any violation. He asked if it was a substantive offense, or an administrative violation. He asked if it was an administrative violation, was it new felony.

Mr. Helgerman said the new felony was violation of lifetime supervision. He said it could be for an administrative offense or it could be a new conviction for a separate offense.

Mr. Digesti asked if the category C felony was probation or mandatory prison.

Mr. Helgerman replied it was probation.

Mr. Digesti asked if there was then a separate term for probation to run concurrently with the lifetime supervision.

Mr. Helgerman said they were granted probation and they were supervised in the same manner as lifetime supervision. He said if the probation was revoked, or they were close to getting off lifetime supervision, the new felony could extend the lifetime supervision.

Mr. Digesti said under the proposed legislation a term of fifteen years was imposed. He asked if it was probation and/or parole.

Mr. Helgerman said it was only for sentences that carried lifetime supervision. The judge could grant probation up to fifteen years for their offenses. If the judge decided to not grant probation and sent them to prison, all but four of the offenses carrying lifetime supervision carry a life sentence. The four that did not carry life sentences would increase the sentence structure under the proposed BDR.

Mr. Digesti asked if a judge sent someone to prison and then the person was paroled, they would have a tail of three to four years on their parole. He asked if they were then given fifteen years parole, what occurred if there was a violation in year seven or eight.

Mr. Helgerman said those people would not be given an additional fifteen years. He said all offenses except for the four including battery with intent to commit sexual assault with no substantial bodily harm, incest, offenses involving luring a child or a person with a mental illness, or the subsequent offense for possession of visual presentation containing a sexual conduct of a person under sixteen years of age did not carry the life sentence. All other offenses such as sexual assault with substantial bodily harm or lewdness with a child under the age of fourteen carried a life sentence. He said the BDR would clean up lifetime supervision confusion except for the four mentioned offenses if the person was sent to prison.

Mr. Digesti asked about the four offenses that were not life sentences. He said if they were paroled, then they would have a tail of years left on their parole. He said if a fifteen

year parole period was added, what happened if a violation occurred after their parole tail expired.

Mr. Helgerman said they would be subject to being revoked from parole, not an additional sentence.

Mr. Digesti said traditionally someone's parole was revoked and they were sent back to complete their underlying term with no new violation of criminal law, what would happen when the four exceptions existed without a lifetime sentence. He asked if they were also put on a fifteen year parole.

Mr. Helgerman said they were not; they would be handled as any other parolee who had their parole revoked. They were returned to prison to serve whatever was left of their sentence.

Mr. Digesti said the people in the four groups would get a benefit that otherwise was not available to them if they were on lifetime supervision.

Mr. Helgerman said they would be getting a benefit in that they would not have lifetime supervision at the end of their sentence. However, the BDR increased the sentence structure for the four offenses so the supervision would be under parole for a similar length of time, up to ten or fifteen years.

Mr. Digesti said if the supervision was extended up to fifteen years and they were then revoked, would they go back and finish their underlying sentence.

Mr. Helgerman said they would finish whatever time they had left on their sentence.

Mr. Digesti asked if it carried all the way through the entire term of their supervision.

Mr. Helgerman said that was correct.

Chair Horne asked if there were any other questions.

Mr. Helgerman said the number of people sent to prison for the four offenses were only 28 people since 2009. It was a very small population who received this benefit.

Chair Horne opened discussion on Agenda Item VII, post conviction reports.

Ms. Bisbee said as a result of an increase in waived Presentence Investigation Reports, (PSI) the Parole Board asked for Post-Conviction Reports (PCR). She said somewhere between 5 and 8 percent of the PSIs that impact the Parole Board's work were waived. She said before the new law, they had very few PCRs. She said in July they requested 4 reports and in August the request was for 55 PCRs, in September 25, October 39, in

November 72 requests. Originally they requested the reports within 45 days of the request. Parole and Probation asked for 60 days to complete the reports. She said for all reports requested between July and November, they received all of them by February. She said problems started in December when 56 reports were requested. They requested 53 reports in January and the last reports were received in April and May. They were still waiting for 17 of the reports requested in February. They requested 55 in March and received 8; in April they requested 30 and received one; in May they requested 52 and received 1. She said they held 7,842 hearings in fiscal year 2012. They predicted approximately 3 percent would not be heard. A total of 949 hearings were continued for various reasons in 2012. She said the major portion were parole violation hearings. She said what was different now was 246 people were continued because they were unable to hold the hearing so it was continued to another agenda. She said it was a rare occurrence in previous years. She said the reports were now as much as six months behind. She said they typically saw people 2 to 3 months before they were parole eligible. She said now the Board was seeing people either right at the eligibility date or when they were past the date.

Ms. Bisbee said if a PSI was done within the last 12 months, she asked for an offense summary on the current case. She said they had their entire criminal and social history based on the 12 month old history. The reason they needed the summary was NRS 213 required the Board to consider the facts of the incident offense when making decisions to grant or deny parole. The other reason was she said it was ludicrous for them to consider granting someone without any information on what they had done. She agreed with the Division in those cases, they did not need a full PCR, but they needed an offense summary. She said because of staffing issues with the Division of Parole and Probation that had become an issue. She said there was only one person doing PCRs and at this time they were behind on the reports. She said it had an impact on the parolee and on the Board because there was an increase in hearings. She said Parole and Probation needed increased staff. She strongly supported the need for increased personnel. She said another reason for the 900 plus continuations was 104 of them were moved after they were scheduled for hearings.

Mr. Ely opened his discussion on Post Conviction Reports, [Exhibit H](#). He read his presentation to the Commission. He said originally the Division was informed that there would be about 10 PCRs a year. He said with that number as a guide, the Division assigned that task to one investigator. The decision was made after the budget was submitted and there was no way to provide for increased staffing. He said the Division experienced overtime and comp time costs and the reports became an unfunded mandate, [Exhibit H](#). He said the Division and the Parole Board agreed the PCRs would be handled on a first served basis. Cases were logged as the requests were received. He said the Division began completing 20 PCRs per month and no overtime or comp time was required. He said without additional staffing the Division will not be able to keep up with the demand for the reports and there will continue to be a backlog, [Exhibit H](#).

Chair Horne said he did not hear a rational reason as to why there was a drop off in PCRs. He asked what the primary cause was for the drop off in the number of reports per months.

Mr. Ely replied the number of reports they had received showed in August of 2011 they received 61 requests for the reports. He said that month they were only able to complete 5 reports. He said the number of reports completed each month increased, but they could not keep up with the requests. He said the demand was too high for the number of people doing the job.

Chair Horne said it seemed there was no problem a year ago keeping up with the demand. He said recently there was difficulty keeping up with demand.

Ms. Bisbee said they suspected there would be an increase in PSIs being waived when they changed the law. She said she understood the Division put extra staff on to fulfill the requests until the beginning of 2012 when they did not have the budget to add the staff. She said since January there was only one person doing the reports and they understood one person was not capable of doing all the reports requested.

Mr. Ely said they were taking people out of their regular jobs to prepare the reports. He said they experienced overtime which they did not have budgeted for that use.

Mr. Siegel asked Ms. Bisbee if it meant parole hearings did not happen that should have happened. He asked if people were serving longer in prison than they otherwise would have served.

Ms. Bisbee said it did not impact a huge number because her staff requested the PCR immediately upon receiving the intake list. The people were not eligible for parole at that time. She said most of the time it would work out and they received the PCR and it did not have a huge impact. The problem was those with short sentences. Her staff notified the Division immediately, but somebody might be eligible in four months. There was no way the Division would have the report ready in four months. She said prior to the change in the law she requested only a few PCRs from the Division.

Mr. Siegel said it appeared to have a fiscal impact as well as a justice impact to the person waiting for the parole hearing. He said they needed to look for a fix either in the law or in the funding.

Mr. Jackson said there was no law requiring the Division of Parole and Probation to prepare a post-conviction report. He said they had some people trained in preparing PSIs. They were so under staffed they were having problems doing the proper investigations and preparing the reports. He said he did not know if they were the proper entity to prepare the reports and funding needed to be made available for the reports.

Mr. Ely said it was important to note one employee doing 20 reports a month, meant they could do 240 reports a year. He said they received 578 requests in the past year. He said if they were funded for additional employees they should be able to meet the needs with a total of 2 to 3 additional employees. He said it was an increase to the budget and positions they had to fill.

Chair Horne asked if the effect they were seeing was due to shifting the PSI reports to counties.

Ms. Bisbee said she did not know the numbers. She said they were concerned about the reports the Board needed to make their parole decisions. Parole was a small part of the responsibility the Division of Parole and Probation. She commented to Mr. Jackson that the Division determined to call the reports post conviction reports and it came under the requirements of NRS 213 for the Board having the authority to request investigation reports for the Division of Parole and Probation. She said there was a semantics issue with the term post sentence investigation and post conviction reports.

Chair Horne said discussion concerning the fiscal hit had to be considered during the Work Session. He said the Commission could express a need for it if they wished. He closed the hearing on Agenda Item VII. He said Agenda Item VIII was a report of the PSI process. Mr. Phil Kohn was unable to attend today so the Item was deferred to the August meeting.

David Sonner, Division of Parole and Probation, detailed a report they were asked to provide to the Commission today concerning PSI reports. He read his information into the record, [Exhibit I](#). He said they generated 5,975 PSI reports from June, 2011 to June, 2012. The Divisions case management system contained the data indicating the sentence date for each case, the due date, three business days prior to sentencing, as well as the actual delivery date, [Exhibit I](#). Captain Sonner said the majority of the reports were delivered from 3 to 7 days prior to the sentence date, [Exhibit I](#). He said all the reports were hand carried, hard copy reports distributed to their criminal justice partners. The Division now had the ability to electronically transfer the reports to the Eighth District Court. He said his Division was in favor of all criminal justice reports being delivered seven business days prior to the sentence date. He said this accommodation was a more reasonable approach rather than a 21 day extension of the sentencing process. He said 7 days would cause minimal impact to the defendants, jails, district courts, and Division, while providing adequate time for defense counsel to review the report with their client prior to the sentencing. The Division also recommended during the judges canvassing prior to the imposition of sentence, any objections, or errors, or inaccuracies in the PSI reports were given a minimum 2 week continuance so the court can order the error corrected.

Chair Horne asked Mr. Sonner to return in August. He asked about the number of PSIs delivered. He asked if all the parties, including the district attorney and the defense counsel, received the report.

Mr. Sonner said yes they were delivered to the court, the district attorney, the public defender and private counsel. He said 97.4 percent of the reports were delivered 3 days or more prior to the sentence date.

Chair Horne asked about the recommendation for 7 business days for delivering the reports and if there were errors, requesting a continuance. He said an issue was trying to alleviate the number of continuances being asked. He said if there was a 2 or 3 week window before the court date, the corrections could be made before the court date.

Mr. Sonner said the Division's concern was that it extended the in-custody status with the jail and impacted the jails in the State. He said their information said 1 or 2 percent of all the PSIs produced had legitimate errors needing corrections, it was small percentage.

Chair Horne closed discussion on Agenda Item VII and opened Agenda Item IX. He said Mr. Kandt would make the presentation.

Brett Kandt, on behalf of Attorney General Cortez-Masto, said the last meeting of the Victim's of Crime Subcommittee was held June 20, 2012. The committee discussed two major issues; the chronic shortage of sexual assault nurse examiners (SANE), and the second issue dealt with the cost incurred when a victim of a sexual offense received emergency medical care. He said Nevada law specified in NRS 449.244 and NRS 217.300 that the cost of the care and examinations cannot be charged to the victim. He said the costs often were incurred by counties and the committee looked at whether the cost of the care could be paid for out of the Victim's of Crime Compensation fund and lessen the burden on the counties. Mr. Kandt submitted a detailed report of the discussion for the Commission in [Exhibit J](#).

Chair Horne asked if there were further questions. He asked Mr. Kandt if General Masto planned to make any formal recommendations for the August work session.

Mr. Kandt said he would follow up with the Attorney General and forward the information to Chair Horne.

Chair Horne expressed interest in the SANE nurse issue. He said one of the issues from the hospitals was a number of nurses who wanted to be SANE nurses, but could not take the toll the job placed on them. He said he thought a good reason to have more qualified SANE nurses throughout the hospitals was to enable rotation of the people to relieve some of the impact on the nurses. Chair Horne closed Agenda Item IX and opened the hearing on Agenda Item X, a discussion of items for the work session documents.

Mr. Anthony referred to the two page document labeled possible recommendations that may be proposed for the work session, [Exhibit K](#). He said the Commission did not have any allocated Bill Draft Requests, (BDR). Individual legislators and committee chairman had carried bills on the Commission's behalf. He said the Commission can also seek a sponsor for legislation, a resolution, draft a letter requesting action, or include a statement of support in the final report. He said the document listed several of the recommendations discussed in the previous meetings, [Exhibit K](#). He said further detailed information would be drafted and present for the Commission members for the August meeting.

Chair Horne asked if anything was missing or if there were suggestions for additional items for the work session.

Mr. Siegel said intermediate sanctions were discussed in a recent meeting. He said the ACLU identified two bills having to do with intermediate sanctions which were taken up in the last Session, [A.B. 93](#) and [A.B. 135](#). He requested the two bills be considered and a recommendation be made to consider intermediation sanctions. He also wanted further discussion concerning aged and seriously ill prisoners. He said the Pew Center recently issued a report concerning bills making relatively modest adjustments for this population. He said it was the discretion of the head of the Department of Corrections to do compassionate release. Several states adopted a requirement for a systematic review of individual cases of inmates involving serious illness and/or above a certain age. He said the states allowed for a systematic review considering release 6 to 12 months early and required good behavior and a low risk determination for new crimes. There had been discussion about aging and seriously ill inmates. He said PSI reporting needed additional staffing. Eye witness identification required best practices and reports from everybody. He said best practices changed from year to year. He recommended requiring a best practice review every three to five years. The final issue he wanted to discuss was the psych panel review.

Chair Horne said the additions of the intermediate sanctions issue, and the aged or ill prisoners were Mr. Siegel's suggestions for additional item in the work session. Chair Horne asked if documentation had been provided by the Pew Center when they heard the prison health care discussion in March.

Mr. Siegel said he did not know, but he had a document from the Pew Center with the latest prison reform measures in the states.

Chair Horne was concerned about supporting or sponsoring legislation for the next session on issues the Commission had not had full hearings or presentations on.

Mr. Siegel said there was an Agenda item and testimony from the head of the Department of Corrections. Director Cox's testimony suggested to Mr. Siegel to see what other states were doing on the issue of aging and severely ill prisoners. He said his other point was the list included a wide range that was not necessarily agenda items.

Mr. Jackson said he shared Chair Horne's concerns. He said he had not worked as part of a previous work session with the Commission. He was concerned about bringing on new topics for the work session. He said Director Cox was asked questions about certain types of prisoners, those of certain ages or serious illness, but there was no presentation or information provided to the Commission as to solutions for those problems. He said there was a lot of information the Commission had received and he requested only matters on which the Commission had previous information. Mr. Jackson asked if he should make a motion about the topic.

Chair Horne said to wait on any motion and hear any of the other additions or modifications to the current material. He asked if there were any further comments.

MR. JACKSON MOVED THE COMMISSION ONLY HEAR MATTERS
ON WHICH THEY RECEIVED A PRESENTATION DURING THE
PREVIOUS MEETINGS FOR THE WORK SESSION MEETING.

MR. KANDT SECONDED THE MOTION.

Chair Horne asked for some clarification on the motion. He asked if the motion included everything in the handout from Mr. Anthony with the exception of two of the recommendations on the issues of the aged and severely ill prisoners. He asked if the psych panel was also excluded from the work session. He said it included intermediate sanctions, parole staffing, best practices review, and witness identification.

Mr. Jackson replied Chair Horne was correct.

Chair Horne asked if the Attorney General's subcommittee on the Victim's of Crime was also included.

Mr. Siegel said it was a reasonable position to say each issue should have been taken up in an agenda item. He said Mr. Jackson commented they did not receive the solution when they did the formal agenda item on aging and ill prisoners. He said there was testimony and exchange and the Commission did not have bills except in very few instances. The hearings were on issues and rarely involved a particular proposed bill. The Commission was different than a legislative committee. He asked for a specific interpretation and offered an amendment to the motion. He proposed the Commission not consider for work session a subject that was not dealt with through agenda and was not discussed at a scheduled meeting of the group. He intended to leave the psych panel out, but indicated the aged and severely ill inmates met suitable criteria for the work session.

Mr. McArthur said he also had concerns about information they received and the topics for the work session. He said he was unsure if a motion was necessary at this point. He agreed with the ideas, but doubted the current motion was needed.

Chair Horne said the motion's effort was that they were in agreement that what was before the Commission was what they would speak on in the work session documents. They would not expand beyond to other ancillary issues. He said this did not preclude other issues from coming before the Session.

Mr. McArthur said the motion was the Commission would hear what was on the paper with a couple of other things that were mentioned.

Chair Horne said this was just for the work session and did not imply the stamp of approval from the Commission. He said various other topics can be suggested to Legislators to bring before the committees in Session.

Mr. Kandt asked about issues vetted and recommended by a subcommittee. He asked if it was in the purview of the work session. He was curious whether the motion included issues vetted by subcommittees.

Chair Horne replied when outstanding reports come before the Commission they would be discussed before the work session documents were studied.

Ms. Bisbee asked if page 2 of [Exhibit K](#) was included in the motion.

Chair Horne replied both pages were included. He said Mr. Siegel asked that the motion be amended, but there was no discussion about amending the motion. He asked Mr. Jackson if he wished to amend his motion.

Mr. Jackson said leave the motion as it stood.

Chair Horne called for a vote on the motion.

THE MOTION CARRIED. (MR. SIEGEL AND MR. DIGESTI
VOTED NO ON THE MOTION.)

Chair Horne asked Mr. Anthony for the dates in August for the next meeting.

Mr. Anthony said the last week of August 28, 2012, was the proposed date.

Chair Horne said he wanted everybody at the work session if possible. He closed Agenda Item X and opened Agenda Item XI, public comment.

Mercedes Maharis said she was the past director of Nevada Cure. She said she had five points she wanted to discuss. She asked the Committee to give careful attention to HIV and AIDs treatments inside the Nevada Department of Corrections. She said her second

point was mental health care for solitary confinement individuals. She believed care was severely lacking for some people in solitary for many years. She said 27 percent of approximately 12,000 individuals were kept in solitary confinement. Ms. Maharis's third point was the psych panel. She said there was audit in 2000 and the members of the Commission needed to look at the audit concerning the issues the audit revealed. She said the psych panel impacted 3,000 individuals, plus or minus. She asked why there was a steady increase in the number of shots fired at High Desert State Prison. She said it had escalated through the years. She said it might be due to lack of money spent on training to give the officers proper skills. Her final item concerned a court ordered settlement for a man who was shot. She said it took the NDOC three years to honor the court ordered settlement. That amount of time allowed the individual to have other issues happen to him that should not have occurred. She asked for consideration of her issues.

Mr. Davis spoke regarding lifetime supervision. He said many of the conditions placed on offenders on lifetime supervision were blanket policies on constitutional rights. He said restrictions on fundamental rights of travel, residency restrictions, and job restrictions were probably not legal in statute. Officials denied the rights to individuals on lifetime supervision even though they were not reasonably related to the crime. He said offenders were required to ask their supervisor if they could move, or change jobs, or travel. He said they should not restrict the right to travel for work purposes at any time, but they did so frequently. He said offenders were technically allowed to get off lifetime supervision after ten years. He knew a client that spoke to an officer who scoffed at him and said she would do whatever she could to make sure he did not get off supervision. He said officers needed more training. He said when lifetime supervision was first enacted in 1995 in S.B. 192, it was determined that it was supposed to be a non-punitive tool to help law enforcement know the whereabouts of convicted sex offenders. He said it was determined that it should have been an administrative caseload by the Division of Parole and Probation. The Division of Parole and Probation determined the rate of the supervision. He said sex offenders on lifetime supervision had the highest and most stringent conditions of anyone under supervision with the harshest penalties. He said cases needed to be placed in the hands of judges and there should be no mandatory sentencing. The last point Mr. Davis made was that the law could be changed and it could be retroactive. He said changes to the law that imposed harsher conditions could not be retroactive. If the law benefited someone, they were affected by the change in the law.

Mr. Goetz wondered if someone was revoked for violating some kind of violation, would they be allowed to appeal to the courts if they did not approve of what they were revoked for by the Parole Board. He said after ten years some people can go off lifetime supervision. He asked how many sex offenders had been released from lifetime supervision since 1995. He asked about the Adam Walsh Act and the proposed lengths of time for lifetime supervision. He said Ms. Bisbee commented about sex offenders and referred to a grant. He asked if the grant was started and who was doing the study. He asked if it was a scientific study for the psych panel and the tier levels. He referred to [Exhibit C](#) concerning sex offender recidivism rates. He said the person who led the psych

panel at this time was not a licensed psychologist in this State. He said something should be done about this lack of licensing for people on the psych panel.

Ms. Brown said she mentioned the software program installed in Clark County in 2005 that put false charges in people's files dealing with traffic citations and violations. She said it turned out it was the software program OTIS which caused the problem. She said the Offender Tracking Information System (OTIS) was the one that put false information in Mr. Kline's file. She said it caused the problem termed a computer glitch and the information continued to come back on inmate's records. She had previously discussed PSI reports. She had a question about post convictions proceedings. Ms. Brown discussed her brother's case again in detail for the Commission. She said in September Mr. Klein's case was going to be a part of a documentary movie presented to the U.S. Congress.

Ms. Hines said she worked with the Nevada Cure Organization and wanted to discuss psych panels again. She said the need for psych panel revision had been heard by the Commission since its inception. She asked who was keeping track of recidivism for sex offenders in Nevada. She mentioned there were three people on the psych panel and one was not even a licensed psychologist in Nevada. She said another person on the psych panel had a felony conviction. She said the third person on the panel came from mental health and worked at Lakes Crossing. She said during last session S.B. 187 was passed and she had a large part in getting it passed. She was disappointed that it did not go further with the psych panel. She said the Nevada Cure Association was started by Mercedes Maharis and herself in 1997. She said they made a lot of changes.

Chair Horne asked if there was further public comment. As there was none, he adjourned the meeting at 1:15 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Secretary

APPROVED BY:

William C. Horne, Chair

DATE: _____

EXHIBITS

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

Date: JULY 17, 2012

Time of Meeting: 9:00 a.m.

	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Mr. Wes Goetz	Sex Offender Recidivism Information
	D	Jerod Updike	Discussion on Lifetime Supervision
	E	Tonja Brown	DNA Testing-Nolan Klein
	F	Robert Roshak	Photo Identification
	G	Tom Ely	Lifetime Supervision
	H	Tom Ely	Post Conviction Reports
	I	David Sonner	Psi Reports
	J	Brett Kandt	Victim's of Crime Subcommittee Report
	K	Nicolas Anthony	Recommendations for Work Shop Meeting