

**MINUTES OF THE
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE
JANUARY 27, 2014**

The meeting of the Advisory Commission on the Administration of Justice was called to order by Senator Tick Segerblom on January 27, 2014, at 9:31 a.m. in 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):

Judge David Barker
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Catherine Cortez Masto, Attorney General
Greg Cox, Director, Nevada Department of Corrections
Lisa Hibbler, Victims Advocate
Assemblywomen Michele Fiore, District No. 4
Phil Kohn, Clark County Public Defender
Senator Tick Segerblom, Chair, District 3
Assemblyman Jason Frierson, District 8

COMMISSION MEMBERS PRESENT (CARSON CITY):

Senator Greg Brower, District No. 15
Larry Digesti, Representative, State Bar of Nevada
Justice James W. Hardesty, Nevada Supreme Court
Mark Jackson, Douglas County District Attorney
Jorge Pierrott, Sergeant, Department of Public Safety, Division of Parole and Probation
Richard Siegel, American Civil Liberties Union of Nevada
D. Eric Spratley, Lieutenant, Washoe County Sheriff

COMMISSION MEMBERS ABSENT:

Connie Bisbee, Chairman, Board of Parole Commissioners

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Nancy Fishman, Project Director, Vera Institute of Justice
Alison Shames, Consultant, Vera Institute of Justice
Marla McDade Williams, Deputy Administrator, Division of Public and Behavioral Health
Dagney Stapleton, NACO
Jacqueline Holloway
Nancy Lipski
Bob Webb Washoe County Community Services Department
Cadence Matijevich, Assistant City Manager, Reno, Nevada
Wendy Naro Ware, The JFA Institute
Bernard Curtis, Chief, Department of Parole and Probation
Robin Hager, Department of Parole and Probation
Justice Michael Douglas, Nevada Supreme Court
Ben Graham, Representative, Administrative Office of the Courts
Stephen Gresko, Senior Criminalist, CODIS Manager, Washoe County Sheriff's Offices
John McCormick, Assistant Court Administrator, Administrative Office of the Courts
Stephanie Heying, Court Services Analyst, Administrative Office of the Courts

Chair Segerblom opened the meeting of the Advisory Commission on the Administration of Justice. He requested a roll call of members present.

Mrs. Angela Hartzler called the roll. A quorum of the members of the Commission was present for the meeting.

Chair Segerblom asked if there was public comment. Seeing none, he requested approval of the Minutes.

MR. FRIERSON MOVED TO APPROVE THE MINUTES OF THE
NOVEMBER 6, 2013 MEETING.

MS. FIORE SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Segerblom requested Mr. Anthony discuss the information concerning assistance from potential providers to the Commission.

Mr. Anthony said at the last Commission meeting they voted to have staff contact the Pew Charitable Trust and other technical assistance providers. He talked to Jake Horowitz at the Pew Charitable Trust. He had worked with them earlier in 2011 with Dr. Austin. He also contacted Marshall Clement from the CSG. Chair Segerblom, Justice Hardesty and Mr. Anthony had a telephone conference with Mr. Clement and he expressed interest in Nevada. Mr. Clement explained it would require a formal application. He said CSG looks for buy-in from all three branches of government. Mr. Anthony was advised to contact the Governor's legal counsel. He said Mr. Clement was interested in attending the next meeting of the Commission. He said staff became aware of the state of Oregon and their commission on public safety. Oregon was able to achieve innovative changes in their criminal justice system last session. He said the Pew Trust helped lobby a reform package that will save over \$326 million in the next 10 years. Some of the reforms included reducing or removing mandatory minimums, expanding probation functions and extending transitional housing. He spoke to the executive director of the Oregon commission and learned he would like to attend the next meeting. He also contacted the Vera Institute. It was a nonprofit, nonpartisan group from New York City. He said they were also a technical assistance provider helping states look at best practices.

Mr. Frierson asked if there was any consideration of a group from Texas called rightoncrime.org. He said he did not want to duplicate any efforts.

Mr. Anthony said he would look to see that there were no overlaps.

Mr. Siegel asked Mr. Anthony about the justice reinvestment issue. He asked if it involved all of the groups or just the Vera Institute.

Chair Segerblom said they were willing to reach out to any outside group willing to help Nevada.

Ms. Nancy Fishman and Ms. Alison Shames represented the Vera Institute of Justice. Ms. Fishman said Vera was an independent, nonpartisan, non-profit organization. Vera focused on making systems more effective through research and innovation. Vera was based in New York City and had been in business for over 50 years. She said Vera combined expertise in research and technical assistance to help improve systems in government. Ms. Fishman continued her power point presentation of the overview of Vera, [Exhibit C](#). She said Vera worked on issues around juvenile justice, immigration, cost benefit analysis, victimization, substance use, mental health and racial justice. She said there had been a lot of focus on comprehensive criminal justice reform. She said at least 17 states had taken major reform efforts, [Exhibit C](#). Changes were occurring due to major budget pressures on state and local government. She said the availability of better information allowed states to consider reforms in justice reinvestment efforts.

Ms. Shames opened her discussion on the Policy trends throughout the country, [Exhibit C](#). She said states were spending more on corrections and sending more people to prison. She said the justice reinvestment initiative and general criminal justice reform states start with an analysis of their criminal justice system. She said each state had to look within their own system for solutions. She said Vera looked at the individual state's drivers to develop policies. She referenced policy trends in [Exhibit C](#). She said when states shift their practices they send more people to community supervision. The traditional goals were being refined to one that sought to change the offender's behavior. They said agencies were focusing resources on high-risk offenders. She said Nevada had a long history of problem solving courts. Ms. Shames said Nevada was a model for other states in some areas, especially the earned discharge credits. Ms. Shames mentioned all the states where Vera worked, [Exhibit D](#).

Ms. Shames said many states were using a system called Performance Incentive Funding, [Exhibit E](#). She said in the past probation or parole agencies neither benefited nor suffered if they sent fewer or more people to prison. Performance incentive funding made community supervision agencies have an incentive to work with their offenders and have them successfully complete their term of supervision because the agency will receive additional or more funding if they send fewer offenders back to prison. She said passing legislation was an essential step in the process of criminal justice reform, but many other factors determined the success of the reform. She said everyone from the system had to participate in the reform. Patience and realistic expectations were necessary as change did not occur quickly.

Justice Hardesty asked if they could tell the Commission how they engage with states and provide support for the research and reforms to the specific state.

Ms. Shames said one way was through the justice reinvestment which was a more formal application through the Justice Department. It was a federally funded initiative. She said Vera was also hired directly to work with states on the analysis and policy development and implementation. She said they also received funding from private foundations.

Ms. Fishman added in the context of justice reinvestment, Vera focused on the Phase 2 part which occurred after the legislation was passed to develop an implementation plan providing technical assistance.

Justice Hardesty asked if direct hire contracts were supported by Pew or other financial foundations.

Ms. Fishman said it depended on the situation. They had when they were funded by a foundation to work in a state, or state governments who hired them.

Justice Hardesty asked if they were familiar with any of Nevada's work over the past five years.

Ms. Fishman said they received the reports of the Commission and were familiar with the 2007 legislation and some of the changes.

Mr. Jackson said he appreciated them pointing out what worked in one state may not work in Nevada and numbers should drive the state's reaction. He said there were presentations in the past about certain numbers dealing with sentencing and successes and failures. He said Nevada typically led the nation as number one in crime and in violent crime. He said Vera worked in Arizona and had three programs there. He asked if they were familiar with the 515 page study performed by Dr. Darrel Fischer. He said it was the most comprehensive study he had ever seen.

Ms. Shames said she had not read the study. Their work in Arizona was primarily through the Immigration and Justice Center. She said they were not working in the adult sentencing area in Arizona.

Mr. Jackson asked if she agreed with him that when you looked at the commitment rate, it was very important to understand the rate can be divided into at least four categories. He mentioned felons sentenced directly to prison by a judge, those who failed on probation, those parolees returned for committing a new crime, and those parolees returned to prison for violating the terms of their parole.

Ms. Fishman said those were some of the categories. She added probationers who committed a new crime. She said that was where some of the state variations occurred. Each state had a different set of "drivers" that were responsible for the states particular commitment rate.

Mr. Jackson said in a state like Nevada, a leader in crime, it was important to determine if the majority of individuals sentenced were in on violent offenses or were repeat offenders.

Ms. Fishman and Ms. Shames agreed with Mr. Jackson.

Mr. Frierson said what Vera did was data driven and not easy to do in a short presentation. He said in criminal justice there was a lot of emotion and passion. He asked what efforts or experience they had in getting stakeholders to buy-in from the beginning. He also said performance funding and contracting was essentially not a mundane concept if communities were able to use the money in other ways that furthered their causes. He asked for examples from other states of increased funding for more officers on the street.

Ms. Shames said stakeholder buy-in was important for success in the state. She said outreach was important from the beginning. She said involving everyone was necessary.

Ms. Fishman said the other aspect about stakeholders was bottom to top, including everybody.

Ms. Shames said performance based funding was a mixture of things. She said Vera did a report on the topic several years ago. She said it was about sharing in the cost savings. She said in California probation was done on a county level. A performance based mandate required that if a county sent fewer people to prison, they received back from the state a certain amount of money per offender that they did not send back to prison. She said the incentive was dollars and the dollars could be used for different things.

Ms. Hibbler thanked them for the report. She said reentry programs had to be included in reports. She said the reentry programs needed to begin while they were incarcerated.

Ms. Shames said a number of states were mandating departments of corrections begin reentry planning before release from prison.

Mr. Siegel asked if successful states were working with several different groups.

Ms. Shames replied Vera worked in many states on projects that were not a part of the formal justice reinvestment initiative. She said if Nevada worked with Pew or CSG it did not mean Vera could not work with Nevada in another capacity on a specific project.

Mr. Siegel said in his analysis of the Nevada legislature, there was a sharp divide between the policy committees and the money committees in terms of their awareness and interest in working in this area. He asked if that was a component in other states and if Vera had tackled the political problem of getting money committees involved in the agenda being discussed.

Ms. Fishman clarified that Vera had worked in states on JRI when Pew had been there. Pew did phase one of the work and Vera did phase two, which was the implementation of the project.

Ms. Shames stated that in many states they included the budget people on the commission so they heard the conversations. She said it was about involving everyone from the beginning. She said many states did not leave it up to the budget committees to find the money. The states were legislating mandated upfront investment or a required reinvestment. She said the process was put into statute.

Mr. Siegel said the budget people were not very well represented on the Commission, but they had tried to reach out to them.

Chair Segerblom said he wanted to incorporate the fact that savings on one end were spent on the other end so the legislation was comprehensive. He also wanted the Governor involved because if it was part of his budget it would make a big difference. He said Vera had private funders they could go to for a specific project. He said Vera offered to work with Nevada to do something innovative and exciting.

Mr. Pierrott said one of the recommendations was to reduce the population in the prisons. He said Parole and Probation was concerned about the time line and the recommendation to hire new officers to supervise the people released to the communities. He asked about support for funding for additional officers.

Ms. Shames said the results were mixed, some states made sure the funding was increased. She said in other places funding was not increased.

Ms. Fishman said if the money did not follow with extra support for supervision and programming and retraining, there would not be results.

Mr. Pierrott asked about the time line for other states to get officers in place.

Ms. Shames said some states made some legislation for early release effective immediately and that resulted in burdens on parole and probation agencies. Other states phased it in over time. It was up to each state to make sure the agencies were ready. The agencies could also reorganize the way they supervised offenders so the least risky offenders were placed on an administrative case load which required very little work from the officers relative to dealing with the higher risk offenders. She said the time line was in the legislator's hands to determine what was needed.

Justice Hardesty said if probation was already underfunded and over worked, reforms initiated would fail without appropriate ways for adequate funding and support services. He asked how many states had reformed into supervising probation through the courts or altered the structure of supervising probation.

Ms. Shames said most states did not have probation within the courts. She said that created a different framework. She said the movement was away from judiciary and towards corrections. She said states had different structures. She said if a risk and needs assessment was done but not passed on to the department of corrections, there was inconsistent treatment practices.

Chair Segerblom said he would like a presentation from the University about training programs for people becoming parole and probation officers. He sensed a need for additional parole and probation officers. He asked if there were any other questions. As there were none, he opened discussion on Agenda Item XI, the marijuana issues. He requested everyone introduce themselves.

Mrs. McDade Williams said Chad Westom, Bureau Chief, were present today. Mrs. McDade Williams said her role was to facilitate the development and adoption of the regulations. She provided a power point presentation, [Exhibit F](#).

Jacqueline Holloway, Director of Clark County Business License, was present.

Dagney Stapleton, from NACO, and Bob Webb from Washoe County were present in Carson City.

Cadence Matijevich, Assistant City Manager, City of Reno was also present.

Mrs. McDade Williams said they began the formal process for comments in October. She said in December they held a public workshop. She said they were waiting for revised regulations from LCB. She said they will follow the law and post a 30 day notice for adoption. At the meeting of the State Board of Health if they adopt the regulations, they will have met their requirement to have the regulations adopted by April 1, 2014. She said regulations were one part and they were

also developing an operational program to go along with regulations. She said they had proposed hire dates of March, 2014, if things stayed on track.

She said Section 25 was the key for application solicitation. They anticipated it will be a ranked system. The intent was to forward only the top ranked applicants up to the number of dispensaries allowed in a jurisdiction. She said there was no limit to other facilities types, only the dispensaries.

Chair Segerblom asked about forwarding the rank list. He asked if it would be in order from the top on down or just forward the top 10 names.

Mrs. McDade Williams said, for example, if Clark County had 10 they would give the top 10 to the County to go through their process. Number 11 would not go to Clark County. She referenced [Exhibit F](#) concerning the application solicitation. Other application requirements were specified in Sections 26, 26.5 and 27 of the revised draft regulations. The county authority for dispensaries was listed in NRS 453A.326. She said the board of county commissioners may increase the percentage of the number of dispensaries to insure individuals have access to sufficient distribution of marijuana for medical use, [Exhibit F](#).

Chair Segerblom asked when the county can make the decision to add the number of dispensaries. He said it was better for the counties to move quickly.

Mrs. McDade Williams said it was better for the local jurisdictions to declare relatively soon in the process. She said it was the counties choice of when they took the action. She said the establishment needed to be operational within 18 months. She said they took a lot of negative comments about the cost.

Chair Segerblom said he understood there was a draft application.

Mrs. McDade Williams said they were focusing on the regulations and did not have staff dedicated to the other operational items yet.

Chair Segerblom asked if the regulation on the Web site was the intention of what went forward.

Mrs. McDade Williams said he was correct and changes in concepts would not occur. She said another issue was when the local governments engaged in the process.

Chair Segerblom said when they submitted the applications they would have a letter stating the location was approved by the local government.

Mrs. McDade Williams said they can, but the reality was some local governments said they would never do that. She said they made the decision that every applicant who came forward understood whether or not they had a realistic chance of being licensed in the location they chose. She said Nevada residency was also an issue between those who wanted it limited and

others who did not want it. She said they did not address the residency issue in the regulations. She said they were advised not to declare the other numbers of establishments, cultivation, the production facilities, and the labs. She said the law said certificates could not be transferred. She said they did not know how it related to ownership issues. The issue of separate buildings was also discussed. She said they agreed they could share a wall with another building, but had to be able to demonstrate they were a separate operation, [Exhibit F](#).

Mr. Callaway asked about a business sharing a wall. He asked if there were increased security measures in the regulation to address the question. He said they had a lot of break-ins where someone came through the wall of the business next door. He also asked about the county taking in more of the business if the cities do not use their allotted licenses. He asked if it could result in all the establishments being in one geographical location. He wondered how that helped the patients who needed access to the dispensary.

Mrs. McDade Williams said the applicant of a shared wall was expected to demonstrate how they met security requirements. The questions concerning all of them being in the same location could happen.

Mrs. McDade Williams said another issue was the agent card. She said there were a lot of requests for people working in a marijuana establishment to get one card, make one application and use it at any other establishment. She said they decided to require a separate fee and have a registration for each business where they worked. She said confidentiality was also an issue. Statutes did not call out what was or was not confidential information. The regulations had specific confidentiality provisions for security plans. She requested clarity on the issue. Appeal rights were not clear at this time. She said as a privileged license she asked what rights they had to appeal adverse decisions from her agency. She also referenced the card holder data in the exhibit.

Chair Segerblom asked if the county did not like some of the candidates submitted would they receive another set of names.

Mrs. McDade Williams replied they would submit more names.

Chad Westom, Bureau Chief, said he welcomed any questions they might have concerning the issue.

Chair Segerblom thanked them and said the state did a fantastic job against huge odds.

Dagney Stapleton had an update from all 17 counties on meeting the provisions of [S.B. 374](#).

Jacqueline Holloway, Director, Clark County Business License, said the Board of County Commissioners gave them the opportunity to proceed and continue to work with the State, the key stakeholders, Metro, and law enforcement developing a licensing and land use framework. She said they were now working on the land use component. She said Ms. Nancy Lipski,

Director of Comprehensive Planning, would speak to the plan which would lay out the land use foundation. Ms. Holloway would conduct workshops related to the business licensing components. The operating components will consist of adopting the state regulations and definitions. The Board of County Commissioners was considering who was to have input into the selection process. Because it was a privilege license, they would handle the framework similar to liquor and gaming licenses.

Chair Segerblom asked if they would use names submitted by the state.

Ms. Holloway replied yes.

Ms. Lipski, Clark County Director of Comprehensive Planning, said they had an agenda item with the Board of County Commissioners to discuss the direction concerning medical marijuana dispensaries, cultivation and testing labs. The main question was additional separations the Board may want to add to the requirements. She said the discussion will focus on whether it was a special use permit or to meet certain requirements. She said she did not know what direction they would take at this time.

Chair Segerblom said with respect to the issue of the county having jurisdiction over other entities if they do not want the marijuana dispensaries, were they ready to make a recommendation to the Commission concerning how soon they wanted to consider reallocating the permits.

Ms. Lipski said it was part of the discussion with the Board of County Commissioners.

Ms. Holloway said one Commissioner expressed an interest in sending a formal letter to the other jurisdictions concerning the licenses.

Bob Webb, Washoe County Community Services Department, said the County Commissioners established a working group in the summer of 2013 of staff members across the County to work on regulations and policies. The Commission adopted a resolution on November 12, 2013, [Exhibit G](#). The resolution directed staff not to accept any applications or documents for medical marijuana establishments until the Commission adopts regulations, resolutions, policies and procedures to regulate medical marijuana in the unincorporated county. The resolution also directed staff to develop regulations and policies to address the licensing no later than June. He said establishments in the unincorporated county intended to handle the licensing through their licensing ordinance. It allowed regulation of controls for multiple items. He said current zoning regulations did not fit with the current establishments as defined in state law. They would modify their zoning regulations to create four new-use types which were the four marijuana establishments. He said they looked at legal criminal codes and minor changes were proposed for marijuana possession and transportation based on state law 453A. He said the county was not proposing any new health board regulations. They were evaluating licensing fees for medical marijuana establishments based on current limits within state law for business license revenue as a whole.

Chair Segerblom asked about the 25 percent in any jurisdiction and Washoe only had 3 jurisdictions. He said there was going to be a surplus of licenses and asked if they thought about reallocating and the process they would undertake.

Mr. Webb said there were 7 government jurisdictions in Washoe County. Legal counsel looked at NRS 453A.326. He said the Division was going to allocate the original dispensary allocations to no more than 25 percent of the total medical marijuana dispensaries. The county commissioners may increase the percentage if it determined it was necessary to insure the most populace areas of the county had sufficient distribution of medical marijuana use.

Chair Segerblom asked for further comment.

Cadence Matijevich, Assistant City Manager, City of Reno, said she would make her discussion following Ms. Stapleton's presentation.

Dagney Stapleton complimented Ms. McDade Williams on her efforts to reach out to local governments on developing the regulation and application process. She said Carson City passed a 180-day moratorium. Churchill County had a discussion at the planning commission and staff was directed to research options including a special use permit to regulate location. Douglas County planned an item on the County Commissioners agenda on February 6, 2014. Lyon County passed an ordinance that included a prohibition on medical marijuana establishments, [Exhibit H](#). She said Nye County had a proposed ordinance scheduled for February 18, 2014. Pershing County had a one-year moratorium on the establishments. Storey County passed an ordinance in December, 2012, as part of an amendment to their comprehensive zoning ordinance. The balance of the counties including Elko, Esmeralda, Eureka, Humboldt, Lander, Lincoln, Mineral, and White Pine were reviewing the issue. NACO recommended all the counties adopt an ordinance by early summer.

Ms. Matijevich provided a packet of information to the committee, [Exhibit I](#). She said the City of Reno passed a resolution placing a stay on the acceptance of land use and business license applications related to medical marijuana establishments. They did not place a definitive time line on the stay. She clarified the stay was not intended to be indicative of a policy position on the part of the Council as to whether they were or were not leaning toward a policy decision concerning the establishments inside the City of Reno. They wanted time to study and review the applications. The regulations were finalized approximately two weeks ago. She said they were still receiving guidance on issues. She thought the process would be similar to Clark and Washoe Counties.

Senator Brower stated for the record: "I am becoming increasingly pessimistic that this is not going to work, and that this can be effective. With the federal prohibition still hanging over our heads, I think we all recognize the problem created by the Legislature puts the cities and counties and their respective district attorneys and city attorneys in a very difficult spot. It was not unlike the live entertainment tax problem the legislature created for the tax department and the gaming control board several years ago. This was much more serious because federal law still says that

possession of marijuana in any amount for any purpose is a federal crime. They were sort of forcing the cities and counties to deal with something that violates federal law. I know the DOJ has essentially said they were not going to enforce this law in every way we might possibly be able to do so, but that was not a change in the law. That was the opinion of one attorney general who works for a President whose office of drug control policy still says that marijuana has no medicinal value. I voted for the legislation with great reluctance, I hate saying I told you so. I would hate to have to be saying I told you so during the next legislative session. But, for the record, I want the cities and counties to understand that, if in fact, it continues to be problematic to implement this new statutory scheme and the soon-to-be regulatory scheme, I encourage them to come back to the legislature and not be afraid to say, look, this isn't working. I know Ms. McDade Williams had done an outstanding job with what she was given, but I am not sure this can work. What the legislature gives, the legislature can take away. If they need to redo this they need to be made aware of it by the cities and the counties."

Mr. Siegel asked if the current state law allowed the county to opt-out of the kind of action being discussed.

Chair Segerblom said the county could opt-out for its jurisdiction but it cannot opt-out for cities within their jurisdiction. The individual cities have to choose to opt-out. Every local government entity has a right to opt-out. He thanked everyone for their efforts and he was confident it was going to happen.

Chair Segerblom opened the discussion on Agenda Item XII, the JFA presentation.

Wendy Naro Ware, Vice President, JFA Institute, did the correctional population forecast, all legislative impacts, and various other correctional research projects for Nevada since 1994. She gave an overview of the sentence credits legislation passed in Nevada, [Exhibit J](#). She said A.B. 510 increased sentence credits for C, D, and E felonies that did not include violence, or sexual offense, or DUI that caused death. The credits were applied to the minimum sentence. The credits helped reduce the minimum sentence making parole eligibility occur faster. It also increased good time credit for education, vocation training and substance abuse programs. She referenced the graphs in her presentation. She said they under projected the results of A.B. 510.

Chair Segerblom asked if it represented the bed population for people covered by A.B. 510.

Ms. Ware said their cycle of forecast was next due April 4, 2014. They had a contract through the Budget Office to produce the statistics. She said the 2013 statistics would be available in a couple of months. She said from 2002 to 2007 there was a very rapid increase in the number of offenders in Nevada, [Exhibit J](#).

Mr. Frierson asked about admission to prison and credits. He thought they were separate things.

Ms. Ware said they were separate, but they were both drivers of the end result, prison population.

Ms. Ware said A.B. 136 would have extended the credits to B felons with the exception of violent crimes, sexual assault, and history of DUI. The bill was passed, but vetoed in 2011.

Mr. Jackson asked about extending credits to certain B felon offenders with the exception of repeat offenders and offenders guilty of violent crimes or sexual assault. He said the actual bill only applied the repeat offenders who had served three or more separate prison terms for three or more felony convictions in Nevada, or five or more separate prison terms for five or more separate felony convictions in any jurisdiction.

Ms. Ware said Figure 4 of [Exhibit J](#) included B felons direct from court and also probation revocations. She said there was a consistent increase in the number of B felons coming to prison. She said new commitments went down in total, but a subset of B felons went up.

Mr. Kohn asked how many people would have been affected by A.B. 136 if it had passed.

Ms. Ware answered about 48 percent.

Mr. Frierson said a distinction was made about the kind of B felonies included. The original bill included all B felonies. It became a more watered down bill.

Ms. Ware said A.B. 510 was also proposed to include B felons, but was reduced down. She said about 55 percent of all admissions were B felons. Because of the changes it is now about 65 percent.

Mr. Kohn asked what the percentage of the new admitters were both A and B felons.

Ms. Ware replied A felons were about 7 percent of the numbers admitted. She said about 73 percent in total were A and B felons. She said it was admissions and the time calculation that factored into the prison population. She referenced [Exhibit J](#) slides showing the number of B felons admitted and the average maximum sentence for the past six years. She said the make-up of the prison population was changing with more B felons. Ms. Ware said Nevada was one of the most successful states in legislation it had already passed. She said it was important to track what had already been passed and determine the successes and failures before going forward with more legislation. Nevada was very successful with A.B. 510.

Mr. Callaway asked if there were plans in the future studies to get further down as far as what some of the category B felons were charged with originally and what their cases plea bargained down to in the current category B felony.

Ms. Ware said no, unless they were specifically requested to do so. It was not part of their forecasting work.

Mr. Jackson had several comments. He said he was critical of the information provided to the Commission from the JFA Institute when Dr. Austin testified on April 17, 2012. He said the

slides in [Exhibit J](#) were the same as shown two years ago with some additional information from 2012 and 2013. He had asked several questions in 2012. He said statistics needed to be good numbers to drive good decisions on behalf of the state. He said Brett Kandt sent a letter to Dr. Austin on April 19, 2012. There were nine specific categories addressed and many questions associated with the categories. He said a key figure used by the Bureau of Justice Statistics to provide macro rankings was how incarceration policies compared to other states. He said they had specific questions requiring answers. He said parole and probation recidivism rates were important as was documenting who was in prison by category. There were some antidotal stories provided by Dr. Austin about first time drug offenders going to prison and he was unaware of even one such case of a first time possession drug offender going to prison. He said determining the actual length of prison stays, broken down for violent and a nonviolent prisoner was requested. He said in order for the Commission to drill down and address the questions he raised they needed the full story. He said statistics provided by JFA to the legislature can control how monies were budgeted and appropriated. He said the Commission supported the Division of Parole and Probation and drafted a letter to the Governor requesting additional funds for the Division. He said the unfortunately during the last legislative session, numbers provided by the JFA resulted in a reduction of personnel for P&P. He asked Ms. Ware when the Commission would receive answers from Dr. Austin and the JFA Institute to the questions from 2012.

Ms. Ware replied she would check with Dr. Austin to see where the request was. They were contracted by the State Budget Office to complete a simulation model and a forecast. She said the drill down information was not part of their normal contract work.

Mr. Siegel asked Ms. Ware to address the idea of how they were interpreting the B felony issue in Nevada. He asked if there was anything unusual in the scope of B felonies, including how the state put something in statute.

Ms. Ware said they took the B felony categorization as it was given to them. She said some categories were a bit broad in Nevada, there was a lot variation in it.

Justice Hardesty said Ms. Ware said there was data available to provide better or improved forecasts for P&P, but it did not fit within their standard forecasting process. He asked her for an explanation.

Ms. Ware said she was referring to a drill-down analysis of B felons, their original charges and the list of things requested from the B felon correction statistics.

Justice Hardesty asked if JFA had the data available that was requested by Mr. Kandt.

Ms. Ware said she had some of it, but not all of it. Things like underlying charges were another data source.

Justice Hardesty asked if they had the data on the sentence they were serving.

Ms. Ware said they had that information.

Justice Hardesty asked if they had consecutive sentences or concurrent sentences.

Ms. Ware said they did not get that data, but they can get the data.

Justice Hardesty said that was something they could provide the Commission from existing data.

Ms. Ware said it would be a separate request from the Department of Corrections, but it was something they could obtain.

Justice Hardesty asked Mr. Cox if he had the information already.

Mr. Cox said he would have to get with his people to determine if they could pull the data.

Justice Hardesty said there were a lot of questions surrounding the issue. He said since the population was increasing, the percentage of the prison occupancy needed to be a priority. He said areas of data needed identification, including a careful examination of each of the crimes in category B felony area and assess whether crimes should be a category B felony. He said it was a policy decision. He said such decisions were often made as a result of staff's comparison with another state without deliberation by the legislators. He said a reassessment of the sentencing lengths and mandatory sentencing of crime was necessary. He hoped the Commission endorsed a broader study of the data. He said that was his motion:

COMMISSION TO UNDERTAKE THE EVALUATION OF CATEGORY B
FELONIES, COLLECT APPROPRIATE DATA AND TENDER QUESTIONS
TO JFA, THE NEVADA DEPARTMENT OF CORRECTIONS, AND TO
THE COURTS SO THEY GET A GOOD UNDERSTANDING OF POLICY
ISSUES OF THIS AREA OF OFFENSE.

MR. FRIERSON SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Segerblom asked Justice Hardesty if he would head a subcommittee. He asked Ms. Ware to forward any information she had to the Commission.

Ms. Ware replied she would need additional funding to complete the work. She may need an official letter from the Commission requesting JFA do the work.

Chair Segerblom opened discussion on Agenda Item VIII.

Bernard Curtis, Chief, Division of Parole and Probation, said he was to discuss presentence investigative reports, PSIs, from the concern about the southern command. He said Robin Hager and Kim Madris were also present at the table. The Division implemented various decisions concerning in-custody cases. He said they would not be continued or calendared for more than 30 days out, [Exhibit K](#). He said they offered overtime and comp time to staff. Chief Curtis outlined the other efforts as shown in [Exhibit K](#) to reduce the PSI backlog. He requested a letter from the Commission to Interim Finance to continue the 21 temporary positions to reduce PSI backlog. Chief Curtis said as of January 7, 2014, they had a backlog of 1,246 PSIs in the Southern Command. There was no backlog in the Northern Command, [Exhibit K](#).

Mr. Kohn asked Chief Curtis how they could help make the positions permanent.

Robin Hager said the positions were described as temporary because it was not in the legislature. She hoped to continue at least 10 or more of the positions permanently. She said this work program got them through until July 1, 2014. They will go back to IFC in June and request continuation through the next fiscal year.

Chief Curtis said it was a transfer from 5 sworn positions and the counties were helping also.

Mr. Kohn said he agreed they needed to have increased availability of community based treatment. He said without P&P getting the officers to do that, it was not going to happen. The Commission needed to work to be sure P&P had the proper resources. He said they needed more officers so P&P can do their job.

Chief Curtis said he had a full complement of new officers in the academy. He said recruitment was on-going. The Department of Public Safety implemented one additional academy per year.

Mr. Jackson concurred with Mr. Kohn. He made a motion to that effect.

MOTION FOR THE CHAIR TO WRITE A LETTER TO THE INTERIM FINANCE COMMITTEE STATING THE COMMISSION WAS IN SUPPORT OF THE ITEMS IN SLIDE NUMBER 3 OF [EXHIBIT K](#).

MR. SIEGEL SECONDED THE MOTION.

THE MOTION CARRIED.

Chair Segerblom commended Chief Curtis on the progress they made on the PSI issue. He opened Agenda Item XII, language in the courts.

Justice Michael Douglas said he was speaking to justice as it pertained to limited English proficiency. He said it meant translation of language access to justice due process. The state had

a long history of providing that in the context of the criminal application. He said the state was not doing that in the area of civil litigation, and administrative hearings for other areas of state government. He said he wrote a letter concerning the “so-called” Perez letter from U.S. Assistant Attorney General Perez. The letter informed them that according to Title VI they had an obligation to provide interpreter services in all areas where someone has rights at issue; both civil and criminal contexts. He said they were asking for interpreter services without remuneration. He said the issue was discussed in multiple areas. He said under the mandate the state would have to provide the interpreter services without remuneration. The Court said if people could pay for the service, they could reimburse the court afterwards. He said it affected areas outside the court, such as unemployment, welfare, driver’s license, any place where a right was at issue. The courts were affected in small claims court, and foreclosure mediation issues. He said Washoe and Clark were doing an admirable job providing the service. It was more difficult in the rural areas. He said remote interpreter stations were being developed. He said the issues with juveniles included the parents being present at the court. He said often the parents did not speak English. They needed to know what was going on. The court’s major concerns were in the area of civil litigation. He said the courts may be responsible for training for the language interpretation. Justice Douglas said he provided background material, [Exhibit L](#). He said his aim was to make the Commission aware of the concern and the need to address it. The DOJ had interacted with about seven states in obtaining voluntary consent decrees for their failure to have a language access plan. He said we had a fledgling plan for the courts and were revising the plan as they received additional assets. He hoped they would not have an instance where the DOJ comes into the state based upon a complaint and orders compliance.

Chair Segerblom asked Justice Douglas if he was in a position to draft proposed legislation the Commission could support.

Justice Douglas said yes, and there were two separate issues. He said the court was concerned with access to justice for civil litigants as well as improving the delivery service for criminal litigants. He said last session they asked interpreters how they were certified and dealt with some of the financial issues.

Ben Graham told the Commission that Justice Douglas had worked on this area for a number of years. He said John McCormick also worked with helping test and work up a program for the interpreters. He said he was pleased with the progress the state had made, and looked forward to continuing the efforts.

Chair Segerblom requested the Attorney General make her presentation on the Subcommittee on Victims of Crime, Agenda Item X.

Ms. Cortez Masto said prior to bringing the group back together they had a membership list dated 2012 and it was outdated. She said in January her office sent a request for individuals interested in sitting on the Subcommittee. She said they were still receiving applications. She said her intent was to have the first meeting of the Subcommittee in February.

Mr. Eric Spratley requested the DNA presentation.

Chair Segerblom opened discussion on Agenda Item IX, Senate Bill No. 243.

Stephen Gresko, Nevada State CODIS Administrator, presented information on the arrestee law and its impact on the laboratories. He said the discussion was about CODIS, which stood for the Combined DNA Index System, a computer system established by the FBI, [Exhibit M](#), to compare DNA profiles. He said the DNA profiles generally come from three classes of offenders, convicted persons, arrested persons, and sex offenders required to register. He said CODIS started at the local level. LDIS was the local DNA Index System, and they uploaded the profiles to one central state site, and once a week it was all uploaded to the national system. Mr. Gresko said Nevada could collect from arrestees, NRS 176.09123; persons convicted of felonies, NRS 176.0913; and sex offender registration, NRS 179D. 443. He said they collected the sample and gave it a specimen ID and there was no personal identification entered. CODIS was nameless. He said he used a system called STaCS to track the information, [Exhibit M](#).

Mr. Gresko continued his presentation of [Exhibit M](#). He said the collection process was simple and easy to use. He said the offender and crime scene DNA profiles were developed by the laboratories. He said all offender hits had to be confirmed. The production costs are expensive. He said the DNA process uploaded in CODIS cost approximately \$40 to \$50 per sample. The total cost was approximately \$75. He said they were going to have to pay to re-work STaCs, hire additional office support, hire criminalists, redesign and bulk order it and set up training for collection sites, [Exhibit M](#).

Mr. Gresko said expungements had always been performed. He said they were required by federal law to expunge profiles that did not qualify for inclusion in CODIS. He said the DNA profile was deleted from CODIS; the biographical record was deleted from STaCS; and the collection kit was destroyed.

Ms. Fiore asked for a time frame for an individual not convicted of a felony to expunge the record.

Mr. Gresko said he did not know how long it would take. He said they were to fill out the request for expungement and send it to the central repository. After it was confirmed they had the right, the laboratory was notified, the NCIC checks would be performed.

Mr. Digesti asked how the notification was received and what format was required.

Mr. Gresko said in his lab if a conviction was overturned or it was a concealed record the notification was a court order. The court order came from a judge or an attorney.

Mr. Digesti said a prerequisite for that required a petition to seal an individual's criminal records that then went to the repository, and then back to Mr. Gresko's lab.

Mr. Gresko said they needed official notice in writing from a court saying the conviction was overturned or the record needed expungement.

Mr. Digesti asked if someone was arrested for a felony, an automatic DNA sample was taken. He asked what occurred if the felony was not pursued or ended up as a misdemeanor. What was the process involved for expungement.

Mr. Gresko said if someone was arrested for a felony and it later was bumped down to a misdemeanor or did not qualify, the arrestee had to fill out the paper work and submit it to the central repository for verification that it needed to be expunged.

Mr. Digesti said the arrestee would have to move to have his record sealed so he could get an expungement of his DNA.

Mr. Gresko said they did not have to have their record sealed. There was a form being designed to fill out and send in to the repository. He said it was the repository's job to do the research. He said they had to gather the information proving they were not convicted of a felony.

Mr. Digesti asked about the sample being destroyed if there was a finding of no probable cause. He asked if that was a finding by the court of no probable cause.

Mr. Gresko said the law said the samples were collected and before the laboratory received them for processing, the judge must confirm that there was probable cause for the arrest.

Mr. Digesti asked if someone was arrested for a felony and the DNA sample was taken, and then there was an opportunity for expungement, was it about a charge or a conviction?

Mr. Gresko said if they were arrested for a felony and the judge determined probable cause for the arrest, the sample will go into CODIS. If, at some point after that, the charge was reduced they may successfully petition to have it removed from CODIS.

Mr. Digest asked if it was a separate process to have their record sealed.

Mr. Gresko replied he did not know the answer.

Mr. Kohn asked what happened when someone was arrested for a felony and the District Attorney decided not to file charges and there was never a court action. He asked how that was expunged.

Mr. Gresko said it was the same process as earlier described. He said if it was reduced or there was never a conviction they may successfully petition to have their sample expunged.

Mr. Kohn asked what if there was never a determination of probable cause, because the District Attorney's office never sent it to the courts.

Mr. Gresko asked if he meant what would happen if the probable cause was never confirmed for the arrest. He said there was a five day limit to have the sample destroyed and it would never go into CODIS.

Mr. Kohn said many times the District Attorney seeks more time to decide to file charges. He said if it took 10 or 20 days to file charges, what happened to the sample.

Mr. Gresko said the five day clock started when the determination had been made or not made. He said when the samples were collected, a number was associated with the arresting event. He said Washoe County placed the burden for finding out what happened with the probable cause on the laboratory. Clark County was placing the burden of confirming probable cause on the jails.

Mr. Kohn said if charges were never filed, the information was never placed in CODIS.

Mr. Gresko said that was the way the law was written and intended.

Mr. Siegel said when the bill was passed there was an intention that a committee would review whether racial profiling or problems might occur or how to deter such problems. He asked if the committee was this Commission.

Mr. Anthony said NRS 176.01246 in subsection 5 of the statute spelled out a subcommittee of this Commission was charged with two duties: (a) to study the costs and procedures relating to the methods, implementation, and utilization for the destruction of biological specimens, and (b) the collection and review of information concerning the number of requests for destruction of biological specimens. He said it spelled out the subcommittee must include at least two members. A member experienced in defending criminal actions and a member of a minority community organization whose mission included the protection of civil rights for minorities. At the last Commission meeting there was discussion whether the Commission wanted to handle all the subcommittee duties at the full Commission level or subcommittee level.

Mr. Siegel said the racial and ethnic aspects of the legislation were potentially very serious. He said the Commission needed to determine how to act on the issue.

Chair Segerblom asked if the Commission had a preference. He said the bill called for a subcommittee.

Mr. Callaway asked Mr. Gresko about the level of funding collected from the assessment fees. He said there was discussion of a disparity of revenue generated in the North compared to revenue generated in the South. He asked if there was an increase in revenue up North.

Mr. Gresko said they saw an improvement after some initial confusion. He said they thought they could start the collection process.

Justice Hardesty said the funding was through a fee on administrative assessments. He said the Nevada Supreme Court was tracking administrative assessments carefully since the conclusion of the Session. He said the funds were below projections in Nevada. He said the North was doing better than the South.

Mr. Gresko said the collection started on July 1, 2013, and they had collected \$70,000.

Justice Hardesty asked if they were collecting DNA samples since July 1, 2013.

Mr. Gresko said they were not collecting DNA until July 1, 2014.

Justice Hardesty did not recall the subcommittee being a committee of the whole of the Commission. He said this subcommittee required some special knowledge. He recommended appointing Mr. Gresko, a public defender and a prosecutor to the subcommittee.

Chair Segerblom added someone with a civil rights background and Mr. Callaway should also be on the subcommittee.

Mr. Callaway said it was important to note revenue collected several months ago was less revenue than Washoe County. He said they did 70 percent of the DNA work in the state. He said the Adam Walsh Act was scheduled to go into effect and they may have to hire six to eight lab people to keep up with the volume. He said the revenue issue was important as they moved forward. He added it was appropriate for someone from the south to be on the subcommittee. He recommended Tracy Birch, the lab director.

Justice Hardesty made a motion.

MOVED TO APPOINT THE SUBCOMMITTEE OF FOUR OR MORE MEMBERS.

Mr. Siegel said the issue of family connection to the people collecting the DNA was an issue central to groups like the ACLU and NAACP. He said not every possible civil rights group might be sensitive to the issue. He hoped they would consult the ACLU.

Mr. Jackson said a person arrested on a felony, was booked at the local jail and the arresting officer filled out a declaration of probable cause. Within 48 hours, a justice of the peace or judge did a review of the declaration and determined whether probable cause supported the arrest. He understood the statute went to that probable cause declaration. He said there were some cases where criminal charges were not filed at that time. However, a probable cause determination was already done by the judge. The statute allowed a prosecuting attorney to do a voluntary dismissal which gave them the opportunity to refile the charges where probable cause was already determined at the time of the arrest. He said it allowed the person to get out of jail. He asked Mr. Gresko about the expungement deleting the DNA profile. He asked how many employees had administrative rights to delete a DNA profile.

Mr. Gresko said it was only the DNA staff that had access to CODIS by the FBI. People who could enter DNA in CODIS could also delete it.

Mr. Kohn said his concern was for the statute and how it would play out. He was not at the committee meeting and did not know the discussion.

Chair Segerblom said they were going to appoint a subcommittee. He asked Mr. Kohn if he was willing to chair the subcommittee or be on it.

Mr. Kohn said he did not have an aptitude for science and he preferred that someone else be on the subcommittee.

Mr. Brower said he did not know if Mr. Gresko was the best person to address concerning the science. He asked how scientifically oriented Mr. Gresko was. Mr. Brower said there were two types of DNA in basic terms. The type being discussed here and the type that was commonly collected pursuant to the various state and federal laws on the issue was called junk DNA. He said it was limited to the 13 loci that provide identifying information, but not all the other medical, genetic and other information that could be ascertained through DNA. He asked Mr. Gresko if he was with him at this point.

Mr. Gresko replied that he was a fully qualified DNA analyst.

Mr. Brower asked if the Nevada law allowed for the collection of junk DNA limited to the 13 loci not all the other types of DNA that could be collected. He asked if that was accurate.

Mr. Gresko replied it was fairly accurate. He said when they referred to junk DNA, it referred to the fact that the body used DNA to replicate itself, to make hair for example. He said the vast majority of the body's genome does not make anything, and the 13 markers are not code of anything. They are used to identify individuals.

Mr. Brower said they were not unlike fingerprints. He said fingerprints were never expunged. He said if they did not expunge DNA, the debate and complications would not exist.

Chair Segerblom opened Agenda Item XII, the Supreme Court's Juvenile Justice Reform Commission.

John McCormick, Assistant Court Administrator, said Ms. Stephanie Heying would make the presentation.

Stephanie Heying, Administrative Office of the Courts, said she staffed the Commission on Statewide Juvenile Justice Reform. She said the Commission was formed in 2011 and co-chaired by Justice Hardesty and Justice Saitta. She said the Commission was made up of various stakeholders, [Exhibit N](#). She said the mission statement was discussed with the various members and multiple presentations were given. She said they began to develop juvenile justice reforms

for Nevada, [Exhibit N](#). During the 2013 Legislature several bills were introduced, including SB 31, SB 106 and SB 108. Several Subcommittees were formed. She reviewed what the Commission hoped to do in the near future. She said the Subcommittee will bring their findings to the full Commission.

Mr. Frierson asked if the Commission was looking at certification. He said they were trying to avoid duplication between the child welfare and juvenile justice committees and this subcommittee.

Mr. McCormick said the Juvenile Justice Reform Commission had looked at certification issues. He said it was discussed before and will be discussed again.

Ms. Hibbler said she served on the Governor's Juvenile Justice Commission and said it seemed there was a lot of duplication in topics.

Mr. McCormick said there were some members on both organizations. He said they were all on the same page in terms of looking at the issues.

Justice Hardesty said he did not know the Commission had taken up the study of the alterations to the statute relating to certification. He said the Commission had approximately 35 members and they represented the entire juvenile community. He said most of the stakeholders on the Commission were focused on resolving the deep end issues and trying to provide answers to problems that were desperately needed.

Chair Segerblom asked if there were any further questions. He asked if there were other potential problems they needed to discuss. He said the medical marijuana subcommittee will start April 1. He opened the meeting for public comment. As there was none, he closed the meeting at 2:11 p.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Interim Secretary

APPROVED BY:

Senator Tick Segerblom, Chair

DATE: _____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice

Date: January 27, 2014

Time of Meeting: 9:30 a.m.

	Exhibit	Witness/Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Vera Institute of Justice	Power Point Presentation
	D	Vera Institute of Justice	Where Vera Works
	E	Vera Institute of Justice	Performance Incentive Funding
	F	Marla McDade Williams	Medical Marijuana Program
	G	Bob Webb	Washoe County Medical Marijuana Program
	H	Dagney Stapleton	Lyon Count Medical Marijuana
	I	Cadence Matijevich	City of Reno Medical Marijuana
	J	Wendy Naro Ware	JFA Presentation
	K	Chief Bernie Curtis	PSI Update
	L	Justice Michael Douglas	Language Interpreters and Access to the Courts
	M	Stephen Gresko	CODIS Presentation
	N	Stephanie Heying	Commission on Statewide Juvenile Justice Reform