Exhibit I

Item I

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: November 9, 2009

Meeting Location: Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701
2nd Floor – Mock Courtroom

Video Teleconferenced: Grant Sawyer Building
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room #3315

Attendees:
Keith Munro, Brett Kandt, Julie Towler, Senator David Parks, Susan Roske, Donna Coleman, Maggie McLetchie, Curtiss Kull, Scott Schick, Diane McCord and secretary Jan Riherd.

Minutes:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 9:00 a.m. Committee members introduced themselves and gave a brief description of their current positions and their interest in the subject matter.

Keith Munro announced that this was a brief initial meeting for committee members to meet and discuss possible topics for a more formal meeting in December. In addition Mr. Munro stated that since this is a study committee it is important to get as much information into the record as possible so that the legislature can review in preparation for the next legislative session. The following list of topics was identified as a good starting point for the committee and the December meeting.

1. Review AB579 of the 74th session of the Nevada Legislature and the effect on the State of Nevada.
2. Discuss State and Federal litigation in regard to AB579 and the different type of challenges being raised in both State and Federal Court.
3. The legislative opinion issued during the 74th Legislative Session setting forth that with the stay of AB 579 in effect that the existing state laws remain in effect; and the importance of getting that opinion on the record.
4. Study the effect of AB579 on juveniles.

The following members will make December meeting presentations to the committee:

1. Susan Roske: A presentation on the litigation as it applies to juveniles in District Court. (Keith Munro will speak with the Clark County DA's office in regard to a presentation on the litigation as it applies to juveniles in the Nevada Supreme Court.)
2. Maggie McLetchie: A presentation on the State litigation and Federal District Court litigation as it applies to adults in District Court.
3. Binu Palal: A presentation on the litigation in the 9th Circuit.
4. Scott Schick: A presentation regarding judicial discretion and the impact on juveniles, including their mandate to report, as brought out by the Adam Walsh Act.
5. Senator Parks: A presentation regarding the Legislative Council Bureau Opinion that the current sex offender laws remain in effect while AB579 is stayed.

No other additions for consideration or presentations for the December meeting were made.

A move for public comment was made. No public comment was voiced.

Keith Munro reported that pursuant to legislation this committee is required to meet twice each year. He anticipates a spring and summer 2010 meeting and if possible a meeting in the fall of 2010.

The following subjects were suggested for presentation in 2010 to the committee:

1. A presentation on how other states are handling Adam Walsh legislation.
2. An update on the status of movements in congress to make amendments to the Adam Walsh Bill, possibly by a national group.
3. Concerns from Officers enforcing current statutes.
4. A representative from the Criminal History Repository to give a presentation on an overview of how the Criminal History Repository works.
5. A presentation from the U.S. Marshals Office and U.S Attorneys Office on how federal authorities deal with sex offenders coming in and out of Nevada.

A move for public comment was made. No public comment was voiced.

The meeting was adjourned at 9:20 a.m.

Minutes respectfully submitted by Jan Riherd.

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: December 21, 2009

Meeting Location: Office of the Attorney General
100 N. Carson Street
Carson City, Nevada 89701
2nd Floor – Mock Courtroom

Video Teleconferenced: Grant Sawyer Building
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room #3315

Attendees:
Keith Munro, Julie Towler, Senator David Parks, Susan Roske, Donna Coleman, Maggie McLetchie, Curtiss Kull, Scott Shick, Diane McCord, Binu Palal, Nick Sagerbloom, Jonathan Vanboskirk, Nick Anthony, Mary Brown and secretary Jan Riherd.

Minutes:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 9:00 a.m. The minutes of the November 9, 2009 meeting were reviewed; Keith Munro called for any suggested additions or corrections. Scott Shick requested the spelling of his name to be corrected. A motion to approve was made and seconded; the minutes of the November 9, 2009 were approved.

Julie Towler gave a brief overview on Assembly Bill 579 of the 74th Session of the Nevada Legislature.

Sex Offender Registration and Notification Act (SORNA) is Title One of the Adam Walsh Child Protection and Safety Act of 2006. The Adam Walsh Act was enacted during the 2nd session of the 109th U.S. Congress of 2006. A handout on SORNA Compliance in Nevada was provided. See Attachment A. Its goal was to make an effective and comprehensive national system of sex offender registration and notification. Assembly Bill 579 (AB579) is the state law to comply with SORNA, was drafted by the Office of the Attorney General, and signed into law in June, 2007 by unanimous approval of the Legislature. The effective date of AB 579 was July 1, 2008.

Ms. Towler reported that Nevada's failure to adopt SORNA would lead to a 10% reduction of the Byrne Grant Funding. At passage of this Act each jurisdiction

was required to adopt SORNA by July 27, 2009, but a blanket extension to July 27, 2010 was granted to all jurisdictions.

AB579 revised the existing Sex Offender Registration scheme to make it SORNA compliant. Ms. Towler reported that there are five main differences between SORNA and existing Nevada Law.

1. Web-based community notification for Tier 1 offenders. (Current law only local law enforcement is notified of Tier 1 offenders.)
2. Expansion of information listed on the website. (Current law does not require vehicle descriptions or license plate numbers.)
3. In person verification – once per year for Tier 1, every 6 months for Tier 2, and every 3 months for Tier 3. (Current law requires verification through the postal system.)
4. Specific time periods of registration – 15 years for Tier 1, 25 years for Tier 2, and lifetime registration for a Tier 3. (Current law, NRS 149D.490, allows an offender to petition to terminate duty to register.)
5. Tier level is based on the offender's conviction. (Under current law tier assignment is based on a 20 point assessment scale.)

Most of the statutes affected are located in 179D of the NRS and have notation effective July 1, 2008. The contents of the website are specified under NRS 179D.250.

Ms. Towler also reported that Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) as part of the Justice Programs of the U.S. Department of Justice is authorized by law to administer standards in SORNA and interpret and implement the final guidelines that were published in June, 2008. In addition SMART is authorized by law to cooperate and provide assistance to jurisdictions regarding sex offender registration and notification.

Keith Munro called for questions for Julie Towler, none were asked. In addition Mr. Munro noted that a copy of Ms. Towler's presentation was to be provided to the clerk and made part of the record. See Attachment A.

Maggie McLetchie gave a brief overview on the litigation in State District Court as a result of the passage of AB579 regarding adults.

Maggie McLetchie reported that on the adult level a number of challenges were filed in State District Court and a preliminary injunction was issued by Judge Wall. See Attachment B. In addition a Federal lawsuit was filed and all the cases and challenges regarding adults have been stayed because of the injunction in Federal Court. Ms. McLetchie also reported that there could be a new wave of lawsuits should the appeal in the 9th Circuit go in the Attorney Generals favor.

Susan Roske gave a brief overview on the litigation in State District Court as a result of the passage of AB579 regarding juveniles.

Susan Roske reported that the Adam Walsh Act includes juvenile delinquency adjudications of Aggravated Sexual Assault or Conspiracy to Commit Aggravated Sexual Assault involving bodily harm. AB579 went beyond including adjudications of delinquency for Non-Aggravated Sexual Assault and Lewdness with a Minor offences. Because these offenses are classified as felonies, the juveniles would be automatically classified as a Tier 2 or Tier 3, requiring 25 years to life registration and putting the juveniles on the community website.

Litigation was filed on numerous grounds, including the constitutionality of this legislation, violation of the due process clause of the constitution, violation of the prohibition of ex post facto legislation, violations of the contracts clause, and the violation of the prohibition against cruel and unusual punishment. This challenge was litigated in State District Court and only one argument was persuasive, that it violated due process. See Attachment C. Ms. Roske reported that a large difference between adult sex offenders and juvenile sex offenders is that the rate of recidivism for juveniles is very low and the ability of juvenile rehabilitation is very high. Judge William Voy's order included that to lump juveniles with adults when they don't actually pose a danger to society violated the due process clause of the constitution. In addition Judge Voy's conclusion was that the old law should remain in effect because the old law treats juveniles separately, they are not subject to the community website, and assessment is done when a child reaches 21 years of age. If the judge finds that the juvenile has not been rehabilitated, then the judge can declare the juvenile an adult sex offender. The State appealed Judge Voy's decision and that matter is currently pending in the Supreme Court.

Keith Munro requested that a copy of Judge William Voy's Order was to be provided to the clerk and made part of the record. See Attachment C.

Jonathan Vanboskirk of the Clark County DA's Office gave a brief overview on the litigation as it applies to juveniles in the Nevada Supreme Court.

Jonathan Vanboskirk reported that on the state court level Judge William Voy had two holdings as follows:

1. That it is unconstitutional to exclude juveniles under 14 years of age from inclusion to SORNA.
2. That it is unconstitutional to include juveniles into SORNA based on their adjudicated offense, he preferred registration based on judicial discretion.

The State saw that a District Court Judge was making a distinction or choice between Adam Walsh and pre Adam Walsh versions of SORNA statutes. There were constitutional concerns that a Judge was making policy for the entire state of Nevada. This case was appealed and argued on June 2, 2009 before the Nevada Supreme Court. Mr. Vanboskirk reported that the State's point of view on this litigation was to allow this process to go forward, thus protecting the Nevada Legislature's right to set policy on this important issue as opposed to the Court. Once the Court sets policy it is permanent, the legislature can be broader based.

Keith Munro called for questions for Maggie McLetchie, Susan Roske and Jonathan Vanboskirk, none were asked.

Maggie McLetchie and Binu Palal gave a brief overview on the litigation pending in Federal Court.

Maggie McLetchie reported that in 2007 both AB579, Nevada's enactment of SORNA, and SB471, a bill that proposed residency and movement restrictions were passed. The ACLU's view was that the movement and registry restrictions were not written in a way to allow for retroactive enforcement. However, when offenders were meeting with their Parole and Probation Officers concerning new classifications pending under AB579 they were told that the residency and movement restrictions were also going to apply. The ACLU felt these restrictions were extreme, for example in some instances it would be difficult for offenders to report to their P&P office if this office was too close to certain kinds of places. Ms. McLetchie reported that there is an expert at UNLV who has looked into residency and movement restrictions in other states and would be willing to give a presentation to this committee.

In an overview of the litigation pending in Federal Court, Ms. McLetchie reported that for a short time there was a preliminary injunction in place that enjoined AB579 in State Court. Later, Judge Mahan issued a preliminary injunction in the Federal Court regarding the following:

1. Procedural Due Process Claim. Under the prior system an offender could petition to change their tier level, under new law there was not a provision that allowed a challenge.
2. Ex Post Facto Claim. That these laws taken together would be extreme and they violated the constitution.
3. Double Jeopardy Claim.
4. Contracts Claim. The terms of the offender's plea agreements included information that foreclosed in the future requiring offenders to move if they were too close to schools, etc.

Judge Mahan found that you can not separate out parts of the law, that Judge's can not re-write the law, therefore the whole law was enjoined, none of SORNA

is in effect and the prior Nevada sex offender laws are in place. SB471 is enjoined from retroactive applications. See Attachment D. Ms. McLetchie also reported that although the subject of juveniles was not before Judge Mahan, the case completely enjoins AB579 and argues if Judge Mahan found it unconstitutional as to adults he certainly would have found it unconstitutional for juveniles.

The State appealed this case to the 9th Circuit. Ms. McLetchie reported that the briefing is completed and that no oral argument has been scheduled. In her experience it may take up to a year after oral argument to get a decision.

Binu Palal reported that he is currently appealing the injunction as set forth by Judge Mahan. The points that are before the Federal Court are the violations of the Contracts Clause, the Ex Post Facto Clause, the Double Jeopardy Clause, and the Due Process Clause. Mr. Palal reported that the Contracts Clause is almost ancillary to the Ex Post Facto and Double Jeopardy Clause because for the Contracts Clause to turn out to be irrelevant it must turn out to be punitive essentially or arguably. In addition Mr. Palal stated whether or not the Ex Post Facto Clause or Double Jeopardy Clause was violated focuses on the issue of whether or not AB579 is punitive in intent and effect. In addition Mr. Palal reported that in the 9th Circuit it usually takes 9-12 months from briefing for oral argument to be heard and an additional 3-12 months for a decision. He expects a decision somewhere between July 2010 and July 2011.

Keith questioned Mr. Palal if there were any U.S. Supreme Court cases or Court of Appeals cases that he was relying upon to say that the Adam Walsh Act that was passed by the Nevada Legislature was constitutional. Mr. Palal reported that he and Maggie McLetchie have differing opinions as to the interpretations, but there are a couple with the largest being Smith v. Doe. The argument is while the Supreme Court found those sex offender registration notification requirements to be constitutional, it doesn't mean that Nevada's are constitutional.

Maggie McLetchie added that it was true Judge Mahan did not find in favor of all claims, but that she dropped a number of claims prior to the permanent injunction hearing and that there is not a negative ruling from Federal District Court at this time. Additionally, Ms. McLetchie reported that there is ancillary litigation regarding attorney's fees and that attorney's fees are also in play in this case as well.

Keith Munro stated as a result of litigation there is now a stay in both State and Federal Court.

Nick Anthony of the Legislative Counsel Bureau presented the Opinion on the issue of the status of sex offender registration laws in our state.

Nick Anthony reported that the Opinion Letter his office issued was dated March 30, 2009 and addressed to Assemblyman John Oceguera. See Attachment E. Mr. Anthony stated that his office was asked, in light of the permanent injunction issued in Federal District Court, what was the status of current laws in Nevada. Mr. Anthony reported that his office concluded that all prior sex offender laws as they existed prior to the enactment of AB579 and SB471 would remain in effect. In rational, pursuant to Finger v. State in 2001, the Court considered that the legislature had passed a law that abolished the not guilty by reason of insanity plea. In that case if they found this new law unconstitutional they were left with the only reasonable conclusion of rather than having no law it would go back to the prior existing law. Because the Order issued by Judge Mahan applied to both AB579 and SB471 in their entirety, that Nevada would go back to existing law.

Donna Coleman gave a presentation of how other states are dealing with Adam Walsh legislation.

Donna Coleman reported that she spoke with the majority of the states, and conducted a survey. See Attachment F. Ms. Coleman learned that Ohio is the only state that is SMART compliant, without the juvenile portion and retroactivity. The only state that reported they had no intention to comply was California. Most states did have a problem with the juvenile portion and retroactivity, and most needed legislation to comply. In addition there were issues by some states on cost, particularly on Notification. There was a joint interest by all states to hold a summit to discuss the issues.

Keith Munro questioned if there was any discussion with respect to extension expirations and the mechanism to apply and the granting of another extension to comply. Discussion was held and it was believed that there are currently meetings in Congress concerning these issues. It was the consensus that we need to work through this issue with the Federal Delegation.

Keith Munro called for questions for Donna Coleman, none were asked. In addition Mr. Munro noted that a copy of Ms. Coleman's survey was to be provided to the clerk and made part of the record. See Attachment F.

Scott Shick of the Nevada Juvenile Justice Administrators gave their position on the Adam Walsh Act and its possible implementation.

Scott Shick reported that the Nevada Juvenile Justice Administrators understanding of the Adam Walsh Act was that the standards for registration and community notification was also applied to juveniles, and that this legislation required lifetime registration of children for certain offenses that typically would

be on lower tier assessments the current system. Mr. Shick reported that he believed the Juvenile Justice Administrators were remiss in not attending any of the seven separate legislative sessions regarding AB579, and are appreciative that they may now have another opportunity to represent their opinion on how juveniles are responding to current sex offender treatment and tier assessments.

Mr. Shick reported that since that time the Juvenile Justice Administrators have done a lot of research and networking including talking to Clark County, Washoe County, and rural jurisdiction department heads, mental health professionals who currently do assessments and Judges on an across the board prospective of how they see the current system and the possibilities of stepping into Adam Walsh. Mr. Shick reported that under the old statues the procedures for community notification of juvenile sex offenders are comprehensive, that they preserve community safety, and meet standards of juvenile detention alternatives initiative, and the disproportionate minority confinement concerns on a state level. He added that the Juvenile Justice Administrators are driven to detention reform and appropriate level of treatment and accountability for juveniles including the strong emphasis on disproportionate minority contact and confinement. Their current position is that approximately fifty percent of the juveniles adjudicated for sexual offenses have been victimized. They believe that on the horrendous top end sexual offenses this is a moot point, but those offenses on a lower level, where judicial discretion is applicable, tier assessment and mental health involvement is available that they can treat these juveniles in an effective manner. The fact that Adam Walsh reduces judicial discretion in juvenile cases is a strong concern for the Juvenile Justice Administrators.

Mr. Shick was questioned as to why the Juvenile Justice Administrators don't consider the charge indicative of the juvenile's level of danger. In response he stated that the judges do not take into consideration the background and history of the individuals. In addition Mr. Shick was asked for a future clarification on JDAI and DMC principals and in what way those are impacted. Mr. Shick also stated that he would bring in more factual information concerning the disproportionate minority confinement in our state with respect to juveniles.

Keith Munro reported that a good foundation was presented concerning legislation, litigation, status of existing law, status of how other states are handling the issues, and the Juvenile Justice Administrators hot topic issues. Mr. Munro requested input on any potential agenda items. Recidivism issues and the tiering process were requested for a future agenda item. In addition Susan Roske suggested that we invite Nicole Pittman of Philadelphia to address this committee. Ms. Pittman has been traveling around the country talking to legislative groups concerning the Adam Walsh Act. Maggie McLetchie proposed that we invite Dr. Hart of UNLV to address this committee. Dr. Hart focuses on residency restrictions. Curtiss Kull with the Sheriffs and Chiefs Association announced that to keep in line with public safety elements their group would be meeting with law enforcement providers that are actually conducting the

community notification and who deal with offenders to explore Adam Walsh and determine their opinion. He will report back to this committee on their findings.

Keith Munro also announced that since the purpose of this committee was to get together a record for the next session of the legislature, that all persons presenting gather their briefs and opinions for reporting to the Legislative Commission.

A move for public comment was made. No public comment was voiced.

The meeting was adjourned at 10:20 a.m.

Minutes respectfully submitted by Jan Riherd.

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: March 19, 2010

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4412E

Attendees:
Keith Munro, Brett Kandt, Senator David Parks, Assemblyman Richard Segerblom, Susan Roske, Donna Coleman, Maggie McLetchie, Curtiss Kull, Julie Towler, Carey Stewart on behalf of Scott Shick and secretary Jan Riherd.

Minutes:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 1:30 p.m. The minutes of the December 21, 2009 meeting were reviewed; Keith Munro called for any suggested additions or corrections. Julie Towler made a motion to approve the minutes, Curtis Kull seconded the motion; the minutes of the December 21, 2009 meeting were approved.

Nicole Pittman, Esq., Juvenile Justice Policy Analyst Attorney, Defender Association of Philadelphia and National Juvenile Defender Center, gave a presentation on the impact of the federal Adam Walsh Act implementation on states.
Ms Pittman has been working on Adam Walsh issues since 2006. Ms. Pittman stated that Nevada was on the forefront of this issue. Since September of 2009, Ms. Pittman's mission has been to travel to different states testifying at Advisory Committees and Joint Legislative State sessions, U.S. Senate sessions, House sessions, Judiciary, and the U.S. Congress. The Federal government is aware that there need to be changes, are currently working on changes, including some changes concerning the juvenile portions of the Federal Legislation.

Ms. Pittman stated that there are two one year extensions available through the SMART office. Every state, especially in the 9th circuit, have decided to request an extension. Ms. Pittman's presentation as follows reviewed issues pertinent to Nevada and discussed recommendations and an action plan. Ms. Pittman presented each attendee with a Notebook handout titled *Examining the Impact of Adopting the Federal Standards of SORNA on the State of Nevada*. This

notebook contains testimony and supporting documents including recommendations, suggested action plans, juvenile provisions, and constitutional issues. *See* Attachment A.

Ms. Pittman stated that she does respect U.S. Congress for admitting that they rushed through passing this act. There wasn't a lot of discussion, reading, research, or scientific experts testifying prior to the passing of SORNA. The premise with SORNA was based upon the misconception that juvenile sex offenders were just smaller adult sexual offenders. In study they are learning that juvenile sex offenders are completely different from adult sex offenders. Their motives are different, their labels are different, a child under the age of 12 cannot be a sex offender, they are a sexually reactive child. There are many issues concerning juveniles that were not considered and she believes that they were treated very harshly under SORNA. There are a number of state and US officials that now understand the differences between an adult sex offender and a juvenile sex offender and are willing to go forward and make some changes to the federal legislation. Ms. Pittman indicated that they are currently working on those changes.

The SORNA design has become a large issue in all the states. Ms. Pittman gave an example concerning the death of a young girl in Maryland in which the suspect is a registered sex offender. Maryland was moving quickly and felt very strongly about implementing this legislation. Ms. Pittman testified in Maryland and believes that they are going in the wrong direction if SORNA is implemented. Maryland is now requesting an extension.

After reviewing assembly bill 579 Ms. Pittman stated that in her opinion AB 579 will not be deemed to be in compliance with Federal SORNA guidelines. She is aware that there are a large number of questions on how the SMART office decides if a state is in compliance and that there was a lot of back history with Ohio, who is currently the only state deemed to be in compliance. Pursuant to Ms. Pittman, there was a lot of work done with Ohio as the first state, but according to the SMART office, there will not be the leniency with other states that was given to Ohio. Many items that were in Ohio's S.B. 10, which went into effect January 2008, will not be allowed in other states. Ms. Pittman reported that Ohio had four constitutional challenges before the Ohio Supreme Court and very recently a slip opinion was issued that stated changes cannot be applied retroactively to any offenders. This issue is consistent to the 9th circuit case, USA v. Juvenile Male.

Keith Munro questioned Ms. Pittman, based on the information that Ohio went from being non-compliant to compliant without any changes in their laws, that the only change was the change in Administration from the Bush Administration to the Obama Administration, that there appears to be a change in the definition of substantial compliance. His understanding was that under the Bush Administration substantial compliance was "everything or you are out" and it

appears that there may be some leniency in the Obama Administration, more willing to work with the States.

Ms. Pittman responded that there were two major factors in Ohio coming into compliance. Number one, the Ohio Attorney General's Office was working very closely with friends in the SMART office under the Bush Administration. There were some scandals that came about from that familiarity and some jobs were lost. Number two, currently under the Obama Administration there are vacant positions which does not allow for the assessment if a state is in compliance. This was also an issue in the Ohio compliance scandal. Ms. Pittman reported that because of the number of challenges filed in Ohio many rural courts had to shut down due to the volume of cases filed. It became impossible for the Courts to hear that volume of cases. There are reports concerning the cost to the Unified Court System of Ohio. Ohio as of January 2010 has had approximately 6,352 challenges filed.

Donna Coleman questioned if Ohio was "grandfathered" in compliance and if any other state could "get their deal".

Ms. Pittman responded that it could be possible, but there were agreements made that if found in compliance, that changes would be made to your state's laws that would bring you into compliance.

Maggie McLetchie questioned how Ohio can be in compliance now that the Supreme Court has declared the entire version of its retroactive laws unconstitutional.

Ms. Pittman responded, that on November 4th, shortly after Ohio being deemed to be in compliance in late September, four oral arguments were held in front of the Ohio Supreme Court, two for juveniles and two for adults challenging Ohio's Senate Bill 10 unconstitutional. The outcome has yet to be decided and is part of the problem concerning the issue with Ohio being found in compliance. Ms. Pittman reported that while public defenders were satisfied, there are so many holes in Ohio's legislation that needed to be filled, and "spirit and body" of Adam Walsh was not being met by Ohio's Senate Bill 10, that there were surprises that Senate Bill 10 was deemed to be in compliance.

Maggie McLetchie asked if it was fair to state that while Ohio who is not really in compliance, even though it is "quote/unquote is in compliance", that no state is truly in compliance with Adam Walsh.

Ms. Pittman agreed that was a fair statement.

Ms. Pittman reported that since 2006 twenty states have submitted compliance legislation to comply with the Adam Walsh Act, and all were completely different. The purpose of creating the Adam Wash Act was to create a comprehensive

system so that when offenders move from state to state there will be better tracking, information sharing, and to "seal up the leaky patchwork" that currently exists. Ms. Pittman gave examples of the differences from state to state. Some states do not have juvenile jurisdiction. There are issues with interstate compact when children travel. Juvenile offenders who have good homes in which to live, for example with grandparents in states other than their own, but because of inconsistent laws children are being required to remain in secure treatment instead of being able to live with their family. Children are staying in secure placement much longer, which drives up the cost. Determination can not be made where to place these juveniles. They can't go home because there are usually other children in the home. As a result, the number of juveniles staying in secure placement are rising even when it is time for them to be released, because there is no where to place these juveniles.

Ms. Pittman believes that under AB 579 the requirement of putting juveniles on a sex offender registry for a lifetime will annihilate the children's future lives. Ms. Pittman referred to a study labeled as the Wolfgang Phenomenon. This study tracked juveniles from adolescence until twenty seven years of age. This study basically said juveniles, with very little intervention, mature out of sexual offending. Statistics reflect that 98% of children who commit sexual offenses as juveniles do not commit offences as adults. Federal Guidelines are silent as to whether a child can go to school, can live near a park, go to college, and the type of jobs they can hold, with very little likelihood that they will offend again. Ms. Pittman's office did a juvenile sex offender impact study. In that study they looked at adults, who were juveniles at the time of their sex offense, and who have not committed another offense. In a state the size of Kansas, with the registration changes, is going to add approximately 7000 more people to the registry. In her opinion she would hate to see these people, who have not offended for years, put back on the registry.

Also under AB 579 Ms. Pittman reported that it will cost exponentially more than the 10% Byrne Grant Money that will come to Nevada. In looking at the differences between existing Nevada State Law and implementing AB 579, updating the register will require increased state manpower, plus flood the registry. This change will not focus the attention and resources to the correct group; it will be an overly broad group of offenders detracting from the small group of violent sexual offenders.

The Proposed Model she presented is along the lines of Senate Bill 121 from Illinois that was passed in 2007. This bill was developed and passed independent of Adam Walsh, and started by state attorney Richard Devine. Illinois had juvenile registration for about 10 years at that time, the procedure was that the child would register with local law enforcement and if there were other circumstances such as aggravated assault, or out of control issues, then discretion was up to judge to put the child on the website. After 10 years of not needing a child to be put on the public website Illinois began to craft Senate Bill

121 which included asking for an experts input on the differences between adult sex offenders and juvenile sex offenders. Basically Senate Bill 121 states that if a juvenile over the age of fourteen commits a sexual offense, after being adjudicated, a hearing is held to determine if that child will go on the registry. If the juvenile is found to go on the registry then they remain on the registry for two years if the offense is a Misdemeanor, and five years if the offense is a Felony. After the appropriate time expires then automatically, in cooperation with a project with Northwestern Law School, a hearing is held to determine if the registration should be terminated. Studies have shown that the brain continues to develop through age twenty-five and this process gives children something to work for, ability to make future plans for a future life. Ms. Pittman is in the process of presenting this model to National Center for Missing and Exploited Children. Members of the U.S. Senate have expressed the opinion that with the National Center's approval that this model would easily pass the House and the Senate.

Keith Munro questioned Ms. Pittman if Illinois Senate Bill 121 distinguished between juveniles that have been certified as adults and those that are certified as delinquents.

Ms. Pittman responded stating in the cases where juveniles are certified as adults, the regular registration applies. Illinois still leaves it up to the discretion of the local law enforcement if these juveniles are placed on the public website, but Senate Bill 121 does not apply to these juveniles, they go through the adult offender registration and notification process.

Mr. Munro stated that it was his understanding that under Illinois Senate Bill 121, those juveniles not certified as adults, gave judges some discretion to implement the appropriate tools for rehabilitation. Mr. Munro questioned Ms. Pittman what good tools should be at Judges disposal.

Ms. Pittman stated that a lot of States are realizing that they are not relying properly on the risk assessment tools at their disposal. Either there is an over reliance on one tool, or they are not using them at all. It has been found those juvenile sex offenders for the most part are either victims of a sexual offense, have an IQ under 70, or are autistic. Studies have found that autistic children were being taught to use their hands to talk and communicate. When those children were mainstreamed into regular schools that use of hands was turning into sexual offenses. A good tool would be to get the determinative factors correct.

Mr. Munro questioned that assuming a good risk instrument is available to make a good assessment, what notification procedures under Illinois Senate Bill 121 are good to utilize and are there any alternative notification procedures to the website?

Ms. Pittman responded that a designated person in the schools to keep records, meetings held to notify teachers, and people monitoring those juveniles were good instruments. In addition it has been found that a large group of these juveniles are in special education, which means there is already a federally mandated person to observe these juveniles while they are in school. There is also a movement to train the special education workers to work with children who have sexually offended. Ms. Pittman stated that there is a lot of fine tuning that needs to be done.

Ms. Pittman stated that having discretion in publishing the offender's address, many times the victim is in the same home as the offender. In addition to the juvenile provisions to be added to the federal legislation, Ms. Pittman feels that adding some discretion so that each State is able to work in their specific guidelines. For example, Pennsylvania is the only state in which they only civilly commit their juveniles, and not their adults. It started as a juvenile commitment law in 2004. They now have twenty-eight juveniles in civil commitment and have discovered through study that twenty-seven of these juveniles have a genetic disease, for example an XY chromosome or Wilson's disease. Twenty-five of these juveniles have an extremely low, off the chart, libido. In addition all twenty-eight juveniles have an extremely low IQ, some as low as forty-five. In just this one small group of juveniles in Pennsylvania there are many consistencies. It is felt that sexual offending may be a learned behavior, but there are many studies that need to be done.

Ms. Pittman directed our attention to the study included in the notebook handout entitled *"Sex Offender Registration and Notification: Limited Effects in New Jersey."* This study began as a Department of Justice funded study through the National Institute of Justice. The study was conducted in New Jersey because Megan's Law started in New Jersey, and New Jersey has a very harsh registration system. The study results were completely different than anticipated. In short, the registration system under Megan's Law is not effective and it is not going to reduce sexual assaults. It is expensive, and in addition going to an offense only based registration is even less effective. It was found that in an offense only registration we would be looking at the wrong suspects. Different studies are now being done across the country in a similar pattern.

Ms. Pittman also presented a study out of South Carolina on juvenile registration. As legislation gets tougher and we get away from prosecutorial and judicial discretion there is a phenomenon called the Hydraulic Displacement Theory. As an example, prosecutors want to get the sex offense convection or adjudication. Many times there is a juvenile victim that the prosecutor does not want to put on the stand and victimize them more, as well as a juvenile offender that will most likely be placed on the registration system for life. That prosecutor will agree to simple assault, the offender is going to go away; he is going to get treatment, etc. Basically the Hydraulic Displacement Theory is saying as we get into the harsh offense based registration systems and take away the discretion from the judge

and the prosecutor that they are going to make these decisions. There is a research paper coming out on this theory, related to Adam Walsh and the offense based system.

Ms. Pittman then directed her talk to the fiscal analysis chart provided. *See* Attachment B. The numbers on this fiscal analysis were obtained from a study conducted by the Justice Policy Institute. The actual financial analysis for Nevada may differ. Some of the expected costs to Nevada will be caused by the change in the tier levels and the offense based registration. It is her understanding that in 2005 there were changes in sex offender legislation that caused the Nevada Department of Records and Technology to re-assess the tier assignments of 4,500 active registrants. This project was never completed because this Department accrued almost $100,000.00 in overtime just to do the re-assessment in regard this small piece of legislation. If AB 579 went into effect, there would be the re-assessment of the tiers by offense not risk, and the challenges by the offenders. Two additional fiscal issues facing states are the law enforcement computer system differences from state to state and the requirements of interfacing with the federal system. A Dot Net System is required to interface with the federal government; many states do not operate on this system. In addition there is an issue with the federal requirements of having a Live Scan Technology, a finger printing and palm printing capability, in all prisons. The installation and maintenance of this technology is an expense issue.

Keith Munro questioned Ms Pittman, in reference to the third portion of the graph, 10% of Byrne, which is the state's penalty for not implementing Adam Walsh. He stated that he believed that there is some utility for applying for an exemption, Nevada was previously granted an exemption, and subsequently there was a blanket exemption granted by the Attorney General for all the states. Mr. Munro questioned Ms. Pittman if she felt if there was any chance that Attorney General Holder will issue another blanket exemption.

Ms. Pittman responded that based on the information she had from the U.S. Department of Justice, she was 98% sure that another blanket extension would be granted. Ms. Pittman also stated that pursuant to information she had gathered that each state should go ahead and submit a request an extension.

Maggie McLetchie asked if a blanket extension was granted, did the state retain all their Byrne Grant money. Keith Munro and Ms. Pittman both acknowledged that the State would retain all of that money.

Donna Coleman stated that Carson City's Sex Offender Registration had already completed their reassessments and was ready to go on July 1, 2009. Discussion was held concerning the due process protections concerning these reassessments. Ms. Pittman stated this is an issue that will aid in requesting an

extension, that the reassessment numbers are important, and it shows an effort in the right direction.

In addition Ms. Pittman addressed the tier shift in states. The greatest numbers of registrants were assessed as a Tier One, but with the implementation of SORNA this changes. In Ohio Tier One changed from 77% of all registrants to 13% and Tier Three changed from 18% of all sex offenders to 54% and growing. A similar analysis has been made in other states. Most states are not ready for the quarterly and lifetime registration requirements and challenges that come with that volume of Tier Three registrations.

Ms. Pittman reviewed the six requirements of requesting an extension to comply with SORNA guidelines. *See* Attachment A, Suggested Action Plan. In addition to meeting the extension requirements, many states are supplementing the extension with information concerning the state's budget issues. Ms. Pittman recommends to this committee to request an extension and that she would be willing to come back to Nevada and testify before the Legislature.

Pursuant to Ms. Pittman, at this time Vermont is currently the only state in the process of legislatively rejecting the Adam Walsh Act. Keith Munro asked for Ms. Pittman to send this committee a copy of Vermont's Legislative Rejection of the Adam Walsh Act for our records.

Keith Munro opened the meeting up to any questions. No Questions were submitted from the floor.

Keith Munro had four questions for Ms. Pittman:

1. One of Nevada's big issues with AB 579 is that it was passed unanimously by our legislature and we need to respect that important body. Mr. Munro referred to page 7 of Ms. Pittman's presentation, Attachment A. It states that certain portions of the Federal SORNA guidelines are in violation of the Nevada and U.S. Constitutions. Mr. Munro asked Ms. Pittman's opinion on what portions of AB 579 are constitutional and would it stand muster.

Ms. Pittman's Response:

Overall AB 579 is in line with the federal guidelines, but she feels that the due process issues are a problem. First, the in juvenile provisions, due process was not afforded to juveniles in terms of a jury trial, and there are issues of taking adjudications and making juveniles register. In addition, the process of registrants going from having to register or check in yearly to the burden of the Tier Three requirements, she is seeing a nationwide shift in the State Court system deeming these requirements ex post facto. In the overall shift to the SORNA guidelines there are going to be a large number of due process issues

opening up. There are going to be some constitutional issues and challenges in regard to the retroactivity to 1956 and reaching back that far, especially with regard to offenders who have not re-offended. Studies that have shown if offenders are going to re-offend that it is done within the first three years.

2. Mr. Munro stated that his understanding of her opinion of the big issues are:
    a. The juveniles that are adjudicated delinquent, but if they are certified as an adult they are in a different category.
    b. The issues as to constitutionally regarding the retroactivity as opposed to the prospective.

Response:

Ms. Pittman agreed.

3. Mr. Munro stated that from her presentation that it looked like Ohio had the benefit of a little looser definition of substantial compliance. He questioned if the State were to look at its law prospective in nature and then looked at the juveniles who are adjudicated delinquent did she think that the SMART office might grant some leeway to a State and still be deemed compliant? In addition he clarified his question, if the 9th Circuit holds Nevada's law to be unconstitutional retroactively, but constitutional prospectively, and only applicable to juveniles who are certified as an adult, did she think that type of scenario might be deemed compliant?

Response:

In her opinion, yes, she would think that scenario might be deemed compliant, however the states that have done that have not been deemed compliant. For example New Jersey had exceeded all the aspirations of the SORNA guidelines, they re-submitted their legislation, after Ohio was deemed compliant, and it was rejected. Therefore from the results she is seeing she feels that this scenario would not be deemed compliant.

4. Mr. Munro asked is she had any suggestions as to the solution in regard to the SMART office?

Response:

Ms. Pittman feels that at this time the SMART office, because they do not have anyone in authority, can not deem anyone compliant.

Donna Coleman questioned Ms. Pittman when she thought the federal legislation was going to change. In addition, she stated that it was her understanding that those changes would affect the SMART office and until those changes are made this is a moot point.

Response:

Ms. Pittman confirmed that the changes would affect the SMART office and that the legislation is basically ready. Although there is information she is not privy to, it is her understanding that the legislation is currently being presented to Mr. John Walsh to see if he is comfortable with the changes, and see if this legislation is in line with his original intent of the Adam Walsh Act. In addition there are financial frustrations, so she feels that we are going to see a blanket extension before we see the legislation changes.

There was discussion concerning the 9th Circuit outcome, and the resulting issues, and the importance of continuing conversation of these issues.

Keith Munro thanked Ms. Pittman for her thoughtful and through presentation. Ms. Pittman reiterated her willingness to help Nevada.

Keith Munro gave a presentation on the December 11, 2009 letter from the Office of Sex Offender Sentencing, Monitoring Apprehending, Registering, and Tracking (SMART Office), and the December 23, 2009 response letter from The Nevada Records and Technology, regarding the State of Nevada's legal obligation to assume registration and notification responsibilities for Indian Tribes. See attachment C.

In the December 11, 2009 U.S. Department of Justice letter, Title One of the Adam Walsh Act, specifically 42 USCS § 16927, provides that federally recognized tribes could elect within one year to become registration and notification jurisdictions. For those tribes that did not make the election, or decided to opt out of the Adam Walsh Act, the responsibility for sex offender registration and notification devolved to the state in which the Indian territory is located. The letter notes that four tribes within the state of Nevada which either opted out of becoming registration and notification jurisdictions or did not elect to become a registration jurisdiction.

In the December 23, 2009 State of Nevada, Records and Technology Division letter, it notifies the U.S. Department of Justice and provides a copy of the injunction that the State of Nevada has against implementing the Adam Walsh Act. This letter also notes that "This office has not been contacted by any Nevada tribe seeking assistance with their law enforcement responsibilities pursuant to the Adam Walsh legislation. Further, your letter does not indicate whether any Nevada tribe knows that DPS is prevented from registering any sex offender under the requirements of SORNA."

Donna Coleman questioned what this information and these letters meant for the State of Nevada.

Mr. Munro responded that the demand for the State of Nevada to begin to supervise the sex offenders from four Indian tribes within our State tells him that the Department of Justice has sided with the Nevada Legislature and believes that our State's Adam Walsh laws are constitutional and that the registration and notification procedures currently being used by our state's law enforcement will be deemed to be compliant with the SMART office.

Keith Munro asked for any other questions. – No questions were asked.

Discussion of topics for the next scheduled meeting.
Assemblyman Richard Segerblom asked if a cost estimate had been assembled to enforce AB 579. Discussion was held concerning this issue. No cost study was known, there were not any fiscal notes put on when AB 579 was passed. Suggestion was made to look at the national studies to give an opinion if those numbers are realistic. Assemblyman Segerblom will contact LCB staff and get that information.

It was confirmed that the locations in which this committee meeting was held was a better forum, especially in regard to hearing and sound. Keith Munro thanked Susan Roske for recommending Nicole Pittman; she provided a lot of information to this committee. The next meeting will be scheduled in the next month or two.

Keith Munro opened the meeting up to public comment.
Carey Stewart, Director of Washoe County Juvenile Services, came forward on behalf of the Juvenile Justice Administrators of Nevada, appearing in the place of committee member Scott Shick. In reference to today's testimony his organization is in complete agreement with regard to the inadequacies and harm that Adam Walsh could have on juveniles. Mr. Stewart reported that the Juvenile Justice Administrators have a system in place that has been in operation since the late 1990's, and this system has been very effective in working with Nevada's juvenile sex offenders. Any future consideration with regard to handling juvenile sex offenders should consider that the current system blends not only public safety, but it also blends the therapeutic components that are very important in working with juveniles. In going into the next legislative session the Juvenile Justice Administrators wanted to put on the record that they have a system that does work. In addition, a study should be conducted concerning the effectiveness of the current system. They feel the current system is not only in the best interest of the juveniles, but in the best interest of public safety.

Keith Munro asked for any questions on this public comment. None were made.

The meeting was adjourned by Keith Munro at 3:02 p.m.

Minutes respectfully submitted by Jan Riherd.

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: June 30, 2010

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4412E

Attendees:
Keith Munro, Senator David Parks, Assemblyman Richard Segerblom, Susan Roske, Donna Coleman, Curtiss Kull, Julie Towler, Scott Shick, Brett Kandt, and secretary Jan Riherd.

Minutes:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 1:32 p.m. The minutes of the March 19, 2010 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none voiced. Julie Towler made a motion to approve the minutes, Susan Roske seconded the motion; the minutes of the March 19, 2010 meeting were approved.

Julie Towler, Nevada Deputy Attorney General, presented an April 19, 2010 letter received from the U.S. Department of Justice regarding Nevada's compliance efforts.

Julie Towler presented a letter from the U.S. Department of Justice dated April 19, 2010. *See* Attachment A. As noted by Ms. Towler, the pertinent portion of this letter is the first sentence. *"On behalf of the United States Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), I am pleased to inform you that, after a thorough review of the materials submitted, the SMART Office has determined that but for the permanent injunction entered by the United States District Court In* ACLU of Nevada v. Masto et. al., Case No. 2:08-cv-00822-JCM-PAL, *the State of Nevada has taken all the necessary steps to substantially implement SORNA."*

Question from Keith Munro:
Mr. Munro asked for Ms. Towler to explain what this statement means in regard to Nevada's compliance with the federal Adam Walsh requirements.

Response by Julie Towler:
Ms. Towler responded that the SMART Office is the governing body that determines whether jurisdictions have substantially complied to implement the federal Adam Walsh Act. This letter voices an approval by the U.S. Department of Justice that Nevada, but for the pending injunction and litigation, has completed the requirements necessary to be in substantial compliance with the federal Adam Walsh Act.

Question from Curtiss Kull:
Undersheriff Kull questioned that if by chance AB579 is overturned, will the U.S. Department of Justice re-review to determine if Nevada is in compliance.

Response by Julie Towler:
Ms. Towler responded that it was her understanding that once an Order has been issued by the 9th Circuit Court of Appeals re-review would depend on the nature of the order. She anticipates that the SMART Office will re-review to determine the effect in regard to compliance and implementation.

Question from Keith Munro:
Mr. Munro questioned/stated that if AB579 is upheld then Nevada would be in full compliance, and would not see a reduction in their Byrne Grant funds.

Response by Julie Towler:
Ms. Towler concurred with Mr. Munro's statement.

Julie Towler, Nevada Deputy Attorney General, presented an April 23, 2010 letter received from the U.S. Department of Justice regarding Nevada's compliance extension request.

Ms. Towler presented a second letter from the U.S. Department of Justice, dated four days later, regarding the Nevada Department of Public Safety's one year extension request. *See* Attachment B. This letter approves the state's extension request to comply with SORNA, and as a result of this extension Nevada will not be penalized and its Byrne Grant Funding will not be reduced for the next year.

Keith Munro provided background information on the next presentation.

The state of Ohio was the first state to reach compliance under the federal Adam Walsh Act, and granted compliance by the SMART office. The decision in the case *Ohio v. Bodyke* has created a large change in their status.

Susan Roske gave a presentation on *Ohio v. Bodyke*, 2008-2502, Slip Opinion No. 2010-2424, an opinion issued by the Ohio Supreme Court.

Ms. Roske reported that the issue in the case of *Ohio v. Bodyke* before the Ohio Supreme Court was whether the Adam Walsh Act statutes violated the

separation of powers by requiring the executive branch, that being the Ohio Attorney General's Office, to reclassify sex offenders that had already been classified by the Court. *See* Attachment C. In *Bodyke* the criminal defendant originally entered into a plea agreement, served some time, and at the time of his conviction he was classified as a sexually oriented offender. This classification under Ohio law is the lowest level of offender under their Megan's Law statutes. He was required to register once per year with the county sheriff and was not subject to community notification. Five years after being released from prison he was notified by the Ohio Attorney General's Office that he was being re-classified under Adam Walsh and was automatically classified as a tier three offender. As a tier three offender he was required to register with the local sheriff every ninety days for the duration of his life, and was subject to community notification. He appealed this issue to the Court of Appeals, who affirmed the decision, and the Ohio Supreme took the case for a discretionary review. There were a number of constitutional challenges, but the question before the Ohio Supreme Court was whether the statue violated the Separation of Powers Doctrine. In this case the Ohio Supreme Court reviewed the Megan's Laws that had been in effect prior to the Adam Walsh Act, including the history and case law, and upheld the Megan's Laws. Then the Court reviewed the State's Adam Walsh Laws. Ohio's laws reclassify offenders based on the statute of conviction rather than individualized assessment. After review of the change from the Megan's Law to the Adam Walsh Act, the Supreme Court was persuaded that the Adam Walsh Act was substantially different from Megan's Law, and they upheld the Megan's Law in making a review of the Adam Walsh Laws.

The Ohio Supreme Court then reviewed the Separation of Powers Doctrine. Ohio's constitution does not have a provision of separation of powers, but their government is set up with three levels, and it was determined that the way the framework of their government operated they did have a separation of powers. They held that the Adam Walsh Act provision governing the reclassification of sex offenders that were already classified by Judges at sentencing under Megan's Law violated the Separation of Powers Doctrine. First, the reclassification vested the executive branch with the authority to review decisions and second, it interferes with the judicial power by requiring the reopening of final judgments. Instead of overturning the statutes as a whole, the Supreme Court of Ohio ruled that the appropriate remedy would be to have the classifications stand as ruled by the judges at the original sentencing hearings. Therefore only those sentences prior to the Adam Walsh Act would be overturned and revert back to their previous classification.

Pursuant to Nevada's Constitution, there is a Separation of Powers Doctrine in Nevada.

Question from Donna Coleman:
Ms. Coleman questioned if this Ohio Supreme Court decision was going to be appealed.

Response by Susan Roske:
Ms. Roske did not have that information.

Question from Keith Munro:
Mr. Munro confirmed his understanding that Ohio, who was one of the first states to be deemed compliant, under their Adam Walsh laws they are now not allowed to be retroactivity applied. In addition, he asked now that Ohio's Adam Walsh Laws can no longer be retroactivity applied, did that effect Ohio's compliance with the SMART office as being deemed compliant with the federal law.

Response by Susan Roske:
Ms. Roske did not have that information, but she will investigate that and report back to the committee.

Question from Julie Towler:
Ms. Towler asked Ms. Roske to confirm her understanding that the Ohio judges determined during sentencing how likely the offenders were to re-offend.

Response by Susan Roske:
Ms. Roske agreed and stated that this was a judicial determination and part of their judgment of conviction.

Question from Donna Colman:
Ms. Coleman asked if Ohio in moving forward is tiering pursuant to Adam Walsh Laws.

Response by Susan Roske:
Ms. Roske confirmed that as the case reads any situation moving forward would be strictly following Adam Walsh, only those retroactive cases would not be complying with the Adam Walsh tier assessment.

Question from Keith Munro:
Mr. Munro asked Ms. Roske to confirm that the Ohio Supreme Court upheld the prospective application of the Adam Walsh Act.

Response by Susan Roske:
Ms. Roske agreed.

Susan Roske gave a presentation on Proposed Supplemental Guidelines for Sex Offender Registration and Notification issued by the U.S. Department of Justice on May 14, 2010.

Ms. Roske reported that this is a directive from the US Department of Justice. *See* Attachment D. The Attorney General, in response to various jurisdictions having issues with including juvenile delinquency adjudications in the community

notification portions of SORNA, re-examined this portion. In the directive the Attorney General stated that it was within his authority to create additional discretionary exemptions from the public website disclosure and to allow jurisdictions to exempt from public website disclosure information concerning sex offenders requiring registration on the basis of juvenile delinquency adjudications. To clarify, each individual state can put into their laws to allow for judicial or legislative discretion on requiring adjudications of juvenile delinquency on their public website. This does not limit discretion on registration, the registration element of the Adam Walsh Act is still mandatory.

In addition, there is a provision in Adam Walsh that the information in the registry must be available to schools, public housing, social services, volunteer entities, or other organizations, companies or individuals who request information about the individuals who are subject to community notification. If the jurisdiction elects not to include individuals' adjudicated delinquent on the public website, then they are not required to disclose this information.

Question from Keith Munro:
Mr. Munro asked that given the change in standards by the SMART office pursuant to the US Attorney General's direction, would this give the Nevada Legislature any opportunities under AB 579 to make potential changes and still be deemed compliant.

Response by Susan Roske:
Ms. Roske believes that Nevada could remain compliant and stated that she believes that Nevada's Legislature could agree to either exempt all adjudications of delinquency from the community website, or give the judges who are doing the sentencing discretion of whether to include them in the public website.

Scott Shick of the Nevada Association of Juvenile Justice Administrators gave a presentation on the Summary Impact of Juvenile Sex Offender Registration.

Mr. Shick reported that the Juvenile Justice Administrators across Nevada accumulated statistics regarding four questions. *See* Attachment E. Mr. Shick presented and read the statistics of the Summary of Impact of Juvenile Sex Offender Registration. There are efforts by district attorneys, public defenders, and judicial branches to reduce offences or hold the offences in abeyance prior to monitoring the juveniles' response to low level sex offender treatment. Mr. Shick stated that there is reluctance on the part of some district attorneys to prosecute to the full extent based on the implications of the Adam Walsh Act. Mr. Shick reported that The Juvenile Justice Administrators have concerns regarding the Adam Walsh Act and its implications to juveniles. It is the Juvenile Justice Administrators experience that juveniles respond favorably to sex offender treatment and the recidivism rate is low among juveniles. The Juvenile Justice Administrators understand that the federal government has made some

concessions concerning juveniles, but juveniles are still going to be required to register and that continues to be a concern.

Question from Keith Munro:
Mr. Munro, upon examining Attachment E, questioned Mr. Shick concerning the gap in numbers. Pursuant to Attachment E, approximately 279 juveniles are being referred concerning possible delinquency, less than ten percent of those referrals are certified up to the adult system, and approximately one-third actually go to some type of formal process, what is happening with the juveniles representing the remaining numbers.

Response by Scott Shick:
Mr. Shick responded that decisions are made on a case by case basis and that those cases may be held in abeyance, they may not have been brought forward, there may be diversion involved, and there may not be enough evidence and are eliminated from the process. Mr. Shick believes that this table demonstrates that a great deal of work is being done with that group of juveniles.

Question from Keith Munro:
Mr. Munro also asked Mr. Shick to explain some of the activities by Juvenile Justice Administrators to see that cases are not charged.

Response by Scott Shick:
Mr. Shick responded that there may have been prior contact with a juvenile. A good deal of these offenses take place within the framework of the home for various reasons, lack of supervision, promiscuous boundaries within the home, etc. Therefore, working with the family, mental health expert intervention, accountability, and implementing boundaries the sex offender evaluations are completed. Juveniles are monitored closely, their academics, and behavior in the family and community are watched and evaluated and brought back for Court review. Most of them respond favorably and are treated out of the process. Those that continue a pattern of offense continue within the Juvenile Justice Administrators system, and potentially into the adult system based on their lack of response.

Question from Keith Munro:
Mr. Munro asked what agencies are involved in this process prior to charging.

Response by Scott Shick:
Mr. Shick responded that Mental Health, School Districts, Juvenile Probation, District Attorneys Office, Public Defenders, CASA, and Child and Family Services. A great deal of the time it is discovered that these juveniles are involved in several agencies based on the risk factors in their families.

Nick Anthony with the Legislative Counsel Bureau gave a presentation on the effect to Assembly Bill 579 of the 74th Session of the Nevada Legislature if juveniles not certified as adults were removed from legislation.

Mr. Anthony echoed Susan Roske's point concerning now that the federal government has come forward with the U.S. Attorney General's Opinion, they have given states leeway to look at the juvenile issue and exempt that from the provisions of the Adam Walsh Act. Therefore the Legislature in the 2011 session, if they chose to do so, could exempt those juvenile provisions in AB 579.

Question from Keith Munro:
Mr. Munro asked for Mr. Anthony to explain how this process would work and for example if a new bill be necessary.

Response by Nick Anthony:
Pursuant to the March 30, 2009 Legislative Counsel Bureau Opinion, because of the pending litigation AB 579 and SB 471 are currently enjoined and therefore null and void. These provisions are still on the books, but not enforceable. A new bill needs to be introduced in the 2011 Legislative Session subsequently modifying some of those provisions. The statutes can be modified even with pending litigation, but he is of the opinion that the modified statutes would still not be enforceable until the litigation is resolved. Another option would be to repeal AB 579 and SB 471 and start again from scratch, which would also require a new bill to be introduced.

Question from Susan Roske:
Ms. Roske asked if it would be possible to introduce a bill to include the type of crimes juveniles would have to commit to be included in the Adam Walsh legislation.

Response by Nick Anthony:
Mr. Anthony believes you can bring a bill forward, whether or not it will be challenged or deemed to be compliant he can not answer. Many factors include the bill's language, current and possibly future litigation.

Question from Susan Roske:
Ms. Roske asked Mr. Anthony to confirm if modifications to current legislation were possible instead of repealing AB 579 and SB 471.

Response by Nick Anthony:
Mr. Anthony again stated that there are statutes that are on the books, but un-enforceable. If a new bill is brought forward, keeping some provisions of AB 579, but had some additional provisions that might be agreeable to all sides, that can certainly be introduced. The overlapping provisions would need to be repealed.

Question from Brett Kandt:
Mr. Kandt stated that there are some portions of the NRS that parenthetically indicate an "either or" situation, the statute is in effect until a certain date, or unless something happens. Since Nevada currently has a statute that is null and void at this point, but depending on future court action could become enforceable, is an "either or" provision a potential avenue to account for future court action.

Response by Nick Anthony:
Mr. Anthony responded that questions have been raised concerning what law is currently in effect, and where that law can be found. Currently the NRS contains the AB 579 provisions, and all the repealed statutes are no longer contained in the NRS. His office is considering a revisers note at the bottom of each of those provisions that were amended by AB579, explaining that the old law is still enforceable, and how to find that law. Currently the law is on file with the Legislative Counsel Bureau and they are considering making it available to the public.

Question from Donna Coleman:
Ms. Coleman asked if anyone knew the status of the 9th Circuit litigation, and if anyone knew what kind of decision the 9th Circuit could issue. For example can they make decisions on a portion of the litigation, or is it "all or nothing".

Response by Keith Munro:
Mr. Munro stated that nothing has been heard from the 9th Circuit. The briefing has been completed for almost two years. Normally in a case of this profile there is oral argument. No oral argument has been scheduled. He does not believe it is an "all or nothing" decision. For example, they could state that all of AB 579 and SB 471 are good law and should be enforced, they could say a portion of it prospectively is good law and retroactively is not good law, they could take out portions of each of the bills, find some type of constitutional violation, procedural due process, or ex post facto as well.

Curtiss Kull gave a presentation regarding a survey of law enforcement officials on AB 579 of the 74th Session of the Nevada Legislature.

Undersheriff Kull reported that in October, 2005 the Reno Police Department conducted a statewide Sex Offender Summit. During that Summit they discussed the current NRS law and how the various law enforcement agencies in the state were conducting their registrations, community notifications, and the enforcement of NRS 179D. Some of the concerns of law enforcement in 2005 are still concerns of law enforcement particularly as they relate to AB 579 and SB 471.

A second Summit involving the same agencies was held in March, 2010. A good cross section of participants attended; including those who daily deal with legislation. Undersheriff Kull provided a written summary of the March Summit. *See* Attachment F. This summary contains information of what the law enforcement officials across the state would like to see added or subtracted from the two bills.

In reviewing a couple of the issues of law enforcement, Undersheriff Kull stated that the law enforcement group as a whole was extremely concerned with the retroactive portions of the Adam Walsh Act. In going to an offender based system they are seeing the tier numbers increasing in the higher tiers and decreasing in the lower tiers. An extreme concern of law enforcement officials is that they are seeing an increased apathy among the citizens due to the increasing information being distributed regarding higher tier offenders. Because of the constant and continued press releases concerning tier three offenders it is law enforcement's opinion that the public will "loose interest". The group was in favor of keeping the timetable for verifications. Law enforcement officials would like to see the offenders on a more regular basis than just an annual verification. Another issue was to keep non sex related issues out of the tiering process, unless they appear to be a pre-cursor to a sex offense. Concerns have been voiced by law enforcement that concentration on high risk sex offenders and corresponding issues will be lost. They did not want to lose that emphasis in getting this information to the public.

Undersheriff Kull reported that Parole and Probation officials that attended the Summit were adamant that they would like to have lifetime supervision out and lifetime parole in. Parole and Probation expressed the extreme difficulties the officers "on the ground" have in dealing with lifetime supervision.

Undersheriff Kull reported that in regard to SB 471 the group as a whole was not in favor of the mandated restricted zones for offenders that are on parole and probation. It is important for the detectives to find adequate housing and employment for the individuals they are supervising. If the detectives can attest where these people are for a large share of the day, they find that offenses lessen. The restricted zones may effect where offenders can be placed. For example, a current issue with the new homeless facility in Reno is that a family center is now below the men's area making it difficult for the offenders to live upstairs. Parole and Probation also feel that they should be able to make the decision whether they conduct active or passive GPS monitoring of offenders on paper. Undersheriff Kull stated that he felt there were members of Parole and Probation that would be happy to elaborate their concerns to this group.

Question from Julie Towler:
Julie Towler requested that Undersheriff Kull define the acronym M.O. and elaborate on the statement contained on page two of Attachment F "Establish an M.O. field or entry on the registration form".

Response by Curtiss Kull:
Undersheriff Kull stated that M.O. stands for modus operandi. Many offenders have particular patterns of behavior. It would be important and helpful for law enforcement officers across the state to have an identification of the offender's regular behavior in the central registry.

Question from Keith Munro:
Mr. Munro asked Undersheriff Kull to elaborate on the statement contained on page two of Attachment F "Make Community Notification internet based".

Response by Curtiss Kull:
Undersheriff Kull stated that the thought process was a that a complete internet notification system requirement be added to law. The reasoning being that mailings have become very cost prohibitive, the sex offender meetings become very difficult to conduct as the high risk numbers increase, and the shortage of personnel resulting from budget issues make the non-internet notification unworkable. The goal being that notifications conducted solely via internet be sufficient under the NRS.

Question from Keith Munro:
Mr. Munro asked Undersheriff Kull to explain the differences between verifications and registration and why verifications and keeping time tables are important.

Response by Curtiss Kull:
Undersheriff Kull responded that registration is the initial completion of the required paperwork. Registration is so that community notification can be conducted and to have a data base for the law enforcement officials to utilize when other offenses occur. Without any time table attached the only requirement under current law is an annual verification visit. Not all agencies are able to do independent in person verifications. To include a time table in the law and require the offender to report more frequently would be extremely helpful to law enforcement officials.

Question from Keith Munro:
Mr. Munro asked Undersheriff Kull the elaborate on the benefit of seeing the offenders more frequently.

Response by Curtiss Kull:
Undersheriff Kull responded that the legislative mandate requiring offenders to report more frequently provides law enforcement officials vital information for the data base including new photographs of the registered offenders and updated residence, employment and vehicle information. This is not only helpful in keeping track of offenders, but also from and investigative standpoint in investigating other crimes.

Question from Susan Roske:
Ms. Roske asked if her understanding was correct in that the Department of Sheriffs supports an individualized assessment on risk assessments as opposed to an offense based tier assessment.

Response from Curtiss Kull:
Undersheriff stated that the information contained in the Attachment F summary was solely the opinion of the law enforcement officials and professionals that work the sex offender cases. This information will be presented to the Sheriffs and Chiefs Association to advise that board of this groups findings. In the point "Keep non sex related convictions out of the tiering unless it appears to be a pre-cursor to a sex offense". The concerns are that there are a lot more issues involved that just the offenses themselves. For example, personal background, behavior, juvenile actions, treatment response, etc. A "vote" was not taken as to whether they desired offender based registration or stay with the current risk assessment in NRS 179. The only issues that were discussed were in regard to the pre-cursors.

Question from Susan Roske:
Ms. Roske questioned whether discussion was held during the Summit regarding the impact of requiring juveniles to register.

Response by Curtiss Kull:
Undersheriff Kull stated that the group did not address any issues concerning juveniles.

Discussion of topics for next scheduled meeting.

Suggestion by Susan Roske:
Susan Roske would like to make a presentation on a potential piece of legislation. Approximately a year ago there was a committee looking at drafting legislation regarding modifying the inclusion of juveniles. She would like to present this statute that was previously drafted to this committee for suggestions and presentation to the legislature for modification in the next session.

Suggestion by Donna Coleman:
Donna Coleman would like for the members of this committee to discuss their findings and what they have learned in regards to presenting this information and a bill to the next legislative session.

Response by Keith Munro:
Mr. Munro stated that this committee's task is to study sex offender laws. This committee is not statutorily authorized to present anything to the legislature.

Public Comment

Laura Riley Johnson:
Ms. Johnson came forward and asked if there was any additional information available from the Law Enforcement Sex Offender Summit.

Response by Curtiss Kull:
Undersheriff Kull informed Ms. Johnson that she had a full copy of the Summit Summary, Attachment F.

Trina Andrade Quiz:
Ms. Quiz came forward and asked if the sex offender registry provided any notations to distinguish between habitual sex offenders and juvenile sex offenders.

Response by Donna Coleman:
Ms. Coleman stated that the website contains information on each conviction of each offender. Information concerning if an offender has been to prison, their prison term, multiple convictions, etc. is all available on the public website.

Detective Shaun Meeks, Sparks Police Department:
Det. Meeks came forward and reported that he is currently assigned to the regional sex offender unit, and has been assigned to this unit since 2005. Det. Meeks stated he had the opportunity to attend the March Summit. In his experience he has met a lot of offenders, has seen cases of re-offence, and those individuals that have not re-offended. The registration component of sex offenders is critical to law enforcement officials. When they are working on an unsolved case this information gives officers a critical data base for reference. Det. Meeks reported that t is critical for law enforcement officials to have a maximum number of compliant registered offenders. They want offenders to be able to reasonably comply with the laws by having a balance of reasonable laws and not to overburden offenders with excessive conditions or restrictions, in order to comply. Two of the major concerns of the department were reported by Undersheriff Kull. The first concern was the tier system changing from the individual assessment system currently in effect, which includes some discretion, to an offence based system, which is very black and white. In his experience in dealing with sex offenders there is no black and white, it is all grey. Det. Weeks stated that tiering an offender based only on offense is very dangerous. He estimated that 80-90 percent of offenders are convicted under a plea bargain, and these convictions do not actually reflect what the offenders were accused of or what they may have done. From a law enforcement prospective he feels there

needs to be some type of discretionary component. Secondly, Det. Meeks reported that law enforcement feels that tiering needs to be prospective. All the offenders being re-tiered under the Adam Walsh Act was going to cause their numbers to skyrocket. The number of high risk offenders was going to change from 2-3 percent to 30-40 percent which creates a difficult management problem for law enforcement. Internet based notification is necessary to assist officers in their duties allowing them to avoid having to transition from law enforcement officials to managers.

Theresa Warner:
Ms. Warner came forward and stated that she totally agreed with Det. Meeks. She stated she had many problems with the sex offender laws. Ms. Warner stated that she was a victim of a sexual crime and was also a nudist, therefore very conflicted concerning this issue. She feels that when you lump all the sex offenders together, or re-classify them, we are diluting the pool. She feels that there is so much information available that this issue becomes difficult to determine what is fact and what is fiction. It is important to Ms. Warner to know if the offender had a private attorney, or a public defender. If the offender took a plea or was the offender prosecuted for their crime. She reported that she is aware of someone who went to prison for a sex offender crime because his granddaughter walked in on him while he was changing clothes and subsequently reported that her grandfather was flashing. She is more concerned about this type of issue than the registration, tiering issues and the sex offenders that might live next door. She is concerned that the state government is more worried about fear and financial issues rather than fact. Ms. Warner is also concerned that the desire to obtain grant money clouds the state's judgment concerning creating effective legislation. Ms. Warner reported that many sex offenders were victims of a sex crime. On a large scale she is concerned what is "being perpetuated over reducing". By continually telling someone they are a sex offender she feels this reinforces the act, not help the offender get better, or reduce the crime. She feels that the Adam Walsh Act dilutes the effectiveness of law enforcement. Ms. Warner wants the law enforcement official concentrating on the high risk offenders. Ms. Warner stated that many homeless people are also sex offenders and agrees with Undersheriff Kull concerning removing the restrictions and allowing these people reside in shelters thus allowing them to be tracked.

Mark Hill with Washoe County Juvenile Services:
Mr. Hill came forward and stated that he believes one of the issues with Adam Walsh, as opposed to the prior laws, is that when a juvenile turned 21 years of age that juvenile could be required to register as an adult if officials felt the juvenile had not been deemed rehabilitated. This is something that we lose with Adam Walsh. Over the years in working with a juvenile, officials get to know the individual and are able to make recommendations for discretionary decisions. Fourteen is currently considered to be an arbitrary age. Under Adam Walsh if the offender is under fourteen they are not obligated to register. Based on his

experience some of the risk factors of offending at a young age, or offending on young victims, are potentially a greater risk. Based on the age cut-off in Adam Walsh Mr. Hill believes that we could potentially have a high risk individual that would not be required to register. Mr. Hill echoed and agreed with Det. Meeks statement concerning an individual based assessment system vs. an offense based system. In working with the same juvenile for a number of years they can make an educated judgment on whether the juvenile is a risk to re-offend whereas if registration is based solely on the offence it eliminates their ability to correctly assess the situation.

Keith Munro asked for any additional public comment. None were made.

The meeting was adjourned by Keith Munro at 2:59 p.m.

Minutes respectfully submitted by Jan Riherd.

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: November 17, 2010

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4412E

Attendees:
Keith Munro, Senator David Parks, Brett Kandt, Susan Roske, Maggie McLetchie, Donna Coleman, Curtiss Kull, Julie Towler, Scott Shick, and secretary Jan Riherd.

Agenda Items #1 and #2:
Call to Order and Minutes
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 1:31 p.m. The minutes of the June 30, 2010 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none voiced. Scott Shick made a motion to approve the minutes, Julie Towler seconded the motion; the minutes of the June 30, 2010 meeting were approved.

Keith Munro took agenda item number five (5) out of order.

Agenda Item # 5:
Julie Towler, Nevada Deputy Attorney General, presented the Legislative Report by the Office of the Attorney General

Keith Munro:
Keith Munro stated that as part of the statutory duties the Office of the Attorney General was required to prepare a report on the work that had been accomplished by this committee by June 30, 2010. The June 30, 2010 meeting of this committee was not included in the Legislative Report. Mr. Munro opened the meeting for discussion, suggestions, additions, or comments to the report.

Presentation by Julie Towler:
Julie Towler provided a copy of the Assembly Bill 85 to the committee. *See*, Attachment A. Ms. Towler stated that there were several sections of the Legislative Report. The Legislative Report included information on committee

meeting dates, basics of Assembly Bill 85, the committee members, the status of the litigation, and the federal injunction issued on October 7, 2008. The Legislative Report included the status of other State's SORNA implementation, as of May 18, 2010 five jurisdictions had been deemed substantially SORNA compliant, including discussion on Ohio's compliance since they were the first state to be deemed substantially compliant. The Legislative Report also included a summary regarding juvenile sex offenders, the differences between adult and juvenile sex offenders, and how juveniles are impacted by the Adam Walsh Act. Nicole Pitman's presentation and the data she submitted to the committee were included in the report. The Legislative Report included a section on the status of law on compliance with information on communications between the Attorney General's Office and the U.S. Department of Justice. Additionally included was Nevada Attorney General Opinion 2010-01 issued on April 8, 2010, which determined that the Sex Offender Registration Laws that were in effect prior to the passage of AB 579 and SB 471 remain in effect during the pendency of the litigation.

Keith Munro:
Keith Munro stated that since this meeting is a culmination of the prior meetings, at the conclusion of this meeting he would like to forward the information from this meeting to the Legislature.

Julie Towler:
Ms. Towler agreed to forward the information from this meeting to the Legislature.

Agenda Item #3:
Presentation on "Convicted Sex Offender Homeless Registration" and "ensuring that sex offenders initially registering as 'visitors,' who remain in the State longer than 45 days, are properly tier ranked, have their address verified, and have community notification where required."

Chuck Calloway, Las Vegas Metropolitan Police Department Representative:
Mr. Calloway stated that he was planning to have an Officer from their Sexual Offender Apprehension Program to present this issue in detail, but the Officer was detained. Mr. Calloway initially appeared on his behalf to answer any questions.

Keith Munro:
Mr. Munro requested that Mr. Calloway summarize the presentation.

Chuck Calloway:
Mr. Calloway stated that the first issue dealt with NRS 179D.470, Sex Offender Registration and a request to change the language. A handout was provided to the committee and visitors entitled "Convicted Sex Offender Homeless Registration Draft". *See*, Attachment B. The requested change includes

language regarding Sex Offenders visiting Nevada. The proposed bill states that if a Sex Offender comes to Nevada and stays longer than 45 days, there is proposed statutory language requiring the long term visitor to be tier ranked and the community notified, rather than the current requirement of registering as a visitor.

Keith Munro:
Mr. Munro questioned Mr. Calloway about the benefit of making that statutory change regarding the supervision of these offenders.

Response by Chuck Calloway:
It is Mr. Calloway's understanding that a great deal of time offenders come into the state, register as a visitor informing officials they are only staying in the state for a short period of time, and then end up remaining in the state for longer than originally reported. Because these offenders are not tier ranked, and no notification is given to the community, surrounding neighbors are not aware these offenders are living in their area. This suggested statutory change would close this loophole and benefit public safety.

Keith Munro:
Mr. Munro asked Mr. Calloway how the Department became aware of this problem.

Response by Chuck Calloway:
Mr. Calloway stated their agency has a Sexual Offender Apprehension Program which solely tracks down sex offenders that have failed to register and are not abiding by the sex offender registration laws. This unit suggested this statutory change based on their experience in the field and their discovery of a large number of unregistered "visitors" without tier ranking or community notification.

Keith Munro:
At 1:42 pm Mr. Munro called a short recess in order for the information packets to arrive at the Las Vegas meeting location. At 1:54 Mr. Munro called the meeting back to order. Mr. Munro announced that Mr. Calloway's colleague was arriving shortly; therefore Agenda Item #3 reporting would be halted and resumed when the Officer arrived. Mr. Munro asked for the committee to proceed to Agenda Item #4.

Agenda Item #4:
Presentation on proposed changes to NRS Chapter 62 pertaining to Juvenile Sex Offenders and Achieving Compliance with the Adam Walsh Act.

Scott Shick, Juvenile Justice Administrators:
Mr. Shick stated that the Juvenile Justice Administrators, with the assistance of Susan Roske, have submitted a bill draft over the desk of Assemblyman

Hambrick to present to the Legislature in the next session. This bill draft is in regard to compliance with the Adam Walsh Act with respect to the Juvenile Justice Statutes. A handout was provided to the committee entitled "Proposed Changes to Nevada Statute Chapter 62 Pertaining to Juvenile Sex Offenders and Achieving Compliance with the Adam Walsh Act." *See*, Attachment C. Mr. Shick asked Susan Roske to come forward and summarize the attempted accomplishment of this bill draft.

Susan Roske:
Ms. Roske stated that AB 579 was an attempt to come into compliance with the Adam Walsh Act by including juvenile delinquents, but that AB 579 went beyond the minimum requirements with the inclusion of juveniles in the adult community notification scheme. Ms. Roske reported that a committee of attorneys and practitioners working with juvenile delinquents met in an attempt to come up with a statutory scheme that would be substantially compliant with the Adam Walsh Act, but not be as harmful to the children in Nevada as AB 579.

Ms. Roske reported that the prior legislative scheme addressing juvenile sex offenders was felt to be appropriate, and the practitioners did not have a problem with the previous scheme that was in place. The prior scheme was a separate community notification standard for juvenile delinquents that would not include juvenile delinquents on the public website. In the prior scheme the juveniles were tiered on their individual risk, and based on their individual risk information, would be disseminated to the community, but not by a public website. If a child had not been relieved of juvenile community notification by the time they reached age 21 the statutes provided for the juvenile courts to determine whether it would be necessary to deem that person as an adult sex offender for the purposes of registration and community notification in the adult system.

The bill draft is a proposal to reinstate the provisions that were repealed by AB 579, allowing for a separate community notification scheme for juveniles which does not include a public website. These statutes are currently in effect since AB 579 was enjoined. This is an attempt to put into place a statutory scheme that is both effective and less harmful to the children of Nevada. Ms. Roske stated that it is a belief that public notification of juveniles adjudicated of sex crimes by way of a public website is harmful to children, their families, and is unnecessary. Ms. Roske acknowledges that juvenile sex offenders are much different that adult sex offenders, they offend for different reasons, are highly treatable, and the recidivism rate is extremely low.

In Attachment C there are versions of statutes that are in effect today which were repealed by AB 579. On page 6 of Attachment C, is the proposed statute that would be the Adam Walsh statute for juveniles. Under AB 579 currently offenses in 62F.200 are the crimes that would be subject to adult registration and community notification. The proposed change is to have the reference in Chapter 179 refer to this statute as those juvenile delinquents that are subject to

adult registration and community notification for violent or repetitive juvenile sex offense crimes. Under the Adam Walsh Act the minimum requirements for including juvenile delinquents in the public notification scheme is the violent juvenile sex offender described as those juveniles age 14 years or older, who commit a sexual assault that involves penetration on the body of another using force and/or violence, or drugging or rendering that person unconscious. The district attorney requested that a second category regarding repetitive juvenile sex offenders be included, which is not required by Adam Walsh. A repetitive juvenile sex offender is a juvenile who has been adjudicated delinquent for one of the enumerated offenses in this statute, and then after adjudication is charged with a sexual assault, battery to with intent to commit sexual assault, or lewdness with a minor. The repetitive sex offender would be included in the violent or repetitive sex offender statute.

It was strongly felt that the enforcement of these statutes should be prospective and not be retroactive. In addition, a requirement that any juvenile adjudicated under this new statute should be given prior notice in writing that the State is seeking to have them adjudicated under this statute. The Court would have a hearing to determine if the State had established by clear and convincing evidence that the child had committed sexual assault, battery to with intent to commit sexual assault, or attempt or conspiracy to commit either one of those offenses, or that they had a prior adjudication for one of the enumerated offenses. The Court could then adjudicate under this statute. This statute is discretionary, sub section five (5) states that in limited circumstances the juvenile court may also consider evidence whether the child poses a threat to the safety of others and level of risk of recidivism to determine whether to grant or deny a request to adjudicate the child under this statute. This gives the juvenile court limited jurisdiction to consider individual risk factors rather that the crime itself to deny adjudication under this statute.

In addition, under the Adam Walsh legislation the requirement for a child to register for life or a minimum of twenty five (25) years was believed to be extremely harsh. Children can be rehabilitated and should have an opportunity to be removed from the public notification website once they have been ordered to register as an adult sex offender. A second statute, on page nine (9) of attachment C was added giving the juvenile court the power to relieve the child from registration and community notification after a period of three years. This statute provides the standard which the child must establish in order to be allowed to be removed from the registration requirement.

Also included are the statutes in 179D that would have to be modified if AB 579 comes into effect and the rulings of the lower court are reversed. Ms. Roske reported that the U.S. Department of Justice has been approached by many states because they do not want to include juvenile delinquents in the Adam Walsh Act that it is still being debated in Congress and many states are refusing to enact the Adam Walsh Act because it includes juvenile delinquents in the

registration and community notification requirements. Ms. Roske reported an unconfirmed understanding that the SMART office may be taking the position that only registration and not community notification would be required under Adam Walsh for juvenile delinquents. If this if confirmed Ms. Roske proposes to change this bill draft to delete community notification and only include registration for juvenile delinquents.

Question from Brett Kandt:
Mr. Kandt proposed the following scenario to Ms. Roske and questioned how this proposal would apply to these juveniles.
Scenario: A group of thirteen (13) year old males, who have no prior sexual offenses, who are known members of a criminal street gang beat and gang rape a woman. How would they be adjudicated under this proposal?

Response by Susan Roske:
The violent or repetitive juvenile sex offender is for juveniles age fourteen (14) or older at the time the crime is committed. Had they been fourteen (14) they could be adjudicated under the new statute and required to register as an adult sex offender and be on the community website as a tier three (3) sex offender. Being thirteen (13) years of age they would fall under the present scheme. They would be declared juvenile sex offenders, be subject to tiering based on an individualized assessment, and community notification pursuant to their level of risk. They would be subject to 62F.250, which if they are not rehabilitated by age twenty one (21) the court could deem them an adult sex offender.

Question from Maggie McLetchie:
Ms. McLetchie asked whether our goal was to come up with a statute that makes sense, or complies with Adam Walsh, or both.

Response by Susan Roske:
Ms. Roske stated that this committee met to attempt to come into compliance with Adam Walsh. Many believed that the present system was acceptable and did not need this additional statute for community protection. Most believed that the children that would fall under this new statute would transfer to the adult system and would be affected by adult laws. In an effort to comply with Adam Walsh, this was as close as they could come to compliance. The fact that this proposal is not retroactive and that it allows a child to come off the registration in three years may not be deemed compliant with Adam Walsh or it may be found substantially compliant. The SMART office is being loose with the rules as it applies to juvenile delinquents. Ohio for example was found substantially compliant when it was not strictly compliant. The committee was hopeful that the SMART office would find this proposal substantially compliant with Adam Walsh.

Suggestion from Maggie McLetchie:
Ms. McLetchie stated that it is her understanding that the SMART office is currently in the process of revising guidelines. Last year the SMART office was

contacted regarding guidelines and suggested that we could contact the SMART office again to obtain what is actually required by the current guidelines, or is likely to be required in the near future and their opinion on substantial compliance.

Response and Question by Keith Munro:
Mr. Munro stated that contacting the SMART office is something we could consider, but also recognize that we have been found to be compliant with Adam Walsh. He would like to see us get further along and get a bill rather than talking points. Assemblyman Hambrick has agreed to sponsor the submission has made to this committee. Mr. Munro asked Ms. Roske in her opinion what are the strongest attributes of her proposal in compliance with Adam Walsh and what are the weak points.

Response by Keith Munro:
Ms. Roske believes this proposal narrowly tailors the children that are impacted under the minimum compliance with Adam Walsh, i.e. juveniles who are charged with committing an act of violent sexual assault. They followed the language that was in the SMART office statement as to those offenses that are required under Adam Walsh. She is unsure of the SMART offices approval of prospective instead of retroactive and the ability to be taken off registration requirements after three (3) years.

Statement by Scott Shick:
The Juvenile Justice Administrators in the state are interested in preserving the dignity of juvenile law and its daily application with regard to juvenile sex offenders. They believe this is a good compromise, it is good legislation, it is good law, and they will push this forward in the Legislature.

Question from Maggie McLetchie:
Ms. McLetchie asked Ms. Roske if she felt this would resolve the current litigation currently stayed at the Nevada Supreme Court pending resolution of the Federal Court litigation.

Response from Susan Roske:
Yes.

Statement by Keith Munro:
Mr. Munro stated if the statute as it applied to juveniles were changed, then it would effect the litigation because the statutes that are being litigated would no longer be in effect.

Response from Susan Roske:
In Judge Voy's opinion, he stated essentially the new law broadens the category of children that are subject to adult registration based on offense only, which includes low risk offenders being subject to community notification, and overlooks

high risk offenders that would escape under this scheme. Taking away the old system, which allows for children under the age of fourteen (14) to be subject to a form of community notification based on an individualized assessment of risk, the children who could be high risk, and are under the age of fourteen (14), would be identified and subject to a form of community notification.

As a comparison example, an eleven (11) year old sex offender who does not re-offend, and under supervision has issues and/or acts out sexually but those acts do not rise to the commission of a crime, and by the time he reaches the age of twenty one (21) is deemed to be a high risk sex offender. Under the present law the juvenile court has the authority to declare this individual an adult sex offender and would be subject to adult registration and community notification. AB 579 took away the courts ability to make that designation, and instead only children fourteen (14) or older would be subject to registration community notification under the adult system. Low risk fourteen (14) year olds are being publically designated as high risk offenders and the younger age high risk offenders are escaping this designation. This would keep the protections in the old system but narrow the violent offenders to a more severe form of community notification. She believes it would do away with the issues on appeal.

Question from Julie Towler:
Ms. Towler confirmed that under the old system the laws were written retroactively, and asked what date is it retroactive to, or is it based on the age of the individual?

Response from Susan Roske:
Ms. Roske stated that it does not say in the statute and in addition this issue is on appeal in the Nevada Supreme Court whether the old laws are retroactive. In addition, Las Vegas Juvenile Court is applying it retroactively. It went into effect in the 1990's, there was a case in the early 2000's that found it unconstitutional, it was re-written and put into effect in 2005. Therefore, since this issue is on appeal, she does not have that answer.

Keith Munro recalled Agenda Item #3

Agenda Item #3:
Presentation on "Convicted Sex Offender Homeless Registration" and "ensuring that sex offenders initially registering as 'visitors,' who remain in the State longer than 45 days, are properly tier ranked, have their address verified, and have community notification where required."

Chuck Calloway:
Mr. Calloway stated that his colleague still had not arrived and moved on with his presentation.

Currently if a sex offender comes in to register, and that individual is homeless, they are registered as transient and there is no address listed for that individual. The requested proposal is that an offender who has no residence be required to provide a cross street or general location of where they "reside or their sleeping place". The purpose is to provide authorities with tools and more information regarding where sex offender "visitors" are staying in the community.

Question from Curtiss Kull:
Looking at this issue from a Legal Standpoint and potential prosecution Mr. Kull asked that if the Clark County District Attorney had been consulted regarding this request and if so, if the District Attorney thought that in a case regarding failure to register if a conviction could be obtained if the offender was not in their approximate location.

Response by Chuck Calloway:
Mr. Calloway had consulted with the DA regarding this request and he shared the same concerns regarding prosecution. Although, many times homeless individuals build temporary structures, some are quite elaborate and include electricity, and that with regard to this issue some sort of evidence or probable cause would need to be established showing the individual is residing in the new location. This is an issue that would have to be handled on a case by case basis, but the DA did not have any problem in moving forward regarding this BDR request.

Question from Donna Coleman:
Ms. Coleman asked how often a homeless person is required to make contact with the police.

Response by Chuck Calloway:
Under the old laws the reporting was to be made once per year, under the Adam Walsh Act, every 90 days.

Question from Donna Coleman:
Ms. Coleman asked if there was anything in the Bill Draft that required a person who could not report an address to report more frequently.

Response by Chuck Calloway:
Mr. Calloway stated that the offender would be required to report pursuant to his or her tier level. Their general goal is to provide law enforcement with more information regarding the offender.

Question from Maggie McLetchie:
Ms. McLetchie stated that many times homeless people are staying where it is illegal to sleep and she has a concern that this legislation would require these people to self incriminate. She agrees that many homeless people are "semi-permanent", but there are also people who do not know where they are going to

be staying, try to get into shelters and fail, are sleeping in public places illegally, and wanted to know if they would be required to report every time their location changes, and how this legislation would work practically.

Response by Chuck Calloway:
Mr. Calloway stated he would be open to any suggestions regarding addressing Ms. McLatchie's concerns and allow them to reach their intent.

Question from Brett Kandt:
Mr. Kandt does not believe there is anything vague about the requirement of the offender providing a location. It does not have to be a street address, but the offender does have to be information that allows law enforcement to have a general location of the offender. Mr. Kandt believes this is reasonable, and is seeking to close a loophole and believes that these proposals accomplish that goal.

Response from Chuck Calloway:
The vagueness he previously spoke about concerned the general area of the offender, not a specific street address. Mr. Calloway agreed with Mr. Kandt.

Question from Susan Roske:
Ms. Roske asked if laws in other states regarding homeless offender registration were researched, and if so, how they define homeless and how they require homeless to register.

Response from Chuck Calloway:
Mr. Calloway stated that the Officer who drafted this language had investigated this issue in other states, and believes that Michigan's laws mirrored this proposal.

Question from Maggie Mcletchie:
Ms. McLetchie stated that a current law that is under injunction on a federal level is SB 471, which is residency restriction. If that injunction is lifted she is concerned that we will have a much bigger issue because the fewer and limited availability of places for homeless sex offenders to live. Ms. McLetchie stated that Florida had a similar issue.

Statement from Chuck Calloway:
Mr. Calloway stated that his colleague Sergeant Michael Mauntel had arrived, so that if there are any areas that need to be addressed, he may be better informed to answer.

Statement from Curtiss Kull:
Mr. Kull again expressed his concern regarding the problems with prosecution, the parameters, and the evidence required showing when the offender had moved. He suggested exploration of a short check in list, regardless of tier level,

requiring a homeless offender to check in more often, for example every 30 days, to advise law enforcement that they are still in Nevada jurisdiction.

Question from Maggie McLetchie:
Ms. McLetchie asked how many additional sex offenses are committed by convicted homeless sex offenders in Nevada. In addition Ms. McLetchie asked if they had considered narrowing the obligation to register with a location to only Tier Two (2) and Tier Three (3) offenders.

Response by Chuck Calloway:
Mr. Calloway did not know the exact numbers, but did know that over one hundred (100) convicted sex offenders registered as transients in Clark County Nevada. In addition, the requirement to register is to all tiers, therefore Tier One (1) would be included in the requirement.

Statement by Sergeant Michael Mauntel:
Sgt. Mauntel introduced himself; he currently works for the Sex Offender Apprehension Program of the Las Vegas Police Department. He stated that he did do research regarding laws in other states, Michigan had a similar issue and his proposal is similar to Michigan's. He also stated he had Michigan's approved bill information; Michigan Senate Bill #1206, 1207, 1208, and 1241 were approved in April, 2010, and is not aware of any legal challenges to those bills.

Question from Maggie McLetchie:
Ms. McLetchie asked if the requested legislative changes are to the laws that existed prior to AB 579, or are they changes to AB579. In addition, based on Sgt. Mauntel's experience, Ms. McLetchie asked if he found the pre AB 579 risk assessments appropriate and useful.

Response from Sergeant Mauntel:
Sgt. Mauntel confirmed that these requested legislative changes are to the laws that existed prior to AB 579 and the pre AB 579 risk assessments are appropriate and useful. His concern is that there is nothing to stop registered sex offenders from registering as a transient. This proposed change is to encourage compliance and to establish a guideline to assist in this matter.

Public Comment
Keith Munro opened the meeting up to Public Comment. No Public Comment was given.

The meeting was adjourned by Keith Munro at 2:41 p.m.

Minutes respectfully submitted by Jan Riherd.

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: October 11, 2011

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4412

Committee Attendees:
Keith Munro, Brett Kandt, Assemblyman Richard Carrillo, Susan Roske, Donna Coleman, Curtiss Kull, Scott Shick, Dane Clauson (on behalf of Katrina Rogers – ACLU), Committee Legal Counsel Julie Towler, and Secretary Jan Riherd.

Members of the Public Who Signed In As Present:
Laurie Johnson, Dr. Jesse Anderson, Wesley Goetz, David Smith, Pat Saunders, Denise Stall, Char Hoerth, Diane McCord, Patrick Davis, Edie Cartwright, Pat Hines, and John Hines.

Call to Order and Public Comment:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 10:00 am. Mr. Munro called for public comment. The following members of the public came forward and spoke:

No public comment from Las Vegas.

Public Comment in Carson City:
Laurie Johnson:
Ms. Johnson appeared before the committee regarding a document entitled Reshaping Sex Offender Policy to Prevent Child Sexual Abuse. Ms. Johnson did not have a copy of the document available at the meeting, but would to submit to the committee at a later date. Ms. Johnson informed the committee that she has previously submitted this document to the Legislative Commission and the Parole Commission. Ms. Johnson requested an extension to fully present this Policy as to enable the author of this document to make the presentation to the committee. Ms. Johnson will provide the committee with scheduling information in an effort to coordinate the author's appearance at a future meeting. Ms. Johnson expressed her personal opinion regarding the excessive expense of compliance with the Adam Walsh Act. It is her understanding that four states, Arizona, California,

Colorado, and Texas have chosen not to comply because of cost issues. The policy presented references Colorado and Texas as states that can be used as examples in forming SOMB's, which are Sex Offender Management Boards. Ms. Johnson stated that her focus, whether compliance with the Adam Walsh Act is met or not, is to zero in on the truly violent dangerous sex offenders using proper assessment instruments. Ms. Johnson stated that we as a state are relying on the behavioral model, which is solely based on the conviction crime, to determine the risk levels of the sex offenders. Ms. Johnson feels that in reading this policy the proven effectiveness of the state implementing Actuarial Risk Assessment Instruments would benefit Nevada. These instruments allow the state to focus on who are the dangerous sex offenders using evidence based policy.

Dr. Jessie Anderson, PhD:
Dr. Anderson introduced himself as a Doctor in clinical physiology specializing in criminal behavior and sex offences. Dr. Anderson stated that his understanding of the Adam Walsh Act in its meaning was initiated for a good purpose, but felt that it got carried away. From a physiological point of view, he feels that the tier three statuses create a danger to the community. It is Mr. Anderson's opinion if Nevada saturates the system with a large number of individuals with tier three statuses, the community will become complacent to the tier three evaluations. The tier three ranking should only be utilized on the small number of individuals who are a high risk to the community. It is Mr. Anderson's understanding the actual rate of recidivism is very low. Mr. Anderson also addressed juvenile behavior regarding sex offences. Juveniles can be easily rehabilitated, and unless the juvenile behavior is repetitive, or there is some organic malfunction of the brain that will continue the behavior, he feels it is detrimental to require adults to register for something they did as a minor. Mr. Anderson feels that the method the State currently uses to evaluate sex offender's tier ranking is good. Mr. Anderson also believes that implementing the Adam Walsh Act is and will be extremely expensive. From a physiological point of view regarding juvenile registration it is his opinion that the current system, while not perfect, works. Mr. Anderson presented the committee, for their review, a publication entitled, The Psychology Behind the Crime, authored by himself, Jesse W. Anderson, Psy.D. (See, Attachment A.)

Patrick Davis:
Mr. Davis introduced himself as a member of Nevadans for Civil Liberties, a new organization that is attempting to bring forward statistics and studies regarding sex offenders. Specifically Mr. Davis addressed recidivism statistics; because it is his understanding that the registration and notification laws are based on the assumption that there is a high rate of recidivism among sex offenders. Mr. Davis presented results from studies done by several states and organizations. A 2003 Department of Justice study found that the rate of recidivism for a new sex crime was 3.5% within three years of being placed on supervision. This study has been followed up by more recent studies by the Department of Justice which confirm this recidivism fact. In Maryland in a study from July, 2008 to

December, 2009 involving over 2,300 offenders under lifetime supervision, the recidivism rate was one third of one percent. In Colorado, in a study conducted in 2009, less than one percent of offenders actively supervised under lifetime supervision committed a new sex offense. In Arizona, in a study conducted from May, 1993 to August, 2000 the rate of recidivism for offenders under active lifetime supervision was one point eight percent. In a report by Illinois Voices for Freedom, the rate of recidivism for sex offenders is the second lowest rate in the country in relation to new offenses of any kind. In a California study released in July, 2011, very few sex offenders are deemed to be violent predators. In this study of over 31,000 offenders only one third of one percent was deemed to be a sexually violent offender. Mr. Davis requests the committee to review the statistics being generated as they look to changing the law. The Nevadans for Civil Liberties organization will continue to supply the Legislature and other related state agencies with updated statistics. Mr. Davis provided the committee with a packet of statistical information. (See, Attachment B.)

Pat Hines:
Ms. Hines requested to be on all advanced Agenda mailings. She stated that it was difficult to locate the meeting on the internet. She has contacted the LCB building staff and they have indicated to Ms. Hines that if contacted they will add the meeting to their calendar.

Ms. Hines would like to procure copies of the article Reshaping Sex Offender Policy to Prevent Child Sexual Abuse and present them to the committee. Ms. Hines estimates that approximately fifty percent of this article refers to adult sex offenders. Ms. Hines presented information from an article by the Justice Policy Institute regarding getting the Adam Walsh Act started and the software needed, which included a cost estimate of over four million dollars. Ms. Hines questioned whether Nevada wanted to expend that amount of money. Ms. Hines requests that we be truthful, honest, and respectful of each other and share information. She feels that the tier levels are unrealistic and that all people are, including sex offenders, different. They all have different personalities and attitudes and should not be treated the same. Ms. Hines stated that Nevada has the ability to go back to offenses starting in 1956. She hopes that the committee will give considerable attention to adult sex offender tier levels and also keep the juveniles off the registration. In reviewing past meeting minutes Ms. Hines was disappointed that the physic panel situation in Nevada was not referenced. She also requested that Nevada come up with statistics regarding successes, accomplishments, failures, and cost evaluations regarding this issue.

Wesley Goetz:
Mr. Goetz read from the California Penal Code regarding State Authorized Risk Assessment Tools for sex offenders and their requirements for reliable, objective, and well established protocols on recidivism, scientific validation and cross validations. Mr. Goetz's opinion is that Nevada's tier levels should be scientifically validated and cross validated. He believes that Nevada's Sex

Offender Assessment Scale was not scientifically validated. Mr. Goetz requests that a study be done to scientifically validate the Sex Offender Assessment Scale that is used in determining offender's tier levels. Mr. Goetz believes that a factor in determining/evaluating the offender's tier level should include the time the offender spent in prison and the treatment received while incarcerated. Mr. Goetz believes that all members of the physic panel should be professional physiologists licensed by the state. Mr. Goetz referenced NRS 179D.132 regarding Attorney General appointment to this committee of a mental health professional. Mr. Goetz requests that the party appointed by the Attorney General be a professional that is licensed by the state that has experience in treating sex offenders. Mr. Goetz suggested a person by the name of Mr. Earl Nielson that is licensed in Nevada and has experience in the treatment of sex offenders, and is interested in being a member of this committee if appointed. Mr. Goetz also requests that the treatment provided in prison to sex offenders be effective in lowering tier levels.

No further public comment was offered. Public Comment was closed at 10:34 am.

Keith Munro took agenda item number six out of order.

Agenda Item # 6:
David Smith, Nevada Board of Parole Commissioners, presentation on AB 18 to the 2011 Legislative Session Reinstitution of Parole Provisions of SB 471.
Mr. Smith provided information and details on AB 18 submitted during the 2011 Legislative Session. Mr. Smith read the attached prepared remarks to the committee. (See, Attachment C).

Agenda Item #3:
Review and approval of the November 17, 2010 meeting minutes.
The minutes of the November 17, 2010 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none voiced. Brett Kandt made a motion to approve the minutes, Scott Shick seconded the motion; all committee members present were in favor of the motion. The motion was carried and the minutes of the November 17, 2010 meeting were approved. (See, Attachment D).

Agenda Item #4:
Presentation by Julie B. Towler, Deputy Attorney General, on AB 85 entitled "Update on Sex Offender Registration Law".
Julie Towler provided a power point presentation entitled "Update on Sex Offender Registration Law". Ms. Towler provided a written copy of the presentation to the committee. (See, Attachment E). Ms. Towler presented information on the following topics.

New Legislation:
Assembly Bill 57 was sponsored by the Attorney General's Office, passed in the last Legislative Session, and went into effect on May 18, 2011. Transient sex offenders must now report their location, and every additionally report every thirty days if their location changes. Visiting sex offenders must initially report their stay location of thirty days or less, and report again if staying longer than thirty days.

Nevada's Compliance with SORNA:
On May 10, 2011, a letter received by Governor Sandoval from the SMART office specified that Nevada has substantial implemented SORNA. Prior to this letter Nevada had been deemed substantially compliant but for the injunction in ACLU v. Masto et. al. Additionally, the 9th Circuit has scheduled oral arguments in ACLU v. Masto on December 7, 2011.

Ohio Supreme Court Case:
In *Ohio v. Williams* the Court found the imposition of SB 10 on sex offenders who committed an offense prior to the enactment of SB 10 violates Section 28, Article II of the Ohio Constitution, which is Ohio's prohibition against retroactive laws. SB 10 is Ohio's SORNA equivalent to Nevada's AB579. SB 10 went into effect on January 1, 2008. The appellant in this matter was indicted under Ohio state law in November, 2007. The appellant was sentenced according to SB10 and argued that he should be sentenced under older sex offender laws that were in effect when he committed the offense. On appeal it was argued that SB10 can not constitutionally be applied to a defendant whose offense occurred prior to July 1, 2007. The Appellate Court affirmed the decision of the Sentencing Court. Past Ohio Supreme Court decisions held that the chapter concerning sex offender laws was in fact remedial. In reviewing SB 10, and the changes to that chapter as codified in Ohio law, the Ohio Supreme Court held that the chapter containing sex offender registration laws were in fact punitive.

Two U.S. Supreme Court Cases:
US v. Juvenile Male, was decided in June, 2011. The Supreme Court found that the 9th Circuit had no authority to determine that SORNA violates the ex post facto clause when applied to juveniles adjudicated delinquent prior the enactment of SORNA. The respondent is this case was the defendant in the criminal action who admitted to sexually abusing a younger child on an Indian reservation, and was charged under the Federal Juvenile Delinquency Act. The defendant was sentenced to two years of juvenile detention, followed by juvenile suspension until his twenty first birthday. The defendant was to spend the first six months of post confinement supervision in a pre-release center. While in juvenile detention SORNA was enacted. In July, 2007 the trial court determined that the defendant failed to comply with the requirements of the pre-release program. The court revoked the juvenile suspension, imposed an additional six month term of detention, and ordered that the detention be followed by supervision until the defendant's twenty first birthday. The court also imposed a special condition of

supervision that required the defendant to register and keep current as a sex offender. The defendant appealed the special condition of registration to the 9th Circuit, and in May, 2008, while the appeal was still pending, the defendant turned twenty one and the juvenile suspension order requiring him to register as a sex offender expired. The 9th Circuit ruling, which occurred over a year after the defendant turned twenty one, stated that applying SORNA to juvenile delinquents who committed their offenses before SORNA's passing violated the ex post facto clause. The United States petitioned for a Writ of Certiorari to the U.S. Supreme Court, while the Writ was pending the U.S. Supreme Court entered a Per Curium Order certifying a preliminary question to the Montana Law to the Montana Supreme Court. Ultimately the 9th Circuit ruling was vacated and the case was remanded with instructions to dismiss the appeal to the 9th Circuit.

Ms. Towler reported that in the next term the U.S. Supreme Court will hear arguments in *Reynolds v. U.S.* In this case the issue is whether the sex offenders convicted before the enactment of SORNA has standing to challenge the validity of the Attorney General's interim rule. In this case 42 U.S.C. §16913 specified the U.S. Attorney General has the authority to specify SORNA's applicability to sex offenders convicted before SORNA's enactment or SORNA's implementation in a particular jurisdiction. The interim rule issued on February 28, 2007, specified that requirements of SORNA apply to all sex offenders, including sex offenders convicted for the offense in which registration is required, prior to the enactment of SORNA

Two 9th Circuit Cases:

U.S. v. George, which was decided in November, 2010, found that a state's failure to implement SORNA does not preclude a federal prosecution for failure to register as a sex offender in the same state; and that Congress had the power under its broad commerce clause authority to enact SORNA; and that SORNA's registration requirements do not violate the ex post facto clause of the Constitution. In this case the appellant was convicted of a federal sex crime on an Indian reservation and served the sentence for the offense. He failed to register as a sex offender in violation of SORNA; he was convicted to that offense in 2008 pursuant to a conditional guilty plea. He appealed, arguing that his conviction was invalid because Washington, which was the location of the requirement to register, did not implement SORNA. Regarding the ex post facto challenge, the court reasoned that the appellant was under a continuing obligation to register. The SORNA violation was his failure to register as a sex offender after he moved to Washington. The indictment charged the appellant with failure on or about September 27, 2007 which occurred after the statute had been enacted.

The decision in *U.S. v. Valverde* was issued approximately one month after the decision in *U.S. v. George*. The court in *U.S. v. Valverde* found that SORNA became effective retroactively to sex offenders convicted before the statutes enactment on August 1, 2008, which was thirty days following the publication of

the final SMART guidelines along with the Attorney General's response to comments pursuant to the Administrative Procedures Act (APA). In this particular case in 2002, the defendant pled guilty to numerous counts of sex crimes pursuant to California law. He was sentenced to twelve years in prison. Prior to his release he signed a form notifying him that under California Law he was required to register as a sex offender within five days of being released from prison, and if he moved to another state he was required to register with that state within ten days. The defendant was released in 2008 with instructions to report to a parole officer the next day. He failed to report and was apprehended in Missouri living with a family member, he never registered in California or Missouri. In April, 2008 the defendant was indicted for traveling interstate and foreign commerce and knowingly failed to register as a sex offender. In February, 2009 the district court dismissed the indictment on the basis that relevant SORNA provisions are not valid exercises of congressional authority to regulate interstate commerce. The district court did not rule on the defendant's retroactivity argument. This 9th Circuit decision referred to *U.S. v. George* on the commerce clause claim. As previously discussed in *Reynolds v. U.S* the Court discussed at length the interim rule making SORNA applicable to all sex offenders that was issued by the U.S. Attorney General on February 28, 2007. Ms. Towler gave some background information on the Administrative Procedure Act (APA). The APA allows an agency to promulgate valid regulations without complying with procedural requirements of notice, comment period, and notice of final rule with comments published. The exception is allowable for when good cause finds and incorporates the finding and a brief statement of reasons therefore in the rules issued. That notice and public procedure thereon are impracticable, unnecessary, or contrary to public interests. Ms. Towler informed the committee that the U.S. Attorney General relied on this exception when the interim rule was made. The U.S. Attorney General stated that notice and comment was contrary to the public interest. The 9th Circuit found that in this case, the statement with the interim rule provided no rational justification for why complying with the normal requirements of the APA would have resulted in a sufficient risk of harm to justify the issuance of the interim rule on an emergency basis, and the 9th Circuit determined this to be clear error. In this case, the 9th Circuit decision is in a minority of decisions with the 6th Circuit. The 4th Circuit, the 7th Circuit, and the 11th Circuit have all ruled that the interim regulations were in fact valid.

The last case Ms. Towler presented was in the U.S. District Court of Nevada. A decision was issued in 2009 in *U.S. v. Benevento* finding that Nevada's failure to enact a SORNA compliant registration system prior to the time of the Defendant's arrest does not preclude his prosecution for failure to register under SORNA. The Court further found that registration requirements of SORNA are not unconstitutional on the grounds challenged by the defendant, which were, due process, commerce clause, ex post facto clause, non delegation doctrine, the APA, the 10th amendment, and the right to travel. In this case, the defendant was convicted of a sex offense in California in 2003, released from prison on

parole in February, 2005, and registered as a sex offender in California. The Defendant signed a form notifying him of a lifelong obligation to know and understand the changes in the law regarding registration. After initial California registration, the defendant absconded supervision and was a fugitive between April, 2005 and his arrest in April, 2007. His indictment came later in 2007 with federal sex crimes of transportation of a minor for prostitution and failure to register as a sex offender. The defendant brought a Motion to Dismiss the charge of failure to register and challenged SORNA.

Questions by Keith Munro:
Munro:
Mr. Munro requested possible, not definitive, outcomes or answers. Mr. Munro confirmed with Ms. Towler that the U.S. Attorney General's interim rule is that SORNA is retroactive to offenses committed prior. Therefore, that it is a rule that Congress gave the authority to issue.

Response by Towler:
Ms. Towler confirmed pursuant to 42 U.S.C. §16913.

Munro:
In reference to *Reynolds v. U.S.* as to the standing to challenge the validity of the U.S. Attorney General's interim rule, Mr. Munro questioned/stated that if these people have standing then they could get to the issue of whether or not Adam Walsh is retroactive to offenses committed prior.

Response by Towler:
Ms. Towler confirmed that possibility.

Munro:
Mr. Munro stated that if they got to that issue and found that it could not apply retroactively, then Nevada would have to have a two tier system; one tier for people prior to Nevada's enactment, and one tier for those subsequent to the enactment.

Response by Towler:
Ms. Towler confirmed that this would be correct.

Munro:
Mr. Munro questioned if this was the only issue as to standing before the U.S. Supreme Court, or are they getting into the applicability of the rule.

Response by Towler:
Ms. Towler stated that to her knowledge the *Reynolds* case is the only one to be heard next term, and that was the sole issue.

Munro:
In reference to *U.S. v. Juvenile Male,* Mr. Munro stated that Ms. Towler previously stated that this case became moot. For the audience, Mr. Munro explained that there is no longer a pending controversy between the government and the individual because the Juvenile turned eighteen and was no longer subject to the juvenile rules governing sex offenders.

Response by Ms. Towler:
Ms. Towler confirmed this statement.

Munro:
With regard to the Circuit Courts, Mr. Munro questioned how many had ruled on Adam Walsh.

Response by Towler:
Ms. Towler believed that to her knowledge only five Circuit Courts have ruled on the interim rule issue. Ms. Towler will report back to the committee how many Circuit Courts have dealt with any issue regarding the Adam Walsh Act.

Munro:
Mr. Munro stated that to his memory the states in the 9th Circuit were Nevada, California, Oregon, Washington, Arizona, Hawaii, and Alaska. He questioned if Nevada is the only state that has passed a comprehensive Adam Walsh.

Response by Towler:
Ms. Towler was not sure, but will investigate and report back to the committee.

Munro:
Mr. Munro questioned if the 9th Circuit case *ACLU v. Masto et. al.* that is being heard in December is an initial case for the west.

Response by Towler:
Ms. Towler stated that this was correct as to the state provisions that have been enacted.

Munro:
In reference to *U.S. v. Benevento*, Mr. Munro questioned that pursuant to the statement "Nevada's failure to enact a SORNA compliant registration system prior to the time of Defendant's arrest. . ." if this was a federal case.

Response by Towler:
Ms. Towler confirmed that in *U.S. v. Benevento* the crimes were federal. Therefore, the rulings were based off the federal version of SORNA. However, based on that issue Ms. Towler believed that the Court was referring to the State provisions of SORNA.

Question by Susan Roske:
Ms. Roske asked it *Benevento* was a U.S. District Court case, or a 9th Circuit Case.

Response by Towler:
Benevento was a Nevada U.S. District Court case.

Agenda Item #5:
Presentation by Scott Shick on AB326. Proposed Changes Governing Juvenile Sex Offenders.
Scott Shick, representing the Nevada Association of Juvenile Justice Administrators and their consultant Susan Roske of the Las Vegas Public Defender's Office, presented their tabled bill draft AB326. (See, Attachment F).

Mr. Shick stated that an overview regarding the bill draft's proposal was to reinstate provisions that were repealed by AB579, the initial enactment of the Adam Walsh Act in Nevada. This bill draft would allow for a separate community notification scheme for juveniles which would not include public website registration. Mr. Shick stated that Nevada is operating under old statutes until the resolution of the matters currently before the 9th Circuit. The Juvenile Justice Administrators still feel that there is wisdom and merit in pushing forward with this bill in the next legislative session.

Ms. Roske explained the purpose of this bill draft was to repeal AB579 from the 2007 legislative session. Ms. Roske stated that the individuals working in the community with the juveniles felt that AB579 was harmful to the juveniles and not helpful to the community. Ms. Roske agreed with the previous presenter, Dr. Jesse Anderson, that juvenile registration opens the door for the juveniles to be classified as Tier Two and Tier Three offenders when they are actually at a low risk to re-offend, and saturates the system allowing the dangerous, high risk offenders to go under the radar. Ms. Roske stated that the registration was harmful to juveniles, exposing them to vigilante reaction to people on the sex offender website, causing the juveniles to be ostracized, to drop out of school, and ruin the juvenile's lives. Juveniles have a high rate of being rehabilitated and a low risk of recidivism. The purpose of this legislation was to formally re-in act those provisions of the NRS that were repealed by AB579 that apply to juvenile sex offenders. With the federal injunction, and with Judge Voy's ruling which is on appeal, the repealed provisions are in effect at this time. The individuals who work with the juveniles feel that the old laws work. They currently use an individual assessment to determine tier level, there is a separate way to apply community notification laws to high risk juveniles, and there is an ability to remove the children from community notification if they are determined to be rehabilitated. There is also currently a provision that if a juvenile is determined to be a high risk to re-offend that at the age of twenty one the Juvenile Court can deem them to be an adult sex offender for the purposes of registration and

community notification. These provisions protect not only the public, but the juvenile also. The tier level determination under Adam Walsh by offense instead of individual assessment of risk does not work for juveniles. AB326 re-in acts the repealed provisions and adds some narrowly drafted provisions to come into compliance with Adam Walsh. Ms. Roske stated that the juvenile provisions included in AB579 we very broad and went beyond what was required by Adam Walsh. The provisions in AB326 called violent or repetitive sex offender is narrowly drafted to include those juveniles that commit either a violent sexual assault or have committed a subsequent sexual assault after being adjudicated on a specified list of offenses. AB326 was drafted by a committee that included prosecutors, ACLU, public defenders, and individuals that work with juvenile sex offenders. The committee felt very strongly that this should not be retroactive. Additionally, that the statute require notice be given the juvenile that the State would be seeking to adjudicate under this statute, and that after three years the juvenile court would have the authority to remove the juvenile from the requirement to register after proving to the court the juvenile had been rehabilitated.

Question by Brett Kandt:
For clarification, Mr. Kandt questioned if the proposal that she just detailed, was included in AB326.

Response by Susan Roske:
Ms. Roske deferred the question to Scott Shick.

Response by Scott Shick:
Mr. Shick confirmed that proposal was included in AB326, which was tabled in the last legislative session.

Questions by Keith Munro:
Mr. Munro asked who introduced AB326, if it was assigned to a committee, and with regard to the statement that bill was tabled, Mr. Munro asked if it had a hearing, or was it not heard.

Response by Scott Shick:
Mr. Shick stated the Assemblyman Hambrick from Las Vegas introduced the bill, that it was not assigned to a committee, and the bill did not have a hearing.

Question by Susan Roske to Mr. Shick:
Ms. Roske asked for background information on why the bill was tabled.

Response by Scott Shick:
Mr. Shick stated that it was not prioritized and with the pending hearings they had some time to continue discussion, work on the bill and push it forward in the next legislative session.

Statement/Question by Keith Munro:
Mr. Munro stated that we should not speculate on Mr. Hambrick's reasons. He is the elected representative, and it is his decision. Mr. Munro also asked what effect would that bill have had on our certification from the Department of Justice regarding SORNA compliance.

Response by Scott Shick:
Mr. Shick responded that he does not know.

Statement/Question by Keith Munro:
Mr. Munro stated that a stage has been reached with Nevada law that first Nevada was compliant except for the injunction, and now the Department of Justice has come forward and said Nevada is compliant regardless of the injunction. Mr. Munro added that now that Nevada is compliant and just waiting for the 9th Circuit to rule, Nevada has reached a benchmark, and he thinks this bill is raising the issue of whether there is any "wiggle room" within that compliance standard.

Response by Scott Shick:
Mr. Shick responded that he believed that was correct, and hoped that a dialogue can be continued around AB326. Mr. Shick stated that the Juvenile Justice Administrators continues to support the provisions laid out in AB326; and if the 9th circuit case is overturned and Nevada is left with AG579 feels that they would be remiss in not pursuing this bill draft.

Question by Keith Munro:
Mr. Munro questioned both Mr. Shick and Ms. Roske, now that Nevada has a benchmark of compliance, questioned their opinion regarding the ethics in penning a letter to the Department of Justice stating that Nevada does not want to interfere with their compliance, would like to put forth some changes to the next legislature, would this effect Nevada's compliance status.

Response by Scott Shick:
Mr. Shick stated that he believed this was a great suggestion. Mr. Shick also stated that the Juvenile Justice Administrators have always supported the Adam Walsh Act; it was only the juvenile portions with which they had exception. They do not wish to interfere with the remainder of the Adam Walsh Act.

Response by Susan Roske:
Ms. Roske agreed with Mr. Shick. She also stated that there have been some changes made by SORNA regarding how SORNA applies to juveniles. She stated that she believed there was a ruling from the SMART office last year that states are not required to put juveniles on their website. Since then there may have been additional changes as they apply to juveniles. She would like to

suggest considering a redraft to allow the juvenile judge the discretion whether or not to require a juvenile to be on the website.

Question by Keith Munro:
Mr. Munro asked Ms. Roske how that ruling would have affected AB326 and whether portions would have been unnecessary.

Response by Susan Roske:
Ms. Roske stated that she feels the SMART office would require the state to have a means of requiring certain juvenile sex offenders to register in the adult system, but given the discretion regarding whether juveniles should be subject to the public website registry.

Statement by Keith Munro:
Mr. Munro stated for confirmation that AB579 made it compulsory for juveniles to be on the public website.

Response by Susan Roske:
Ms. Roske responded that statement was correct.

Statement by Keith Munro:
Mr. Munro stated that it is his understanding that prior to the 2007 Legislative session the federal government said juveniles had to register and be on the public website. Nevada passed the law, AB579, stating juveniles had to register and be on the public website. Nevada was subsequently enjoined, and during the pendency of that injunction, the federal government came forward and stated that some juveniles do not have to be on the website.

Response by Susan Roske:
Ms. Roske stated tha it is her understanding that the States can have the discretion of whether or not to put juveniles on the website.

Question by Keith Munro:
Mr. Munro asked if the 9th Circuit case that is going to be argued in December upholds AB579, then the issue of whether Nevada wants to require all juveniles to be on the website would be ripe for consideration by this committee.

Response by Susan Roske:
Ms. Roske agreed.

Question by Keith Munro:
Mr. Munro questioned if Mr. Shick and Ms. Roske if they would agree to collaborate on penning a letter to the Department of Justice.

Response by Scott Shick and Susan Roske:

Both Mr. Shick and Ms. Roske agreed to draft a letter to the Department of Justice for review.

Statement by Scott Shick:
Mr. Shick wanted to clarify that even with regard to juveniles; there is a law enforcement working knowledge of the residence, schools, and location parameters of all juvenile sex offenders undergoing treatment is in our regional system.

Question by Brett Kandt:
Mr. Kandt asked that we have an item for possible action on the agenda for the next meeting regarding the request of an Advisory Opinion from the SMART office specifically on the issue that Nevada be permitted under current federal law to enact provisions such as those set forth in AB326 or in the proposal that was just detailed regarding juveniles.

Response by Keith Munro:
Mr. Munro agreed to place this on the next meeting agenda.

Statement by Scott Shick:
Mr. Shick added an additional fact that the Juvenile Justice Administrators did consult with sex offender psychological experts when AB326 was drafted.

Question by Donna Coleman:
Ms. Colman asked that since Nevada is currently is in compliance and Nevada is currently operating prior to AB579, what part of AB326 would be different from the current procedure.

Discussion by Susan Roske, Keith Munro and Donna Coleman:
Brief discussion was held regarding the differences between current procedure and the bill draft, and the issue of compliance. Mr. Munro clarified Nevada's compliance. Mr. Munro stated that AB579 law is deemed to be compliant. Mr. Munro went on to state that the AB579 laws are not in effect because Nevada has had one branch of the federal government state we needed to pass these laws, Nevada passed them, and a second branch of the confirm that AB579 was compliant. Then a third branch (judicial) of the federal government say "no", disregard what the other two branches said, you are unconstitutional with regard to the US Constitution. Pending what happens in 9th Circuit Nevada will find out what is accurate.

Agenda Item #7:
Public Comment:
Keith Munro opened the meeting up to Public Comment.

Public Comment in Las Vegas:
Florence Jones:

Ms. Jones stated that her comments are with regard to sex offender paroles. Ms. Jones has had two sex offenders paroled directly to her home, the last being a year ago, so there may have been a correction to this situation. They were both released with a cursory meeting and not an actual meeting with their parole officer and without any specific curfew or rules. They did not find out until almost two weeks later that they had a seven pm curfew. Ms. Jones suggests that until the parolee can meet with their parole officer and received specific rules that they are released with a general curfew and rule base. She assumes that this is a P&P issues, but felt this committee may be of assistance.

Public Comment in Carson City:
Patrick Davis:
Mr. Davis stated that Julie Towler did not refer to *Smith v. Doe* in Alaska. Mr. Davis feels that this committee needs to be concerned that Adam Walsh is a new enactment and because of the scope and issues that law is going to be challenged many times. If this committee is only concerned with bringing Nevada into compliance with Adam Walsh, that is one thing. However, if the State is concerned with making the registration and notification laws harsher in relation to ex post facto purposes, Nevada is going to have to be concerned with how punitive these laws are made and the affirmative restraints and disabilities this places on them. Mr. Davis is aware of a number of people and organizations looking to challenge the registration laws because of the affirmative restraints and disabilities it places on an offender and the myriad of issues involved in registering. There is not a comprehensive registration scheme; there are a number of registrations for example drivers' license registration, yearly registrations etc, all of these registration issues effectively enforce felony penalties for not registering properly. Mr. Davis stated that Nevada should look at making registration more coherent and consider tying all these laws together, and giving and implementing an interconnected system that gives offender a single registration requirement. Mr. Davis informed the committee that they will need to be more aware of current and new litigation nationwide regarding the seriousness of Adam Walsh and its restraints. Mr. Davis continued and stated that any attempt to make the requirements too harsh will make it a punitive scheme which could be overturned.

Mr. Munro called for additional public comment, none was given.
The meeting was adjourned by Keith Munro at 11:32 am.

Minutes respectfully submitted by Jan Riherd.

MEETING MINUTES

Organization: Advisory Committee to Study Laws Concerning Sex Offender Registration

Date: December 22, 2011

Meeting Location: Legislative Counsel Bureau
401 S. Carson Street
Carson City, Nevada 89701
Conference Room # 2134

Video Teleconferenced: Legislative Counsel Bureau
555 E. Washington Avenue
Las Vegas, Nevada 89101
Conference Room # 4401

Committee Attendees:
Keith Munro, Brett Kandt, Senator Ruben Kihuen, Assemblyman Richard Carrillo, Curtiss Kull, Scott Shick, Elizabeth Neighbors, Committee Legal Counsel Julie Towler, and Secretary Jan Riherd.

Members of the Public Who Signed In As Present:
Edie Cartwright, Laurie Johnson, Dr. Jesse Anderson, Wesley Goetz, Mike Wright, Frank Cervantes, Sally Ramm, Julie Butler, Diane McCord, Patrick Davis, Nancy M. Leake, Anthony Leake in Carson City and Laurie Johnson in Las Vegas.

Agenda Item #1:
Call to Order and Roll Call:
The meeting was called to order by Keith Munro, Assistant Attorney General and Committee Chair at 1:05 am. Mr. Munro asked for roll call, the above members of the committee were present.

Agenda Item #2:
Public Comment:
Mr. Munro called for public comment. The following members of the public came forward and spoke:

No public comment from Las Vegas.

Public Comment in Carson City:
Wesley Goetz:
Mr. Goetz stated that he was at the previous meeting on October 11, 2011 and at that meeting asked if Nevada's tier levels were scientifically validated and cross validated. Mr. Goetz said he had been conducting research on this subject. He procured an Introduction of a letter from a June 21, 1996 meeting; however Mr.

Goetz is having difficulty locating meeting minutes, or information regarding the 1996 creation of the Risk Assessment Scale for Sex Offenders to determine tier levels. Mr. Goetz inquired if this committee was doing any studies on this subject. It is Mr. Goetz's understanding that the current Risk Assessment Scale was developed by Nevada Parole and Probation with input from law enforcement and correctional personnel, but he does not believe it was scientifically done. Mr. Goetz feels it is important to procure the research to see if this Assessment Scale was scientifically done. Additionally, Mr. Goetz stated that Sex Offenders receive treatment in prison, but would like to know if that treatment is helpful, because it seems to him that the tier level remains the same when the offender is released from prison. If an offender is in prison receiving treatment for example 10 to 15 years it should lower risk assessment. Mr. Goetz stated that in the current Risk Assessment Scale treatment only lowers the risk assessment a few points. However, in the determination of the degree of contact of the offender's crime, three points plus a multiplication of five can be added to the risk assessment. It is Mr. Goetz's opinion that if an offender is receiving effective treatment in prison by a psychologist it should lower the offender's risk assessment by the appropriate number of points and have the ability of multiplication of points by five instead of the current multiplication of points by one.

Agenda Item #3
Approve October 11, 2011 Meeting Minutes:
The minutes of the October 11, 2011 meeting were reviewed; Keith Munro called for any suggested additions or corrections, none voiced. Scott Shick made a motion to approve the minutes, Curtis Kull seconded the motion; all committee members present were in favor of the motion. The motion was carried and the minutes of the October 11, 2011 meeting were approved. (See, Attachment A).

Agenda Item #4
Audio Recording of December 7, 2011 9th Circuit Oral Argument in ACLU v. Masto et al.:
Mr. Munro stated that on December 7, 2011 there was an Argument before the United States Court of Appeals in San Francisco. One of the questions effecting this study group has been the pending case ACLU v. Masto. Several years ago, the United States District Court Judge Mahan issued an injunction, which Mr. Munro explained was a stay, of Nevada's Adam Walsh sex offender laws. Mr. Munro estimated that this case has been on appeal for approximately three years. The 9th Circuit has had an Oral Argument in this matter and the outcome of this case will effect what this group needs to study, and any changes or improvements. Mr. Munro felt that this oral argument needed to be set forth for the record for this committee because next September we will be required to put information together for the Legislature so they can utilize this information in consideration during the upcoming Legislative session. Mr. Munro stated he wanted to play this oral argument and give the committee members and the members of the audience an indication of the difficulty of this issue. Julie Towler,

Legal Counsel for the Committee, was present at the oral argument and played a downloaded recording of the December 7, 2011 9th Circuit Oral Argument. An audio CD of this recording is attached. (See Attachment B). The Oral Argument can also be found online on the 9th Circuit website at: http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000008460

At the conclusion of the playing of this recording Mr. Munro stated that there are a lot of strong questions in this matter, and that there were well prepared litigants, Binu Palal Deputy representing the Attorney General's Office and Maggie McLetchie representing the ACLU. It is also evident that there was a lot of thought from the Judges into this issue and they are trying to come up with the proper resolution.

Mr. Munro asked if anyone wanted to comment on this issue. The following member came forward:

Scott Shick:
When he researched the Nevada Legislature hearings and sessions regarding AB579, their concern was the lack of Juvenile Justice representation or testimony regarding the impact on juvenile law and juvenile sentencing in the Courts and he felt this was reflected in the recording played today.

Agenda Item #5
Presentation of Draft Letter to Linda Baldwin, Director of SMART by Julie Towler:
Mr. Munro stated that Nevada has been certified compliant by the Federal Government regarding the Adam Walsh Act, and has a letter from the Department of Justice to Governor Sandoval stating that Nevada has substantially complied with federal requirements. Now that Nevada has complied with federal requirements, and has a Court decision coming soon that may change the status of Nevada's laws, if Nevada wanted to change some of its law and maintain its certification and retain Byrne Grant Funding. Mr. Munro stated that the committee wanted to research how Nevada would go about this process. The federal guidelines provide no mechanism for this process. Mr. Munro stated he thought there was probably no mechanism in place because very few states have been deemed compliant, and that Nevada is probably the first state to study these issues.

Mr. Munro continued by stating at the last meeting He asked Susan Roske of the Clark County Public Defender's office if she would prepare a draft letter to Linda Baldwin, Director of SMART regarding this process/issue. Ms. Roske did prepare a draft letter and it was an excellent start and used as a framework by committee Legal Counsel Julie Towler to add to this draft letter.

Ms. Towler presented the draft letter to the committee. (See Attachment C). Ms. Towler stated that the letter addresses the most relevant facts. It discusses the

substantial implementation letter, this committee, and the supplemental guidelines that were issued by the SMART office in January 2011. This letter quotes a passage from those guidelines basically stating that there appears to be a discretionary exemption from public website disclosure of sex offenders required to register on the basis of juvenile delinquency adjudication. The letter also discusses AB579 and what is currently required. Additionally, that this committee has not taken a position to accept or reject the premises, but are requesting guidance from the SMART office to determine if there is a process in which the law could be adjusted in preparation for the 2013 Nevada Legislative Session. Ms. Towler called for any questions.

Question by Keith Munro:
Mr. Munro stated that in an effort for clarity, the Federal SMART Office, Department of Justice, has said there is an exception for juveniles regarding community notification.

Answer by Julie Towler:
Ms. Towler responded stating that guidelines specify only public website notification. Community notification encompasses a variety of ways that a community is notified. It is Ms. Towler's understanding that website notification is one part of community notification.

Question by Keith Munro:
Mr. Munro stated that the laws Nevada passed in 2007 do not provide for that type of flexibility.

Answer by Julie Towler:
Mr. Towler confirmed that is her understanding of the way AB579 is written.

Question by Keith Munro:
Mr. Munro stated that if the draft letter to Ms. Baldwin was sent, Nevada would be attempting to determine if we could make that change in Nevada law to allow for a possible juvenile exemption and public website notification and still maintain certification.

Answer by Julie Towler:
Mr. Towler confirmed by stating "Yes".

Statement by Brett Kandt:
Mr. Kandt stated he was the one who requested that the letter be drafted and thanked Ms. Roske and Ms. Towler for their efforts. Mr. Kandt moved that this committee accept this draft letter and submit this letter to Ms. Baldwin.

Statement by Keith Munro:
Mr. Munro stated that he wanted to explore any additional questions before taking a vote on that motion. Mr. Munro asked, without expectation of a firm

position, of Senator Kihuen and Assemblyman Carrillo if this is something the Legislature could potentially address. It is his understanding that the Legislature considers many issues including money, grant funding, public safety and would this possibly assist the Legislature.

Answer by Senator Kihuen:
Senator Kihuen agreed and it was his personal opinion that this would be helpful.

Answer by Assemblyman Carrillo:
Assemblyman Carrillo agreed with Senator Kihuen that this is something we need to move forward on and attempt to get this cleared up.

Statement by Keith Munro:
Mr. Munro agreed and stated that this was just a letter asking for the process.

Statement by Scott Shick:
Mr. Shick stated that he believes that this committee should move forward with the letter, that the Juvenile Justice Administrators are looking for an avenue to have discretion regarding juveniles on the public website, and believes that this is a step in the right direction.

Mr. Munro stated that Mr. Kandt's motion was on the table and called for a second to that motion. Scott Shick seconded the motion. Mr. Munro asked that Mr. Kandt restate the motion prior to the vote. Mr. Kandt re-stated that he moves that this committee approve the letter that has been drafted by Ms. Towler and requests that the letter be sent by the Attorney General to the SMART Office. Mr. Kandt continued by stating that he feels that it is necessary to take this action now and not defer it, that he feels the SMART office might respond by stating that Nevada submit proposed legislative changes and they will inform us if we remain substantially compliant. If the SMART office does respond in this manner, we need to have sufficient time given the deadlines for the submission of bill draft requests to the Legislature.

Statement by Keith Munro:
Mr. Munro stated that if the SMART office does not respond that at least we know the landscape, and our members of the Legislature know that they are taking a risk if any changes are made. However, if we send this letter and receive a response that there could be a mechanism that will allow our public policy makers an opportunity to know there is an avenue for continuing certification before they make any changes.

Mr. Munro having received the motion and the second to that motion called for a vote. The motion was carried unanimously.

Agenda Item #6
Public Comment:

Public Comment in Carson City:
Patrick Davis
Mr. Davis introduced himself as a member of Nevadans for Civil Liberties, and asked the committee to review the registration laws in different states. His organization is bringing these articles to the committee's attention in relation to other States that are having constitutional issues with their registration laws. Mr. Davis stated that that AB579 actually started with SB192, the registration laws in 1997. Mr. Davis went on to state that a lot of issues are constitutionality issues as in Smith v. Doe. If you go back to SB192 in 1997 Mr. Davis feels that it is clear that the registration laws that are in effect at this time, not counting AB579, violate the standards set forth in Smith v. Doe. Mr. Davis informed the committee that there is a member of their organization that will be filing a lawsuit in State Court challenging the validity of SB192 and NRS Chapter 179 regarding registration laws. Mr. Davis stated that a number of other states have had issues with the laws, notably Ohio, who has had to spend millions of dollars revamping their system and dealing with lawsuits regarding the fallout of Adam Walsh issues. Mr. Davis stated that the Legislature in Kentucky overhauled a lot of their sex offender laws based scientific fact and empirical studies, which in his opinion Nevada is ignoring. Mr. Davis went on to state that in 2005 it was mandated that Nevada keep statistics, and two years later that law was repealed. Mr. Davis stated that Nevada does not want to know the true statistics. Therefore, Nevada is left with using statistics from other states, which his organization is supplying to this committee and the Legislature. Mr. Davis stated that these facts/statistics represent the true rate of recidivism, and that the registration laws were imposed for public safety. If there is no public safety reason for these laws to be in effect, because the statistics used to implement that law was wrong, then there is a constitutional challenge to overthrow that law. In most state's that deal with recidivism rates for public safety their organization is discovering that recidivism is between point one percent and five percent, which makes sex offenders the lowest rate of recidivism of any crime in the country. Mr. Davis stated that all the dollars for recidivism are being spent for sex offenders and against no other types of criminals. Mr. Davis stated that in listening to the 9th Circuit argument there are many issues and it is a very complex situation. The committee needs to go back to 1997 in their studies. Mr. Davis presented a number of reports and statistics to the committee for their consideration. (See Attachment D).

Mr. Davis asked the committee to allow for public comment, not only at the beginning of the meeting and the end of the meeting, but also during each individual agenda item. Mr. Davis also stated that he had difficulty locating the minutes from the previous meeting online. He was finally able to procure a copy a few days prior to this meeting and requested that the minutes be available on line within thirty days following the meeting.

Response by Keith Munro:
Mr. Munro stated that this committee is required to meet twice per year. Additionally, Mr. Munro requested that the clerk make sure there is an item placed on the on the next meeting's Agenda that the public may come forward and make any changes to the official minutes of today's meeting. The committee wants the minutes to accurately reflect the meeting, and if there are any concerns to the accuracy of the minutes to please come forward, that this committee strives to make these minutes accurate.

Response by Patrick Davis:
Mr. Davis stated that it was his opinion that the minutes for the previous meeting were accurate and comprehensive. Mr. Davis stated that he appreciated that the statements/points made by each speaker were not edited.

Response by Keith Munro:
Mr. Munro stated that there were two items on the Agenda, and if Mr. Davis wanted to comment on either of these items, he could do so at this time.

Response by Patrick Davis:
Mr. Davis appreciated being given extra time, that he prepared his comments to fit into the five minute time limit. Mr. Davis stated that there are a lot of issues the 9th Circuit brought up, which creates a lot of issues for this committee. It is apparent to Mr. Davis that the 9th Circuit ruling could go either way, and until that ruling this committee is limited. Mr. Davis stated that looking at the Smith v. Doe challenges he feels that it is ex post facto and there are many ways those rulings can be taken for double jeopardy, and that there are other ways to be challenged. As previously stated by Mr. Davis it will be challenged in State Court. Mr. Davis stated that in numerous other rulings the 9th Circuit upheld the challenge in Smith v. Doe, it was the Supreme Court that overturned those challenges. It is Mr. Davis' assumption that the 9th Circuit will rule in favor of the ACLU. In Smith v. Doe, Doe took the case back to State Court and won on ex post facto challenges as to State law.

Public Comment from Carson City
Nancy Leake:
Ms. Leake introduced herself as a member of Nevadans for Civil Liberties and an advocate for offender rights. She is asking the committee to review the recidivism statistics. Ms. Leake read verbatim a portion of a December 22, 2011letter and attachments from Patrick Davis to the Advisory Committee to Study Laws Concerning Sex Offender Registration. (See Attachment E). Ms. Leake stated that each State's law is different, and she believes that the State should look at each person individually, that people change.

Public Comment from Las Vegas
Laurie Johnson:
Ms. Johnson introduced herself as a sexual abuse victim and the mother of a juvenile adjudicated as an adult sex offender. Ms. Johnson stated that in her experiences and knowledge that she has gained first hand as a victim and at the offender level she would like the safest outcome for all. She would like to send the northern committee members a published version of "A Reasoned Approach, Reshaping Sex Offender Policy to Prevent Child Sexual Abuse", a 54 page policy paper by Alisa Klein. Ms. Johnson did not have a copy of the document available at the meeting, but would to submit to the committee at a later date. Ms. Johnson informed the committee that she has previously submitted this document to the Legislative Commission and the Parole Commission. Ms. Johnson requested an extension to fully present this Policy as to enable the author of this document to make the presentation to the committee. Ms. Johnson will provide the committee with scheduling information in an effort to coordinate the author's appearance at a future meeting.

Ms. Johnson expressed her personal opinion regarding the excessive expense of compliance with the Adam Walsh Act. It is her understanding that four states, Arizona, California, Colorado, and Texas have chosen not to comply because of cost issues. The policy presented references Colorado and Texas as states that can be used as examples in forming SOMB's, which are Sex Offender Management Boards. Ms. Johnson stated that her focus, whether compliance with the Adam Walsh Act is met or not, is to zero in on the truly violent dangerous sex offenders using proper assessment instruments. Ms. Johnson stated that we as a state are relying on the behavioral model, which is solely based on the conviction crime, to determine the risk levels of the sex offenders. Ms. Johnson feels that in reading this policy the proven effectiveness of the state implementing Actuarial Risk Assessment Instruments would benefit Nevada. These instruments allow the state to focus on who are the dangerous sex offenders using evidence based policy. Ms. Johnson ran out of time and was unable to complete her presentation. Ms. Johnson's complete presentation was presented in written form to the committee. (See Attachment E)

Response by Keith Munro:
Mr. Munro stated that it is the committee's intent to ask Alisa Klein speak at a future meeting.

Additional Public Comment from Carson City:
Anthony Leake:
Mr. Leake introduced himself as a member of Nevadans for Civil Liberties and an advocate for offender rights. He is asking the committee to review the recidivism statistics. Mr. Leake read verbatim a portion of a December 22, 2011 letter and attachments from Patrick Davis to the Advisory Committee to Study Laws Concerning Sex Offender Registration. (See Attachment G).

Warner Held:
Mr. Held continued to read verbatim a portion of a December 22, 2011 letter and attachments from Patrick Davis to the Advisory committee to Study Laws Concerning Sex Offender Registration. (See Attachment H).

Dr. Jesse Anderson, PhD:
Dr. Anderson stated with regard to recidivism, it is the people at Penn State University that have an issue. Once a person has committed a sexual offence and gone through therapy the recidivism rate is very low. In reference to Ms. Laurie Johnson, a public comment speaker from Las Vegas, and her statement that she was a victim and that her son was a juvenile adjudicated as an adult, Dr. Anderson wanted to submit for the record the following information. With regards to a juvenile and website notification, if the individual is adjudicated as an adult, that notification should remain. Juveniles should not be on the website. Dr. Anderson stated that the reason being because once a juvenile turns 18, and all the background checks required for employment, that publicly available online information would cause problems with the juvenile being able to obtain employment and learn lessons such as punctuality and responsibility. If the implementation of the draft letter and recommendations regarding juveniles to the legislature comes to fruition, then Dr. Anderson believes that there needs to be some leeway to the Courts, the law enforcement personnel, and the Juvenile Justice Administrators, so they can do what is best for each individual. Dr. Anderson does not believe that categorizing all juveniles into one lump, or doing a tier assessment on juveniles is adequate. Dr. Anderson does not want the evaluation of the juveniles to be ambiguous. Ambiguity hurts, specifics are easier to deal with, and then we can evaluate the juveniles one by one.

Wesley Goetz:
Mr. Goetz stated that if Nevada accepts the Adam Walsh Act, it will cause Nevada sex offenders to become more unstable in their ability to find housing and employment making more and more sex offenders penniless and homeless. Mr. Goetz stated that he heard a statistic on the radio that 14,000 children in Nevada were homeless. When an individual is penniless and homeless he turns to crime just to eat. Therefore, he believes that implementing the Adam Walsh Act will cause these problems to Nevada sex offenders. Mr. Goetz stated that he is a sex offender having problems locating employment, and if not for the aid of his family he would be homeless. Mr. Goetz does not believe it is right for Nevada to make sex offenders homeless when there are so many other people already homeless. It would be possible that the sex offenders will revert to crime, maybe not another sex offense, but an offense such as theft, causing increased prison costs. This could result in Nevada becoming penniless. In reference to the policy paper "A Reasoned Approach, Reshaping Sex Offender Policy to Prevent Child Sexual Abuse" that Laurie Johnson submitted, it refers to sex offenders as being monsters, pedophiles, child molesters, etc. which puts a label on sex offenders. This label would make sex offenders penniless and homeless because employers, not wanting their businesses to suffer a loss of revenue

because they hired a sex offender, would not hire the sex offenders. Mr. Goetz believes a better use of Nevada's money would be spent on more treatment for sex offenders, make community support networks for sex offenders, enabling the sex offenders to locate housing and employment. The treatment should enable the sex offender to have a normal healthy life. If the sex offender has a normal healthy life, he will make friends and have a support system. It is Mr. Goetz's opinion that Nevada's Parole and Probation Division want sex offenders to have employment that is "behind the scenes" such as dishwashers and mine workers, not working with the public. It is Mr. Goetz's opinion that when a sex offender is working behind the scenes, it makes the offender feel they are a bad person and they come straight home from work becoming hermits. If a person is a hermit they are anti-social. If a person is anti-social, an offender will be reverted back to crime because there is no one to assist the offender in their emotional problems. It is also Mr. Goetz's opinion that implementing the Adam Walsh Act would not be the right avenue for Nevada. Mr. Goetz referred to Henry Reid's statement that Nevada should be the leaders, and not be left behind. Mr. Goetz stated that if Nevada wants to be a leader, then Nevada should invent ways for the sex offender to get treatment and go back to a normal healthy life with a tier level one; or no tier level at all, without a duty to warn. With the duty to warn, finding employment is difficult. This is information Mr. Goetz would like the committee to consider. Mr. Goetz is unclear as to what the committee is going to do. Mr. Goetz stated that the public was giving more information to the committee than the committee was giving to the public. Mr. Goetz ended his public comment by asking the committee if anyone had read the policy paper provided by Laurie Johnson.

Response by Keith Munro:
Mr. Munro stated that he had read "A Reasoned Approach, Reshaping Sex Offender Policy to Prevent Child Sexual Abuse", a 54 page policy paper written by Alisa Klein.

Mr. Munro called for additional public comment, none was given. The meeting was adjourned by Keith Munro at 2:50 pm.

Minutes respectfully submitted by Jan Riherd.