MINUTES OF MEETING

Name of Organization: Advisory Council for Community Notification of Sex Offenders

Date and Time of Meeting: 9:00 A.M. - Tuesday, February 24, 2004

Place of Meeting: Legislative Building
Room 2134
401 South Carson Street
Carson City, Nevada

Grant Sawyer Building
555 East Washington Street
Room 4412
Las Vegas, Nevada

AGENDA

I. The meeting was called to order at 9:25 a.m. A quorum was present with Advisory Council members Assemblywoman Genie Ohrenschall, Assemblyman Garn Mabey, J. Charles Thompson, Clark County Assistant District Attorney, and Dorla Salling, Chairman, State Board of Parole Commissioners. Senator Schneider arrived at approximately 9:40 a.m. All Council members were present with the exception of Senator Maurice Washington and Kristin Luis, Carson City Deputy District Attorney. Also present were Bradley A. Wilkinson, Principal Deputy Legislative Counsel, Legislative Counsel Bureau, and John Michela, Deputy Attorney General, Office of the Attorney General.

Mr. Wilkinson introduced himself, Mr. Michela and the members of the Advisory Council.

II. Dorla Salling made a motion to nominate J. Charles Thompson as Chairman for the meeting. The motion was seconded by Assemblyman Mabey. The motion carried unanimously.

III. Assemblywoman Ohrenschall made a motion to approve the minutes from the meeting of July 17, 2000. The motion was seconded by Assemblyman Mabey. The motion carried unanimously.

IV. Chairman Thompson opened the meeting for discussion on the proposed changes for Nevada's Guidelines and Procedures for Community Notification of Adult Sex Offenders, beginning with a presentation by Daryl Riersgard, Manager of the Criminal History Repository and his colleagues, Tisha Johnson, Program Manager for the Sex Offender Unit, and Laura English, Case Worker.

Ms. English stated that the overall purpose of the proposed changes was to ensure that the timetables for the work of the Sex Offender Unit, as set forth in the Guidelines, matched the Sex Offender Unit's practical ability to complete the work, and that at present, the Sex Offender Unit was not meeting the timetables set forth in the Guidelines.

Mr. Riersgard began explaining the proposed changes by remarking that recent legislative changes broadened the applicability of the provisions pertaining to sex offenders.

Mr. Michela noted that the proposed changes on pages 3, 4 and 5 of the Guidelines are being made to reflect

more accurately the current statutory language. There were no further concerns or comments regarding these changes.

Chairman Thompson inquired as to the reason for the changes under Section 3.00 of the Guidelines, pertaining to risk assessments. Mr. Michela responded that the Central Repository had solicited input from the Nevada Department of Corrections. He commented that the changes eliminated the reference to the "Mental Health Director of the NDOC," as that position no longer exists. Mr. Michela explained that the Central Repository wanted the opportunity to determine the risk of recidivism from the records rather than placing the responsibility on NDOC to determine which records show a risk of recidivism. The changes allow NDOC to disclose more psychological and psychiatric profiles, not just those profiles that in their determination show a risk of recidivism. Mr. Riersgard added that the Central Repository relies heavily on these profiles to get the best possible risk assessments.

Mr. Michela noted that on page 6 of the Guidelines, there is a change with respect to the Risk Assessment Methodology. Mr. Riersgard explained that there is no longer a funded position in the prison system for a Mental Health Director, as stated earlier by Mr. Michela. Mr. Riersgard stated that currently, when the Central Repository proposes a change to the risk assessment formula, any change to this methodology would need to go through the appropriate representative at the NDOC. As the originators, the Central Repository can propose a change, but the change would have to go through Rex Reed at NDOC before there is a consensus that there will be a change in the way that risk assessments are done. Mr. Michela noted that he believes that this proposed change reflects the trouble that Mr. Riersgard was having in getting input from NDOC on changes he wished to make to the methodology. Mr. Michela explained that this change requires Mr. Riersgard to solicit input from NDOC, but if NDOC does not respond in a certain amount of time, Mr. Riersgard can go forward with the changes and is not tied down.

Chairman Thompson stated that he noticed that on page 7 of the Guidelines, the Manager of the Central Repository has the ability to override any tier level risk assessment. He questioned whether this had happened in the past. Mr. Riersgard replied that it had been done in the past. He commented that with any strict formula, there are factors which sometimes need to be considered for the public safety. It is not frequently done, but the ability to override gives them the opportunity to do the best possible job to give the right risk assessment to a given sex offender. Chairman Thompson asked for an example of such an occasion. Ms. English responded that an example might be a violent sex offender with more than one victim who is homeless and carrying the HIV virus, but who has no other sexual criminal history. In that case, the score would not go high enough to give the public access to his whereabouts.

Ms. Salling commented that she sits on the reconsideration committee for tier panel assessments and that they do see the overrides occasionally. She said that she would support the request for this change. She stated that the form itself is just a form, and it cannot possibly address all of the different situations that come up. Therefore, the Registry needs the ability to do an override. They do not exercise the ability very often, but when she has seen it exercised, it was done so appropriately.

Assemblywoman Ohrenschall mentioned the case involving Harold Shaw, who was trying to be close to or around a particular church facility in order to prey on youthful victims. She inquired as to whether any of the definitions being changed would pick up a person like him. Mr. Riersgard explained that he is familiar with the Harold Shaw case and with respect to Mr. Shaw, the only conviction that would have put him into the Registry was for an offense involving a statute that was found unconstitutional by the Nevada Supreme Court. He noted that the statute involved the offense of annoying a minor which was ruled unconstitutional because the language in the law was found to be too vague. After consulting with the Attorney General's office, it was decided based on that ruling that such offenses should be removed from the Registry, and that happened to apply to Mr. Shaw.

Assemblywoman Ohrenschall read an article from News Channel 8 concerning Harold Shaw. (Attached) She inquired as to whether there would be some way some provision could be made perhaps in the Guidelines for someone who has a prior conviction of annoying a minor to be added in the Guidelines rather than waiting until the next Legislature meets.

Mr. Michela reiterated that the Nevada Supreme Court did declare NRS 207.260 unconstitutionally vague, as it existed before the 2001 legislative session. The Legislature amended NRS 207.260 in 2001, and the Supreme Court specifically refrained from ruling on the constitutionality of the amended statute. In the most recent legislative session,

NRS 207.260 was again amended, and it removed all reference to “annoy” and “molest.” Along with the most recent statutory changes, NRS 207.260 was removed from the definition of sexual offense found in NRS 179D.620 and other places within the NRS. The effect of the statutory change was that NRS 207.260 is no longer considered a sexual offense. Mr. Michela concluded that if it is not a sexual offense, someone convicted of violating that statute cannot be considered a sexual offender, and it would require a legislative change to put people convicted pursuant to NRS 207.260 back within the bounds of the Registry.

Chairman Thompson inquired about the deletion of the periodic review of the risk assessment formula, contained on page 7 of the Guidelines. Mr. Michela responded that the concept of reviewing the formula is contained in the changes to the previous paragraph, as it addresses how to change the formula and how the formula is reviewed. He remarked that it would have been redundant to leave that paragraph in the Guidelines.

Chairman Thompson inquired about Section 5.00, paragraph 4. He stated that he is concerned that the Repository is not getting the information it needs. Mr. Riersgard stated that he works closely with the Administrative Office of the Courts to address these issues and coordinate to get that flow of information. The Central Repository has received assurance that the problem of not getting all the information they need will be corrected in time. Mr. Riersgard stated that they are continually working on better ways to get the information from all entities of the criminal justice system.

Chairman Thompson wondered whether the Division of Parole and Probation would have access to the same information as the courts. Mr. Michela suggested that to address the Chairman's concerns, the Guidelines could be amended further to include a reference to the Division of Parole and Probation in the paragraph at issue. After further discussion, Mr. Michela suggested that perhaps the Guidelines could be amended to delete the reference to the documentation being provided by the courts, so that regardless of the source from which the documentation was received, the Repository could be working on the registration as soon as possible.

Chairman Thompson requested that Ms. English comment about the time periods in paragraph 5 of Section 5.00 being changed from 60 to 90 days. Ms. English responded that the Central Repository needs more time to complete assessments, especially when the person comes from another state, and the Repository must rely on the other state to get documentation. Chairman Thompson inquired as to whether other states have been cooperative in providing information to Nevada. Ms. English responded that on the whole, other states have been cooperative, but that there are certain states from which it is more difficult to get information than others. Chairman Thompson inquired as to whether the offenders in question are usually coming to Nevada while on probation or parole or whether they have moved from another jurisdiction after having completed their probation, parole or sentence. Ms. English responded that the offenders are usually moving here from another jurisdiction.

Assemblywoman Ohrenschall asked about whether there was some way in which the state could “somehow pull the transient sexual offender into the picture” to ensure “that situations like the tragic one in Florida where the little girl was picked up at the gas station and later found dead would not occur in our state.” Mr. Riersgard responded that the unfortunate part of the system is that the system is limited to providing registry information on convicted sex offenders. In the case in Sarasota, Florida, that individual had thirteen prior charges, but no sexual convictions.

Chairman Thompson asked about the changes to the guidelines relating to a request for the reconsideration of the tier level risk assessment assigned to a sex offender. Ms. English stated that the change was to ensure that a submission of a request by a sex offender for reconsideration of the tier level risk assessment was made timely. Ms. Salling asked if there was a definition of “timely” in the guidelines. Chairman Thompson replied that the requirement under Paragraph 3 of Section 6.00 of the Guidelines provides that the request for reconsideration be made be within 10 days after the date the offender is served with a notice of tier level risk assessment. Paragraph 5 of Section 6.00 of the Guidelines makes it clear that if a request is not made timely, which means in compliance with that Paragraph 3, that the right to a hearing is waived.

Chairman Thompson asked for comments on the change in the guidelines relating to the transfer to the Central Repository of the current duties of the Reconsideration Assessment Panel when a request for a hearing and reconsideration on a tier level risk assessment is made. Ms. English replied that, at this time, the duties when a request

for a reconsideration of a tier level risk assessment is submitted are not being done. Mr. Riersgard followed up by stating that the reason is simply one of workload. Mr. Riersgard stated that to the extent that it is possible the duties imposed by the statutes on the Sexual Offender Registry program are being done, but there simply is not enough staff and time. Ms. Salling stated that the number of requests for reconsideration which are submitted is growing. Three years ago, only one request per month would be submitted. Currently, ten or eleven requests are submitted each day. The workload is manageable at this point, but in the future, if the sexual offenders continue requesting reconsideration hearings, either the Reconsideration Panel will need to be broadened or the procedures for reconsideration will have to change. Mr. Riersgard confirmed what Ms. Salling had said about the workload growing. A year ago the Sexual Offender Registry was adding 40 new sex offender cases per month. Last month, statistics indicate that the Sexual Offender Registry added 175 new cases.

Chairman Thompson asked if the Legislature would be asked to remedy the lack of resources. Mr. Riersgard replied that a legislative remedy would be sought and that it is overdue. Chairman Thompson asked if the legislators serving on the Advisory Council would make a note of the need for a legislative solution to the workload issue. Assemblywoman Ohrenschall stated that she would be interested in working with the staff of the Central Repository. Ms. Salling stated, "I would like to go on record to support any request that the Central Repository might make in their next budget for more staff. I deal with these folks on a daily basis and they are desperately understaffed. That is all I would like to say is for our legislators is any budget request they might be able to make that you might be able to support that because they are dramatically overworked. Thank you."

Chairman Thompson asked if there were any other comments or recommendations on the changes to the Guidelines. With no further comments or recommendations offered, Chairman Thompson stated that the hearing was open for public comment.

V. Chairman Thompson opened the meeting for public comment.

Mr. Reed identified himself as Rex Reed, Administrator of Offender Management Division for the Nevada Department of Corrections. He offered to answer any questions that the Advisory Council may have of the Nevada Department of Corrections. The Advisory Council had no questions for Mr. Reed.

Ms. Hines identified herself as Pat Hines. She stated that she had concerns regarding the statement that must be put out for community notification regarding vigilantism. She stated that the current statement is not strong enough. Chairman Thompson read the language on page 14 of the Guidelines, wherein it states that "[l]ocal law enforcement shall specifically advise any individuals receiving notification under Tier 2 or Tier 3 that any acts of recrimination or vigilantism against the offender are unlawful, and will likely subject the individual engaging in such acts to civil liability as well as criminal prosecution." Ms. Hines stated that the statement was not strong enough and "instead of saying may it should say if their vigilantism is found to have merit that it should not be may it should be should." Chairman Thompson asked if Ms. Hines had additional comments.

Ms. Hines stated that she had comments on the Risk Assessment Methodology on Page 6 of the Guidelines. Ms. Hines stated that she had a "deep concern" that there is not a periodic review of methodology. It appears to her that there is "a lot of extra cost and waste of staff time by the number of risk assessments that are done on sex offenders. There is one done by the psych panel at NDOC and if you recall, and you particularly have been on this committee for a long time. It started out in 1996 it was the Advisory Board for Community Notification as part of parole. And now, if you look on today's, it says Community Notification for Adult Sex Offenders. So, the whole format has changed. With this psych panel doing assessments within the Department of NDOC, they are the people, they can also read the PSI, they can also read the NCIS but they have information on the inmate while incarcerated." Ms. Hines continued that "I had confirmed today that the assessment sheet being used that was transferred from Parole and Probation to the criminal repository in 2001 when it was changed over to become their responsibility for tier levels. It is still being used. That is the form that was first became a desperate measure in 1996 based on a test that came out of New Jersey, or some Eastern state. It was made up strictly for pre-sentencing for judges to help them. The 19 categories on there … there needs to be a revision desperately." Ms. Hines stated that "I think this committee is one of the two committees that are supposed to be active under the Central Repository and should be reviewing this, not just rubber-stamping it today."

Ms. Hines continued that "the other thing is we are the only state that really has a psych panel. There is no other state that has such as this where the sex offender must get certification from the psych panel. Personally, I think it is a great thing because it is done through the NDOC through the parole board. The liberty of a sex offender does not lie with the parole board. I think Ms. Salling will agree with that. They have no authority if the person does not pass the psych panel. Why do we need a risk factor done by the psych panel? The parole board is now in the process of redoing the risk assessment, I believe, Ms. Salling, is that correct? They are in the process right now of redoing their risk assessment from George Washington University, Dr. Austin. Maybe before you make a decision on this you should look at combining those two and maybe letting the psych panel expand that organization and take some of the work away from the Central Repository. Quite honestly, their people have this dropped on them with no training. They are still using the manual that they inherited from Parole and Probation, and this risk assessment sheet. I have a copy of the risk assessment sheet from the psych panel. I have the one the Parole Board was using and the one they are still working on. I really would like to see you talk to NDOC and the Parole Board people and Central Repository and see if you can you come up with a better workable. Maybe use one risk assessment by the three departments."

Ms. Hines stated that her third recommendation was that she hoped "this is not like 2000 when there was one meeting where changes were made and they are all rubber-stamped. She continued "That's why I asked about the enactment of the current notification by law. I appreciate your consideration and hope there will be future meetings with these things included."

Chairman Thompson thanked Ms. Hines for her comments and asked if there were any questions for Ms. Hines. With no questions asked, Chairman Thompson asked for the next person who wished to make public comments.

Mr. Frankell identified himself as William Frankell of Las Vegas, Nevada. Mr. Frankell stated that he had a couple of issues to address.

Mr. Frankell stated that his first issue related to "notification for those who are convicted prior to the enactment of the current notification laws." He stated "I don't feel that they should be included or if they are they should have some input or be contacted as to why they are being included. I believe this is an ex post facto application of the statutes."

Assemblywoman Ohrenschall asked if Mr. Frankell felt the entire guideline caused an ex post facto application. Mr. Frankell replied that "For those convicted prior to the enactment of the statutes if you are going to apply them, yes, Ma'am." Assemblywoman Ohrenschall asked if Mr. Frankell had any specific recommendations for changes. Mr. Frankell replied "I would like to at least see the issue of those who are convicted prior to the enactment of these statutes. At least have that addressed with the Legislature and in public hearings so those that are affected and the family of those that are affected, on both sides of the issues, may be heard. I have no problem with the basic idea of the notification. I think in many cases that is a good idea. How it is enacted in some cases I believe is incorrect."

Chairman Thompson asked if the United States Supreme Court had held that community notification statutes could be applied to persons convicted of sexual offenses prior to the passage of the statutes. Mr. Michela replied that the United State Supreme Court had held that community notification statutes could be applied to a person convicted of a sexual offense prior to the enactment of the statute because the statutes were civil as opposed to punitive in nature.

Assemblywoman Ohrenschall asked if anything prevents the legislature from permitting a person who was convicted of a sexual offense prior to the enactment of the "Megan's Law Statute" in Nevada from seeking an administrative review as to the "tier level they would be on." Mr. Wilkinson replied that the current guidelines permit those persons to seek an administrative review in the same manner as anyone else. Mr. Frankell asked if the time limit for requesting such a review was 10 days. Mr. Michela replied that the time limit is 10 days after the offender is notified of the tier level assessment.

Mr. Frankell stated that his next issue was whether the current health issues of a convicted person were considered in making a tier level assessment. For example, Mr. Frankel questioned "If they are physically incapable of posing no future risk would that impact a Tier level?" Ms. English replied that there is a reassessment after 10 years of registration. However, Ms. English stated that the offenders do "get points taken off their score if they have health

reasons why they cannot re-offend."

Mr. Frankell stated that his next issue was whether any provisions existed regarding if "someone had a valid challenge currently in court on their conviction to have their notification or assessments or whatever placed on hold." Mr. Michela responded that it would be inappropriate for the Central Repository to look at current challenges to convictions because that would require the Repository to actually step into the place of courts and determine the validity of an individual sentence or conviction. The duty of the Repository is to react to whatever a court may ascertain. Chairman Thompson added that "once a Judgment of Conviction is entered that individual stands convicted of that offense. Challenges to that conviction can be made by direct appeal and subsequent to direct appeal by post conviction habeas corpus motions and indeed attacked over a period of many years. It would be my preference that once the original Judgment of Conviction is entered that we do the assessment based on that entry, not withhold assessments simply because there are one or more repeated challenges to that conviction at a later time."

Mr. Frankell asked if someone could describe how a risk assessment is conducted. Mr. Frankell was interested in what information is taken into consideration and what is not. Ms. English responded that "we look at police reports, criminal history, pre-sentence investigations, physiological evaluations, and other documentation we can find from the courts. Sometimes, it is the judgment of conviction or the court minutes, victim statements, that sort of thing."

Chairman Thompson asked if there were any additional members of the public that wish to make comments or if there were any additional comments from members of the committee. Assemblywoman Ohrenschall made a motion for the Advisory Council to recommend to the Attorney General the proposed changes discussed by the Advisory Council. Mr. Michela asked for clarification as to whether the proposed changes to Section 5, Paragraph 4, deleting the words "from the courts" were included in the pending motion. Ms. Salling stated that "[w]e would accept that change." Assemblyman Mabey seconded the motion. The motion passed unanimously.

Chairman Thompson asked if there were additional matters to come before the Advisory Council. Assemblyman Mabey stated that he had several questions he hoped to get answered.

Assemblyman Mabey asked whether Nevada had a less stringent notification requirement than other states and whether that leads to sexual offenders choosing to relocate to Nevada from other states. Mr. Riersgard replied that he considers this to be an issue of concern; however, there is not proof that this is happening. According to Ted Short, an inspector from the FBI who conducted an audit of the Sex Offender Unit, there is an informal network in the sex offender community and it is a very mobile population, even more so than other criminals in the system. The Las Vegas Police Department and the Reno Police Department confirm that there is the perception that this informal network exists. The concern is that the network of sex offenders discusses issues state by state as to "the amount of heat that is being applied." Nevada ranks very low in a number of categories and other similar indicators, including the non-compliance percentages, which have gone up. Mr. Riersgard stated that he could provide three examples of why Nevada ranks so low. "We have a statute in Nevada called Sexually Violent Predator." He stated that "For some reason our prosecutors have decided not to use that, and we have no one in that category … of the 9,000 plus cases, we have no one in the sexually violent predator status. By contrast, Florida has 22,000 sex offenders in that category. Nevada received its first one this last month. It was not a home-grown sexually violent predator; he moved here from Maine." He noted that the last two Tier 3 sex offenders that went through community notification in Reno created quite a stir within the community; both came from out-of-state. He concluded "Those are three examples that might bolster what we fear is a perception that we would like to turn around with a more aggressive approach which includes all elements of the program."

Assemblyman Mabey next asked how someone might know if there is a sexual offender in his neighborhood and what the mechanism for finding that out is. Mr. Riersgard stated that prior to AB 78 of the 72nd Legislative Session, the public would call his office and they would have to have specific information on the person they perceived as a known offender. The person calling would need to provide the name, date of birth, address location and a host of other particulars on the suspected sexual offender. Additionally, all that could be confirmed was whether that person had a Tier 2 or Tier 3 risk assessment. The law prohibited divulging if the sexually offender was registered if the offender had been assessed a risk factor of Tier 1 or lower. Chairman Thompson stated that he had received a number of calls from members of the public wanting to know if Nevada has a web-site where Tier 2 and Tier 3 offenders could be identified.

Mr. Riersgard responded that AB 78 of the 72nd Legislative Session authorized the creation of a sex offender web site for public notification. At the time AB 78 was enacted, the budget did not have sufficient funds to build that web site. However, Donna Coleman, the president of the Children's Advocacy Alliance, offered private foundation money to build the website which was used as a match to obtain a federal grant. With those two sources of revenue, the sex offender web site was started and the state registry files were connected with the federal registry. Mr. Riersgard anticipated a public announcement next month to say that the web site has been built and that it will be available for public access.

Assemblyman Mabey next asked about the existence of a center in his district for counseling or helping sexual offenders. He stated that some people in his Assembly district have brought up that they were concerned. Mr. Riersgard stated that this was outside the jurisdiction of the Sex Offender Registry or the Repository and was mostly likely an issue of municipal ordinance and local control. However, this brought up the issue that there are different protocols for the local enforcement as opposed to his office which he hopes to address in the next legislature. Currently, the information that he can report is different from what the locals report.

VI. With no further business to come before the Advisory Council, a motion was made by Chairman Thompson to adjourn the meeting. The motion was seconded by Assemblywoman Ohrenschall and carried unanimously. The meeting was adjourned at 11:00 a.m.

Respectfully submitted,

Karen Kade
Legislative Counsel Bureau

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J. Charles Thompson, Chairman