MINUTES OF THE
ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE

JUNE 6, 2012

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, on June 6, 2012, at 9:36 a.m., at the Legislative Building, Room 4100, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. The Agenda is included as Exhibit A and the Attendance Roster is included as Exhibit B. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (CARSON CITY):

Assemblyman William C. Horne, Chair, Assembly District No. 34
Senator Greg Brower, District No. 3
Brian Campolieti, Board of Parole Commissioners
Larry Digesti, Representative, State Bar of Nevada
Mark Jackson, Douglas County District Attorney
Jorge Pierrott, Sergeant, Department of Public Safety, Division of Parole and Probation
Richard Siegel, American Civil Liberties Union of Nevada
Todd Vinger, Undersheriff, Washoe County Sheriff's Office

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas Metropolitan Police Department
Catherine Cortez Masto, Attorney General
Sheryl Foster, Nevada Department of Corrections
Lisa Hibbler, Victims Advocate
Phil Kohn, Clark County Public Defender
Assemblyman Richard McArthur, Assembly District No. 4
Senator David R. Parks, District No. 7

COMMISSION MEMBERS ABSENT:

Judge David Barker
Honorable James W. Hardesty, Justice, Nevada Supreme Court, Vice Chair

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

Tonja Brown, Advocate for the Innocent
Bernard Curtis, Chief, Division of Parole and Probation
Tony DeCorona, Deputy Chief, Division of Parole and Probation
Pat Hines
Bradford Glover, Nevada Department of Corrections
Kim Madris, Division of Parole and Probation
P. Michael Murphy, Clark County Coroner/Medical Examiner
David Roger, Las Vegas Police Protection Association
Josh Reisman, Las Vegas Police Protection Association
Chris Collins, Las Vegas Police Protection Association
Christopher Laurent, Clark County Chief Deputy District Attorney
Richard Boulware, Vice President, NAACP
Katrina Rogers, American Civil Liberties Union of Nevada
David Sonner, Captain, Division of Parole and Probation
Rex Reed, Administrator of Offender Management Division, Nevada Department of Corrections

Chair Horne called the Advisory Commission on the Administration of Justice to order and requested a roll call of members present.

Mrs. Hartzler called roll and noted Judge Barker and Justice Hardesty were absent.

Chair Horne opened Agenda Item III, Public Comment. He requested speakers come forward in Carson City. He reminded everyone public comment was also available at the end of the meeting.

Tonja Brown, Advocate, said the 2011 Bill S.B. 201 was brought to the Commission in 2010. The bill concerned the ombudsman. She said the majority of the information was deleted through the legislation. The Attorney General's office removed most of the

information she wanted out of the bill. She requested the bill be reintroduced as written for an ombudsman for the Nevada Department of Corrections (NDOC). She said it would eliminate future litigation. The computer glitch could have been resolved. She said she requested DNA testing in 2010 at the inmates' own expense. The Commission requested she provide information concerning the computer glitch. She was told the NDOC had the information, but they never provided it. She read a letter she submitted to the Commission, Exhibit C.

Chair Horne said the letter did not need to be read into the record. He said he was prepared as Chairman of the Judiciary Committee to ask the Audit Division of LCB to audit the NDOC on this issue. He said an audit was planned after July 1, 2012 of the NDOC. He said the Audit Division could look into the allegations on the charges that may or may not have been placed on inmates' records.

Ms. Brown asked if the audit entailed going into the 2007 denials or was it going to be the information she provided to him.

Chair Horne said Mr. Townsend was very adept at conducting thorough audits of various departments in the State. He said he would not have Mr. Townsend seek her direction or instructions on how to conduct the audit. He would advise him to look into whether or not inmates were saddled with convictions they had not committed.

Mr. Jackson said he had knowledge of the Russell Yaeger case. He said it was a heinous crime, but he was paroled and not released. He said it was not due to a computer glitch. He said the Division of Parole and Probation was present with specific knowledge of that particular case.

Chair Horne said they could hear it as a part of public comment.

Bernard Curtis, Chief, Division of Parole and Probation, said when they received Ms. Brown's inquiry, they checked into it and found information concerning Mr. Yaeger.

Tony DeCorona, Deputy Chief, Division of Parole and Probation, said Mr. Yaeger was sentenced in October 1979, for first degree murder in Nye County. He was seen by the Parole Board in 1995 and granted parole to Massachusetts. He was arrested and continued on parole. He was arrested in 1998 in San Francisco and returned to Nevada, and his parole was revoked for three years. He was again granted parole to Massachusetts only, and they denied his return to that state and the Board rescinded his parole in 2002. In January 2002, he was granted parole, and the initial plan was denied because his sponsor did not know Mr. Yaeger. He again submitted a residence plan to New Mexico and that state denied it because he was not a resident of the Interstate Compact. His parole was rescinded. He was again granted parole to the State of Massachusetts in 2004 and was again denied, so the parole order was rescinded. In 2005 he was granted parole to New Mexico and that state again denied it. In 2009 he was granted parole, but had no

release plan. He requested to go to a halfway house and was advised to apply to a Las Vegas Community Correction Center. The Division requested a new plan in May 2010, and he did not submit a plan. In January 2011, the Division received an acceptance letter from transitional housing with a request for indigent funding. Mr. Yaeger was determined to be not qualified for indigent funding, and a new residence plan was requested. As of August 3, 2011, no residence plan had been received from Mr. Yaeger.

Chair Horne asked if there were any questions for Mr. DeCorona.

Mr. Siegel said apparently there was an attempt to parole, but the State and Mr. Yaeger did not work out a plan. He asked if it was a systemic problem or was it an individual problem.

Mr. DeCorona said there were cases that were granted parole, but they wished to expire or their plans were not good plans. Mr. Yaeger's case was not a lone case. Mr. Yaeger did not provide a viable plan and it had impacted him.

Mr. Siegel wanted the Commission to take notice of this problem. He said the Commission had taken steps to facilitate parole.

Pat Hines commended Commissioner Bisbee for a grant for a study on sex offenders. She said the Commission had very little for sex offender benefits. She hoped some beneficial laws would be in effect in the next Legislature. She said everything previously was toward juvenile justice. She was concerned about the computer glitch. She gave the Commission a copy of the Parole Violators Admitted By Year: 2000-2011, which omitted the year 2007, Exhibit D. She said the information was not available to Dr. Austin.

Chair Horne asked if there were any more questions for Ms. Hines. He closed the public comment and opened Agenda Item IV, approval of the minutes.

> MR. SIEGEL MOVED TO APPROVE THE MINUTES OF THE APRIL 17, 2012, MEETING OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE.
>
> MR. JACKSON SECONDED THE MOTION.
>
> THE MOTION CARRIED.

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Chair Horne opened discussion of Agenda Item V, a presentation on the Washington Intensive Supervision Project.

Mr. Kohn asked a question on Agenda Item VII, regarding the Coroner's Inquest. He said the Nevada Supreme Court took the coroner's inquest up for discussion. He wondered if the Commission should wait until the Supreme Court gave guidance as to what they thought was appropriate.

Chair Horne said with the Commission's timeline, the next meeting was scheduled for July. He said there were no assurances the Supreme Court would have a decision by then. The purpose was so the Commission had information on the history of the coroner's inquest and proposals of where they were going in the future. He said if they did not hear the information today, it might not be heard at all. Chair Horne returned to Agenda Item V.

Anmarie Aylward and Sandy Mullins offered an overview of the Washington State System and discussed the pilot, The Washington State Intensive Supervision Project (WISP). She said they also would give an overview of the bill development from the pilot project. She said they gave materials to the Commission including a paper on changes in supervision, called Changing Community Supervision, Exhibit E. They had focused on higher-risk offenders. She said they moved the community supervision population from the early 2000s of 65,000 offenders on active supervision down to 18,000 cases. Today they were supervising just over 15,000 offenders. She said it was a significant shift downward in the number of cases supervised in the State. They were focused primarily on higher-risk offenders with the addition of alternatives to incarceration. The state moved to risk need and responsiveness. She referenced the HOPE Program from Hawaii and looking at swift and certain responses to violations, Exhibit E. She said violation of conditions resulted in immediate arrest for short-term periods. They saw a significant decrease in the number of violations, an increase in accountability with the offenders, and an increase in compliance with the rules of supervision, Exhibit F.

Sandy Mullins said they were asked to look at a five to ten percent cut which would involve early release and other proposals. She said they wanted to implement good policy and increase evidence-based programming. She said the State spent approximately $35 million a year in jail bed contracts. They built legislation saving a significant amount of money annually, Exhibit G. She said they used short-term sanctioning and also did something to reduce recidivism.

Ms. Aylward said the new bill, Exhibit H, had numerous new parts to supervision. She said they were introducing it to all the local areas to enable them to do swift and certain responses.

Mr. Siegel asked how a state got started with intermediate sanctions. He asked beyond the legislative process, what were the first steps taken.

Ms. Mullins said much of it was given in the presentations by Dr. Hawken and Mark Kleiman, as a partnership between the City and the Department of Corrections, Exhibit I.

She said it was a good local partnership and the pilot level introduction of the program. She emphasized Dr. Hawken advocated for a pilot program.

Ms. Aylward said this piece of the program required assessing staff readiness. She said they had three years of staff reduction tied to evidence-based principles. She said they shared information with the staff and looked for new ways to deal with the higher-risk population.

Mr. Siegel said she mentioned a higher-risk population and asked what they had done with the lower-risk population to prepare to this point.

Ms. Aylward responded that the Washington State Legislature, in combination with the Washington State Institute for Public Policy, made some legislative decisions to assess, on a static risk assessment, criminal history and offenders who were in the low-and moderate-risk groups. She said if they did not meet the risk level, they were closed off of supervision. She said they had a mandatory minimum confinement for community custody violators, Exhibit J.

Chair Horne asked if there were any further questions. As there were none, he closed Agenda Item V. He opened Agenda Item VI, a presentation on the Opportunity Probation Enforcement Nevada Program (OPEN).

Bradford Glover, Nevada Department of Corrections, provided a PowerPoint presentation, Exhibit K, to the Commission. He said he would give a brief presentation concerning OPEN. He said Kim Madris from Parole and Probation would discuss what needed to occur to increase participation in the OPEN program. He said that in 2009, the NDOC visited the HOPE program in Hawaii. HOPE was an open probation enforcement program and was the basis for the Nevada OPEN program. He said a pilot program was begun in 2010 by the NDOC, and P&P started a program for offenders who violated their terms of probation and were sent to Casa Grande. The program limited the term to Casa Grande to a maximum of 90 days as opposed to a minimum of one-year custody in the NDOC. It allowed a response to a violation within a week rather than three or four weeks. He said Dr. Deborah Shaffer was doing a third-party evaluation to determine if the program was succeeding. He said OPEN was a year-long, high-intensity supervision program, Exhibit L. Mr. Glover read the information contained in Exhibit L. Since the beginning of the program in 2010, 23 have graduated the OPEN program, 6 were revoked; 21 probationers were referred to Intensive Day Treatment, and 15 graduated.

Chair Horne asked if officers could refer people to the judge without any other violations while they were on parole. He asked if the officers had a sense the parolee might need more intensive intervention, could they make a referral.

Ms. Madris, Deputy Chief, Parole and Probation in Southern Nevada, said currently the program was set up only in the Southern part of the State. She said Judge Jackie Glass

had volunteered as the sitting judge for the program, but had since retired, and Judge Delaney was the only judge for the OPEN program. Ms. Madris said a P&P officer was the only one to refer an offender to the judge for acceptance into OPEN.

Chair Horne asked if the referral had to be accompanied by an infraction.

Ms. Madris said yes, it was strictly a pre-revocation, intermediate-sanction type program. She said it was individuals in a status of non-compliance that were referred to the program.

Chair Horne said Exhibit L mentioned that officers may refer offenders they believed were in need of a more structured form of supervision. He said that implied they could be referred prior to them having a technical violation.

Ms. Madris replied that was an ideal situation. There were many obstacles in Nevada with the program. She said the program was unfunded. Parole and Probation had only been able to have one officer work with the pilot program due to funding cuts. She said staffing, lack of involvement by the courts, and space available at Casa Grande made it difficult to continue the program.

Chair Horne said officers were able to make recommendations, but due to staffing, they did not refer someone to the OPEN program.

Ms. Madris said the officer supervising the caseload worked at an intensive level. She said the officer was somewhat restricted to a caseload of 33 to 35 offenders.

Mr. Campolieti asked Mr. Glover if the program was only used for drug offenders, or did it include other offenses on probation.

Mr. Glover said at this time it was only being used for drug offenders, but it was also for non-violent offenders, and sex offenders were excluded from the program.

Mr. Siegel said the number of people in the program was fairly small. He asked for an estimate of the population that could be put into a transitional program for drugs or other technical violations.

Ms. Madris said the issue in Nevada was limitations on housing and staffing at Casa Grande. She said A.B. 93 decided up to 50 participants could be housed in Casa Grande at one time. The solution was arrived at in an attempt to find a better way to deal with these types of technical violators. She said other states used their county facilities. If Nevada utilized local jails, they would lose some of the benefits of Casa Grande.

Mr. Siegel asked if Ms. Madris was saying the program was operating at an optimal level, or could a relatively small amount of funding make a difference in terms of the population.

Mr. Glover said Casa Grande was used as a transitional center with approximately 400 beds. He said there were about 320 individuals there at this time, and some beds were always set aside for the OPEN program. He said A.B. 93 only granted 50 participants in the program. The bill also designated it as a pilot program. He said Senator Horsford had wanted to increase the number of people in the program.

Mr. Siegel said there was approximately a 75 percent savings on county detention and 50 percent on the NDOC detention. He said there was a significant potential savings per inmate. He asked if any of the agencies had any proposals to expand the program.

Mr. Glover said he was not at liberty to say yes or no to the question, but he would go to his director and bring the answer to Mr. Siegel.

Mr. Digesti referred to the flowchart in Exhibit K. He said he understood the OPEN program was a one-year high-intensity program for offenders.

Ms. Madris gave a brief overview of how an offender was accepted into the program and what steps occurred once a violation happened. She said a violation report was written by a P&P officer and reviewed by a P&P supervisor. If it met all the criteria, male offender, between the ages of 18 and 26, non-violent, and no new criminal charges, it would be referred to the OPEN officer to present to the judge for review. The judge would then say the candidate was or was not suitable for the OPEN program. At the revocation hearing, the offender was presented with the concept of OPEN and given the opportunity to accept the program or choose to revoke to jail or the NDOC. The offender then signed an agreement to participate in the program and was transferred to the OPEN officer. If the offender had a technical violation, he was immediately arrested and taken to Casa Grande. She said the purpose of the program was to have an immediate response to a bad act. She said for someone who violated multiple times, the judge had the latitude to order the offender into Casa Grande for a ten-day period and no more than ninety days. She said since Judge Glass retired, the program had not had the judicial backing. The program was meant to be an immediate action for a bad act.

Mr. Digesti said based upon what Ms. Madris said, and the flowchart in Exhibit K, the alleged first technical violation referred to someone who was already accepted and had agreed to be in the OPEN program. Mr. Digesti said a probationer could be placed into the program if he went to court on a violation report, and the sentencing judge gave him the option of the one-year intense program called OPEN. He asked Ms. Madris if that was the correct interpretation.

Ms. Madris replied he was correct.

Mr. Digesti said a probation officer, on his own, was not able to direct or give a probationer the option of the OPEN program without first having a violation report in place. The ultimate decision would be made by a district court judge. He asked once the offender was in the program, if someone tested dirty for drugs, was it considered a technical violation or a new crime.

Ms. Madris replied it was considered a technical violation. A new criminal act would be an arrest for a violent misdemeanor or a new felony conviction. Those individuals would not be referred to the OPEN program.

Mr. Digesti asked if it was the arrest or the conviction that kicked them out of the program.

Ms. Madris replied it was the conviction.

Mr. Digesti referred to the Flowchart in Exhibit K and asked if where it said "new arrest", it was not necessarily accurate.

Ms. Madris said a new arrest violation report was written in every case and it would go to the judge. The judge could continue the person in the program or remove them from the program.

Mr. Digesti said there was some judicial discretion in the program.

Mr. Kohn said all the cases went to one judge. He asked when someone decided to go into the program or not, was the district attorney or counsel present.

Ms. Madris said it was a revocation hearing, so she assumed both the district attorney and counsel were present.

Mr. Kohn said he thought when they appeared before Judge Glass, there was no counsel present.

Ms. Madris said prior to the revocation hearing, when the offender made the choice to go into the program, their attorney was present. She said all hearings after that point were conditions of probation and the offender voluntarily accepted the conditions and an attorney was not present at the compliance hearings.

Mr. Kohn said there was going to be another judicial change in August that will send the program to another judge. He said maybe they can restart the program. He said many things were done by agreement and not statutorily or by rule.

Chair Horne asked if there were further questions. He closed the hearing on Agenda Item VI and opened Agenda Item VII, the coroner's inquest.

Chair Horne said the coroner's inquest was an overview of the inquest in Clark County. He said there were cases currently in litigation. He said the August workshop would explore whether there was material for a bill for the coming Legislature.

Mr. Jackson brought up a point of order. He questioned if the Commission had the authority under Chapter 176 to hear the matter. He said the Commission's duties and responsibilities were specifically set forth by statute. It stated the Commission was tasked with identifying and studying issues of the State's system of criminal justice. He said specifically the issues related to sentencing, probation, parole, operation of the Nevada Department of Corrections, the effectiveness of specialty court programs, juvenile justice, and the involuntary civil commitment of sexually dangerous people. He said the coroner's inquest appeared to be an issue local only to Clark County. The issues raised were in connection with a specific ordinance enacted in Clark County. He said because it was a local issue and not a state issue, the Commission should not hear the matter.

Chair Horne replied that the Commission was allowed to take up informational items, and that was what Agenda Item VII was. He said it could have a far-reaching impact.

Mr. Anthony, from the Legal Division, said Chair Horne was correct; it was an informational item. The Commission had broad discretion to hear a number of issues. He said there was a possibility the issue could become statewide legislation, and therefore was pertinent and relevant to the authority of this Commission.

Michael Murphy, Clark County Coroner, provided information in reference to the coroner's inquest process as it was in Clark County. He said there were two types of coroner's inquests used by their office. The first was per NRS 259.050 which was used to investigate the cause of death and questionable death dating back to 1944. He said that since 1969, a coroner's inquest was conducted on a death at the hands of law enforcement in Clark County. He said the coroner made a commitment in 1969, after the death of a youth by police, to review those types of deaths. The sheriff and district attorney were elected positions, and the coroner's office in Clark County was an appointed position. He said at the inception of the process, it was closed to the public and was very similar to a grand jury. He said that between 1979 and 1980, they began the use of hearing masters who were appointed from the defense bar and the coroner no longer sat as the hearing official. Rulings of "criminal", "justified", or "excusable" were introduced into the process. He said "criminal" meant the individual responsible for the death acted outside their legal right and acted in a criminal manner. "Justified" meant the police officer used deadly force with intention and as a result the death was justified. He said "excusable" was when the officer acted under the color of office, but no intent to use deadly force was present. He said these sometimes occurred when a struggle took place. He said that in the mid 1980s, the process was further revamped and allowed for questioning of the officers. A later development only allowed written questions. The list of hearing masters was established and used in a rotation process. In 2006 a committee was formed to again look at the process as a result of some sentinel cases, and changes were made to the process in

2007. It was decided to use the justice of the peace instead of the hearing masters of the jurisdiction in which the case came forward. It allowed individuals who represented the third degree of consanguinity of the family member to ask questions. He said that often involved the spouse, children, parents, brothers and sisters asking questions. He said attorneys were also allowed to be present to ask written questions as well as the police attorneys.

Mr. Murphy said there were more events which occurred regarding the inquest. In 2010 a panel with many community stakeholders enacted Clark County Ordinance 2.12.080, and it was amended by the County Commissioners. The Commissioners established that an ombudsperson would now represent the family and the public *et al* and be able to ask questions in open court. He said seven ombudspersons were appointed and two pre-inquest meetings were established before the inquest. The meetings outlined what would happen during the inquest process and allowed all the individuals to vet their concerns. The family representative, along with an attorney, was allowed to attend the pre-inquest meetings. He said questions were handled by the district attorney, and also legal representatives of the law enforcement community, and the ombudsperson. He said it was important to note where multiple jurisdiction agencies and officers represented by separate groups came together with multiple attorneys. He said there was no ruling to be determined by the coroner's panel, instead a list of interrogatories were created. He said they were questions asked to answer factual information, not pre-assignment of guilt or innocence. He said the changes occurred in October 2010. There were nineteen inquests currently pending.

Chair Horne asked if there were questions for Mr. Murphy. As there were none, he called Chuck Callaway to testify.

Chuck Callaway, Director, Intergovernmental Services, Las Vegas Metro Police Department (LVMPD), said he believed the inquest process was important because it allowed the public to hear from officers why they used deadly force. He said the agency's position was to give the new process a chance to see if it worked. He said that during the 2011 Legislative Session, they opposed A.B. 320 which would have abolished the inquest process. He said the process faced legal challenges and there had not been an inquest since 2010. Many officers stated they would not participate in the process. He said LVMPD was dedicated to being as transparent as possible with the public where the officers used deadly force. In 2010 they created a critical incidence review team to perform reviews of deadly force incidences. He said that in February, 2012 they created the Office of Internal Oversight. They were tasked with conducting in-depth reviews and recommending correct action and reporting their results to the public. They were the first law enforcement group in the country to participate in the U.S. Department of Justice's Community Oriented Policing Service Program. He said members were conducting a review of LVMPD's use of deadly force incidents and will make recommendations for change for the better. He said they released two reports on their website providing the public with detailed facts related to the use of deadly force by the officers. The first

report was a force investigation team report detailing the information gathered by the homicide detectives at the scene of an incidence. The second report was an Office of Internal Oversight review covering any training, policy, or tactile issues they improved upon as a result of the critical internal review. He said there was a void in transparency with the public due to the inquest process being stalled. The district attorney's office decided to review the backlog of deadly force cases and publish their findings. The release of LVMPD's reports also gave the public more insight to the incidences. He said they would continue to be pro-active in their efforts to ensure the safety of their officers was upheld and also to reduce deadly force incidents.

Mr. David Roger, Attorney, said he was with the Las Vegas Police Protective Association (LVPPA). Deputy Director Chris Collins and Mr. Josh Reisman were also with the LVPPA. He said Mr. Reisman would address the constitutional issues of the ordinance involving the coroner's inquest.

Mr. Josh Reisman said the constitutional challenges currently on appeal before the Nevada Supreme Court raised four issues. They were the jurisdictional question, separation of powers, due process, and equal protection. He said the justice of the peace under the ordinance was required to serve as presiding officer over the coroner's inquest and officer-involved deaths in Clark County. He said there was only one statute in Nevada that granted justice courts authority to preside over coroners' inquests; it was NRS 259 and it limited the jurisdiction of the courts to preside over inquests to coroners' district counties. He said Clark County was not a coroner's district county. Clark County's use expanded the justice courts' jurisdiction to non-coroners' district counties in violation of Article 6, Section 8 of the Nevada Constitution. He said with regard to the separation of powers, the ordinance violated it by mandating that justices of the peace perform the duties of a prosecutor. The justice of the peace is conscripted under the ordinance to serve as an adjunct advisory and investigate the instrumentality of the executive branch in its role as prosecutor. It violated the separation of powers doctrine.

Mr. Reisman said in regard to due process, officer-involved death inquests or accusatory proceedings did not meet the minimal requirements of due process. He said it limited officers to one attorney representative and lacked individual subpoena powers. It did not provide for the exercise of the officers' Fifth Amendment rights. He said equal protection employed a classification of persons distinguishing between persons who were peace officers and caused death while acting in their capacity, and persons not peace officers and caused death. The ordinance adopted separate procedures for criminally investigating civilians and officers. He said fundamental rights were involved.

Mr. Kohn asked if Mr. Reisman had a suggestion as to who should preside over the hearings if it was not the justice of the peace.

Mr. Reisman said he had not made any suggestions.

Mr. Kohn said he did not remember ever having a discussion as to who should sit at the hearings if not the justice of peace. He asked Mr. Collins to address the question.

Mr. Collins said he did not recall the conversation from 2007.

Chris Collins said he sat in the 2007 meetings and the 2010 meetings. He did not support any of the changes from 2010. He said he made the panel aware that the police officers of the LVMPD would not participate in any inquest from these changes. He said they gave Garrity Protected statements, but they did not participate in a coroner's inquest.

Chair Horne said he understood not giving voluntary statements, but asked how different it was from the reports written by the officer for the general investigation. He said if there was a fatality on the scene, the officer was required to write a report on everything that happened. He asked if those statements were permitted into the inquest, but the officer would not give any additional statements or clarification.

Mr. Collins said currently officers involved in the use of force wrote no reports or paperwork. The reports were done by the Force Investigative Team. The Team, until six weeks ago, received no statements from the officers. He said they had agreed the officers would provide Garrity Protected statements to the Force Investigative Team. The sheriff said the Team will not speak to the officer who used deadly force, but will speak to the witness officers, and those reports would come forward at the inquest.

Chair Horne said hypothetically when a police officer made a traffic stop and was by himself, and the stop evolved into a fatality, the officer would not write a report on the incident.

Mr. Collins said if an officer conducted a vehicle stop and it resulted in a deadly force incident, that office was responsible for doing no paperwork. The Force Investigative Team did the paperwork.

Mr. Roger said Garrity Protection was the United States Supreme Court decision which provided that if an officer was compelled to give a statement as a condition of his or her employment, and they refused to give the statement, they could be disciplined or terminated. He said the statement was protected and cannot be used by the prosecution against the officer in a criminal case. He said officers carried Garrity cards and asked if they were compelled to give statements, and if so, whether they would be terminated or disciplined if they gave a statement. He said from that point forward, officers cooperated and gave protected statements.

Mr. Jackson asked Mr. Roger if the statements were confidential. He said they could not be used by the prosecution, but the prosecution was not privy to the content of the compelled statement and did not see the statement.

Mr. Roger said Garrity was a personal right. In cases where the officer was not a target, that statement can be used in criminal prosecution against the shooting officer. The subject officer's statement and any derivative evidence cannot be used against them in a criminal case. He said the question was whether the statement could be used by the district attorney. He said Los Angeles and New York had dirty teams and clean teams. The detectives would investigate the criminal case and determine whether criminal charges were appropriate. The evidence would be turned over to the clean team so they could reinvestigate the case and submit it to the prosecutor's office.

Mr. Kohn asked Mr. Roger if in 2010, when he was district attorney in Clark County, if he knew from the initial investigation that he would be bringing criminal charges, there would be no coroner's inquest.

Mr. Roger replied he was correct. The ordinance provided if the death was caused by an officer and was publicly known, then no inquest was mandatory. He said if the sheriff arrested an officer for murder and the district attorney would prosecute him, there was no need for an inquest.

Mr. Kohn said he used the example of the highway patrolman going at an excessive speed and asked if Mr. Roger remembered the case.

Mr. Roger said it was one of the cases where the district attorney prosecuted.

Mr. Kohn asked if they were following Garrity in 2010.

Mr. Roger said no, the officers were not given Garrity Protections at the time. He said Garrity was a formalized procedure between the supervisor and the officer providing the information.

Mr. Kohn was concerned about the Fifth Amendment aspect. He asked Mr. Collins if Garrity was actually put in formally to protect police officers, would it change his opinion about going forward with coroners' inquests.

Mr. Roger said Garrity did not apply to court proceedings. He said because the statements were compelled by the employer, that was the parameter of Garrity. He said if an officer went to an inquest and testified, they were not being compelled to give a statement and they were not protected by Garrity. The Fifth Amendment rights would apply. They believed the subject officers were entitled to the Fifth Amendment as well as the witness officers. He said there was a federal statute, the Criminal Civil Rights statute, that caused some concerns for officers also. He said the federal statute said if someone's constitutional rights were violated, they could be prosecuted under the statute. He said Mr. Collins advised his membership to invoke their Fifth Amendment rights and demand Garrity Protection.

Mr. Kohn said there was nothing the Legislature could do to change the civil rights acts of the federal government, so they were unable to craft legislation that would make the LVPPA comfortable.

Mr. Roger replied there was no legislation he was aware of that would make them comfortable unless all the officers were granted immunity at the beginning. He was unsure if state immunity provided immunity for federal crimes.

Mr. Kohn said he did not think it provided immunity.

Mr. Roger said he spoke with the sheriff earlier and made a commitment to review the cases. He said he committed to publishing his opinions. He said the sheriff and the district attorney were making efforts to provide information in the cases.

Mr. Callaway clarified statements made earlier. He said the hypothetical late night stop with no witnesses was currently handled with a public safety statement given by the supervisor who arrived on the scene. The statement was specific to the safety of the public. He said it did not go into specific facts as to why the officer used deadly force. He said there was no case where the officer refused to give information and they were left wondering what had happened.

Mr. Jackson asked Mr. Roger if when all the reports were released, it went beyond what had been looked at by other states concerning a coroner's inquest. He said in his opinion his role was limited in an officer-involved shooting. He said it was his duty to determine the legality of the shooting.

Mr. Roger agreed with Mr. Jackson. He said his proposal only reviewed the criminal aspects of the case. The district attorney issued a report based upon the evidence he received and the sheriff releasing the reports, which was not required. He said there were few jurisdictions that had a coroner's inquest in place. He said Kings County in Seattle, Washington, had a coroner's inquest process. Clark County had an ombudsman to represent the decedent's family. He said the inquest took approximately four days.

Christopher Laurent, Chief Deputy District Attorney, Clark County, said he did the last 50 inquests for the office. He presented information on the impact of the new ordinance. He said prior to the change, the law enforcement officers in Clark County cooperated fully in every police-involved investigation. They always gave information. He had two cases pending and he did not anticipate any police participation other than the submitting officer because of the Garrity statements. He said in the future there will be no statements coming from officers because they will invoke their Fifth Amendment rights. He said he doubted the process would achieve transparency due to the lack of the officers' statements. His office now put forth decision letters which analyzed the case and reviewed it to be sure there was no criminality. If there was criminality, they recommended charges.

Chair Horne said prior to these changes, they had 100 percent cooperation from law enforcement officers in the inquest process. After the changes, they had zero cooperation from the officers. He asked if that was correct.

Mr. Laurent said "cooperation" was a misnomer. He should have said the officers prior to the changes waived their rights in Garrity, and gave unprotected statements. They did not seek to protect themselves in any way. Now, because of what they perceived, they never received the credit for waiving their rights and testifying. Currently, under advice from counsel and their union, they asserted their rights as they were entitled. He said that could not be held against them; it was their constitutional right.

Chair Horne said that prior to the change they voluntarily gave statements. He said he believed at that time they had no immunity or protections, but they gave statements. What had changed to put them in more jeopardy than they were before the changes?

Mr. Laurent said they always had the protections they could have invoked. He said the officers elected not to do that in the spirit of cooperation. He said the populace of LVMPD believed it was becoming too adversarial and they thought they were being betrayed by a process they had supported since 1969.

Mr. Kohn asked Mr. Laurent if they removed the ombudsman, would it change anything.

Mr. Laurent said he did not anticipate the officers would ever give up their rights again.

Mr. Richard Boulware, First Vice President, NAACP of Las Vegas, Assistant Federal Public Defender, said he was here because of a series and history of problems in terms of shootings and the deaths of unarmed minorities. They had many questions as to why the deaths were occurring and had not received any information. The inquests were borne of the Civil Rights Movement. He said there was lack of transparency from the district attorney's office and the police department. The purpose of the inquest was to provide information when none was given. There was a lack of independent individuals making decisions and reviewing police actions. He said the inquests were a way to provide information and transparency to the process.

Chair Horne asked Mr. Boulware if he had any substantive suggestions on how the process should work prior to the changes of today.

Mr. Boulware said he was on the committee that did the reforms for the inquest. He had asked earlier for a separate group of prosecutors to prosecute the crime. He was aware of the tension for prosecutors who worked regularly with police officers and also investigated the potential prosecution of those officers. He said separate units addressed the problem. He also asked the sheriff to have additional civilian members for a use-of-force board. The board was LVMPD's internal review of the incidents. He said both the requests continued to be denied. He also recommended cameras in cars to create greater

transparency. He asked LVMPD to keep track of the demographics of the stops with respect to ethnicity. He said he was not successful in getting the changes he suggested.

Mr. Siegel said there was a statewide study of police stops. He requested the *Las Vegas Review Journal* articles from December concerning this issue. He requested staff prepare and distribute the articles.

Mr. Boulware said the ACLU and NAACP had filed a petition with the Department of Justice to investigate the officer-involved shootings in Las Vegas and the disproportionate stops. He would provide the petition they filed for the Commission.

Mr. Callaway said the use-of-force board was made up of seven members; four were civilians and one was the non-voting chair. He said citizens outnumbered the officers on the board. There may be changes to the structure of the use-of-force board. He said cameras were supported by the sheriff whether it was dashboard cameras in cars or body cameras on officers. Cost was a significant issue with cameras, especially in storage and data. He said the agency was not ignoring some of the suggestions made by the community they were looking at the suggestions.

Ms. Katrina Rogers, ACLU of Nevada, said her intern, Ash Khosrowshahi helped prepare the comments. She said the ACLU was involved in the coroner's inquest process through the review boards in 2007 and 2010. She said the process today provided more protection for officers and more procedural safeguards, even though they are not needed. She said it provided a process that was more fair and neutral than any inquests done before. She said that in 2007 and again in 2011, the PPA and district attorney's office and LVMPD agreed with the implementation of justices of the peace as the presiding officer in an inquest process. The ACLU was concerned about the need for a neutral third party reviewing the facts when an officer takes a life. The process in place in Clark County was neutral. She added that the process was just fact-finding, not associated with guilt or fault, Exhibit M. The process only took place after the district attorney decided no charges were going to be brought against the officer. She reiterated the changes made things more fair and balanced and provided more protections for the police. She said the hostility with the officers and their refusal to cooperate was because the inquest process was public. She said earlier it was done behind closed doors and in-house. She added that the ACLU was not on a witch hunt of police officers. They appreciated those at LVMPD who worked with the ACLU to get the information and facts to the public. She said confidence for police officers by the public was served by the inquest process.

Mr. Callaway asked Ms. Rogers if she had stated that the old inquest process was not neutral and was behind closed doors.

Ms. Rogers said that in the old inquest process, there were members of the family of the deceased that could be present and members of any of the parties of interest or participants. She said other than that, the process was not open to the public. She said

now the inquest was open to the public and there was a provision in the ordinance allowing for broadcast of the inquest on public television.

Mr. Callaway asked if she was aware that the Trevon Cole inquest held under the old inquest system was televised and the officer participated and was asked over 900 questions during the process. He said a jury of citizens came to a conclusion of whether it was justified. He asked if she considered the jury to be a neutral party who heard the facts of the incident.

Ms. Rogers said she believed the jury was a neutral party and there were special circumstances which allowed the Trevon Cole inquest to be broadcast. The police were available to answer the public's questions. She said she meant by neutrality the panel no longer adjudicated fault or guilt.

Chair Horne asked Ms. Rogers to expound on her comments that there were more protections for police officers than there were before. He asked what protections they had now that they did not have before.

Ms. Rogers said that earlier the questions went towards fault or guilt. She said those were removed, and it was one protection. Another protection was the allowance of an attorney for the officers and the discretion of the presiding officer as to how many attorneys could be involved. She said the officers could be involved in the pre-inquest meetings with the presiding officer, the ombudsperson, and their personal attorney to work on the questions that can and cannot be asked. She said they had a fuller participation in knowing what was expected of them and being able to object at an earlier point in time before the issues became public.

Mr. Jackson asked Ms. Rogers to clarify how it was more of a protection for an officer to face questions by an ombudsman who was an advocate for the person or family members of the deceased.

Ms. Rogers said the entire inquest process by the ordinance was designed to be non-accusatory in every process. She said all the questions asked must be approved by the members before the inquest hearing begins. She said even though there was a third party asking questions, the officers were now represented by an attorney and had more opportunity to object and have their interests protected.

Mr. Jackson said it was not uncommon for a person who was a suspect of a crime to invoke their constitutional rights. He said if a prosecutor commented on that and said the suspect refused to cooperate, it would be prosecutorial misconduct. He said Ms. Rogers said several times that law enforcement officers refused to cooperate. He asked if they were actually invoking the rights that were afforded to them.

Ms. Rogers said they had every right to invoke their rights. The ACLU was not forcing officers to testify or do away with the Fifth Amendment Rights. She said with constitutional due process rights, one only looked at those rights associated with an adversarial, criminal, or adjudicatory proceeding. Everyone involved in the inquest process had taken great pains to ensure the inquest process was not an adversarial proceeding. She said therefore the due process concerns did not apply unless there was a deprivation of life, or liberty, or other fundamental rights at stake. She said that in an inquest proceeding, there was no deprivation of the fundamental rights. She said they were not looking at having an officer forced or compelled to give incriminating information. She said the ACLU was more concerned with an open and honest review of the facts by a neutral third party.

Mr. Siegel said she referred to requesting involvement by the Department of Justice (DOJ). He asked her what the interest was with the DOJ in regard to this issue.

Ms. Rogers said it was important to know the inquest process, and the Department of Justice reviews were two very separate things. The inquest process was the Clark County ordinance involved with transparency of police actions. The petition the DOJ was asked to review dealt with an overall practice and policy of the LVMPD. She said the ACLU asked the DOJ to review policies and procedures of the police department regarding use of force.

Mr. Callaway said there were two components of the DOJ, one being the civil rights side, and the other is the “cop” side which was the community oriented policing side. He said the Sheriff had conversations with the DOJ and it was why they were undergoing the cops’ side review. He said that by the end of August, there would be a series of recommendations from DOJ on how LVMPD can improve as an agency. He was confident the recommendations given would be adopted by the police force.

Mr. Digesti said he was not totally familiar with the code for the inquest process. He said earlier Ms. Rogers commented that the inquest takes place after it was determined by the district attorney there would be no criminal prosecution. He asked if that was correct.

Ms. Rogers said he was correct. The inquest process was designed to be a review of the facts after there was a decision no criminal charge would take place.

Mr. Digesti asked if a police officer was invited to testify at an inquest after a determination and there was a record there was no criminal prosecution, how can the officer invoke a Fifth Amendment privilege.

Ms. Rogers said that in the decisions the district attorney presents regarding adjudication or bringing criminal charges, there was no absolute guarantee of immunity. She said there was a statement stating that unless further facts came to light, there would be no criminal charges.

Mr. Digesti said it was open-ended and there was always a possibility of charges.

Ms. Rogers replied yes, there was always the possibility other charges could be presented. She said facts could be found with or without the inquest process. The ordinance for the inquest process was designed to answer any questions of fact or lay out the facts surrounding the death in a more formal proceeding.

Mr. Digesti asked Ms. Rogers if a number of police officers were present when a shooting occurred, and the officers might be witnesses as opposed to a target suspect, were they all allowed to invoke the Fifth Amendment at an inquest. He said his knowledge of criminal law said before anyone invoked a Fifth Amendment privilege against self incrimination, they had to show the validity of that privilege. Why would police officer witnesses be able to invoke the Fifth Amendment privilege when they were not the target?

Ms. Rogers said if there were multiple officers involved and two of them were witnesses and had no participation in the use of force, a judge decided the Fifth Amendment did not apply and they were not allowed to invoke the protection. The police union directed officers involved to state they were invoking their Fifth Amendment rights regardless of whether they were actually involved in the use of force.

Mr. Digesti said the justice of the peace in charge of the inquest would make the decision whether the officers could invoke the Fifth Amendment rights.

Ms. Rogers said in one case it was determined because the case was actually litigated.

Mr. Callaway said if the suspect officer took inappropriate action and the witness officer failed to intervene, then that witness officer could potentially become a suspect officer. He said that was why the union took their attorney's advice to invoke their Fifth Amendment rights on the grounds they could become suspect.

Mr. Digesti said he did not understand the process. He said if a police officer invoked the Fifth at an inquest, a determination needed to be made by someone that the witness did have a legitimate Fifth Amendment privilege. The privilege was not invoked just for the sake of invoking it. He said a proper foundation needed to be laid for the invocation of the Fifth Amendment in the first instance. He said it seemed a witness would have to appear at a coroner's inquest and answer questions by the judicial officer in charge of the proceedings. The officer in charge would then have to make a determination whether the individual had a valid Fifth Amendment privilege against incrimination. He said he did not think a union official should make the decision. He was familiar with Garrity and how it was used. He asked if a witness refused to answer, after it was determined the person did not have a valid Fifth Amendment privilege, what were the sanctions that could be imposed. He said as an outside observer and not privy to all the facts, the issue revolved around police officer shootings. Mr. Digesti said his perception of the situation

appeared to add to the code of silence that may or may not permeate among law enforcement. He said the issue went back to transparency and the public's perception of what may or not may not be going on.

Mr. Kohn said he was a member of the committee in 2007 that worked on the coroner's inquest the first time and a member again in 2010 which brought the statute. He said he preferred not to make arguments one way or another. He said if the district attorney had already made a determination, why would they hold an inquest. If the police department believed a crime had occurred and the officer-involved death was criminal, there would not be a coroner's inquest. He said if a determination was not made that a case was criminal, then it would go to the coroner's inquest. He had no strong opinions to offer concerning the matter.

Ms. Cortez Masto asked if prior to 2007, the coroner's inquest process was closed to the public. She asked if that was an accurate statement.

Mr. Kohn said he did not remember the inquests being closed. He said the questioning was closed, but he did not remember the hearings ever being closed.

Chair Horne said Mr. Boulware spoke about suggestions for a separate prosecutorial office. He asked Mr. Kohn if that had been discussed in the meetings.

Mr. Kohn said the suggestions made today had never been considered. He did not remember ever having a discussion about a different agency or different group of prosecutors looking at the cases. There was a motion put forth by David Roger to take the district attorney's office completely out of the hearings. There was a vote and it was decided to leave the district attorney in the process. He said perhaps prosecutors who were not working day to day with homicide should be the prosecutors investigating the cases. He was shocked to hear other police officers who had nothing to do with the shooting could be held liable and would have to defend their rights. He said he had never heard that before today. A witness cannot avoid testifying in a court just by saying he had Fifth Amendment rights. He said he did not want police officers giving up their Fifth Amendment rights, but at the same time there had to be a Fifth Amendment interest.

Chair Horne said it would be interesting to explore an independent arm of the prosecutor's officer or the Attorney General's office. He said everyone agreed law enforcement officers had a tremendous amount of power and authority. They were asked to do many dangerous things, but there cannot be a process which allowed police officers and district attorneys to be the sole determiners of whether a shooting was justified. He said at the same time, a process where a police officer was exposed to an inquisition process was not acceptable. He said the entire department did not have a Fifth Amendment blanket or those who were not involved in the case at issue. The community was entitled to have comfort and confidence that the process was fair and transparent. He

said it seemed the confidence had waned with the community. Chair Horne closed the discussion on Agenda Item VII and opened discussion on Agenda Item VIII.

Mr. Anthony discussed legislation sponsored by the 2009-2010 Advisory Commission on the Administration of Justice that did not pass in the last legislative session. He said there were overviews of the five different measures and the latest version of any legislation introduced by the Commission that did not pass in 2011, Exhibit N. The first bill, A.B. 136, would have extended A.B. 510 credits to certain Category B felons. It was passed by the Legislature and was vetoed by the Governor. The veto message was included in Exhibit N. He said three other bills did not pass. One was A.B. 96 which prohibited or limited a court from ordering a victim or witness to submit to a psychological exam. He said S.B. 123 did not get out of the Senate Committee on Government Affairs.

Mr. Anthony said S.B. 365 also did not pass out of committee. Finally, there was Senate Joint Resolution 1 (SJR 1), introduced by the 2007-2008 Advisory Commission and passed by the Legislature in 2009. It was a resolution that proposed amending the Constitution, so it had to pass twice in identical form. It was not passed in the 2011 Session, Exhibit N.

Mr. Siegel asked Mr. Anthony if he recalled a bill which dealt with intermediate sanctions. He asked if it was passed by both houses, but perhaps was vetoed by the Governor.

Mr. Anthony said as far as Advisory Commission bills, there were nine bills; five passed and four failed to pass.

Mr. Siegel said it was an advisory bill to endorse the principle of intermediate sanctions instead of returning people to prison. He asked Chair Horne if today was the right day for a discussion of changing or modifying any of the bills.

Chair Horne said either the July meeting or the work session would be a good time. He said A.B. 136 passed in both houses, and he asked the Governor for clarification on the veto. The Governor's office asked the NDOC to answer his questions. He asked if someone from the NDOC had comments. He said the violent, sexual, and DUI crimes were removed from the bill. The Commission might want to try to get it passed at the next Session. Chair Horne closed Agenda Item VIII and opened Agenda Item IX.

Mr. Kohn said the Subcommittee had a second meeting concerning the Presentence Investigation Report. There was a document reviewing NRS Chapter 176, Exhibit O. He recapped the Nevada Supreme Court Case, *Stockmeier v. State*, which said any perceived errors or omissions in a PSI report had to be addressed prior to sentencing. He said it would not be fair to try to relitagate some of the issues 10 years after the fact. Mr. Kohn said the Committee looked at the federal rule which gave the probation reports to the

attorneys 35 days in advance. That was difficult for the Division of Parole and Probation. He said the Committee suggested the report be given to the parties 21 days in advance of sentencing, within 7 days; either party can suggest changes, then 7 more days to meet and confer and resolve the changes. He said they also brought the NDOC in to ask what form the corrections needed to take. Probation reports were also used by the NDOC for many purposes, including classifications and later by the parole board. An accurate report was important. Mr. Kohn said the criminal justice system needed rules set forth and everybody knew the rules. He said the U.S. Supreme Court decided two cases that also made it clear there was a right to effective assistance of counsel at plea hearings and at sentencing hearings. He said the proposed changes would help everyone in the criminal justice system.

Jorge Pierrott said the Division of Parole and Probation had made some changes to resolve some of the errors found in the PSI process. He said that prior to sentencing if errors were identified, they were presented in court and the court then gave the Division two weeks to resolve the information and resubmit the information back to the court. He said it was implemented after the *Stockmeier* case. Mr. Pierrott said the changes requested for the PSI process amounted to less than one percent of the cases in the Las Vegas or Southern Command, as well as less than one percent in the Northern Command. The requested changes to include 21 days before sentencing for the PSI process required making changes to 99 percent of the cases without errors. He said the Division submitted their cases 3 to 5 days before sentencing and provided defense and prosecution with time to make their reviews. The changes requested would create substantial problems for the Division and they needed additional bodies to fulfill the changes. He said the Division would require one additional specialist supervisor, six new specialists, and thirteen vehicles for the specialists to go to court for cases in the Southern Command. He said Northern Command would have to request one additional supervisor, five specialists, and fourteen vehicles. It would create substantial problems for the Division.

Mr. Kohn said Parole and Probation was saying they were requesting changes for a very small percentage of the cases. He said he wanted to see how many times the reports went to the lawyers 5 days in advance. Five days was not enough time to go through the reports of the number of sentencings they had and make the changes that needed to be made. He said the defense was not getting the reports 5 days in advance in the majority of cases. There was no rule determining the number of days it had to be presented before the report. He said Parole and Probation used an NCIC report and not convictions with the judgment of conviction. Defense agencies in Nevada did not have access to NCIC; they could not see what probation saw and mistakes were made. Mr. Kohn appreciated there was a cost for Parole and Probation. He said if it was not done correctly, it would lead to lawsuits and cost one way or another. It was prudent to get the reports earlier in time and have the opportunity to make sure the reports were accurate. He said if they decided to do nothing, it will get litigated and a court will decide the rules for the State.

Mr. Pierrott responded saying they had policies and rules they followed. The reports were implemented within the allotted time. Secondly, he had records of when the reports were sent to the public defender's office and also the district attorney's office. The records could be provided to the Commission. He said changes were made because of the *Stockmeier* case to address the PSI process and recognize the errors.

Chair Horne said Mr. Pierrott said he could provide a record accounting of when the reports were submitted to the public defender's office and the district attorney's office. He said he did not remember when he had received a report 5 days before court. He said if Parole and Probation can provide documentation the reports were getting to the attorneys in that time period of 3 to 5 days, he wanted to see it.

Mr. Kohn asked for every probation report for the last three years and asked in how many days did they get them to all the attorneys in Southern Command. He said he did not want just the last couple of months since he opened the issue. He wanted to see some records of all the probation reports in the Southern Command over a significant amount of time. He said NRS did not set forth a time other than before the probation report.

Chair Horne said he wanted reports for one year, not three years.

Mr. Curtis said they had information that went back a year. He said they would not be able to do three years with their resources.

Senator Brower said he was not interested in finding out the history in terms of the timing of the reports. He said the fact there was no requirement in statute caused problems. The question was what the rule ought to be rather than the current practice. He said the federal rule was 35 days, which was too much. He added 7 days might not be enough time. He said they should be concentrating on what was doable and made sense.

Mr. Curtis said with the resources to do the job, they could meet any date. The courts had to change their time schedules, and the jails would need extended time with inmates. He said it was a problem for the people in custody.

Senator Brower said an important factor was the Division's resources and what was doable without the need for a lot more resources. He said fairness dictated there be some number that is not the day of the hearing. He said it was not fair to receive something the day of the court hearing.

Mr. Curtis said P&P made some strides in other areas. He said they did electronic transfers in Reno and Las Vegas to the courts.

Mr. Vinger said it would help the Legislators to have a full understanding of the total fiscal impact statewide for the counties, and cities, as well as the State.

Mr. Digesti asked Mr. Curtis what the typical turn-around time was from entry of the plea to sentencing in Clark County. He asked how long the court gave the department to prepare the PSI report.

Mr. Kohn said he recognized it would cost money and they should give P&P more resources. He wanted the Legislature to vet the idea. He said he wanted to give P&P more time to prepare reports for people out of custody, and make sure they received the reports sooner on the people who were in custody. They needed to make some rules and make sure there was enough time to accurately look at the reports.

David Sonner, Captain, Division of Parole and Probation, said the court gave them a minimum of 30 days for in-custody offenders and 45 days for out-of-custody offenders to produce the PSI reports. The proposal by the Subcommittee would extend the custody time up to a minimum of 51 days in custody, which would impact the jail's resources. He said often the 45 days for out-of-custody reports were extended due to giving priority to the in-custody cases.

Mr. Digesti said in the North, the courts typically gave 30 days for the reports. He said everyone recognized the hardships for everybody as they tried to make the system better. The way it was structured now was not efficient. He was concerned about mandates from outside decisions. He said perhaps the district court judges could give the department more time to develop the PSI reports. He said if they gave more time, he did not think it created burdensome financial or additional financial impact on the department. It might create financial considerations for the jail. The federal system typically was not as busy as the state courts were, but the point was the federal system gave 60 to 90 days for the PSI report. He said their guidelines put the onus on the defense lawyer and the public defender's office to work with the PSI report and remove the problems and differences before going to court. One of his concerns was that when he went to court, he hoped the judge had time to review the report. He hoped they could come up with a solution that was workable, reasonable, and addressed the issues.

Mr. Kohn said he preferred they deal with the problem rather than the federal courts. He said that in Clark County, a court often had 10 to 15 sentencings in one session.

Mr. Sonner replied he was correct, but there may be even more. In Clark County there were 24 criminal departments.

Mr. Kohn said it was not unusual for some courts to have 15 sentencings in a day. He said if they received the reports the same day or even 3 days in advance, they were unable to be effective. He said Parole and Probation needed more resources to do the job.

Mr. Curtis said that 70 percent of the funding for PSI production was transferred to the counties last Session. He said 30 percent still came from state funding.

Mr. Vinger reiterated that the funding was billed from the counties. He said the average daily cost in Washoe County was approximately $112 a day per inmate. He said it was important for the Legislators to know the true financial impact for every county.

Chair Horne closed Agenda Item IX and opened Agenda Item X.

Attorney General Cortez Masto reported on the meeting of the Subcommittee on Victims of Crime. She said the subcommittee focused on the human trafficking component and addressing the commercial, sexual exploitation of individuals. She said they worked on identifying model legislation they could present to the Legislature. They wanted to be sure many individuals contributed to the proposed legislation. The other issue they dealt with was the licensing of nurses for the SART/SANE programs for sexual assault exams in the State. She said the requirement to keep up certification in the programs was difficult in the rural communities. The other area they addressed was the sexual assault exam fees. Victims of sexual assault who went to a hospital for an exam did not pay for the exam by statute. However, the fees charged by the counties went from $200 to several thousand dollars. She said conditions should not be attached to sexual assault victims seeking an exam. Another area they continued to monitor was the VINE project, which was the victim notification program. She said it was a program to let the victim know where the perpetrator was and what was happening with him. They received funding from the federal government to fund the VINE project. She said it was an automated program that contacted the victim and gave the information electronically and coordinated with all the law enforcement in the State. They hoped to have the program in all the counties by the end of the year.

Chair Horne said he looked forward to seeing the SANE nurses qualifications. He said he knew it was a difficult process. Chair Horne closed Agenda Item X. He said the next meeting was proposed for the week of July 16 through July 20, 2012. He asked for a quick response of the availability of members. Possible items for discussion included A.B. 107, a review on assault weapon gun laws, lifetime supervision and the impact on Parole and Probation, post-conviction reports, and the final report from the PSI Subcommittee. He added that the Attorney General's final report on the Victims of Crime Subcommittee and a solicitation of final recommendations to be included in the Work Session document was scheduled for the week of August 20, 2012. Chair Horne closed Agenda Item XI and opened Agenda Item XII, public comment.

Ms. Brown commented on failed bills, including S.B. 265 which dealt with credits. She talked about inmates placed in segregated units who did not receive credits. She said inmates should not be penalized because they were unwell and placed in a segregated unit. She commented on John Witherow's testimony, Exhibit C. She said he did not commit a murder, but was in for habitual crimes. She asked the board to consider limiting a life with possible parole to a maximum 20-year term. She also discussed infections in the prisons. She said there needed to be a public notification of the dangers. She asked what the name was of the software program tied to the computer glitch.

Mr. Rex Reed said Casa Grande had eight wings of either 48 or 52 beds in each wing. The capacity was 400. They did not mix female and male inmates. He said if the committee decided to recommend an increase in the OPEN program, they needed to make the increase in units of 50. He said otherwise it destroyed the efficiency of the prison. They could not mix various inmates.

Ms. Hines said she needed to know when Dr. Austin was returning to the meeting. She asked if he was sending information to the Commission that they had requested from him.

Chair Horne said Dr. Austin was not coming back before the work session.

Mr. Anthony said any requested information they had received from Dr. Austin was posted to the Advisory Commission's website. Ms. Hines also asked if Ms. Sheryl Foster had provided information to the group.

Ms. Foster said the information requested in the first meeting she attended was provided to the Commission.

Mr. Anthony said any information requested by the members or the public was posted on the website or available as an attachment to the meeting minutes which were also available on the website.

Ms. Hines said she was not in favor of an audit by the LCB. She thought the audit should be done by an independent agency. She requested an audit on the amount of money the Attorney General spent in the last five years to keep the Adam Walsh Act in active status. She said the money could have been better spent on victims, inmates, and their families. Nevada did not offer benefits to a felon with a sexual assault charge. She said it was time to give some advice and consideration to what could be done for adult sex offenders. She asked for consideration to do something beneficial for sex offenders in the State. She said spend some money if needed to help them get jobs. She said public education for the general population was needed.

Chair Horne closed public comment. He asked if there was any further business. As there was none, he adjourned the meeting at 2:08 p.m.

RESPECTFULLY SUBMITTED:

_____
Olivia Lodato, Secretary

APPROVED BY:

_____
William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE

Date: June 6, 2012 Time of Meeting: 9:30 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	Tonja Brown	Letters/Affidavit
	D	Pat Hines	Computer Glitch
	E	Anmarie Aylward	Washington State DOC Information
	F	Anmarie Aylward	Washington Senate Bill 6204
	G	Sandy Mullins	WISP Program
	H	Anmarie Aylward	Final Senate Bill Report
	I	Sandy Mullins	Washington State Intensive Supervision Program
	J	Anmarie Aylward	Sentencing Guidelines
	K	Bradford Glover	NDOC OPEN Program
	L	Bradford Glover	OPEN Program
	M	Katrina Rogers	ACLU Comments on Coroner's Inquest
	N	Nicholas C. Anthony	2011 Bills Not Passed in Legislature
	O	Phil Kohn	PSI Report