

**MINUTES OF THE  
ADVISORY COMMISSION ON THE  
ADMINISTRATION OF JUSTICES'S  
SUBCOMMITTEE TO REVIEW PRESENTENCE  
INVESTIGATION REPORT PROCESS**

May 22, 2012

The meeting of the Advisory Commission on the Administration of Justice's Subcommittee to Review Presentence Investigation Report Process (NRS 176.0123) was called to order by Mr. Phil Kohn, Chair, at 1:30 p.m. on May 22, 2012, at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous video conference at the Legislative Building, Room 3138, 401 South Carson Street, Carson City, Nevada. The Agenda is included as [Exhibit A](#). All exhibits are available and on file in the Research Library at the Legislative Counsel Bureau.

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

Phil Kohn, Chair, Clark County Public Defender  
Sheryl Foster, Nevada Department of Corrections  
Kim Madris, Acting Commissioner, Division of Parole and Probation

**SUBCOMMITTEE MEMBERS PRESENT (CARSON CITY):**

Brian Campolieti, Board of Parole Commissioners  
Mark Jackson, Douglas County District Attorney

**SUBCOMMITTEE MEMBERS ABSENT:**

Judge David Barker

**STAFF MEMBERS PRESENT:**

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

**OTHERS PRESENT:**

Captain David Sonner, Division of Parole and Probation  
Chuck Callaway, Las Vegas Metropolitan Police Department

Chair Kohn opened the Subcommittee to Review Presentence Investigation Report Process at 1:30 p.m. on May 22, 2012. He requested a roll call of members present.

Mrs. Hartzler called roll. Judge Barker was absent. Mr. Brian Campolieti was present for the Board of Parole and Ms. Sheryl Foster represented Mr. Cox.

Chair Kohn opened Agenda Item III, Public Comment. He asked if there was any comment from Carson City or Las Vegas, and there was none. Chair Kohn opened the discussion concerning the PSI reports. He said he wanted to engage the Nevada Department of Corrections (NDOC) in the discussion. He said if they made any changes to the PSI reports that were stipulated to by the parties or found by the Court, what form did the amendment have to be in for the purposes of the NDOC and for the Parole Department. He asked if the PSI needed to be sent back to Parole and Probation for a new report with all the changes or if there could be some other type of addendum that was workable for the NDOC's needs and for Parole and Probation. He asked Ms. Foster for her input on the topic.

Ms. Foster said she spoke with Ms. Madris on the subject earlier regarding options to corrections made to the PSI report. She also talked to the keeper of their records, and they discussed handwritten corrections made to the PSI at the time of sentencing by the judge. They would accept it if it was backed up with a minute order outlining the changes.

Chair Kohn asked Ms. Foster if it was only put in the judgment of conviction, a signed document by the Court, was that acceptable.

Ms. Foster said if it was spelled out in the judgment of conviction, it would suffice as long as it came with the PSI and included the handwritten changes. She said they needed an official document showing that the handwritten changes were made by the judge at the time of sentencing.

Mr. Campolieti said if there were any changes, the Parole Board needed access to the changes.

Chair Kohn asked about his suggestion of putting the changes in the judgment of conviction signed by the judge and filed as a court document. He asked if that was sufficient for the Parole Department.

Mr. Campolieti said it would suffice for the Parole Department.

Chair Kohn said historically that had not been the case. He said the lower courts did not always get all the documents to the NDOC and the Parole Board. He also asked the Parole Board what percentage of the cases were in-custody versus out-of-custody cases.

Ms. Madris said Captain Sonner was present to discuss those numbers.

Captain Sonner said he was with the Division of Parole and Probation. He said they produced a total of 624 PSIs in April 2012. He said 196 were in-custody PSIs which equaled 31 percent of the total. He said in May they had completed 551 PSIs and 202 were in-custody, which represented 37 percent. He said they were comfortable saying anywhere between 30 and 40 percent of the PSIs were in-custody reports. He updated the group on the e-filing of the PSIs in the Second Judicial District. He said the Eighth Judicial District was entering into the process of e-filing. They were testing the system and so far it worked well. He said in the next three weeks a total of 32 departments were scheduled to receive electronic PSIs. He was informed by a district court technology department that they were planning to provide electronic access for the Public Defender's Office as well as the District Attorney's office. They were also discussing the potential provision of providing PSI reports electronically to NDOC. He said if it happened it would be a totally electronic system of the distribution of their reports. The benefits included requiring fewer resources because they did not have to hand deliver the reports to the courts every day. He added that potentially, the reports might be received sooner than they were now.

Chair Kohn asked how far out from sentencing would the reports be given to the district courts after the change over to the electronic system.

Captain Sonner said presently the reports were there a minimum of 3 days prior, but potentially they could be there 4 or 5 days prior. He said the system was still in the test phase.

Chair Kohn said he was concerned about the private bar not having the same access as the public defenders.

Captain Sonner said it was totally different in terms of supplying private bar with the electronic reports. He said access was a major concern for District Court personnel.

Chair Kohn said he was aware of the 72-hour time that Parole and Probation worked under to get the reports to the parties. He said he thought it was statutory, but upon rereading the statutes it was not statutory, but was policy.

Captain Sonner replied he was correct, it was Parole and Probation policy.

Chair Kohn said he presented a document at the last meeting mirroring the federal guidelines which got the reports 35 days in advance. He said he recognized it would be a burden on Parole and Probation. As there was no rule now, he did not think they could go forward after the next Legislature with no rules. He asked Mr. Jackson to comment on the discussion.

Mr. Jackson said doing nothing was the wrong way to proceed. He said the Subcommittee was going in the right direction. The issue affected the prosecuting offices, the defense bar, and ultimately the Department of Corrections and the Parole Board. He said not everything would be captured within the judgment of conviction. There were two main disputed facts that arose during PSI reports: criminal record references as to arrests and convictions and allegations of gang affiliations. He said gang affiliations were important because in many cases it was not charged as an enhancement, but the Division looked at it as part of the PSI. He said if it was not disputed by the defendant, when the individual came up for parole and the only documents the Parole Board had were the PSI and the judgment of conviction, the gang enhancement affected the individual. He said it also affected the person in their housing at the NDOC. When a sentencing judge made a determination that there was factual information, it needed to be a part of the PSI. He said changes could be in the form of a minute order. He was concerned upon conviction of a defendant that three copies of the judgment of conviction and a copy of the PSI went to the NDOC. Those were the only documents that followed the person through the system. He said they needed to be correct. Mr. Jackson said he liked what was drafted in the proposed conceptual amendment, [Exhibit C](#). He mentioned that in paragraph 2, the words "sentencing guideline ranges" needed to be stricken from the proposal. He said they needed to focus on the amount of notices given to all the parties. He said 3 or 4 days are insufficient for prosecution to get prepared. They could become more efficient in the process. He said 7 days before the sentencing was a reasonable time. He proposed keeping the 7 days in paragraph 5; looking again at the 35 days in paragraph 1 and maybe changing it to 21 days; and paragraph 2 remained at 14 days before the sentencing.

Chair Kohn agreed with Mr. Jackson that the two areas of contention were primarily criminal records and gang affiliation. He said the Department of Parole at the federal level had more than the 45 days Parole and Probation had in Nevada. He suggested they give P&P more time to do out-of-custody cases, and keep 45 days as the guideline.

Ms. Madris said the situations occurred rarely and they were going to be changing the entire system to accommodate less than 2 percent of the reports. She hoped the Subcommittee took that into consideration. She said the amount of staffing required to accommodate the recommendations was large. She recommended looking at the cost and searching for some other solutions.

Chair Kohn said his personal opinion was that there were so few cases due to the lateness of the report and the inability to review the reports with the client. He said two U.S. Supreme Court cases recognized that 97 percent of all cases were plea bargained. He said getting the report 3 to 5 days before sentencing was insufficient time. Without an amended situation, there was going to be litigation in federal courts. He asked Mr. Jackson if there was a burden of proof in the *Stockmeier v. State* case.

Mr. Jackson agreed with Chair Kohn. He said the intent was to identify whether there was an issue. He said the majority of states had procedures spelling out how inaccuracies in the reports were amended or corrected. He commented on prior testimony. He said they were not asking to speed up sentencing hearings. He said the PSI reports were due at the same date as earlier, but the sentencing hearing was extended for three additional weeks. The proposal allowed for the minimum period to be waived by a defendant. He said the amount of money it cost for a *habeas* petition to be filed alleging ineffective assistance of counsel was hours of attorney and support staff and averaged in excess of 300 hours. He said that far exceeded the expense of taking care of the problem in the beginning rather than later. He thought they had looked at other alternatives. He recognized there were costs involved for P&P but the hours at the front end were much less expensive than at the later date.

Chair Kohn said the counties were concerned about the cost of keeping people in jail for a longer period of time. He agreed with Mr. Jackson that they needed to have some rules and to get the reports done correctly.

Chuck Callaway, Las Vegas Metropolitan Police Department, said his concerns were very clear. The concerns were about holding inmates in their facilities for a much longer time than they were currently being held. He said they supported changes that made the process more efficient and helped get accurate PSI reports.

Chair Kohn proposed keeping the proposal as presented and changing the 35 days in paragraph 1 to 21 days so they had 21, 14, and 7 days as a starting point for discussion with the Commission as a whole.

Mr. Jackson said paragraph 2 would have to say within 7 days after receiving the PSI report. Mr. Jackson made a motion.

MR. JACKSON MOVED TO ACCEPT THE CONCEPTUAL PROPOSAL TO INCLUDE 21 DAYS IN PARAGRAPH 1, 7 DAYS IN PARAGRAPH 2, AND REMOVE THE SENTENCING GUIDELINE RANGES IN PARAGRAPH 2.

MS. FOSTER SECONDED THE MOTION.

THE MOTION CARRIED. (MS. MADRIS VOTED NO.)

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Chair Kohn asked if there was further discussion on the topic.

Ms. Madris informed everyone that the Division decided to place a *Stockmeier* disclaimer on the PSI form given to the defendant. The *Stockmeier* disclaimer informed the individual filling out the information that it could be reviewed by federal, state or local agencies and used for further determinations to include parole considerations. She said they put the same disclaimer in the completed PSI.

Chair Kohn suggested it would be specifically used by the NDOC for classification, and it was the duty of the applicant to meet with their attorney and go over anything in the PSI.

Ms. Madris said that they required the defendant to initial the disclaimer for verification they had read and understood it. The decision was made statewide.

Chair Kohn said it came to his attention there were reports requested of the Division of Parole and Probation, and by the Parole Department, of cases where somebody was going before the Parole Board, but there were no PSI reports done in their specific case. He asked what the reports were called.

Ms. Madris said it was a Post Conviction Report.

Chair Kohn said he was unaware of the existence of these reports. He asked if they were legal after the decision in *Stockmeier*. He said probation reports could not be changed, but could they create a new report. He said the Post Conviction Report was expensive. He asked how often PSIs were waived because there were concurrent ones or a more recent PSI.

Mr. Jackson said it happened, but it was in the minority. He said the purpose of the post conviction reports were due to particular changes that happened since their last PSI report.

Chair Kohn asked how often the post conviction reports were requested every month.

Ms. Madris said it was a function done in the Headquarters in Carson City. There had been up to 200 requests in a month. She said as soon as an individual was entered into the NDOC, if there was no PSI completed in the last 6 months, the Parole Board requested the report.

Mr. Campolieti said if the Parole Board did not have a PSI, they requested the post conviction report.

Chair Kohn said one of the reasons was they did not know the facts of the new incidence. He said the report might be more effective if it was done earlier. He did not know these reports were required or how many were required. He said it was something to consider on the agenda of the full Commission.

Ms. Foster asked if the PSI report did not have to be done if a report had been done within 5 years.

Chair Kohn said yes, that was a problem and he was unaware that those were the kind of numbers where it was happening, especially in the southern district.

Ms. Foster asked Mr. Campolieti if they requested a post conviction report if a PSI had not been done within 6 months,

Mr. Campolieti said he did not have the information concerning how much time had elapsed from when they were requested other than when an individual came up on parole. He said if they did not have a PSI, they requested a post conviction report because they needed the information. He said it could be 12 months or 8 months, or 2 years.

Ms. Foster said she was not familiar with the post conviction report. She asked if it looked like a PSI with the same information as a regular PSI report.

Mr. Campolieti said it was not as detailed as a PSI report. He said it had a synopsis of the offense and a criminal history. He said they needed the information including their prior criminal history.

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Chair Kohn said this was new information for him, and he did not know the reports existed or in such numbers. He said it was something the whole Commission should discuss. He asked if there was public comment from the north or south.

MS. FOSTER MOVED TO ADJOURN THE MEETING AT 2:15 P.M.

MR. JACKSON SECONDED THE MOTION.

THE MOTION CARRIED.

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Chair Kohn thanked the Subcommittee for attending the meeting.

RESPECTFULLY SUBMITTED:

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Olivia Lodato, Interim Secretary

APPROVED BY:

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Phil Kohn, Chair

DATE: \_\_\_\_\_

