

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

JULY 9, 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 1:24 p.m. at the Grant Sawyer Building, Room 4401, 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
Steve Yeager, Deputy Public Defender, Clark County, Chair

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Renee Romero, Director, Forensics Lab, Washoe County Sheriff's Office
Vanessa Spinazola, Legislative and Advocacy Director, ACLU of Nevada

COMMITTEE MEMBERS ABSENT:

Steve Gresko, Senior Criminalist/CODIS Administrator, Washoe County Sheriff's Office

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Chuck Callaway, Police Director, Las Vegas Metropolitan Police Department

Chair Yeager opened the meeting at 1:24 p.m. He requested the Secretary call the roll.

Mrs. Hartzler called the roll and a quorum was present.

Chair Yeager asked if there was any public comment at this time. He briefly reviewed the scope of the Subcommittee and asked for suggestions on future agenda items and people to testify to answer questions. He opened discussion on Agenda Item IV, a discussion of the costs to implement the provisions of S.B. 243.

Mr. Anthony said he was serving as the legal counsel and primary staff to the Subcommittee. He said there was a memorandum regarding the DNA assessment, [Exhibit C](#). He had difficulty getting accurate information. He said the senate bill authorized a \$3 administrative assessment be collected upon every arrest. He said [Exhibit C](#) showed Clark County had collected \$505,400.50. Washoe County Treasurer's Office said they collected \$45,511.98. He said that information might be low. Ms. Romero had provided an email concerning the numbers collected, [Exhibit D](#). He said he did not have statewide information because the \$3 fee was held by each county's treasurer.

Renee Romero said Washoe County had received \$136,652.43. She said they served 13 counties in Nevada. The other counties provided \$107,150.16 from the fee. She said the total Washoe County received was \$243,802.60, [Exhibit D](#).

Chair Yeager asked if there were projections of the anticipated money collected. He asked if the amount was adequate to keep up with the program.

Ms. Romero said Washoe County submitted a fiscal note of approximately \$500,000 for their program costs. She said there was no set amount predicted, it was a wait and see approach. She said the counties were slow to learn about the law and sending the funds on a monthly basis. She thought the amount they received on a monthly basis would still increase.

Tracy Birch agreed they did not have the estimate about what the fee would contribute to the fund. She said there were some issues at the beginning of the legislation on July 1, 2013. Judges were only accepting the fee if there was a conviction or a guilty plea after a July 1, 2013 arrest. She said the first quarter Clark County only collected \$20,000, the second quarter \$132,000 and the third quarter \$270,000. She said now they were at over \$500,000. She said it will generate the funds necessary for the program.

Chair Yeager inquired about the actual costs of the program.

Ms. Romero estimated, on a per sample basis, the cost was \$75. She said it was based on total program costs. She said it was not what it cost to analyze a sample.

Mr. Washington said the \$3 was supposed to serve a function. He asked if the total program cost covered the labor involved including the person giving the sample.

Ms. Anderson asked if there was data on the amount of money returned to an arrestee when they were eligible for the return and also on repeats of DNA taken.

Ms. Romero said it was too soon for the data as they had been collecting samples for less than two weeks.

Ms. Birch said Clark County had only collected samples for one week. She said they had collected 311 samples. They did not have any indication of money returned to arrestees. She asked what Ms. Anderson meant by returning funds.

Ms. Anderson said perhaps she misunderstood the statute. She said on page 10, Subsection 2 of Section 15 of [Exhibit E](#), she thought the assessment was also attached. She said she may have misread the statute.

Chair Yeager said prior to S.B. 243 passing, when somebody was convicted of a felony or certain misdemeanors, a DNA sample was required. The defendant was ordered to pay \$150; the fee was in statute. He said the fee remained in statute, but to fund the new law there was an additional \$3 administrative assessment that was added to any conviction of any type throughout the State. He said they would try to get clarification on the issue.

Ms. Birch thought the \$3 assessment was an administrative assessment on a person convicted of a misdemeanor, gross misdemeanor, or felony and had nothing to do with the collection of the DNA sample. It was a way to fund the legislation and was separate from the \$150 collected for the collection of the DNA sample.

Chair Yeager said he hoped they could get a sense of what the collections were and if there were issues with the funding. He said they may need to revisit the fee. He opened discussion on Agenda Item VI. He said they did not have a big sample size but wanted to hear how things were going.

Ms. Birch said in Las Vegas they took great care to make sure the southern half of the State had trained people in the collection of the samples. The biggest volume was in Clark County. She said if someone was arrested they went to the Clark County Detention Center. They asked for a DNA sample and fingerprints. She said the fingerprint information came back to the lab and they identified the person through an SID number. She said the DNA sample was placed in a bin to await probable cause from the courts on persons in custody and persons released from custody. She said if probable cause was determined the sample was moved to Bin Number 2 which indicated the samples were ready to be moved to the lab for analysis. She said if probable cause was not determined, samples were moved to Bin Number 3 and collected for destruction. She said they had collected 311 samples. She said probable cause had been determined on 137 samples. She said samples were collected at the same time as the fingerprints were taken.

Ms. Spinazola had a question about the booking. She asked if race was included on the booking sheet for Clark County Detention when they took fingerprints and DNA samples. She asked how they could track race.

Chuck Callaway, Police Director, said there was a box for race on the booking sheet when a person was processed into the system.

Mr. Yeager asked how the determination was made concerning race, by asking the arrestee versus visual conclusion.

Mr. Callaway said they asked the offender what their race was and marked the box.

Mr. Yeager asked if one booking sheet was used for all of Clark County or do different agencies use different forms.

Mr. Callaway said at the Clark County Detention Center there was a standard called the "declaration of arrest sheet." The front page contained all the information on the subject and the attached sheet contained the details of the probable cause. He said he could not speak for the other areas.

Ms. Anderson asked if the box included options for mixed race. She said studies had been done concerning self-identification in an arrest context being the same as self-identification in the census context.

Mr. Callaway said he was unsure of the answer. He said someone could potentially answer one way or another in hopes of different treatment. He said usually people had some form of identification that also contained their race. He said there was a box for "other" which included mixed race.

Chair Yeager asked Ms. Birch if, when an offender was arrested, they gave a sample and fingerprints. He asked about a person arrested under warrant versus out in the field caught in the act of doing something.

Ms. Birch said the arrest warrant paperwork went directly into the laboratory at the time for analysis.

Chair Yeager asked if she knew what the triggering event was for a judge to look at something for probable cause.

Ms. Birch said probable cause had to be determined within 48-hours. The justice court judges had developed a procedure for them to receive the paperwork from Clark County Detention Center.

Chair Yeager said when someone was in custody and in jail for some time there was a 48 hour hearing submitted to the judge.

Ms. Birch said yes, it was already in place. She said for those being released, they set up a system to get the paperwork to the judges. The judges took on additional work. The labs still needed written verification of probable cause.

Chair Yeager asked about somebody arrested for a felony offense, but who was going to be released almost immediately. He asked if there was enough time for the process.

Ms. Birch said one of the reasons they took the samples at booking was if they were released, the paperwork still went to the judge and returned for probable cause. She said if there was no probable cause the samples were destroyed. She said it did not matter if the person was still detained.

Chair Yeager said they had developed a process to make determination of probable cause sooner rather than later on an individual no longer in custody. He asked where the fingerprints came into the process.

Ms. Birch said they waited for the fingerprint information to come back before they processed. She said the state said they could get the verification back within 12 hours. She said locally they went to local AFIS, the Automated Fingerprint Identification System, first and might be held up for several days. She said they did not have information on how long it would take.

Chair Yeager asked if all the analysis of samples were done in Washoe County.

Ms. Birch replied that Clark County and the other four southern counties went to the Las Vegas Forensic Laboratory. She said they processed the sample and developed a profile for the local data base. They then upload to the State data base in Washoe County. She said the actual samples were retained by the Las Vegas Metropolitan Police Department.

Ms. Anderson asked who the different groups of people who were involved in the process.

Ms. Birch said the training was given in the four counties to people who collected the samples at the detention facility. They gave one-on-one training for everyone. They developed a video for new hires or remedial training. They also gave every agency a copy of a DVD that was the same training as given one-on-one. She said the first week there were a lots of questions.

Ms. Spinazola was interested in the process for the DNA sample being destroyed after trial and someone was free and clear. She asked how people got their information out of the federal government database and if there was a form provided to people.

Ms. Birch said an expungement form was developed by the Central Repository of Nevada, [Exhibit F](#). The forms were available on the Central Repository website. The form was given to each arrestee before they left the detention facility. She said they planned on destroying the sample and removing the DNA profile from CODIS.

Ms. Romero said Ms. Birch was totally correct. She said Washoe County processed the samples and the other counties they served do not come to the laboratory until the fingerprints were verified and an SID number attained and attached to the kit. She said the process was similar to Las Vegas. She said there was a database called STACS that housed the data about the person. When a sample went into CODIS, there was only an identifying number and the DNA profile. There was a separate database for Washoe County to determine if the person had already been collected. She said there was a box on the kit to collect the DNA sample in which race was part of the collection.

Chair Yeager asked if any problems needed addressing.

Ms. Romero said the Sheriff's Office had a video on how to protect them from getting wet from saliva during the collection.

Ms. Birch said one thing they dealt with first were remands. They received remands from the court that were considered arrests and were felony charges. They quickly found a way to indicate it on the paperwork. She said they looked at all the arrests in the past week. She said about 40 percent of the felony arrests were already in STACS. They had a way to remove them from STACS if necessary.

Chair Yeager asked if anybody had refused to submit a DNA sample.

Ms. Birch replied none that she had heard about. She said they provided a blood collection kit if someone refused. However, they had to file a motion to get permission to collect that sample.

Chair Yeager asked about the issue of remands. He asked if it was a situation where the offender was already in custody on something that was not a felony.

Ms. Birch said she was not sure.

Ms. Spinazola asked if any of the crime labs gave any consideration to prohibiting familial searching. She said the law was silent on the subject.

Ms. Romero said they had several discussions about familial searching. At this point, they do not perform that type of searching.

Chair Yeager said part of the statute mentioned that the labs can do outside contracting. He asked if either of the labs in this State did outside contracting.

Ms. Romero said they outsourced their arrestee samples. She said they had a program in place where they outsourced convicted offender samples and they would include the arrestee samples.

Ms. Birch said her lab does not outsource offender or arrestee samples.

Ms. Romero said they had no problems with the contractor they were using. They do an on-site inspection of the facility on an annual basis.

Mr. Washington asked if the information collected from the samples was on a spreadsheet for the Committee to review.

Ms. Birch said they had STACS which was a database of all the collected samples.

Chair Yeager asked Ms. Romero about Washoe County doing the DNA analysis for the rural counties.

Ms. Romero replied that was true, they served 13 counties and it included all of the northern rural counties.

Chair Yeager asked how the samples got from where they were taken to the Washoe County lab for analysis.

Ms. Romero said the samples could be mailed or couriered, and there were several other formats through which samples came to them.

Ms. Birch said they knew what samples were collected because they were entered into STACS at the time of collection. She said they reconciled all the samples collected and if they did not receive a sample, they inquired about it.

Ms. Romero said Washoe County did the exact same thing as Clark County.

Chair Yeager said one discussion about the bill was that it was a powerful tool. He said it might potentially prevent future crime or solve cold cases.

Ms. Birch said they had not yet processed any samples.

Ms. Romero said the situation was the same in the north. They had not processed any samples as of yet. She said they would provide statistics about what sort of hits were generated from arrestee samples.

Ms. Anderson asked if there was also the potential to have hits that exonerated people who were currently incarcerated.

Ms. Romero replied that was possible.

Chair Yeager opened discussion on Agenda Item VII, state DNA database and CODIS.

Ms. Romero said CODIS was straight forward. The profile was entered into a local database, it was electronically uploaded to the State database. Washoe County entered profiles of arrestee and convicted offenders and forensic unknowns into the database. The entire state database was uploaded to the national level. She said they received information of any hits once a week. There was no identifying information attached to the samples, it was just a series of numbers. She said when a hit took place, the sample was pulled within the lab and retested for quality assurance to ensure it was the right person. She said they then requested an evidentiary sample. The sample was then tested. The CODIS database had been in place for several years and the procedures worked very well in both laboratories.

Chair Yeager said each state had an administrator of CODIS for that state.

Ms. Romero replied he was correct, every state had a state database administrator. Nevada was the only state that did not have a state laboratory system. She said in Nevada there were two laboratories under separate government structures, but they worked very well together.

Chair Yeager opened discussion on Agenda Item VIII, expungement of DNA. He said it was discussed earlier. He said the members had a copy of the form, [Exhibit F](#).

Ms. Birch said the form was created by the State. She said they had reviewed the form and made suggestions which the State followed.

Chair Yeager asked Ms. Birch what the process looked like.

Ms. Birch said it was an application form. It asked for subject name, address, DOB, etc. It cited the law, [Exhibit F](#).

Chair Yeager urged the committee members to look at the form. He said the Committee was expected to look at the number of requests made for the destruction of the samples and the number that were denied.

Ms. Birch said the request went to the Central Repository. The labs will know because the information will be sent to them and they will do the actual expungement. She said there was guidance for the paperwork required on the form.

Chair Yeager said sometimes it was difficult to get the documents.

Ms. Anderson asked about technical capacity for non-offenders or where no charges were filed, or a dismissal or an acquittal. She asked about the category of no charges, dismissal or acquittal. She asked if it was made automated would they have the technical capacity existing in house to make it possible.

Ms. Birch said there was no database accessible to all agencies to check on adjudication of charges or court related issues. She said it took a lot of resources and there was no one-way to be able to facilitate automatic expungement in Nevada.

Ms. Romero agreed with everything Ms. Birch stated. She said it would create a situation where every sample was a research project.

Ms. Birch added that it would be researching each sample every week or every day due to the way the court system worked.

Chair Yeager said there was discussion in the Legislature concerning expungement. He said an automated system would be quite costly.

Mr. Washington asked about the language of the Senate Bill in section 13, page 1, in the second paragraph, [Exhibit E](#). He asked what it meant when the person was not convicted, the biological specimen must be destroyed.

Ms. Romero noticed the same language, but she said that part of the bill was a digest of the bill. She did not think it accurately represented what was actually in the bill.

Mr. Anthony said the digest was accurate, but a bit misleading. It was not automatic, but a person may apply to have the record destroyed. He said pages 4 through 9 of section 13 had the actual language, [Exhibit E](#).

Mr. Washington said the official language was in the pages referenced. It was not an automatic purging of the record.

Ms. Spinazola asked about immigration consequences for people in Clark County. She asked if people detained by ICE would also have the opportunity to purge the information from the system.

Ms. Romero replied that they were federal arrestees. They were not taking federal samples. She said they received the form when a sample was collected.

Mr. Callaway said his office worked closely with the consulates of various countries. He said when a person was booked under a local charge and a sample taken, they were given a copy of the requirements for expungement. He said if they were deported by ICE, they were required to adjudicate the local offense before deportation. He said if the charges were dismissed or dropped and they were deported, they could contact the consulate for their country for help with the expungement process.

Chair Yeager asked how they obtained the necessary documentation needed to accompany the expungement form.

Mr. Washington asked if there was a fee for the form.

Ms. Birch said there was no fee for submitting the form. The law provided for payment of cost of obtaining biological samples, destroying biological samples, and purging DNA records. She said NRS 176.09127 addressed the cost incurred for expunging the sample. She said there was no way to charge anybody for expungement. She said NRS 176.0915 only talked about a fee for obtaining biological specimens.

Chair Yeager said the form did not come with a fee. Some courts might charge a fee for a certified copy of whatever the applicant needed.

Mr. Anthony referred to NRS 176.09127. He said any cost incurred to obtain a biological specimen or to destroy, or purge a DNA profile of a specimen, was a charge against the county in which the person was arrested. He said it was up to the county to pay the costs.

Ms. Spinazola asked about the letter of support from a district attorney. She wondered if there was a form people could request to receive that particular letter. She said it was "B" on the form on the website.

Chair Yeager said receiving a letter can be complicated. He said having some kind of form was something to consider. He opened discussion on Agenda Item IX.

Ms. Birch said they originally projected 24,000 samples in the southern half of the State. She said based on the numbers from the first week, it was more like 14,000 samples. The amount of felony arrests at the Clark County Detention Center for 2012 was about 20,000. She said the numbers collected may decrease over the years because they had already been collected.

Ms. Romero said Washoe County anticipated about 7,000 samples including the other agencies they served. She agreed with Ms. Birch they would know better after some time.

Ms. Anderson asked if the projections were differentiated by city or subareas of the city. She asked if the numbers were different where training was done so arrest rates were expected higher in areas where there was training.

Ms. Birch said she could not address any of the questions. She did not have that sort of data.

Ms. Romero replied she did not have any answers either. She said they worked to obtain the total number of arrests.

Ms. Birch said the majority of samples were collected in Clark County.

Chair Yeager opened discussion on Agenda Item X, potential topics for future meetings.

Mr. Washington said they had a good discussion.

Ms. Anderson suggested studying places where there were comparisons with other states with more experience or similar or different structures. She also suggested whether or not what was happening in the processing of DNA was picking up the facts of arrest rates of locations where training was done, of social economic factors, or other factors.

Chair Yeager said the subcommittee would meet again at least one time in late August or September. He said they were tasked to report back to the Advisory Commission on the Administration of Justice regarding their work. He asked if there were any further questions. He asked if there was any public comment. As there were none, he adjourned the meeting at 3:07 p.m.

Respectfully Submitted:

Olivia Lodato, Interim Secretary

Approved By:

Steven Yeager, Chair

Date: _____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice's
Subcommittee to Review Arrestee DNA

Date: July 9, 2014 Time of Meeting: 1:24 p.m.

	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Nick Anthony	Memorandum on S.B. 243.
	D	Renee Romero	Clarifying information on funds in memorandum dated 7/7/14.
	E		Copy of S.B. 243
	F		Copy of DPS DNA Expungement Application Form