

**MINUTES OF THE
ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE'S
SUBCOMMITTEE TO REVIEW ARRESTEE DNA**

August 25, 2014

The meeting of the Advisory Commission on the Administration of Justice's Subcommittee to Review Arrestee DNA was called to order by Chair Yeager at 9:05 a.m. at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada and via videoconference at the Legislative Building, Room 3137, Carson City, Nevada. The Agenda is included as [Exhibit A](#) and the Attendance Roster is included as [Exhibit B](#). All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Rachel Anderson, Professor of Law, UNLV
Tracy Birch, Executive Director, Criminalistics Bureau, Las Vegas Metropolitan Police Department
Bertral Washington, Las Vegas Urban League
Steven Yeager, Deputy Public Defender, Clark County, Chair

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Steve Gresko, Senior Criminalist/CODIS Administrator, Washoe County Sheriff's Office
Renee Romero, Director, Forensics Lab, Washoe County Sheriff's Office
Vanessa Spinazola, Legislative and Advocacy Director, ACLU of Nevada

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Julie Samuels, Urban Institute of Justice Policy Center
Julie Butler, Division Administrator, Central Repository of Nevada Records of Criminal History, Department of Public Safety
Erica Souza, Supervisor, Central Repository of Nevada Records of Criminal History, Department of Public Safety
Julie Marschner, Las Vegas Metropolitan Police Department
Kellie Gauthier, Las Vegas Metropolitan Police Department

Chair Yeager opened the meeting at 9:05 a.m. He requested the Secretary call the roll.

Ms. Hartzler called the roll and all the members were present.

Chair Yeager opened Agenda Item III, public comment. There was no public comment from the floors. Chair Yeager said the committee members received an email from Mercedes Maharis with comments to be noted for the public comment portion of the meeting, [Exhibit C](#). He said this was the second and final meeting of the Subcommittee.

Chair Yeager opened discussion on Agenda Item V, approval of the minutes of the last meeting. He noted Ms. Birch submitted corrections to the minutes, [Exhibit D](#). He asked for a motion to approve the minutes with the corrections from Ms. Birch.

Ms. Romero said on page 6, paragraphs 3 and 15, the word STACKS should be spelled STACS.

Mr. Washington moved to approve the minutes as corrected.

Ms. Romero seconded the motion,

The motion passed.

Chair Yeager opened discussion on Agenda Item VI, a presentation on collecting DNA from arrestees.

Julie Samuels, Urban Institute of Justice Policy Center, said in June of 2013 they published their report about the policies, practices, and implications of collecting DNA from arrestee across the country, [Exhibit E](#). She said their report was funded by the National Institute of Justice which was a part of the U.S. Department of Justice. There were 29 states and the federal government authorizing the collection of DNA from some classes of arrestees. She said the thinking was that more profiles could lead to more hits and more crimes solved.

They looked at laws across the states. She said laws varied considerably among the states. She said the timing for collection was also very different among the states. She said the other big finding was with respect to expungement. Nevada was consistent with the majority of states that put the burden of initiating a removal or expungement on the arrestee and not on the State. She said seven states provided automatic expungement. Most profiles loaded into the system would stay in the system if automatic expungement was not adopted.

Ms. Samuels said labs often did a lot of the work up front, coordinated training and insured sample quality. She said they noticed some labs needed to change their process due to the change in volumes. She said most states received some form of funding to support implementation. They noted there was ongoing administrative work for the labs, [Exhibit E](#). She said overall, the labs responded with creative and innovative ways.

Ms. Samuels included the final technical report concerning the collection of DNA at arrests in [Exhibit F](#). She said based on their study there were several questions concerning the law in Nevada. One question concerned communication working among the agencies where they needed to learn about judicial determination of probable cause before analysis; how the system worked for checking for duplicates; and the process to see if all the required samples were collected. She asked if there were ways to track the impact of the new laws.

Ms. Spinazola had a question about the seven states that had automatic expungement policies. She said they had heard a lot about cost barriers.

Ms. Samuels said their impression was that all states were aware it seemed to be a cost intensive process to get it started. She said there was an up-front barrier. Automatic expungement required intense tracking of the cases to know when they should be expunged. She said the tracking infrastructure was expensive.

Ms. Spinazola asked about the way to address the problem of the racial disproportionality.

Ms. Samuels said they did not collect demographic data. She said she did not know how much data was available on the matter and they did not find any good data to address the question. She said they did not get to that level of specificity. She said they were trying to understand if there was training in terms of providing information to the collection agencies about the new law and how to implement it.

Ms. Anderson asked if they had information about biological samples collected through voluntary collections and whether there were variations in expungement rules.

Ms. Samuels said they did not look at that, they were focused on the arrestee laws and how it was implemented in the state.

Ms. Spinazola asked if the *Maryland v. King*, 133 S. Ct. 1958 (2013) decision leaves open any questions about the constitutionality of existing statutes or proposed statutes.

Ms. Samuels said they put their report out about the same time as *Maryland v. King* so there was an entire section concerning the uncertainty about the laws. She said there had been a pending case, *Haskell v. Harris* No. 10-15152 in the United States Court of Appeals for the Ninth Circuit, that upheld the California case even though the California law was much broader than the Maryland law. She said Vermont overturned its state law, but it was based on that state's constitution. She said many more states were likely to adopt the arrestee laws.

Chair Yeager asked about how some of the states flagged the samples as a convicted person's samples once they were convicted. He asked how the states viewed the difference between arrestee samples and convicted samples.

Ms. Samuels said they only found a couple of places where they went in and reclassified the profile. She said it may go back to before the FBI accepted the samples. She said they needed to keep track of something before they could upload it into the Combined DNA Index System (CODIS).

Chair Yeager said her report was detailed and helpful.

Ms. Anderson asked about the effective DNA laws on public safety. She said in addition to the data on hits, did she also have information on exonerations resulting from hits from arrestee data.

Ms. Samuels said they were not able to develop any information responsive to that.

Chair Yeager said the effectiveness of this kind of program depended on how quickly the samples were entered in the data bases. He asked if there was an average time between taking the sample versus entering it into the searchable data base.

Ms. Samuels said she did not know the lag time. She thought the key question was whether there was a backlog. She said in some places the arrestee sample went to the bottom of the line although it was more time sensitive. She said in some places the labs were dependent on some of the federal funding for processing data. She said on average it took about 90 days from arrest to conviction.

Mr. Washington asked if there was a state with a very good program that worked well.

Ms. Samuels said a number of states were doing very well. She said Nevada was ahead in terms of trying to coordinate the many different pieces.

Chair Yeager asked about the timing of the collection in Nevada and when it was actually processed.

Ms. Birch said they had collected 2,263 samples during the first month of collecting them. She said they received 2,074 and had 421 profiles in CODIS. She said they had 908 samples ready for DNA or were being analyzed now.

Ms. Anderson asked if there was demographics data.

Ms. Birch said Ms. Marschner provided her with some data concerning race. She said in southern Nevada the arrestee percentage was 3.8 percent Asian, 33.6 percent African American, 17.9 percent Hispanic, .4 percent Native American, .2 percent "Other", and 43.7 percent Caucasian.

Ms. Anderson asked if the majority were from the Las Vegas Valley area.

Ms. Birch replied they handled four different counties, Nye, Lincoln, Esmeralda, and Clark. The largest percentage of samples were from Clark County.

Chair Yeager asked Ms. Romero to speak on the same topic—the timing from arrest to including the DNA sample into the data base.

Ms. Romero said in Washoe County the samples were treated separately whether it was a casework sample versus an arrestee sample. They had different processes and followed different work flows. The arrestee samples were processed at the end of every month. They were packaged and outsourced and treated the same as the convicted offender samples. The turnaround time averaged 45 days.

Ms. Anderson said one of the ways the samples were transported was by mail. She asked how the samples were preserved and how the chains of custody issues were addressed.

Mr. Gresko said the evidence was frequently sent in the mail. Evidence was sent in the mail to the FBI, and the University of North Texas in missing person cases. He said it was sent with a tracking number via Fed Ex or certified mail from a U.S. Postal Service office. He said the offender samples were not evidence and there was no chain of custody associated with them. He said STACS had a record of every sample collected.

Chair Yeager thanked Ms. Samuels for her report. He said if there was a hit on a sample, a second sample was obtained from the suspect and would have a normal course of chain of custody.

Ms. Anderson asked about topics addressed at the last meeting. She said it appeared there were some differences in data collection, transport, and location of the storage of the samples in the north and the south areas of the State. She said it might provide an opportunity to track differences.

Ms. Birch said there were limited conversations about the tracking in the south. She said they were working out the issues that had arisen. She said they discarded samples from parole violations. The process said each sample was studied to assure all the proper paper work was present. She said they made some changes and how they were going to ensure they improved the process. She said it was a lot of work for the laboratories. They were in the process of getting approval to hire more staff to handle the research and the all the paperwork. She said the process was working for them.

Ms. Spinazola asked about marking the race category on the samples or booking sheets.

Ms. Birch said race was entered into STACS at the time of collection and a printout was created and placed on the collection envelope.

Mr. Gresko said STACS recorded the race but it was the responsibility of the person collecting the sample to also collect the race. He said it was self-reported.

Ms. Spinazola asked if it was reported to the central repository and if anyone besides law enforcement could gain access to STACS.

Mr. Gresko said the race information was only available to people with access to STACS.

Chair Yeager asked what kind of demographic information was collected in STACS. He asked if it included any notion about whether it was an arrestee sample versus a convicted person sample.

Mr. Gresko said it tracked all those things; the type of offense, the first and last name, the date of birth and other numbers for identification. He said the race was collected also.

Chair Yeager asked if a notation was updated if a person was convicted.

Mr. Gresko said there was no way for them to know the ultimate outcome of the arrest. He said there was no communication between the labs and the courts. He said the only way they were ever going to revisit it was in regard to an

expungement request. He said if they had a CODIS hit they verified there was a qualifying offense.

Ms. Anderson asked if both agencies discussed the training processes in place. She asked if it included everyone involved in the sample taking and if there was repeat training for people involved.

Ms. Birch said everyone involved in the southern part of the state received training about collection. They created a teaching video for remedial or follow-up training if needed. She said they monitored the samples and if there were issues, reached out the agency to assist them.

Mr. Gresko said the process was the same in the north. He said all the collecting agencies were trained and they continued to monitor the types of samples. He said retraining was an issue with turn-over and training never stopped.

Chair Yeager opened discussion on Agenda Item VII, the expungement of biological specimens.

Julie Butler, Division Administrator, Central Repository of Nevada Records of Criminal History, Department of Public Safety, said Ms. Erica Souza would make the presentation.

Ms. Souza, Supervisor, Repository Units including the Fingerprint Examiner Unit, said their role in the DNA process was relatively minimal. She said they worked closely with the two crime labs in the State to finalize processes where they intermingle with each other. She said they were working on an automated process between the STACS DNA data base and the State's computerized criminal history system, [Exhibit G](#). The automated process was being worked on by the Central Repository, Washoe County Sheriff's Office (WCSO), and the STACS DNA data base vendor, [Exhibit G](#).

Ms. Souza said the expungement process related to Senate Bill (S.B.) 243 was not yet implemented. She said they provided a DNA Expungement Form for all DNA arrestees. She said the form was available in both English and Spanish and on their website. Ms. Souza continued to read her testimony from [Exhibit G](#). She said to date, her office had received two requests to expunge DNA records. The requests were being processed and will be returned back to the requestors as neither of them contained any supporting documentation and were incomplete. She said some processes may need to be modified in the future, [Exhibit G](#).

Ms. Spinazola asked if STACS was only available to law enforcement linked to the courts.

Ms. Souza said she understood it was just law enforcement.

Ms. Spinazola asked about an arrest that led to a conviction and if it could be automatically updated.

Ms. Souza said it would be a large undertaking to include the courts.

Mr. Gresko said it would be very difficult to do that right now because STACS did not have any functionality to integrate with the courts. He said a better idea was having some type of statewide court system that law enforcement could tie into for updates.

Chair Yeager asked about the two requests for expungement that were denied due to lack of proper documentation. He asked if she recalled why they were making the request for expungement.

Ms. Souza said one of them did not indicate any reason for the request. She said the other one may have been a dismissal, but they failed to include any court documentation indicating it was dismissed.

Chair Yeager said the expungement form stated if there was an agreement to receive a charge other than a felony, someone could ask to have the DNA removed. He was concerned about the request for a certified copy of the agreement. He said sometimes there were agreements reached verbally without any formal written documentation. He said there would be court minutes reflecting what occurred. He asked if the Central Repository would accept minutes from the court.

Ms. Souza replied yes, in the absence of a formal agreement, they would accept the court minutes. She said they would revise the form to indicate that was acceptable documentation.

Chair Yeager commented on subsection B of the expungement form. He said it was when charges were not filed 3 years after the date of arrest. He did not know if there was a process in place at the District Attorney's office for such a request. He said they all needed to work together to enable someone to get the needed letter. He asked if the Central Repository charged any fees for the DNA expungement application form.

Ms. Souza replied no, they did not charge a fee for the form.

Mr. Washington asked about the minutes. He asked what was involved to receive formal minutes from the court.

Ms. Butler said she did not know because it was not part of their responsibilities. The burden was placed upon the arrestee or convicted person. She thought they needed to make a request through the court clerk where they were convicted.

Chair Yeager said it varied depending on the county. He said in Clark County it would require a request of the Clerk of the Court. He said receiving a certified copy of the minutes might be more difficult. He said it usually required paying a nominal fee. He had access to court minutes, but they were not certified. He asked if a printout was accepted or did they need a certified copy of the minutes.

Ms. Souza replied they required a certified copy of the court minutes. She said the practice was consistent with everything else they did in regard to receiving any documentation from the courts.

Chair Yeager said he understood they needed to be consistent. He said he was interested in how many letters for expungements were requested and the outcome.

Mr. Washington asked Ms. Souza about expungement and the process. He was interested in the seven states with automatic expungement and what the process would be like for her office.

Ms. Butler replied it would be a very manually intensive process for the Central Repository. She said they could not undertake the process at this time; their systems were not capable of doing it. She said they planned to modernize the system in the future. She said it was difficult to return several legislative sessions from now to add something back into their requests.

Ms. Spinazola said at the last meeting immigration consequences were discussed. She wondered if they had reached out to the major consulates to inform them of the process.

Ms. Butler replied they had not reached out to the consulates and did not plan to do so.

Chair Yeager opened Agenda Item VIII, costs to implement S.B. 243.

Ms. Birch said her document was for all four counties. She said as of August 20, 2014, they received \$637,798.36 including interest income, [Exhibit H](#). She said

the actual cost of expenses using the fund were \$38,413.91. She said they spent over \$142,000 to implement the program. She said they anticipated using over \$200,000 per year to purchase the actual kits and the analysis of the samples and the collection kits to take the samples. She said they were looking for approval to encumber some staffing to help with administration of the program.

Ms. Romero said that in Fiscal Year (FY) 2013-2014 they received \$243,274.60, [Exhibit I](#). She also provided a graph showing what they received each month that year. She said they still believed their costs were approximately \$500,000. She said similar to Las Vegas, they had to spend money before they were funded and use grant funds for the purchases.

Chair Yeager said it appeared the estimates were between \$550,000 and \$600,000 collected in the southern counties. He said in the northern part there was about \$250,000. He said it appeared between \$750,000 and \$850,000 was collected from the \$3 fee.

Ms. Romero said it was calculated two ways. She said one way was \$75 per expected number of samples received and then compared it against how they would be using the funds. She said they would use the funds to pay salaries for a criminalist and office support specialists to purchase collection kits, pay for processing of samples, and pay for continued training and STACS and the improvements needed in the data base.

Chair Yeager asked if anybody knew what the balance was for the \$150 assessed for convicted offenders.

Ms. Birch said she had access to the numbers but did not bring them today.

Ms. Romero said they also tracked those numbers separately and she did not bring them with her today. She said historically comparing the number of convictions to the amount of money collected, they receive about 10 percent of the available funding.

Ms. Birch said it was the same in the southern half of the State. She said the Statutes provided they could use the funding for training or any needs the DNA detail had.

Ms. Romero said they usually used it for casework analysis.

Ms. Birch said based on the samples collect to date, she asked the Clark County Detention Center to estimate how many subjects were booked on felonies and

already had a sample taken. She said quite a few samples were not collected due to previous samples taken.

Chair Yeager opened Agenda Item IX.

Mr. Gresko gave a basic overview of how CODIS worked nationally and in Nevada. He said CODIS was an acronym for Combined DNA Index System, [Exhibit J](#). He said it was a computer system established by the FBI to compare DNA profiles. There was also a missing person element to CODIS. He said there were 3 tiers to CODIS, local, state and national. He said there were three types of offender classes in Nevada; arrestee for a felony, conviction, and sex offender registration. He said there was an injunction against the sex offender registration at this time. He said once they had a DNA profile they gave it a specimen identifier, a laboratory identifier, specimen category and the DNA profile, [Exhibit J](#). He said DNA profiles had no names so they used a separate data base to track the information in CODIS. They used STACS and the data was housed on two secure servers at the Washoe County Sheriff's Office.

He reviewed the steps followed in collecting a sample, [Exhibit J](#). He said current practice for convicted offender samples in northern Nevada included sealing the collection kit and sending it to the Central Repository for fingerprint verification and then sending it to the WCSO laboratory. In the South, the kit was sealed and sent to Las Vegas Metropolitan Police Department laboratory for DNA. He said prints were only verified when a DNA profile matched a crime scene DNA profile.

Mr. Gresko outlined the current practices after collection of samples, [Exhibit J](#). He said Nevada did not have a State DNA lab, rather two county labs that function as a State lab. He said offender hits had to be confirmed. Mr. Gresko said expungements were performed when they were informed a conviction was overturned or changed to a charge that no longer qualified. He said the DNA profile was deleted from CODIS, the biographical record deleted from STACS and the collection kit was destroyed. When the profile was deleted at the State level it was automatically deleted at the national level.

Ms. Spinazola asked if there were any hits yet.

Mr. Gresko said he had not had any hits yet.

Ms. Birch said she had two arrestee hits from other states. She said they were in the process of notifying the states of the confirmation.

Ms. Spinazola said it was a monthly upload about the expungements to the national data base. She asked if there was some way to track an out-of-state hit that should have been expunged on the national level.

Mr. Gresko said they upload twice a week to the national system. He said if he received an expungement notice and he removed it from CODIS, it would go to the FBI prior to their search being performed.

Ms. Anderson said Mr. Gresko mentioned if they got a duplicate warning it was up to the officer to decide whether or not to collect.

Mr. Gresko said information collected and stored in STACS was not always the best, people lied about their names, social security numbers, and their dates of birth. He said what they put in STACS was the information gathered by the collecting officers at the time they took the sample.

Ms. Anderson asked about expungement of the samples not qualifying for inclusion in CODIS.

Mr. Gresko said for convicted offenders there was nothing in Nevada Statute about expungements. He said if someone's record was being sealed and there was no conviction, the sample was expunged. He said arrestees had a law on the books requiring the proper paperwork for expungement of their sample.

Ms. Birch said they also expunged a sample if they received a court order instructing them to do so.

Chair Yeager asked if the STACS data base was only used in Nevada.

Mr. Gresko replied STACS was a private commercial company providing the software to forensic laboratories. He said every state was different, but a number of states and the FBI used STACS.

Chair Yeager asked if other states collected additional information.

Mr. Gresko said it varied from state to state and that STACS did whatever was requested from the state. He said they were trying to integrate the state criminal history records with STACS. He said other states had done it to a more thorough degree.

Chair Yeager asked if there was additional information Nevada would want in the STACS data base.

Mr. Gresko said he was not sure STACS was the best place for that information. He thought the Central Repository data base might be a better place. He said it was important the information be filled out and updated.

Chair Yeager said he agreed and understood the frustration about lack of complete information. He asked when a sample was removed from CODIS, was it also deleted in the STACS record.

Mr. Gresko replied he was correct, all the information except for the bar code number was removed from STACS.

Chair Yeager asked if he knew the number of records expunged or the reasons why they were expunged.

Mr. Gresko said they tracked each sample and the reason why it was expunged, but none of the information about who supplied the sample.

Ms. Birch replied the same thing was done in southern Nevada.

Ms. Anderson asked about the collection of biological samples used to exonerate people wrongfully convicted.

Mr. Gresko said CODIS was a powerful tool in exonerating people who were wrongfully convicted.

Ms. Spinazola asked if there were any exonerations yet in Nevada.

Mr. Gresko said he had not had any arrestee hits yet. He said it was probably too early to know if there were any hits in other states.

Ms. Birch said he was exactly right.

Ms. Spinazola had a question about dual names and how they had information expunged.

Mr. Gresko said because their DNA profile did not change, STACS and CODIS had all the duplicates tracked. He said they kept all the physical duplicates together. He said he hoped when the Central Repository sent the request for expungement they also sent the State Informational Depositories number.

Ms. Spinazola asked if any of the seven states with automatic expungement also used STaCS and if it provided any models for additional information.

Mr. Gresko said he would check with the CODIS administrators from those states.

Mr. Washington asked if there were some instances where there was automatic expungement if it was related to an overturned conviction, or federal law required it.

Mr. Gresko said federal law required any lab that became aware, through a certified copy of a court order that the qualifying offense was no longer in existence, the DNA profile must be expunged.

Ms. Birch added it was not automatic in that they were researching cases. If they were informed or receive notification they removed the samples.

Mr. Washington asked if the laboratory was informed, the arrestee was not required to fill out the DNA expungement application form.

Mr. Gresko said if they were an arrestee, they still needed to fill out the form. If they were a convicted offender, they did not need to fill out the form. He said State law had a specific requirement for people who had a sample collected due to arrest. He said it was a huge job for the labs to have to track every sample. If he received a certified copy of a court order saying the arrestee was convicted of a misdemeanor and they wanted the sample expunged, he would respond there was a process in the State requiring the paperwork to the Central Repository. He said the communications needed to come through the official channels to the labs.

Ms. Birch said in southern Nevada, their policy was if they received a court order they would expunge the sample as per the court order and notify the Central Repository.

Mr. Washington asked if they knew what percentage of felony arrests actually turned into a felony conviction.

Mr. Gresko said he had no idea what the number might be.

Mr. Birch said she did not know the number either, but some numbers were in the Urban Institute about those percentages.

Ms. Anderson asked if it was possible if the burden and cost to track was set aside, was it possible for the courts to automatically issue documents for expungement.

Mr. Gresko replied there would need to be some kind of communication with every court in the State. He said the problem now was there was no simple way to

access that information. He said it was difficult to follow up on the cases. They would need a streamlined process to easily obtain the information.

Ms. Birch agreed with Mr. Gresko. She said without a reliable IT system in place to support the requirement of automatic expungement it was not feasible.

Ms. Butler said they were facing a backlog of 800,000 criminal history dispositions. She said they were proactively working and trying to hire enough staff to manually enter the data of those dispositions and also on an IT project to help manage and match the dispositions. She said all courts now reported to the Central Repository for dispositions. She said it was important all entities reported to the Repository. She said an automated DNA expungement process was not possible without further automation. It was too burdensome to try to track manually.

Ms. Spinazola asked Ms. Butler if there was an automated system that criminal repositories tend to use throughout the country and if the seven states with automatic expungement used a similar system.

Ms. Butler said she did not know what criminal histories systems the other states used. She said states were widely varied in terms of their criminal history systems.

Chair Yeager said there was someone ready to demonstrate the use of the DNA kits.

Ms. Birch said Julie Marschner and Kelli Gauthier were present for the demonstration.

Ms. Marschner said each kit was prepackaged with an envelope used to return the sample to the lab, and a collection bifold that could be used to manually enter the information. She said the bifold had a preprinted bar code unique to the kit and also matched the bar code on the DNA collection device.

Ms. Gauthier demonstrated collecting the DNA. A sponge applicator was used to swab the inside of the cheek and gums of the offender. The sponge was pressed onto a color-indicating card which turned from pink to white when there is enough saliva. The sponge swabs for 20 to 30 seconds for enough saliva to transfer to the DNA card. She said a clip kept the sponge secure and it was then slid into the envelope. She said it was a peel-and-seal envelope.

Chair Yeager asked if there were any questions concerning the DNA swab. He opened Agenda Item X concerning the projected number of arrestees submitting

samples of DNA. He said the projected numbers were 15,000 to 16,000 in the southern part of the State and 7,000 in the north.

Ms. Birch and Ms. Romero agreed with the estimates.

Mr. Gresko said the numbers should be close to the projections.

Ms. Birch said initially they estimated about 20,000, but had since scaled the number back.

Chair Yeager opened Agenda Item XI, a discussion of recommendations to the ACAJ.

Mr. Anthony said this was the part where the Subcommittee made recommendations for the full Commission. A majority of the members could make a motion and pass it. He said some options included Chair Yeager presenting the ideas at the next ACAJ meeting. He said there were three different options they may consider for possible action. The first was to include a policy statement in the final report. The second option was to draft a letter to certain interested persons. The last option was to draft legislation or to ask the Commission to submit a bill draft.

Mr. Washington said there were some automated processes for data that could occur for automatic expungement. He said a significant percentage of felony arrests were rejected and no charges were filed or dismissed. He said less than 25 percent of the convictions were a nonfelony charge. He recommended that by 2016 the expungement process for collected arrestee DNA where the charges were dismissed, discharged, or acquitted be automatic.

Ms. Romero was concerned it was premature to draft legislation for automatic expungement without having the infrastructure first.

Mr. Washington said he needed guidance on which way was more appropriate. He said when legislation established law things happened. He said his concern was a number of people had their DNA in a system where there was a 50 percent chance there was no legal reason for it to be there. He said it was easier to remove the DNA if convicted of a felony, but then the charges were dismissed. He said if making a policy statement stimulated change, he was comfortable with the suggestion.

Ms. Anderson was concerned about overcapturing and retaining the biological specimens for people who are not convicted or otherwise should not have their

specimens retained for the lack of an IT system in place. She advocated for the highest level possible in the policy statement.

Ms. Birch suggested before the law was passed they reached out to several forensic labs who had experienced implementation of these types of laws. She said Maryland required automatic expungements but they said it was an increased burden on the forensic scientists and the labs. She said even the Urban Institute reported a lot of the burden was taken by the labs even though it was a state law. She said it took at least 2 to 3 years to implement an IT system.

Ms. Birch said she was not worried about the law being well written, rather she was worried about the State having the infrastructure and funding to have an IT system that was reliable and notified someone in the state concerning the disposition on a case. She was sure the law would be well written .

Ms. Anderson said she wanted to amend her statement to say the law might not capture all of the things raised as a concern.

Ms. Spinazola asked if the current law prohibited automatic expungement.

Mr. Anthony said the current law provided for an alternative. It did not specifically prohibit expungement, but it provided anybody who wished to have their record expunged go through the form and process.

Ms. Spinazola asked how far in the future a law could begin.

Mr. Anthony said usually a law took effect within the time period before the next Legislature met again. He said the default legislation enactment date was October 1st, and sometimes it was January 1st if more time was needed. In this case the funding was July 1st. He said it was possible to sunset provisions as well.

Ms. Spinazola asked if it was possible to mandate collection of information into the system, or was it deferred to the counties.

Mr. Anthony said there were times when the Legislature mandated collection of certain information. He said if the State passed a mandate, there will be costs.

Mr. Washington realized when the State passed the law, the burden was on the people. He said there could be a significant number of people who did not have costs, education or knowledge of how to expunge this record. He said there was likely a way when someone was arrested, that the electronic information could be passed along between agencies. He said there was a process in place for

expungement now, and he said the burden was on the people to be expunged. He said the burden should be on the State.

Chair Yeager said it was very early in the process. He said it remained to be seen the volume of requests for expungement. He thought there were two different proposals. Mr. Washington wanted various parties to work together to determine a way for expungement that could potentially be automated. He said Ms. Anderson said without real time, accurate, and a statewide data base able to track criminal cases and dispositions, it was going to be difficult and costly to do automatic expungement. He said there was nothing in the law that precluded automatic expungement. He said he was mindful of imposing too much on the agencies and giving them too little to do the work. He said it may be appropriate to make a policy statement. He was hesitant to draft legislation that would make it automatic. He said the Subcommittee would continue to exist beyond the interim. He said they needed to take appropriate steps in recommendations to the ACAJ.

Ms. Anderson said funding and resources were required for implementation of automatic expungement. She said the need for expungement existed and there was sufficient information to address the issue.

Ms. Spinazola asked if it was too late to submit a request to the Governor.

Mr. Anthony replied in the past the Advisory Commission continued to send recommendations throughout the fall and copied both the Governor and the chairs of the money committees.

Ms. Spinazola asked if they wanted to go through the legislative process with a financial request, how would they address it.

Mr. Anthony said based on past practice of the Commission, when an issue involved a general policy recommendation it was put in a letter to the Governor and copied to the money committee chairs. In the past there had not been legislation attached to the letter, although sometimes there might be a separate bill.

Ms. Birch said they did not have an automatic expungement for convicted offenders. She said if they were notified through some official court order they expunged convicted offender records and profiles. She said it was the same for arrestees. She said what they would need was some sort of automatic notification so they did not have to research the adjudication of cases.

Mr. Washington said testimony stated federal law required destroying the sample and eliminating the information from CODIS. He said once the change in conviction occurred some burden existed to remove the DNA.

Ms. Birch said they had to be notified.

Mr. Gresko said the federal DNA law said if they became aware through a certified copy of a court order an offender sample did not qualify, they were required to take it out of the data base. The burden was on the people to notify them.

Ms. Anderson said she believed there was testimony all the courts were reporting on the disposition of cases to the Central Repository of Nevada Records of Criminal History.

Chair Yeager asked if there were any motions concerning the two topics in terms of the policy statement as well as a budget request. The policy statement would instruct the various people involved in the DNA process to communicate better and ways or systems that would help lead to an automatic expungement. He said they recognized there were technical hurdles that needed overcoming.

Ms. Spinazola made a motion to draft a letter to reach out to the states with automatic expungement and gather all the information needed as well as what type of IT system needed. Ms. Spinazola moved to write a letter requesting Ms. Butler and Mr. Gresko look into other states with automatic expungement for guidance for best practices. She also moved to look into the cost of the systems required.

Ms. Anderson seconded the motion.

The motion carried.

Ms. Spinazola said she wanted the costs to translate into a budget request to the Governor.

Chair Yeager said if the information was available a motion for a separate letter to the Governor and finance committees letting them know about the request that was made on the Central Repository and the state DNA lab.

Ms. Spinazola moved to request a second letter advising the Governor and the finance committees of what was occurring concerning the costs for automatic expungement.

Ms. Anderson seconded the motion.

Ms. Romero asked for clarification on the motion. She said if the state and Central Repository determined a cost for this project, then the information would be forwarded to the Governor.

Chair Yeager said yes if they determined there was a cost it would be forwarded now or for the next Legislature. He asked Ms. Spinazola to remake her motion.

Ms. Spinazola moved to draft a letter to the Governor and the money committees advising them Ms. Butler and Mr. Gresko were asked to look into the costs of automatic expungement and the knowledge will be shared with the Legislature.

Ms. Anderson seconded the motion.

The motion carried. (Ms. Romero and Mr. Gresko voted No.)

Ms. Spinazola agreed the policy position paper was important.

Ms. Spinazola moved to ask staff to create a policy paper asking all the relevant people involved in the process meet and discuss and work together, including IT changes, how race factored in, immigration consequences, and felony arrests resulting in convictions.

Mr. Washington recommended they get information on the numbers or data regarding requests for expungements according to the law now.

Ms. Anderson recommended data on voluntary collections of samples.

Ms. Spinazola said she accepted the recommendations and she was also interested in exonerations resulting from arrestee DNA. She also requested information on arrestee data resulted in convictions.

Ms. Birch said all of the questions were unanswerable until they had at least 1 year to gather data. She said some things could be addressed, but wondered if it required a policy request at this time. She said sending the letter to Mr. Gresko and the State Repository to do research on the automatic expungement was the biggest concern. She said the other data was not available at this time.

Ms. Spinazola wondered if there could be an initial convening of what the different systems could do and place the Subcommittee's issues out for others to consider.

Ms. Anderson suggested from the report, the difference between hits from arrestee data and convicted data, a separation of the two is included in the recommendations.

Chair Yeager said the motion would be advising the Advisory Commission to let the interested stakeholders continue to discuss the issues raised by the Subcommittee. He said the motion was appropriate as a policy statement. He asked for a second.

Mr. Washington seconded the motion.

The motion carried.

DRAFT

Chair Yeager said three motions had been approved by the Subcommittee. He closed Agenda Item XI and opened Agenda Item XII, public comment. He thanked the Subcommittee for all their work. He adjourned the meeting at 12:21 p.m.

Respectfully submitted:

Olivia Lodato, Interim Secretary

Approved by:

Steven Yeager, Chair

Date: _____

Exhibit	Witness / Agency	Description
A		Agenda
B		Attendance Roster
C	Mercedes Maharis	Letter about DNA
D	Tracy Birch	Minute corrections
E	Julie Samuels	Collecting DNA
F	Julie Samuels	Collecting DNA technical report
G	Erica Souza	Testimony
H	Tracy Birch	#3 Assessment Fee Fund
I	Renee Romero	WCSO Funds Collected
J	Steve Gresko	CODIS