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

## SEPTEMBER 12, 2014

The meeting of the Advisory Commission on the Administration of Justice was called to order by Senator Tick Segerblom, Chair, on September 12, 2014, at 9:01 a.m. at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 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 (CARSON CITY)

Connie Bisbee, Board of Parole Commissioners
Larry Digesti, Representative, State Bar of Nevada
Justice James Hardesty, Vice Chair, Nevada Supreme Court
Mark Jackson, Douglas County District Attorney
Catherine Cortez Masto, Attorney General
Jorge Pierrott, Department of Public Safety, Division of Parole and Probation
Richard Siegel, American Civil Liberties Union of Nevada
D. Eric Spratley, Washoe County Sheriff's Office

## COMMISSION MEMBERS PRESENT (LAS VEGAS):

Judge David Barker, Eighth Judicial District Court
Chuck Callaway, Las Vegas Metropolitan Police
Greg Cox, Director, Nevada Department of Corrections
Assemblyman Jason M. Frierson, District No. 8
Lisa Hibbler, Victims Advocate
Phil Kohn, Clark County Public Defender
Senator Tick Segerblom, Chair, Senate District No. 3

## COMMISSION MEMBERS ABSENT:

Senator Greg Brower, District No. 15
Assemblyman Wesley K. Duncan, District No. 37

## 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:**

Tonya Brown
Natalie Smith
Marc Mauer, Executive Director, The Sentencing Project
Joan Yarbrough, Agent, U.S. Postal Service
Margaret Love,
Richard Cassidy
Natalie Wood, Chief, Division of Parole and Probation
Robin Hagger, Division of Parole and Probation
Kim Madris, Division of Parole and Probation
Jim Wright. Division of Parole and Probation
Keith Munro, Assistant Attorney General, Office of the Attorney General
John Witherow, Nevada Cure
Vanessa Spinazola, A.C.L.U. of Nevada
Steve Yeager, Chair, Subcommittee to Review Arrestee DNA
Julie Butler, Department of Public Safety

Chair Segerblom opened the meeting at 9:01 a.m. and requested a roll call.

Mrs. Hartzler called roll and a quorum was present.

Chair Segerblom asked for public comment, Agenda Item III.

Tonya Brown said she was an advocate for inmates and the innocent. She was testifying today to support Nevada Cure and their recommendations for testing for Hepatitis C, independent ombudsman, and other things. She said her brother entered the prison system with Hepatitis C in 1989. There were problems in the men's prison. She asked for mandatory testing for Hep C before prisoners were released. She also supported the idea of an independent ombudsman. She said if there was an independent ombudsman civil litigation would not be what it was. She referenced her documents provided to the Commission, Exhibit C. She also mentioned DNA and an amendment she wanted to introduce for DNA testing for prisoners at their own expense.

Chair Segerblom asked if there were other comments.

Natalie Smith, Nevada Cure, said she received mail from prisoners regarding Hepatitis C. She said many of them had not been informed they had Hep C and sometimes they were denied treatment. It sometimes took a year to see a doctor. She said she got 10 to 30 letters a week from prisoners.

Chair Segerblom asked for a motion to approve the minutes.

Mr. Kohn moved to approve the minutes of the July meeting.

Judge Barker seconded the motion.

The motion carried.

Chair Segerblom opened discussion on Agenda Item V.

Marc Mauer, Director, The Sentencing Project, said his organization was a nonprofit founded in 1986. Mr. Mauer presented his testimony from Exhibit D. He addressed three issues in his oral testimony. The first was an overview of trends in incarceration, secondly was the impact of incarceration on public safety, and thirdly the implications for sentencing policy. He said his focus today was primarily public safety. There was a large rise in prison population over the past 40 years which lead to more incarcerations. He said since 1980 the entire increase in prison population was a function for changes in policy, not changes in crime rates, Exhibit D. He said declines in crime occurred with no adverse effects on public safety. Incarceration had an effect on crime. He said the impact on reducing crime may be less than it was commonly believed. The first issue was the "replacement effect" where a certain party was removed from the street but replaced by other people committing crime. He said sending a juvenile may leave a group to recruit someone else to join their ring. There were different effects depending on who was incarcerated. The second factor that limited public safety was that we were past the point of diminishing returns in the effect of prisons on public safety, Exhibit D. He said another issue on diminishing returns in incarceration had to do with long term incarceration. One in nine prisoners across the country was serving life sentences. He said people generally age-out of crime. The final issue with public safety had to do with the deterrent effect of the justice system. He said now was a good time to assess the appropriate mix of prison and non-punitive approaches for the best public safety outcomes, Exhibit D.

Chair Segerblom asked if any states went back and looked at people already in prison and identified those who should be released sooner.

Mr. Mauer said New York had policies going back to the 1970s and in 2009 they scaled it back substantially and allowed people to be considered for release under those policies. He said in Michigan a mandatory law for drugs was life without parole. He said that was scaled back to between 15 and 20 year sentences. Also, in California the three strikes and you are out law had been revised and several thousand people were now eligible to apply for reconsideration of sentencing.

Chair Segerblom asked if they went back to the judge or the parole board.

Mr. Mauer said he thought they went back to the sentencing judge.

Mr. Siegel asked about the B felonies that could potentially be moved down to C or D felonies. He asked about things other than drug offenses and if there were any offenses that were systematically overcharge or over-sentenced.

Mr. Mauer recommended looking at crimes that could be charged as felonies or misdemeanors. He said most of the offenses were property offenses.

Mr. Spratley said in the written testimony regarding the deterrent effect being primarily a function of the certainty of punishment, not the severity of punishment, was because of long standing findings. He asked if there was a report or study that was done and could Mr. Mauer supply the findings to the Commission.

Mr. Mauer said he could supply a report from the National Research Council which he recommended they examine. He said it was a 400 page report and had a good summary of the deterrent effects.

Mr. Spratley said it seemed they needed more cops on the street for the deterrent to take effect.

Mr. Mauer said having more cops on the street might increase certainty of the deterrent. He said in many jurisdictions it meant law enforcement should not be judged on how many arrests they made, but based on how many problems they solved.

Justice Hardesty asked Mr. Mauer if he looked at any of the reports or studies regarding Nevada's prison system, specifically to determine whether or not the demographics of the population in this state fit within the observations he had made. Justice Hardesty said some of the general points made today were different than what was known about Nevada's prison population.

Mr. Mauer said he was not an expert on Nevada's prison population. He said he took a cursory look at several things in the population. The rate of increase in Nevada was more than other areas.

Justice Hardesty said the Department of Corrections personnel had the impression that the Nevada Department of Corrections received more hardened individuals committing more serious crimes. Nevada may be housing the worst of the worst, so to speak. He said the prisons had evolved to a point where they were incarcerating some of the more difficult people.

Mr. Mauer said it might be a legacy of the drug wars. He said it may reflect that there was lack of constructive interventions early in their criminal career. People do not stay hardened forever.

Justice Hardesty asked if he was familiar with the parole rate in Nevada. He said he had been told it was a significant parole rate and without it the prisons would be in much worse shape.

Mr. Mauer said he had not looked at parole or how the rates compared with others. Regardless of what the rates were, there were discussions for the past 15 years on reentry.

Mr. Pierrott asked about states that converted certain crimes and reduced them to lesser sentences. He asked about the impact on the departments of parole and probation and had it mandated changes on how they supervised the individuals.

Mr. Mauer said any kind of change along these lines required projecting ahead what kind of shift of resources may be necessary.

Mr. Pierrott asked if he worked with those states to determine how many officers would be needed.

Mr. Mauer said they had not done that and the experience of probation and parole was varied around the country. He said they were in a time of flux. He mentioned there was an emphasis on technical violations.

Chair Segerblom said the prison population seemed to be composed of people there due to a sex offense or have some kind of sex offense tied to their history. He asked if there was a national movement in that area.

Mr. Mauer said nationally there was a growing population of sex offenders in prison. He said much of it was good news that society was taking the offenses more seriously. He said the challenge with sex offenses was that it was not a “one size fits all” type of problem. They needed a sophisticated understanding for treatment and appropriate supervision.

Chair Segerblom said a senator from Oakland passed a bill where the courts can look at male offenders between the ages of 18 and 24 and recognize that population did crazy things and their sentence may be reevaluated.

Mr. Mauer said some places allowed for expungement, but he was not aware of states that actually reconsidered a prison sentence.

Chair Segerblom asked if he agreed there was a certain period of time when a young man’s mind let him do things he might not do when he was older.

Mr. Mauer said the Supreme Court looked at two life without parole sentences that recognized the human brain was not fully developed until about the late twenties or so. He said it did not excuse the behavior, but said dealing with a 30 year old was different than with a 16 year old person.

Mr. Siegel had a question about race. He said Nevada confirmed national trends of three to four to one particularly on black to white searches, arrests, and stopping cars.

He said it showed up in terms of over incarceration more than anywhere else. He asked if it included other felonies.

Mr. Mauer said the figures were not unique. Racial disparities in the system were cumulative. He said if they were unwarranted early in the system it had an impact as it went further along. He said they understood law enforcement needed to deal with real behaviors and real people, but also in a way that was fair and appropriate.

Chair Hardesty said on the last page of Exhibit D he highlighted review admissions criteria for court diversion and alternative sentencing programs. He said he assumed it was an endorsement of specialty court programs around the country.

Mr. Mauer said yes, in general. Drug court was by far the most common and popular specialty court. He said at the same time there was compelling research suggesting in many drug courts the criteria for admission was relatively narrow so that good services and treatment were not reaching enough people.

Justice Hardesty said implicit in this recommendation was the importance of a stable funding system for specialty courts in the state.

Chair Segerblom opened discussion on Agenda Item VII, law enforcement for the postal service under Nevada laws.

Joan Yarbrough, Special Agent in Charge, U.S. Postal Service, introduced her testimony, Exhibit E. She said the Inspector General of the postal service was requesting an amendment to NRS 171.1257 concerning peace officer status for postal service law enforcement officers. Ms. Yarbrough read her testimony in Exhibit E. She said the postal service had two law enforcement agencies. The OIG agents had authority to make arrests relating to postal matters, they did not have the authority for state crimes related to postal matters. She said there were times it was more appropriately prosecuted in state courts. She offered three examples where there were issues due to not having peace officer status, Exhibit E. Ms. Yarbrough made several suggestions to the recommended amendment of NRS 171.1257, Exhibit E.

Chair Segerblom asked which states had similar laws.

Ms. Yarbrough said the postal inspectors and the OIG agents had peace officer status with Alaska, California, Colorado, D.C., Florida, Illinois, Indiana, Michigan, South Dakota, Tennessee, Texas, and Wyoming. She said there was peace officer status inspectors but not OIG agents in Arkansas, New Jersey, New York, North Carolina, South Carolina, Utah, and Virginia.

Mr. Callaway asked how many OIG agents were in the Las Vegas-Clark County area. He asked how often during an annual basis those agents were investigating postal crimes or potentially making arrests or could not make arrests due to lack of state powers in the county.

Ms. Yarbrough replied that there were two agents in Nevada. She said in 2013 4 or 5 cases went state. She said in 2014 about 8 to 12 went state. She said the threshold was increased on postal related cases and was currently $30,000 loss and 250 victims.

Mr. Callaway asked if she envisioned the agency having state arrest powers, the two agents in the Las Vegas area would serve search or arrest warrants on their own. He asked if they would still reach out to local law enforcement for assistance.

Ms. Yarbrough said yes, they would probably access some local law enforcement. She said local law enforcement would not have to worry about the evidence or arresting the individual.

Justice Hardesty asked about the factors for consideration to "go state" as opposed to federal. He worried about the accumulating population in our prisons.

Ms. Yarbrough said there was an option of seeking prosecution on a federal misdemeanor or issue a magistrate ticket as a federal misdemeanor. She said they were often fined. When the crime had multiple victims it might be appropriate to receive a felony for the crime.

Mr. Spratley said she had stated in 1997, Congress separated the office of inspector general from the inspection service creating the OIG and in 2007 added the inspection service. He asked why they were not rolled into that NRS in 2007.

Ms. Yarbrough said she did not have an exact answer. She said for a while they both worked more independently than they should have, but that had changed.

Mr. Frierson said in 2007, when the statute was amended, he did not see discussion. He asked if there were some benefits that came with being a peace officer that might expand expenses to the state within law enforcement and health issues.

Ms. Yarbrough said she could get the information for the Commission. She said with peace officer status she could do more to help the local police officers when needed.

Mr. Frierson said she discussed areas where not having peace officer status was a problem involving delayed investigations and prosecutions of cases. He asked if there were cases where there was a disagreement between a federal agency and a state agency.

Ms. Yarbrough said she had not had that experience.

Mr. Digesti asked about the total financial impact to the state if the request was approved. He said there would be a jurisdictional issue and he saw many more cases going the state route as opposed to federal court. He anticipated an increase in state prosecution which could translate into a financial impact for the state.

Ms. Yarbrough said they did not have a financial study of the impact, but she could get the information for him. She was not aware of a financial overburden to the state.

Chair Segerblom opened discussion on Agenda Item VIII, justice reinvestment.

Justice Hardesty referenced the memorandum from Mr. Anthony which provided a summary of the Oregon reform measures, Exhibit G. He said he hoped some of the initiatives were included in the discussions in October concerning recommendations to the legislature.

Chair Segerblom said if Nevada could model themselves after Oregon it would be great for the state.

Justice Hardesty said one of the key components involved the expansion of specialty courts and the stabilization of their funding and a significant investment by their legislature into the court system. He said he asked the specialty court funding committee in Nevada, under the jurisdiction of the supreme court, to compile the various financial problems in the court's system. They needed to visit the funding mechanism and some of the crimes that might be appropriate for expansion of admission into the successful programs.

Chair Segerblom said he concurred and the problem in Nevada was the up-front expense. He said they would save a lot of money in the long run by doing this.

Justice Hardesty said the beauty of the Oregon program was that they had created a statute that had accountability mechanisms in it. He said it was not just a give way, they tracked the data to help the funding committees understand how to track the application of the funds.

Chair Segerblom opened discussion on Agenda Item IX, *C*ategory B felons.

Mr. Cox, Director, Department of Corrections, gave an update on the diagnostic center to find supporting documentation on federal, state and drug reforms. He said they were also studying offense location trends, offender characteristics, and sentencing variations. The analysis would facilitate future legislative discussions within the Category B offenses and what changes, if any, can be made. He said impact projections would be provided as applicable. They would continue to inquire with stakeholders on Category B offenses based on levels of victimization. He said the team planned to attend the October work session to provide more information. He said they would look at the burglary statutes in particular.

Mr. Jackson said it appeared this item, regarding Category B felonies, presented major concern. He said he was a stakeholder involved in some of the meetings. He received an email identifying seven specific Category B offenses and moving them from the one-to-six year sentencing range to Category C with a one-to five sentencing range. He said the first offense listed as the deadly weapon enhancement was not a crime in and of

itself and was a separate enhancement and should not have been included. He said of the six remaining offenses the diagnostic center had errors on four of the six. He said of the seven offenses, there were mistakes on five of them. He also received all the Category B offenses the diagnostic center put into three categories; immediate bodily harm, no immediate bodily harm, and possible immediate bodily harm. He said under NRS 176 the final report should have been submitted no later than September 1st. He was concerned about the October date. He said there was not enough time. He said they needed the correct data to make decisions for the people of Nevada. The Commission's duty was to drill down and study.

Chair Segerblom pointed out they did the best they could with the resources available. He said he was presenting a bill on this issue in February. He thanked Director Cox for reaching out and trying to do the best they can.

Mr. Frierson said Director Cox was doing an excellent job.

Justice Hardesty said they had not had resources to evaluate a lot of drill down data until Director Cox was able to secure the assistance of the diagnostic center. He said it was a work in progress and they may need additional education regarding some of the criminal statutes.

Chair Segerblom said the issue would come back in October. He opened Agenda Item X, additional budget resources for the NDOC.

Director Cox said the department was submitting a budget to the Governor in the next week. He said the board members asked that the study be completed. The department was presenting a study for additional custody staff, security staff, correctional officers, sergeants and lieutenants, and other program activities such as mental health and substance abuse. He said he would provide the Commission the study and the staffing recommendations.

Chair Segerblom asked if they were looking at substantial additional resources.

Director Cox replied that they were asking for additional custody staff and the program staff. He said it was a significant cost to the state. The projections of the population remained relatively flat. He said the furloughs were something the staff wanted to go away, they were doing six furloughs a year. He supported the furloughs being removed and secondly look at the staffing study and recommendations.

Mr. Siegel said the ACLU received some letters suggesting continuing problems with non-retention of medical and mental health staff. He asked if it was getting better, worse, or the same in the last several years.

Director Cox said he discussed the difficulty in hiring professional staff. He said the funding for them was an issue, but they continue to fill positions and provide services they were required to provide for the inmate population.

Mr. Siegel said the constitutional issues were heightened in the prison and jail settings. He said they had a responsibility to assure there was adequate staff and retention of staff for physical and mental health.

Chair Segerblom said it would be good to increase the salaries. He said he saw they were using Medicaid for some of the prisoners, but the hospitals were complaining about the lack of money.

Director Cox said they were utilizing Medicare and appreciated that the legislature gave them several tools to do a good job. He said they were looking at other ways concerning reimbursement for the hospitals. They were required to provide the medical services needed and approved by physicians and doctors.

Chair Segerblom asked about a policy or law which allowed the release of an inmate based on the end of their life or some kind of medical condition where they can be released.

Director Cox said there was a compassionate release program. He said it was specific in regards to medical. The Department placed an inmate in a hospice center in Las Vegas in regards to their illness and treatment. He said the Department was asking for additional staff to establish a hospice in their operations. He said it was a continuing issue associated with the aging population. They had an obligation to provide for the medical needs and services of the inmate population.

Chair Segerblom opened Agenda Item VI, collateral consequences to S.B. 395. He said the presentation was from the Uniform Law Commission and Ms. Love.

Margaret Love served as the pardons attorney in the Justice Department in the 1990s. She said she was helping people deal with collateral consequences and law reform projects. The Uniform Act provided the most comprehensive and sensible treatment. She said Richard Cassidy would speak further on the topic. She said mass conviction was a problem and many people did not go to prison but ended up with a criminal record that could be extremely burdensome. Collateral consequences were in the statute books, the rule books and the formal and informal policies of employers, Exhibit H. She said there were more people with convictions, and more restrictions in the law books. Nevada had 751 laws and rules in the statutes and rule books that disqualify or limit opportunities for people with a criminal record. She said there were also over 1,000 federal law consequences. She said Nevada had an existing relieve structure with broad authority. She reference a handout of a list of laws passed in the states in the past 18 months dealing with collateral consequences of a criminal conviction, Exhibit H.

Richard Cassidy, Chair of an acting committee on the Uniform Collateral Consequences of Conviction Act, said he chaired the drafting committee. He made general comments on the act. He said the subject of the legislation was the civil law effect of the conviction of a crime. He said the effect was a barrier to successful reintegration into a law abiding life for people who had a conviction. The study referenced by Ms. Love showed there

were 45,000 American statutes and regulations based upon having a record of conviction. He said they affected every facet of daily life. The estimated number of people who had a record was between 60 million and 90 million with a record of conviction. He said most of the sanctions were for life. He said Nevada had an active Governor's Pardons Program. He outlined the sections of the UCCCA, Exhibit H. He said private employers or landlords were not directly affected by the Act.

Chair Segerblom said they went through the bill in the last session of the Legislature. He was interested what states had adopted the bill.

Mr. Cassidy said Vermont adopted the bill this year. He said they removed approximately 30 serious crimes from the bill. He said they were the only state that had adopted a comprehensive version of the act. He referenced several states that had picked up some of the important provisions of the act, Exhibit H.

Ms. Love said the two provisions most appealing to jurisdictions were the inventory notion that Nevada already had and the certificate of restoration of rights. She said it lifted the mandatory bars and allowed people to go into a job interview and be considered on an individualized basis. She referenced Exhibit H with the general relief provisions. She said a number of states were giving consideration to the relief measures and the role of courts in granting relief.

Mr. Cassidy said New Mexico adopted the Act twice, but the Governor vetoed it.

Mr. Kohn was concerned about collateral consequences and considered them a contributor to recidivism. He was concerned how indigent defenders or any lawyers learn all the 1700 collateral consequences and advise clients and not be on the hook for ineffective assistance of counsel when one of the serious consequences lead to an unforeseen result. He was also concerned that the law changed. He referenced the Adam Walsh Act. He asked how to make the law have effect without leading to liability for indigent defenders.

Mr. Cassidy said the statute, by its expressed terms, did not create or limit the liability that lawyers may have. In Vermont the law of legal malpractice was comparable to the law of medical malpractice. He said not every mistake or error lead to legal malpractice. He said given that there were 45,000 different statutes and regulations, it was obvious no lawyer could give totally comprehensive advise on collateral consequences.

Ms. Love said criminal defense lawyers and public defender offices compiled their own organized version of the collateral consequences that apply in a certain jurisdiction. She said it was important to discuss with the client what their particular needs were.

Mr. Kohn did not disagree, but there should be a limit to liability written into the statute. He said no matter what crib sheet they devised with several thousand collateral consequences, they were opening themselves up to serious problems.

Mr. Cassidy said there was language in the statute that said the statute did not affect the duty of defendant's lawyer or give any new cause of action to a defendant. He said it did not say there cannot be liability.

Ms. Love added she had not heard the idea of civil liability, even in a deportation context, raised as a concern.

Mr. Jackson asked about the laws enacted in 2013-1014, Exhibit H. He said it appeared the relieve from the collateral consequences excluded the serious violent and sexual offenses.

Ms. Love said most of the states did exclude them. She said they would not include sex offender registration among the collateral consequences that offered relief.

Mr. Jackson asked if any state offered relief from the sex offender registration.

Ms. Love replied, yes and she could get a list for him. She said there was a whole spectrum of sex offender registration issues. She said the Romeo and Juliette kinds of cases were sometimes pardoned by the governor of the state.

Mr. Jackson asked about the certificates and if there was any victim notification if an individual sought a certificate and secondly was the certificate obtained in the criminal justice system or a civil matter.

Ms. Love replied in most cases there was victim notification. She said in most states the prosecutor may or may not object. She said if the prosecutor did not object it allowed the court to go ahead. She said in Ohio the court that gave relief was the court in the county of their residence.

Mr. Cassidy said in Vermont the application for relief was conducted in the federal court.

Mr. Pierrott asked about their experience with certifications and qualifications for employment with regard to law enforcement.

Ms. Love said the uniform act excluded law enforcement employment. She said most states excluded law enforcement employment. She said the janitorial or secretarial staff was not necessarily excluded. She said New York excluded in their police department but not the fire department.

Mr. Cassidy said the Uniform Act did not remove the ineligibility for employment in law enforcement. He said not every agency had collateral consequences so there were some places where one might be able to seek employment in law enforcement.

Judge Barker said a trial judge wanted a fair, accurate, informed decision based upon merit and law and integrity in the process. He thought he heard them say they had not

heard of a criminal defense attorney sued for malpractice in a civil action. He asked if that was true.

Ms. Love replied it was true, she had never heard of such a case.

Mr. Cassidy said the Uniform Act had not been in place and effective in any place as of yet. He said the statute was very clear that it did not give anyone a cause of action for money damages.

Ms. Love said once past deportation, the cases did not seem a departure from the earlier laws.

Judge Barker said in the context of a post adjudication situation, an individual was seeking relief by way of petition. He said there was judicial impact in that a court would have to review a petition seeking relief.

Ms. Love replied that was correct. She said there were other states with long standing certificate programs. She said the court acted upon petition.

Mr. Cassidy said New York had a two-step process handled through the judiciary. He said the volume of cases had never been large.

Judge Barker asked if the petition actions were taken by original public counsel in seeking relief or was it independent action not funded by public dollars.

Ms. Love replied the only state she knew that provided any provision for involvement and payment through public money was California. She said some legal aid offices help people and the public defender's offices were not involved in this work.

Judge Barker asked about pre-adjudication situations. He mentioned a situation where a lawyer might say to his client he did not know if he could explain all the potential outcomes or ramifications and by that statement drive the action to trial with additional public expense. He asked if that was a realistic situation.

Mr. Cassidy replied that would be very poor lawyering. The evaluation was what would happen if they did not negotiate a plea. He said the Uniform Act and the Certificate of Limited Relief provision allowed a court to issue a certificate and also provided another useful tool for plea negotiations.

Ms. Love said it was important to provide some measure of relieve after the sentence was imposed and even been served. She said there were new collateral consequences being added all the time.

Judge Barker asked about complaints received from judges where the actions had moved forward. He asked if they had heard of any complaints regarding their proposal.

Mr. Cassidy said in Vermont some of the judges were worried about the possibility there would be persons with convictions who would utilize the relieve clause repeatedly.

Chair Segerblom asked if judges complained about having to cite the 700 potential disqualifications.

Ms. Love said the only thing the Uniform Act required at sentencing was the more general advisement. She said the court should make sure the person was alerted to the problem of collateral consequences and the various areas they may affect.

Mr. Cassidy said the act stated there was a written notice and at the time of the plea the judge confirmed the individual received the notice and discussed it with counsel.

Justice Hardesty asked about anything in the Uniform Law or certificates intended to preclude consideration of an individual's prior criminal history in connection with professional licensing.

Mr. Cassidy said the idea was to remove the stigma of conviction, but not change history. The fact that the person had a conviction was not enough, but could look at the behavior.

Justice Hardesty offered a hypothetical situation concerning the Board of Medical Examiners who consider licensing physicians precluded from considering the criminal history of an applicant for a physician's license. He was concerned about professions that licensed people based on their good character. He was concerned about how that was addressed in states that had adopted the Uniform Law.

Mr. Cassidy said Section 8 of the Act said when deciding to impose a disqualification, the decision makers shall make an individualized assessment to determine whether the benefit or opportunity should be denied.

Ms. Love said most licensing boards operated under a good moral character standard. The Uniform Act would not change that. The relieve takes away the absolute bar of ineligibility.

Mr. Cassidy said there was discretionary judgment.

Justice Hardesty asked if the Uniform Law adopted a standard of review by which trial court decisions were reviewed for grant or denial of certificate on preponderance of the evidence.

Mr. Cassidy said the Uniform Act incorporated by reference whatever standard was in the state for review of governmental action and limited relieve to a remand back to the governmental organization making the decision .

Justice Hardesty said 95 percent of criminal cases in Nevada were resolved by guilty pleas. He was concerned about the impact on the status of Nevada's jurisprudence which to now said collateral consequences were not to be considered in connection with post-conviction writ petitions in determining ineffective assistance in counsel. He said this could have an impact on jurisprudence if enacted by the Legislature. He was concerned about the adoption of a statute that disrupted jurisprudence on that point

Mr. Cassidy said Section 3 of the Act began by saying: "this Act does not provide a basis for invalidating a plea, conviction, or sentence."

Ms. Masto said the Attorney General for the State of Nevada was the legal counsel for all the professional licensing boards. She had similar concerns to what Justice Hardesty brought up. She said providing the Boards with more discretion instead of a bright line rule opened it up to more litigation on whether they were providing individuals with a professional license. She said she foresaw more problems with litigation.

Mr. Cassidy said he was on the board of standards in Vermont. He said in a few cases the boards would have to pay more careful attention in order to do individualized assessments.

Ms. Love said she was not sure how the bright lines worked in Nevada. She said a number of states had a substantial relationship standard built into the licensing laws. She said most states did not have bright line rules in licensing.

Ms. Masto asked that they allow the attorneys in her office, who represented the boards and commissions on a regular basis, to weigh in on this process. She wanted to be sure it was good law that was passed.

Ms. Love said she would work with the attorneys and show them case law that might be useful.

Chair Segerblom said the population primarily restricted were of color so there was a racial aspect of this thing.

Mr. Jackson said they needed additional information. He referenced Senate Bill 395 subsection 12, the duties of the Commission under NRS 1760.125 stated their duty was to identify and study the impacts and effects of collateral consequences in the State and the identification and study must cause to be identified any provision in the Nevada Constitution, the Nevada Revised Statutes and the Nevada Administrative Code.

Chair Segerblom asked Ms. Love if there was a national group who had already gone through Nevada statutes and listed it on a website.

Ms. Love said in Nevada law it was specifically provided they were allowed to rely on the study the National Institute of Justice had done.

Chair Segerblom asked if the ABA had made a list of the collateral consequences and posted them on their website.

Mr. Cassidy said there was a very good study in existence now.

Chair Segerblom opened discussion on Agenda Item XI, a presentation on additional budget resources for Parole and Probation.

Natalie Wood, Chief, Parole and Probation, referenced her letter in response to his questions, Exhibit I.

Mr. Kohn said he had met with Ms. Wood last month and she made it clear she could not provide the personnel necessary under AB 423. He asked how many more writers it would take to comply with AB 423.

Ms. Wood said with the current resources they could not reach the 21 day mark set in statute. She said they were restructuring internally and using overtime to meet the current statutory requirements.

Mr. Kohn said the 21 day had not yet gone into effect. He said there had to be some amount that would make this possible.

Ms. Robin Hagger, Fiscal Analysis, said there was no number of PSI writers they could ask for with relation to AB 423 because their budget was built upon JFA estimates. She said she could not directly tie anything to AB 423.

Mr. Kohn said they had an idea of how many people went through the various district courts every year. He wanted to support the agency getting the resources they needed so he could do his job properly and have the reports ahead of time.

Ms. Hagger said when JFA did their estimates they looked at more than a year or two of data. It was a significant amount of data over multiple years. She said changing the time lines did not necessarily mean they produced any more PSIs than they had in the past. It just meant they changed when they were due. She said she did not have a full year of data for AB 423.

Ms. Wood said they tried to meet the current statutory guidelines. She said they were being truthful and forthright with their staffing level ability to meet the 21 days. She said they were receiving the PSIs 14 days in advance at this time. She asked if the PSIs were being reviewed.

Mr. Kohn said yes they were being reviewed. He said they were receiving them 14 working days in advance. He said they could live with 14 court days but they had asked for 14 calendar days.

Ms. Wood replied that was correct.

Kim Madris, Deputy Chief, Southern Command of Parole and Probation Division, tried to explain where the issue was. She said it was not a staffing issue at this time. She said what occurred was the PSIs were assigned out up to 90 days in advance. She said for every day they were trying to meet they had to pull 7 days of PSIs back and ask for continuations. She said in the past every Monday for 7 Mondays they pulled back the assigned PSIs and asked for continuances. She said to achieve that they needed more bodies and continuances. She said it was a onetime thing they had to do.

Mr. Frierson said he was baffled that they could not predict case loads. He said they were never 100 percent accurate but they made predictions every year. He said it sounded like they changed the law, and P&P did not want to do it. He said if there was overtime needed in order for the process to continue, there had to be a way to predict how many bodies and hours it took to do a PSI and make a request to do that.

Ms. Hagger said she did not create the numbers for the budget, but received them from JFA. She took the data and put it into a formula driven by a staffing study done in 2008. They asked for a new staffing study in order to accurately reflect their needs. She said she was bound by rules and regulations on how she can create the budget.

Mr. Frierson said his issue was they said there was no way to know what was needed.

Ms. Wood said there was two ways of looking at the situation. She said AB 423 was to provide the attorneys with an opportunity to review the PSI in advance with their client to determine if there were factual corrections needed prior going to court. She asked if there were any statistics about the attorneys sitting down with their clients ahead of time and taking advantage of the bill.

Mr. Frierson said usually they had the same case load problems as Parole and Probation. He said there were ways to calculate how many bodies were needed to get the job completed.

Judge Barker said he heard every week that the criminal judge was not touching the PSI in preparation of sentence 21 days, or 14 days before the actual hearing date. He said he did not understand 14 court days or 14 calendar days. He asked if there was a new way they could assist P&P, perhaps new computers, or new methods.

Mr. Kohn said in Clark County at the entry of plea, the court provided the defendant in court the questionnaire P&P used. He was surprised they were not using some type of computer method to get the information from the client and quickly transport the information to the office of P&P. He said maybe they should look at technological techniques to get information more quickly.

Jim Wright, Director, Department of Public Safety, said they were talking about a level of service. He remembered the earlier discussions about the issue. He said they decided they had to change things in the product to meet the dates. They asked offenders when the PSIs were addressed and they learned within one or two days or

even the day of the hearing. He asked if they had set a service level demand that others were not meeting. He asked if 21 days was realistic. He said there a lot of demands on the state budget. He asked if this was something they wanted to press forward. He said they were asking for positions in the budget.

Mr. Jackson said the district attorneys association supported what was drafted during the previous interim. He said the original intent of the subcommittee was the 21 days. He said the biggest complaint was the defendants and defense attorneys were looking at the reports the day of or prior to a sentencing hearing. The idea of the 21 days was to try preventing delays based on a block of 7-day periods.

Mr. Digesti said he understood everyone's concerns. He said the courts relied, to a certain extent, on the recommendation made in the PSI report. He said he did not review the PSI report for the first time the morning of sentencing. The 21 day rule may not be as practical as they thought. He said if the defense lawyers were not reviewing the PSI until the morning of sentencing then the problem needs to be fixed. He said he preferred the same system as used in the federal system. The defense attorney had until a "drop dead date" after they got the report to file and lodge any objections. He said if a lot of defense attorneys were not meeting with their client until the morning of the hearing to address the issues, then the 21 day rule accomplished nothing. He said some burden and responsibility had to be put back on defense counsel. He recommended giving them a time to lodge their objections, but not the morning of sentencing hearing.

Chair Segerblom said P&P was requesting going from the current law of 21 days to 14 days. He asked if that was the upcoming proposal.

Ms. Wood said the BDR proposed 14 calendar days. She said originally there was a fiscal note attached to the bill for slightly less than $1 million.

Mr. Kohn said he did not have the fiscal note with him. He said it seemed like a very strange fiscal note. It had a significant number vehicles in it.

Ms. Haggar said the fiscal note did include 21 new positions. It also had the vehicles, but they could be removed.

Justice Hardesty said part of the issue was a disconnect between reality and the budgeting constraints imposed on the Division. He said P&P needed to be released from the constraints of the budgeting process because it was unrealistic. It prevented them from providing adequate and realistic numbers and addressing reality when it differed from projections that were incorrect. He wanted the underpinning of the Division's budget process be reevaluated for a more realistic assessment of the issues. He said he was very reluctant to see PSIs pared back in information. He said everybody in the system was reading the PSI. The less information provided, the bigger the disservice to the entire criminal justice system. He said they needed to make realistic

assessments of staffing needs and not be confined to the projection problem. He said that was a recommendation they needed to put a stop to as soon as possible.

Ms. Bisbee said the JFA projections for PSIs did not take into account that if the court waived the PSI, they still had to do a report. She said the report started when someone was first brought in and they were notified on intake lists. She said they were still required to do something similar to a PSI report. It was a post-conviction report, but it was the same process, using the same people and had the same statutory requirement. She said it made it even more difficult to determine how many positions were needed. She said it was important to the entire process.

Director Cox agreed with Ms. Bisbee and Justice Hardesty. He said it was critical they had a good product, PSI report, for their classification process. He was not clear on the calendar days, versus work days, or the court days. He asked if it was better if it was court days.

Ms. Madris said by doing work days the weekends were removed. Thus, the division had to get it to the court sooner. Where if it was calendar days they were given the weekends and it actually benefitted them. She added work days and court days were the same thing for them.

Mr. Frierson chaired the committee where the bill originated. He said his concern was the integrity of the institution if they dictate to a department that they needed them to do something and they could not tell the committee what they need to do it. He said if they made a recommendation it should be 14 calendar days then they need to put forth a good effort on how they can comply with whatever the number was.

Ms. Wood said they were not saying they could not do it, they were being honest and direct with them with their current resources. She said given the original fiscal note, they restructured internally, applied more staffing, and utilized overtime.

Chair Segerblom thought they were saying what it would take, hypothetically, to do the 21 days.

Mr. Jackson said the subcommittee that reviewed the PSI investigation process originated because of a Nevada Supreme Court decision, the Stockmeier decision. He said that case was about an error that occurred in a PSI report and revisiting the error. The primary scope of the subcommittee dealt with the issues about making timely objections.

Judge Barker noted the use of technology and GPS systems was commonly used as a function of out-of-custody supervision at a county level. He said the additional technology at the state level was necessary and important.

Chair Segerblom opened discussion on Agenda Item XII, laws concerning sex offender registrations.

Mr. Keith Munro, Nevada Attorney General Office, said he served as the Chair for the Subcommittee to Study Sex Offender Laws. He offered an overview of the committee's work, Exhibit J. He said prior to passage of AB 579 or the 2007 session of the Legislature, the statutes and history of the sex offender registration statutes indicated they were not intended to impose a penal consequence, but to protect the community and assist law enforcement. He said congress passed the Sex Offender Registration and Notification Act, SORNA. It was a provision within the Adam Walsh Child Protection Safety Act, Exhibit J. In response to federal legislation the Nevada Legislature passed AB 579. It placed sex offenders in one of three tiers based on their crime of conviction. He outlined some of the specific requirements in the bill as seen in Exhibit J. He said no legislature had sought to repeal AB 579 in its entirety. He said the bill appeared to be Nevada's effort to meet the sex offender standards established by Congress. Nevada was reviewed by the Federal Department of Justice and was found to meet the requirements of the federal Adam Walsh Act, Exhibit J. The next exhibit listed the 16 other states, territories and Indian tribes that met the requirements of the federal legislation. He said the committee reviewed the litigation arising from the passage of AB 579. He referenced his exhibits again and said after almost four years of litigation the Ninth Circuit Court of Appeals denied a challenge to the constitutionality of AB 579. He said the plaintive cited eleven causes of action. In 2013 the Nevada Supreme Court denied a state court challenge to AB 579. He said in January of 2014 the Nevada Supreme Court stayed the implementation of AB 579. He said there was a copy of the Court order in his exhibits, Exhibit J. The Court expressed some strong views about the implementation of a portion of AB 579. He said it applied to both juvenile and adult sex offenders. He said most sex offenders were adults and the heinous juvenile sex offenders were often certified as adults. The group of sex offenders the Supreme Court expressed concern for were not the adults or the juvenile sex offenders who were certified as adults, but the juvenile sex offenders who were adjudicated as juveniles.

Mr. Munro said after passage of AB 579, the federal requirements changed with respect to community notification for juvenile offenders adjudicated as juveniles. He said in January of 2011, supplemental federal guidelines were issues. He said the federal Department of Justice gave discretion to the states as to the appropriate form of community notification with respect to juvenile offenders. He said the federal guidelines brought Nevada out of line with federal requirements regarding notifications for juvenile offenders. Nevada now had a community notification requirement more stringent than what was required by federal law. He said the intent with the passage of AB 579 was to keep Nevada in line with the nationally required standard. He quoted from his exhibits citing a SORNA implementation review of the State of Maryland, Exhibit J. He said it was a change as to what was allowable to meet the national standard for juvenile registration. Nevada was again more stringent than the national requirements regarding juvenile registration. Mr. Munro said the Attorney General decided to use one of her bill draft requests for the upcoming session to address some of the study efforts of the advisory committee. The Attorney General will present legislation to determine if the Nevada Legislature wished, with respect to juvenile offenders, to bring Nevada's statutory structure into conformity with the changes to the federal requirements. He said the issues involved whether the legislature wanted to provide discretion to district court

judges in juvenile cases as to community notification. Second, whether the legislature wished to change the registration requirements for juveniles in conformity with what was approved for the State of Maryland.

Chair Segerblom asked if there were any questions. He opened discussion on Agenda Item XIII, testing for Hepatitis C.

John Witherow, Nevada Cure, said he was requesting an amendment of NRS 209.385 to include testing of all prisoners for the Hepatitis C virus, Exhibit K. He said it would involve an amendment to Section 1 and Section 6 of the statute. He said the CDC recommended all Baby Boomers receive a one-time Hep C testing. He said currently prisoners were not tested. They did not know how many prisoners were infected with Hep C because there was no testing. He said the NDOC was charging $425 a prisoner to be tested for the virus. Most prisoners were poor people and did not have the money to pay for the test. He said in Las Vegas a Hep C test can be obtained from $26 to $84. He said the NDOC could work out a contract with a company to do Hep C testing of all prisoners in a price range between the $26 and $84 amount. He said it was done with the HIV virus and every prisoner was tested for HIV. He said Hep C was transmitted in the same fashion as HIV and was more contagious. He said he submitted documents from the U.S. Preventive Services Task Force, Understanding Hepatitis C, and a Hepatitis C Toolkit, Exhibit K.

Chair Segerblom asked Mr. Witherow if any states were testing their prisoners for Hep C. He also asked if someone tested positive, what was the state obligated to do.

Mr. Witherow said he was not aware of what other states tested for Hep C, however he was aware there were court decisions saying prisoners who exhibited the symptoms should be tested. The cost for treatment for Hep C was enormous for the most effective treatments available. He said there was a new treatment that eradicated the virus for 90 percent of the people, but it cost $84,000. He said there were other treatments for a lesser cost, but it was still expensive. He said the NDOC had protocol set up for when the infection reached a certain level and they received treatment. He said all prisoners should be tested and notified if they had the virus. He said if they had it and were not eligible for treatment while in prison, they should receive information from the NDOC concerning Medicaid, Medicare and treatment when they were released.

Chair Segerblom asked if people were contracting the virus in prison.

Mr. Witherow said yes, there was a substantial possibility of transmission of the virus in prison through drug use, needle sharing, unauthorized sexual misconduct or with a cell partner using their razor.

Director Cox said the NDOC was working with the Chief Medical Officer, Dr. Green, and reached out to the federal bureau of prisons to look at their protocol and process. He said they also talked to other states and the National Commission on Correctional Health Care in regards to the best practices and standards. He said they had care and

concern for inmate population. He had not yet found a state testing everybody. He said they were actively pursuing the issue and the problem.

Chair Segerblom said they would raise the issue with the Legislature in February. He opened Agenda Item XIV.

Vanessa Spinazola, ACLU, said she had distributed copies of her presentation, Exhibit L. She said it was a follow-up to the study mandated in SB 107 about solitary confinement and administrative segregation. She said she gathered stories about Nevada. Solitary confinement caused psychological damage, made rehabilitation difficult, and made re-entry into the community difficult. She said there were people in Nevada prisons who had been in solitary confinement for a long period of time. She said they did not have any information on the average length of stay for adults. The ACLU will not share information on intakes because of fear of retaliation resulting in additional time in segregation, Exhibit L. She said there were no statutes regulating segregation. She said they advocated for an actual state level statute. She used the ABA standards for comparison on the treatment of prisoners. She presented standards in her exhibit and reviewed them briefly. She said the ACLU received the most intakes from people who believed they were not getting due process and they did not understand why they were placed in segregation. She continued her presentation of Exhibit L. She said Standard 23-3.8 talked about meaningful forms of mental and social stimulation while in segregation The NDOC said they did not offer any direct program services such as training classes or mentoring to inmates classified within the segregation population. She added they could not benefit from the good time credits if they were unable to do programing. She said Standard 12-3.5 talked about provision of necessities, Exhibit L. Ms. Spinazola listed some recommendations from the ACLU taken from the ABA Standards.

Mr. Callaway thanked Ms. Spinazola for not showing the same video she used during the session. He said some numbers showed from 20 to 25 percent of the Clark County Detention Center population suffered from mental illness. He said it may take a month or more before someone was transported to Lakes Crossing for evaluation. He asked how the ACLU proposed, in a facility such as the Detention Center, to house someone when they suffered from severe mental illness. He asked about the rights and safety of other people in the facility to not be placed in a cell with someone with mental illness. He asked what they should do when the law prohibited them from putting someone with mental illness into segregated units.

Ms. Spinazola suggested the person be seen routinely by a mental health expert. She said sometimes the mentally ill prisoners were segregated in a room and checked every 23 hours. She said the ABA standards permitted some level of segregated housing.

Mr. Callaway said the ACLU believed in some cases it was appropriate to use segregation.

Ms. Spinazola replied if it was a mental health unit. She said not segregated housing as it means solitary confinement, but if there were checks and balances and a full review and classification committee then yes, there were instances where they could segregate.

Mr. Spratley asked if the facts were about the state prisons and was it directed to the sheriff's offices and jails also.

Ms. Spinazola said the study was to include everybody, but Washoe County did not participate in the study so they did not have their statistics. She said ideally the law would be state wide.

Mr. Spratley asked why Washoe County did not participate. He said last year Washoe County offered Ms. Spinazola and several others during the discussion of SB 107 to come to the Washoe County Detention facility at any time, unannounced, for a tour of the facility.

Ms. Spinazola said they did not go to the facility. She said it was not about a snap shot, it was about practices over a period of time. She said she would only get a brief picture on any given day.

Mr. Spratley asked if she had reached out to the 17 sheriffs in the state and contacted them regarding policies and best practices. He said the ABA standards seemed like Washoe was in compliance. He said instead of codifying it why didn't they reach out and work cooperatively with the sheriffs.

Ms. Spinazola said without a statewide standard, it was difficult when people come out with their policies. She said the policies were all different.

Mr. Siegel commented about seriously mentally ill people who needed to be treated differently and break the business as usual line. He asked Ms. Spinazola about the term due process and what it meant in a prison or jail. He asked if due process required a degree of independence on the part of the adjudicating authority.

Ms. Spinazola said the ABA standards talked about a classification committee. She said as part of that the inmate may select an advocate. She said it was typically staff at the prison or they may advocate for themselves. The missing component was the classification committee. She said an evidence based trail with the possibility of appeal was needed.

Ms. Bisbee said she too appreciated not seeing the film again because it had nothing to do with Nevada Corrections. She said she also did not recognize the term on the cover of her presentation, "solitary confinement" Exhibit L. She said to her knowledge there was no such thing as solitary confinement in Nevada.

Ms. Spinazola said she used the term solitary confinement because that was what they heard from prisoners and they self-described they were held in solitary confinement. She said it was also a term used by many mental health professionals and corrections professionals. She said she used the definition in the ABA article for segregated housing, which was being prevented from having contact with people or mental stimulation for extended periods of time.

Ms. Bisbee asked if she ever wondered if it confused things, such as using the film during the last legislation session. She said if they used something not relevant to Nevada, how do they change things in Nevada if it was truly wrong.

Ms. Spinazola said Nevada prisoners were calling it solitary confinement. She said as an advocacy group they used the terms of the people they served.

Mr. Callaway said currently the detention center had 34 inmates awaiting transportation to Lakes Crossing. He said the average stay for the inmate was about 39.4 days. He said they had a backlog of inmates waiting to go and who were suffering from mental illness. He said they needed to go through the process to determine whether they were capable of standing trial. He asked what they recommended as to who went first. He said the people waiting transport might be violent and suffering from mental illness. He said often they could not be housed with other inmates for the safety and rights of those other inmates.

Mr. Siegel said 40 years ago there was a lawsuit that created Lakes Crossing. He said the information Mr. Callaway stated suggested that Lakes Crossing was grossly inadequate for the current situation. He said the Commission should have put it on the agenda. They should have recognized the need to study the problem and it was a fiscal issue.

Chair Segerblom said it was also a health issue and a committee on health was studying the Lakes Crossing issue.

Mr. Kohn said he agreed with Dr. Siegel. He said 38 days to get to Lakes Crossing was an incredible improvement over last year. He said it was closer to five months previously. He said the Clark County Defender's Office found it necessary to sue the State of Nevada and they had reached some agreements. He said one problem was that Lakes Crossing was only in northern Nevada, but 80 percent of the population was in southern Nevada. He said there was an agreement between Clark County and the State of Nevada that there would be a significant number of beds at the Rawson Neal Center next year. He said they needed to work together on the issue, but he did not think it was something for the Commission right now.

Mr. Cox said they wanted to work with the ACLU. He said there were communication and definition issues about what solitary confinement was and there were questions about the presentation of the issues. He echoed Ms. Bisbee's comments that he was glad he did not get to witness the previous video. He said they were looking at the

processes and procedures, what other states were doing, and were looking at a number of different things. He said Nevada did a lot of things other states do not do in regards to audio visual equipment, access to the equipment, and due process. He said Nevada may have some issues, but not the issues of how you get out of confinement. He said they had an obligation to protect the inmate population and the staff. He said a lot of states made decisions based on litigation and took it out of the hands of correctional professionals. He said he would continue to work with the ACLU and other people. He thought the NDOC did a good job. He said he would review the issues outlined in Ms. Spinazola's presentation, Exhibit L.

Chair Segerblom asked if there was a reason why two people could not be housed together on death row?

Mr. Cox said you could have them together. He said he wanted people to come see what they were doing. He said Nevada operated very differently than other states. There were policies and procedures for those inmates outside of the cells. He said he looked at double celling people six or seven years ago. He said the condemned unit inmate population were being treated very well.

Mr. Spratley said the 17 sheriffs and the Sheriff of Washoe County had different codes and statutes than the NDOC. He said the sheriff had certain obligations and duties spelled out in NRS as to what they could do. They were all reaching out and extending the olive branch and invited the ACLU and anybody else who wanted to take a snapshot of the facilities. He said it seemed they were trying to present a picture painted by the tools given to an advocacy group. He recommended she get a framework of what she was fighting against. He said she needed to be able to report factually what was happening in the various sheriff's offices. He wanted to work together to make policies. They needed to compromise and reach a mutual agreement.

Ms. Spinazola said if he and the other 16 counties responded to SB 107 and answered all the requirements that the Clark County Detention Center answered, she would visit every single one of the facilities.

Mr. Spratley said the Nevada Sheriffs and Chiefs had a meeting in November and she could get on the agenda and speak to the group. He said he could coordinate it for her.

Mr. Callaway said they did respond and she was welcome to come visit their facility at any time. If she felt one visit was just a snapshot, she could come every day if she wished to do so.

Chair Segerblom opened discussion on Agenda Item XV.

Attorney General Cortez-Masto reported on the Subcommittee on Victims of Crime . She said they had two meetings. They discussed various issues and voted on three of them to put into BDR form, Exhibit M. She said the first BDR allowed the Department of Corrections to provide victim information to the Attorney General's office. She said their

goal was to provide information to victims at all stages of the judicial process. The bill allowed them to gather information in death penalty cases and contact the victims directly. The second BDR addressed provisions for payment of sexual assault examinations by the Victims of Crime fund. She said by statute any victim of sexual assault was entitled to a medical exam for which the counties were required to pay. She said the cost of the exam varied across the state depending on the county. They worked with the Nevada Victims of Crime Compensation Fund to see if some of those funds could help pay for the exams. She said they arrived at a compromise so everybody benefitted. It allowed reimbursement to the counties for the cost of the medical examination up to $10,000 or 10 exams, whichever was greater per year. The last BDR addressed criminal restitution orders. She said criminal debts with a restitution component became a civil liability when the offender was discharged from supervision by Parole and Probation. She said the judgment needed to be renewed so it did not expire. The BDR stated the unpaid restitution did not need to be renewed and did not expire until it was paid in full. She said the subcommittee voted in support of the three BDRs and they were before the Commission for support. She said the issues of fines, fees, restitution and the collection of those payments had arisen. She said they realized the state did not have a handle on how it was collected or where the money went. She said they decided to take it on because they were interested in whether it was going to the benefit of victims in the State. She said they scheduled another meeting at the end of September to start the research process.

Chair Segerblom thanked her for the report. He opened discussion on Agenda Item XVI.

Steven Yeager said he chaired the Subcommittee to Review Arrestee DNA. He said the subcommittee had two meetings concerning SB 243. He said they were somewhat limited about information because arrestee DNA was not taken until July 1, 2014. He said the subcommittee came up with three recommendations, Exhibit N, that did not require legislation. He said the first one was drafting a letter to the State DNA data base and the central repository asking them to look at states that did automatic expungement.

Chair Segerblom asked what the current expungement law entailed.

Mr. Yeager said under SB 243 the burden was on the arrestee to seek expungement under certain qualifying circumstances. He said it required the arrestee fill out certain paper work, obtain certain documentations, a certified court minutes or letters indicating prosecution did not go forward. They would then submit the information to the central repository for verifications and decide if expungement was appropriate. He said only 2 people had submitted paper work at this date and both failed to submit the appropriate documentation.

Mr. Yeager said the subcommittee also talked about the frustration concerning the lack of a centralized data base to track criminal charges or dispositions. He said they asked for a letter to the appropriate agencies to look at automatic expungement. He said they wanted to try to get a number on the cost. The third recommendation was to have

parties work together. He said they wanted to encourage the stakeholders to continue to work together and talk about how to better share information and streamline the process. He said the subcommittee needed more historical information to know how the implementation of SB 243 was going.

Chair Segerblom asked if they were able to determine whether the DNA was being tested quickly around the state and secondly any idea of the cost per DNA test.

Mr. Yeager responded in Clark County it took about 8 weeks from the time the sample was taken to the time it was processed and put into CODIS. He said in Washoe County it was about 45 days from sample to uploading the information into the system. The cost everyone agreed upon was $75 per sample.

Chair Segerblom asked how many felony arrests per day there were on average in Clark County.

Mr. Yeager said the projections would be about 16,000 samples from Clark County this year since the program started in July. He said about 7,000 samples were anticipated from Washoe County. There were approximately 23,000 qualifying arrestees. He said the number will likely drop if there was already a sample in the system. They do not take another sample. He said the cost was approximately $1.75 million a year. He said an additional administrative assessment fee of $3 was assessed to anybody convicted of any offense in any court in the State. He said in addition, when somebody was convicted of a felony offense and the DNA was ordered to be taken, they were assessed an additional $75 fee to offset the cost. The projection for the $3 fee was collections of approximately $750,000 to $800,000 a year and did not include the $75 fee if convicted of a felony. He said neither laboratory was concerned at this date about the amount of money collected.

Chair Segerblom opened the discussion on Agenda Item XVII.

Mr. Anthony said the Commission members had the 3 page report from the Subcommittee on the Medical Use of Marijuana, Exhibit O. He said there were 20 members on the subcommittee and they had two meetings. He said at the end of the second meeting they chose 10 different recommendations for further discussion.

Chair Segerblom asked Mr. Anthony to begin the discussion on No. 4 of Exhibit O.

Mr. Anthony said recommendation No. 4 was to amend the criminal laws in the area of possession or trafficking which set out weights to determine prosecution. The subcommittee believed the law should only take into account the active level of THC in an edible product.

Chair Segerblom said he believed they had talked about that earlier.

Mr. Callaway said they had discussed so many portions of the bill that he did not remember if they discussed it or not.

Chair Segerblom said it made sense if you put a small amount of marijuana in an edible, you would not charge the full weight of whatever the end product was. He asked about No. 7 of Exhibit O. He said it was about the current DUI standard which was a *per se* standard. Chair Segerblom said all the recommendations were in the exhibit.

Mr. Jackson said the District Attorney's association met yesterday. He said the *per se* issue came up at the meeting. He said a statute created the Subcommittee and it was specific that the Subcommittee on the Medical Use of Marijuana was constrained to examine those issues related to medical marijuana and dispensation of the marijuana. He said the DUI laws did not fall within the issue of medical marijuana. The DUI laws broke down into three types of laws; some states without *per se*, some had a 2 nanogram per milliliter of blood, and some states had gone to 5 nanograms per milliliter. He said there was a huge public safety issue involved. He said it should have been addressed by the Commission. There were several issues involved in No. 7 of Exhibit O. He said the process was in place for the Board of Pharmacy to schedule the substances. He said there were a lot of recommendations from the subcommittee.

Chair Segerblom asked if there were any other recommendations for the Work Session. He said there was a separate 5 page list of potential recommendations, Exhibit P.

Ms. Bisbee requested they add more money for the Parole Board.

Mr. Jackson said the list appeared to be through the last meeting. He said the Attorney General had three BDRs for the Subcommittee on Victims of Crime. He said Mr. Munro's presentation was also not on the list.

Chair Segerblom said he thought the Attorney General's BDRs were separate.

Ms. Masto said the BDRs from the Subcommittee on Victims of Crime were coming before the Commission for approval or not and they would still have to find a bill sponsor for them. She said Mr. Munro's presentation had a BDR that was in the Attorney General's package.

Mr. Jackson said the Commission could still offer support of any of the BDRs.

Mr. Anthony said the list was compiled looking at all of the Commission's previous meetings. He said it did not include any recommendations from today, such as Hep C or the Subcommittee on Victims of Crime, or anything on solitary confinement. He said he would add all those for the work session.

Ms. Masto said they would still seek support from the Commission for Mr. Munro's BDR that was part of her bill package.

Mr. Jackson said he had not made the recommendation on Item No. 12 on Page 2 of Exhibit P. He had not presented any items to the Commission.

Mr. Jackson said in Agenda Item 17 in Exhibit P, he made a motion to remove Item No. 17 G, draft legislation to eliminate the *per se* nanogram amounts.

Chair Segerblom said they could not make motions to remove something before it was considered.

Mr. Jackson said he disagreed and said it was a proper motion. It was a list of items that would go forward to the work shop session.

Mr. Spratley seconded the motion.

Chair Segerblom said he had been informed he did not have to recognize the motion.

Mr. Jackson asked legal counsel to provide him with the information he provided the Chair.

Mr. Anthony said under the Rule of Order, the Chair did not have to recognize a motion.

Justice Hardesty said as a point of clarification concerning the Subcommittee reports which were on the Agenda for discussion in October, he did not believe the Commission had endorsed any of the Subcommittee reports or recommendations.

Chair Segerblom responded he was correct. He opened discussion on Agenda Item XIX, public comment.

Julie Butler, Nevada Department of Public Safety, General Services Division, commented under the medical marijuana recommendation Exhibit O, No. 3 regarding background checks of third party vendors. She wanted the record to reflect they requested, if the intent was to request FBI criminal history, it had to be a statute authorizing the Division of Behavioral and Public Health to request the FBI report. She said if they only wanted a state of Nevada background check, a name-based or fingerprint background check there were various requirements. She requested the bill reach out to the criminal history repository so they could address the issues as the bill was being drafted.

Chair Segerblom asked if, under the current laws, someone wanted to work in a dispensary, was the federal background check required.

Ms. Butler said under SB 374 to work in the dispensary required a finger print background check. She said the way it was worded in talking about licensure for third party vendors and businesses to undergo a background check above the current laws it had to be by statute and not by regulation if they wanted to access FBI criminal history.

Chair Segerblom said they wanted to allow third party businesses to go into a grow house and have the license and same cards as people who worked for the dispensary. He asked if there was further public comment. As there was no further business, he adjourned the meeting at 3:05 p.m.

Respectfully Submitted:

_____
Olivia Lodato, Interim Secretary

Approved By:

_____
Senator Tick Segerblom, Chair

Dated: _____

## EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice

Date: September 12, 2014 Time of Meeting: 9:00 a.m.

| | Exhibit | Witness / Agency | Description |
|---|---|---|---|
| | A | | Agenda |
| | B | | Attendance Roster |
| | C | Tonya Brown | Advocate |
| | D | Mark Mauer | Sentencing in Criminal Justice |
| | E | Joan Yarbrough | US Postal Service |
| | G | Justice Hardesty | Justice Reinvestment |
| | H | Margaret Love | Collateral Consequences |
| | I | Natalie Wood | Parole and Probation Budget |
| | J | Keith Munro | Sex Offender Laws |
| | K | John Witherow | Nevada Cure Hep C |
| | L | Vanessa Spinazola | Solitary Confinement |
| | M | A.G. Cortez Masto | Subcommittee on Victims of Crime BDR Proposals |

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|---|---|---|---|
| | N | Steven Yeager | Subcommittee to Review Arrestee DNA Report |
| | O | Nick Anthony | Subcommittee on the Medical Use of Marijuana Report |
| | P | Nick Anthony | WorkSession Recommendations |