

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

AUGUST 28, 2012

The meeting of the Advisory Commission on the Administration of Justice was called to order by Assemblyman William C. Horne, Chair, on August 28, 2012, at 9:09 a.m., at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada, and via simultaneous videoconference at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and at the University of Nevada School of Medicine, Room 25, Griswold Hall, 701 Walnut Street, Elko, 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
Larry Digesti, Representative, State Bar of Nevada
Mark Jackson, Douglas County District Attorney
Justice James Hardesty, Vice Chair, Nevada Supreme Court
Jorge Pierrott, Sergeant, Department of Public Safety, Division of Parole and Probation
Richard Siegel, President, American Civil Liberties Union of Nevada
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Judge David Barker
Connie Bisbee, Board of Parole Commissioners
Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department
Catherine Cortez Masto, Attorney General

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Phil Kohn, Clark County Public Defender
Assemblyman Richard McArthur, Assembly District No. 4
Senator David R. Parks, District No. 4

COMMISSION MEMBERS ABSENT:

Greg Cox, Nevada Department of Corrections
Lisa Hibbler, Victims' Advocate

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
Assemblyman John Ellison
Robert Roshak, Director, Nevada Sheriffs and Chiefs Association
Brett Kandt, Special Deputy Attorney General
Mercedes Maharis

Chair Horne called the Advisory Commission on the Administration of Justice to order at 9:09 a.m. He requested a roll call of members present.

Mrs. Angela Hartzler called the roll and noted two members were absent.

Chair Horne welcomed Lt. Eric Spratley of the Washoe County Sheriff's Office to the Commission.

Chair Horne clarified for everyone in the audience or listening on the Internet that the Commission was not holding a work session today. He said the work session was removed from the second revised agenda at staff's recommendation and in an abundance of caution to comply with the timely posting of the work session document materials. He intended to hold a future meeting solely for the purpose of undertaking the work session. He said he would clarify points before the meeting began. He said there were overflow rooms for the public in Carson City, Elko, and Las Vegas. He planned on hearing the Agenda items in order. He said in accordance with the Nevada Open Meeting Law,

directly following his comments, there would be two periods of public comment. He said this had always been the practice of this Commission and he was sorry some had received information stating that would not be the case today. Due to the number of individuals wishing to speak, he planned to limit public comment to two minutes per individual. Additional comments may be submitted in writing for the record and for consideration by the Commission. He reminded people that testimony should not be repetitive. He said there was an expected level of public decorum at the Nevada Legislature. If someone engaged in derogatory comments, loud outbursts, or disruptions of the meeting, they will be asked to leave and will be escorted from the building. He said free speech and the opportunity to engage in public debate was a true fundamental of the country. He asked for cooperation in maintaining the dignity and decorum of the body. He said it included respect to the members of the Commission and all individuals who may have views or opinions contrary to others. He said the Advisory Commission was charged with reviewing the criminal justice system of Nevada and making recommendations to the Nevada Legislature. The Commission did not enact, nor did it have statutory authority, to request bill drafts. The purpose of the Commission was to look at pertinent issues of the criminal justice system. In light of several high-profile assaults, including one less than a mile from this building, the Commission thought it was important to have an informational discussion on the issue of assault weapons. The discussion was limited to law enforcement, the Law Center to Prevent Gun Violence, and the National Rifle Association. He recognized it was an emotional topic. He thanked the participants who were placed on the agenda today and asked that they all be afforded respect and courtesy.

Chair Horne said as Chair, he did not appreciate the misinformation that was presented on this issue. He said he would not be bullied and he found that type of behavior extremely disappointing. He said any attempt to dissuade the body or the members of the Commission from performing their duties amounted to bullying, and will not be tolerated. He said he was also disappointed that Assemblyman John Ellison, a colleague, did not personally call him. Mr. Ellison wrote an editorial in his local paper implying the Chair's intention was the banning of assault weapons. He said that was not true. He said Mr. Ellison requested the meeting be videoconferenced to Elko. Chair Horne said failing to contact him was unprofessional. He thanked the many people who had contacted him via email or phone and expressed their opinions and concerns on the issue respectfully. He said they outnumbered those who were less respectful or thoughtful in their words. Finally, he did not have the power to ban assault weapons in the State of Nevada. He said they were here today to hear the issue and the Commission would decide after the meeting whether to make any recommendations to the Legislature. He opened the discussion for questions from Commission members.

Judge Barker said he had reviewed the duties of the Commission regarding Agenda Item VIII. He did not see where the duties related to Agenda Item VIII and wished to discuss it.

Chair Horne requested legal comment on the statute.

Mr. Anthony said the duties of the Advisory Commission were spelled out in statute. He said it was a broad definition to review the entire criminal justice system in Nevada.

Judge Barker referred to subsection 1, "identify and study elements of the State's system of criminal justice which affect the sentences imposed for felonies and gross misdemeanors." He asked if Mr. Anthony believed that language was enabling language to talk about assault weapons.

Mr. Anthony replied he was correct.

Judge Barker said he disagreed.

Mr. Anthony said the Commission originally grew out of the Sentencing Commission, was changed in 2007, and the duties were expanded. He said throughout 2008, 2009, 2010 and 2011 the Commission has used the authority broadly to look at all elements of the criminal justice system, including crimes which may or may not include carrying an assault weapon. He said if it were banned and made a criminal penalty it would fall within the jurisdiction of the Commission.

Judge Barker said he looked at the four corners of the language of the statute, and it talked about criminal justice which affected the sentences imposed for felonies and gross misdemeanors. He said it was not a criminal offense to possess an assault weapon. He said he thought it was outside of the Commission's responsibility to have it on the agenda. Judge Barker moved to strike it from the Agenda.

JUDGE BARKER MOVED TO STRIKE AGENDA ITEM VIII.

MR. KOHN SECONDED THE MOTION.

Chair Horne asked if there was discussion on the motion.

Mr. Kohn said it was one of the most complex issues facing the country. He said it was a Constitutional discussion regarding the Second Amendment, and it would take an incredible amount of time for the discussion. There were issues that had been worked on for the past two years that needed addressing. He said if a discussion was needed, the Legislature could have hearings. It needed more than one or two hours of discussion. He said it was one of the most difficult issues in the country. He said assault weapons and the abortion issue were the two hottest topics of discussion and today was not the time to review the issue. He said if there were specific statutes that should be changed, please show the Committee for discussion. He said a broad discussion of weapons was not something they could do in a short amount of time and that was the reason he seconded the motion.

Chair Horne reminded the members that it was informational only and the scope and authority of the Commission to hear the issue was reviewed by Legal. He said because of the complexity of the issue and because it was controversial, did not mean it should not be heard. He said one of the underlying purposes of the Commission was to look at issues dealing with the public and its safety. The purpose was to ask probing questions, and the Committee accomplished a great deal. He reiterated that it was just information. He asked what Nevada's laws were when dealing with concealed carry weapons and assault weapons. He said he was interested in having a respectful discussion concerning the issue. He said it was not seeking to solve the issue between differing opinions, but to begin the public discussion. He added it would have been appropriate for Commission members to say they did not want the topic on the agenda when it was first discussed.

Mr. Jackson said he understood Judge Barker, and at the previous meeting, he lodged a similar type of objection to a matter on the Agenda. He said based upon Legal Counsel and what was put on the record, he understood the broader interpretations of how the Commission moved forward. He also said to not necessarily make an assumption that a recommendation would be made to the Legislature to ban assault weapons. He said there could be an urging by the majority of the Commission members to the Legislature to not take on any BDRs or legislation involving assault weapon bans. He said it was going to be difficult to overcome Article 1 Section 11 of the Nevada Constitution. He opposed the motion at this time and was willing to listen to the discussions.

Assemblyman McArthur asked if the agenda item was pulled today, would it not be brought up in a work session.

Chair Horne said there was nothing to work on if the Commission did not have a hearing on the subject. He reiterated it was only an informational item today. Chair Horne said the motion was to pull Agenda Item VIII. He requested a roll call vote.

THE MOTION PASSED. (CHAIR HORNE, SENATOR PARKS,
MR. SIEGEL, MR. PIERROTT, AND MR. JACKSON VOTED NO.
MS. MASTO, MR. COX, MS. HIBBLER AND SENATOR BROWER
WERE ABSENT FOR THE VOTE.)

Chair Horne said Agenda Item VIII was removed from the Agenda. He said there would be a five minute recess to allow those present for the hearing of Item VIII to leave the meeting if they wished to do so.

Chair Horne reconvened the meeting. He opened Agenda Item III, public comment.

Assemblyman Ellison said he meant no disrespect. He said he emailed Chair Horne a letter as soon as he received the Agenda. He said he received three different Agendas,

which was very confusing for him. He said each one said either comment or no comment. He said he did not believe in calling somebody at home and that was why he sent the email. He said he would forward a letter he wrote as testimony to Chair Horne at his personal office. He said he wanted to go on the record that he showed no disrespect for Chair Horne or the Committee whatsoever.

Chair Horne thanked Mr. Ellison. He asked if there was further comment from people in Elko.

Mr. Ellison said everybody had left. He said the sheriff was there and several different people from different gun ownerships who had the same concerns he did when they saw the articles.

Tonja Brown commented on Agenda Item VII, concerning policies and procedures for the identification of criminal suspects. She asked if a case study from 2007-2008 was being considered, and if it would be considered once the presentation was completed. She said many people had been wrongfully convicted through eyewitness identifications. She said 162 people positively identified Mr. Klein in the same photo lineup that was shown to the victim, and it led to his arrest and conviction. She was interested in a study of wrongful convictions on people who had maintained their innocence. She said NRS 213 needed to be tightened.

Chair Horne closed public comment and opened Agenda Item IV, approval of the minutes from the meeting held on July 17, 2012.

Ms. Bisbee said a correction needed to be made on page 13 of the minutes. She said she had stated percentages of between 15 and 18 percent of the PSIs impacted the Parole Board, and she meant to say 5 to 8 percent and wanted the record corrected.

MR. JACKSON MOVED TO APPROVE THE MINUTES FROM THE
JULY 17, 2012, MEETING OF THE ADVISORY COMMISSION ON
THE ADMINISTRATION OF JUSTICE.

Chair Horne said there was a motion to approve the minutes with the amendment from Ms. Bisbee.

MR. DIGESTI SECONDED THE MOTION.

THE MOTION CARRIED. (JUSTICE HARDESTY AND MR. SPRATLEY
ABSTAINED.)

Chair Horne closed Agenda Item IV and opened Agenda Item V.

Mr. Kohn said the subcommittee had some proposed conceptual legislation to amend NRS Chapter 176 regarding probation reports and when the reports must be filed. He said he brought up the matter because of a case decided by the Nevada Supreme Court in May 2011, *Stockmeier v. State*. He said the Court ruled on the finality of P&P reports once a case was concluded. He said the P&P reports were used by the court to arrive at a sentence and also by the Department of Corrections in their classification of inmates and by the Parole Department when determining when someone should be paroled. Mr. Kohn said there was no rule as to when reports must be filed. There was a tradition in Nevada that the reports were filed three or four days in advance by the Department of Parole and Probation. He said based on the numbers from Parole and Probation between June 2011 and June 2012, 3,200 of the nearly 6,000 probation reports were filed three or four days prior to sentencing. He said three days was not enough time for the defense to thoroughly review it with their clients. He said three days that included weekends was not a sufficient amount of time. He proposed working on legislation that gave Parole and Probation more time to do the out-of-custody reports, and it will take less time for those in custody. He said he believed Parole and Probation said 37 percent of the clients were in custody, but he might be wrong. He said that right after the *Stockmeier* decision, the public defender's office received a P&P report a day or two before sentencing with an allegation that the client had an escape out of Georgia. There was an arrest, but no conviction. He said P&P believed using NCIC without convictions was a part of the criminal history. He said defense attorneys in Nevada did not have access to NCIC. Mr. Skolnik said it was something that would be at issue when someone was classified at the DOC. Mr. Kohn presented a statutory scheme where the probation report was due 21 days in advance of sentencing, the defense had 7 days to make any objections, and the prosecution had 7 days to answer those questions and 7 days before the court received comments and concerns from both sides, [Exhibit C](#). He said the proposal would cut down on time in custody. He was asking for a rule telling everybody when reports were due and amendments or concerns were due and giving the court and counsel time to answer. He asked the committee to adopt the conceptual legislation in [Exhibit C](#).

Mr. Pierrott responded that the letter provided by Parole and Probation to the Commission had different numbers than those Mr. Kohn stated. He said 5,821 reports were delivered between 3 or more days prior to the day of sentencing, which was 97.4 percent. He said that was a very high number for PSIs. The Division said they would provide the PSIs to all related agencies, such as the courts, the public defender's office, and any private attorneys 7 working days prior to the date of sentencing. He said it would not create a financial burden on the Division, the courts or the jails. The proposal submitted might mean people were in jail for a longer length of time. He said the proposal was a minimum of 51 days in custody before they were sentenced. He said Parole and Probation submitted a proposal allowing all parties involved to review the information, suggest corrections and changes and submit the changes back to the court a week later. He said there were very few cases submitted that required corrections, and the PSIs were submitted within 3 days before sentencing. He said they were willing to make changes and submit the reports 7 working days before sentencing.

Justice Hardesty asked of the 5,975 PSI reports from June 2011 to June 2012, how many of the reports were delivered to the court within 45 days of the request.

Mr. Pierrott replied the information they had was, 5,821 of the reports were submitted to the court 3 days prior to sentencing, and 154 reports were submitted 2 days prior. He said 71 percent of those reports were delivered 3 to 7 days prior to sentencing. He said the majority of the reports were submitted within the time allotted by the courts.

Justice Hardesty said perhaps they were not communicating. He said the statute establishing the requirement for the Presentence Investigation Report, before the court can initiate sentencing, requires the production of the PSI report within 45 days. He said the statistics did not reflect the number of PSI reports generated within 45 days or beyond that period. He asked if that was correct.

Mr. Pierrott said all the reports were submitted within 45 days.

Justice Hardesty asked if all 5,975 reports during the fiscal year were prepared within 45 days of request.

Mr. Pierrott replied, yes, all reports were submitted within the 45 days. He said they submitted the reports 3 to 7 days before to have the reviews done, and they all were submitted on time.

Mr. Kohn suggested further discussion with the commanders of the Southern and Northern Districts. He did not believe the information was correct. He doubted all the reports were completed within 45 days. He said he was willing to give much more time for out-of-custody so more officers were not needed. He suggested further discussion was needed to clarify that 100 percent of the reports were filed within 45 days.

Mr. Pierrott said he would gather the information concerning the reports and how many extensions were required. He would submit the information at a later date.

Justice Hardesty said the reason for the request was that the proposal was an excellent one. It addressed the concerns outlined in *Stockmeier*. He said his concern was that PSIs were not produced within 45 days when he was a district court judge. He said the sentencing dates then had to move. He was concerned that it impacted sentencing dates and the calendar of the court. He said setting dates that allowed the defendant and the prosecutor to correct errors made in the report affected delays in sentencing, and occupancy in county jails. He said adequate staffing needed to be provided to the Division of Parole and Probation to ensure the timely production of PSI reports. He wanted to augment the report to request adequate staffing be made available to the Division preparing the PSI reports. He said it was critical that the reports be right in light of the current statutory scheme.

Judge Barker concurred with Justice Hardesty's initial impressions when he was a district judge. He said the concerns continue even more so now with the increased numbers. He said they have continued sentencing hearings as a consequence of a lack of the PSI. He noted P&P was very responsive during judges' meetings to the judges' continued concerns. He said P&P needed more resources to do their jobs. The proposal for legislation was necessary, as it gave rules and directions and would save on the backend of a sentence. He said it gave rules to apply to specific situations, and would take a lot of the subjectivity out of the analysis.

Mr. Pierrott said he received some information, and there were no late PSIs. Some of the situations where PSIs were extended was when requested by the courts. He said they had statistical data he would supply the Commission showing they submitted the PSIs within the allotted 45 days.

Mr. Siegel said he understood the argument Mr. Kohn made by adopting the policy. He said P&P stated there would be delays, based on the scheduling they would be doing to get the 21 days. He wanted assurance in terms of the net result that the time people spent in custody would be reduced rather than extending the time. He asked if everyone agreed the policy would reduce time spent in custody.

Mr. Kohn responded currently the report was received 3 or 4 days in advance of the sentencing. He said if there were some errors or omissions in the report, they had to ask the court for a delay. He said the person had already stayed at least 45 days in custody. If corrections were needed, then more time was required to check the information. He agreed with Justice Hardesty that more probation officers for P&P were required so they could do the reports in a timely manner. He suggested they give P&P longer to do out-of-custody reports and make sure the in-custody reports were done within 45 days. Mr. Kohn said in 2008, the Nevada Supreme Court issued ADKT 411 which told all defense attorneys they needed to do a better job at sentencing and reviewing the reports. He said they also learned the reports were used by the Department of Corrections and the Parole Board. He said there were two U.S. Supreme Court cases this year dealing with plea bargaining. He said one of the cases discussed the right to effective counsel at the sentencing. He said we were a criminal justice system based on pleas. Over 99 percent of all cases in Clark County were plea-bargained. The sentencing hearing became the pivotal hearing in the case. He said there was little time to review the report in detail with the client. It was critical that everyone in the system receive the report 21 days in advance, with 7 days to review the report. He said it would give the district attorney time to review their reports and consider the objections. He said it would make the entire system better. It may cost some money in more probation officers, but it would also lead to fewer continuances after the report was filed.

Mr. Pierrott said the in-custody reports were done within 30 days. He said Mr. Kohn was suggesting the reports be extended a minimum of 51 days. The people in custody would be there at least 51 days before they were sentenced. He said it increased the amount of

time every single person was in custody. Mr. Kohn's statement saying it will cost more money was correct. He said they were offering to submit the report within 7 working days, which extended the time. He said it would allow P&P to concentrate on the PSIs needing correction, rather than encompassing every single person in custody and increasing their time in custody from 30 days to 51 days. He said it would affect the jails and the cost of people in custody.

Mr. Digesti said the recommendations from Mr. Kohn's subcommittee were excellent. He did not see the problem of having a PSI report on file within the 45 days ordered by the court. He said the problem was one of getting the report to the defense in ample time for review and to make whatever corrections were needed. The operative dates were the 21 days in advance of sentencing. He said in essence, that changed the 45-day rule to being one of 24 days from the date it was ordered. He suggested extending sentencings out 60 days as opposed to 45 days to build a better timeframe to accomplish what was necessary. He said there was discussion about people waiting in custody awaiting sentencing, and he did not know how many would be going on to prison. He thought the bigger problem and issue was what happened on the back side of people either being sentenced to prison or given a grant of probation. He said the PSIs followed the individuals throughout the system. Some change needed to be made, and he did not think they received the reports in time. He thought perhaps felony sentencing should be treated differently than gross misdemeanor sentencing. He was more concerned about the big picture than having someone spend an additional 15 days in jail awaiting sentencing on a major felony that could have long-term ramifications.

Mr. Kohn was concerned that P&P's argument was they had to add time onto the people in custody. He suggested giving the Department more time to do the out-of-custody work, which was the majority of the reports. He said leave the in-custody at 45 days, which gave them 24 days to do the report. He said they should extend the time on the people who were out of custody. The Nevada Supreme Court in *Stockmeier v. State* deferred to the federal system. The federal system gave the report 35 days in advance and the Probation Department had to use convictions and judgments of conviction. He was not asking for that solution. He said 21 days was a reasonable time for everyone to review.

Justice Hardesty referred to paragraph 6 of [Exhibit C](#). He said it was an important addition to the statutory scheme. He said some district court judges will entertain competing arguments about subject matter that was inaccurate and attempt to resolve the inaccuracy. He said others would hear the argument without resolving the dispute over the inaccuracy. The consequence was, the inaccuracy was maintained for the defendant throughout the entire system. He said the proposal required all district court judges make findings of fact and resolve the disputed errors in the PSI report. He said it may not be an easy process as it may go back over a long period of time, but it was critical to have the component. The resolution of the errors was very critical in the future of the defendant.

Chair Horne reminded the members the item would be on the Work Session. Senator Parks asked if they were going to put specific dates into statute. He asked if they would somehow otherwise require the dates, but leave it to regulation.

Chair Horne said it would be discussed in the work session. He closed the discussion on Agenda Item V and opened discussion on Agenda Item VI. He thanked Mr. Kohn for his work on the Subcommittee.

Attorney General Cortez Masto reported that the Subcommittee on Victims of Crime looked at two issues. The first issue was with respect to SANE/ SART nurse certification. She said the challenge they faced across the state was the forensic certification of the nurses necessary to conduct the sexual assault examinations that occur throughout the state. She said one area was addressing the certification issue through the Nursing Board. There was some concern that the nurses in the State needed to be a SART or SANE nurse because in order to get the certification, they had to conduct some sort of training. However, the training was unavailable without the certification at the national level. She said they had proactive meetings with the Executive Director of the Nursing Board and the Board's lobbyist. They hoped to avoid having to introduce any legislation mandating the types of requirements necessary by the nurses. She said the goal was to work with the Board to address the issue.

Ms. Masto said the second issue involved the State's funding from the Violence Against Women Act. She said as a condition of the State receiving funding, particularly involving sexual assault exams, the Act mandated that the victim of sexual assault should be able to receive an exam and not have to pay for the exam or file any type of complaint with a law enforcement agency. She said the Subcommittee had a draft addressing the issue, [Exhibit D](#), adding that it was not a final draft. The funding for sexual assault exams was mandated to be paid by the local counties. The Subcommittee was trying to determine whether the State's Victims of Crime Compensation Fund could pay for the initial sexual assault exams. She said it was still being determined if there were enough funds to cover the exams. She said the draft was not final, but they hoped to move forward with a BDR.

Chair Horne said Ms. Masto suggested not having legislation go forward concerning the SART exam. He said it might be advisable to propose legislation in case they were unable to come to agreement. The legislation might not be needed, but it was better to be prepared rather than delay until the 2015 session.

Ms. Masto said it was a great idea. She suggested potential language they could present at the work session for a BDR as a Plan B in case the negotiations with the Nursing Board fell through.

Justice Hardesty asked Ms. Masto how many exams there were statewide in a fiscal year.

Ms. Masto said that was a challenge for the Subcommittee. She said they did not have those numbers. They had information from Washoe County and Clark County, but they wanted the information from the rural counties also. She said in Clark County, it was approximately two million dollars to cover the initial exams.

Justice Hardesty said the measure had great merit, but he was concerned about the adequacy of the money and the need to increase the availability of resources. He said it was particularly important in the cases where the victim elected not to pursue something with law enforcement.

Ms. Masto said they had a concern that the Victims of Crime Compensation Fund money came from the administrative assessments. The administrative assessment funded many more programs and positions throughout the State. She said if the number was too large, the assessment funds could not cover it, and the counties would have to continue to cover the costs of the initial exams.

Chair Horne closed the discussion on Agenda Item VI and opened Agenda Item VII, a presentation on policies and procedures for the identification of criminal suspects.

Robert Roshak opened the discussion with a list of agencies in compliance with A.B. 107 and with policies in place or that were still developing policies [Exhibit E](#). He said there were a few agencies he had not received any information from concerning their status. He said he heard from two agencies today, the Washoe County School District and the College of Southern Nevada. The college indicated they had a policy in place, and the school district was still developing their policy. He said [A.B. 107](#) did not appear to have a formal date of when the policies had to be in place. He said the agencies in the State took the bill seriously.

Chair Horne asked if any of the agencies conveyed what was holding them up in creating their policies. He said there were numerous models available, and that it did not seem that difficult of a task.

Mr. Roshak said many of the agencies involved were redoing their entire department policies based on the Lexipol model. He said Lexipol was the company contracted throughout the State to provide agencies with the best practices. He said all the agencies he was waiting to hear from except one were working with Lexipol. He did not know why he was not contacted by some of the agencies.

Mr. Callaway said looking at the list and taking into account Washoe County Sheriff's Office and Las Vegas Metropolitan Police Department, those two agencies made up approximately 80 percent of the law enforcement officers in Nevada. He said some of the law enforcement entities, such as school district police, were areas where witness identification was a very small part of their daily activities. Some agencies that may be under Post as Category 2 or Category 1 officers such as game wardens or animal control

officers seldom did witness identification. He said the vast majority of law enforcement agencies in [Exhibit E](#) appeared to be in compliance.

Chair Horne said it seemed even more practical for those agencies to adopt another department's program.

Mr. Jackson said he wanted to be sure the Commission understood what a law enforcement agency was. He said under [A.B. 107](#), each law enforcement agency shall adopt policies and procedures governing the use of line-ups and show-ups. The submitted compliance report had 46 agencies listed. He said there were different definitions for law enforcement agencies under the NRS. Homeland Security defined a law enforcement agency as a county sheriff, a metropolitan police department, a police department of an incorporated city, or the Department of Public Safety. He said a law enforcement agency defined under juvenile justice laws contained the first three agencies. He said under Crimes of Public Health and Safety, there was a different definition. It was defined as *any* law enforcement agency in the state, any police officer, a special investigator employed by the Attorney General's office, and any investigator employed by a district attorney's office. He said based upon the 46 agencies listed in [Exhibit E](#), some were agencies that employed persons that possessed the powers of peace officers under NRS Chapter 289. He said his office had an investigation division, and he had three investigators who were Category 1 peace officers. He lost one investigator due to budget cuts. He said they employed line-ups and show-ups, and he had adopted a policy complying with [A.B. 107](#). He requested amending the compliance report list to include the Douglas County District Attorney's office. He said there was a long list of agencies employing persons who had the power of peace officers that were not included in the list.

Mr. Kohn agreed with Mr. Callaway. He asked Mr. Roshak if the Commission could see the changes occurring in the large departments. He said he wanted assurance that the one-person show-ups were rare. He said the Supreme Court had not outlawed them, but it had said they were highly suspect and should only be used in emergencies. He said he saw as many one-person lineups now as he ever had. He asked if there was really any change in the identification process in the major agencies and asked for copies of the reforms or policies put in place in the major agencies.

Mr. Roshak said he would request copies. He said many used the Lexipol model, and many others used the policy provided by LVMPD. He said LVMPD planned to change their policy again and make it stricter. He said [A.B. 107](#) stated departments had to have a policy and did not indicate what had to be in the policy except covering the show-ups, photo line-ups, and the standard line-ups. He said it left some vagueness. He asked for a specific list from Mr. Kohn.

Mr. Brett Kandt, Special Deputy Attorney General, clarified that he had advised all district attorneys' offices who employed investigators to adopt a policy and provided them a copy of the Lexipol policy, a policy from the Rocky Mountain Innocence Project,

and the Las Vegas Metropolitan Police Department policy. He also confirmed the Attorney General's investigation division had adopted a policy similar to LVMPD policy.

Mr. Callaway clarified a point regarding A.B. 107. He said the concerns at the time were a "one-size-fits-all" approach. He said rural agencies could not comply because they lacked the number of deputies or lacked the ability to do blind line-ups. The second issue was, best practices were constantly changing. He said LVMPD had changed their policy since the last legislative session and were continuing to look for better ways to operate. He said putting procedures and policies into NRS dictating how agencies should conduct themselves would be dangerous, as best practices continually change.

Chair Horne said many of the concerns could be avoided if many of the agencies get a policy down.

Mr. Roshak said he would continue to press forward getting all the information requested and would supply it to Mr. Anthony as the information came in to him.

Chair Horne closed the hearing at Agenda Item VII. He opened the meeting for public comment.

Mercedes Maharis said last time, she mentioned five items to the Commission. She said she was focused on one item today. She requested they reopen the psych panel issues. She said many had waited for years for this issue to be discussed. She said it was critically important to public safety.

Ms. Brown discussed several things based on personal experiences. She referred to the 162 people that picked her brother out of a photo line-up. She said there was actually 164, and 2 people did not pick him. She requested all law enforcement agencies conform to the same standards, including the lighting. She said distance should be the same also. She asked the Commission to look at cases where the defendant maintained their innocence.

Mr. Siegel wanted assurance the work session items referring to a bill from 2011 or earlier legislation included copies of the bills in the final work study documents.

Chair Horne said the bills could be included.

Justice Hardesty asked about recommendation Number 4 on the work session document concerning a draft circulated August 28, 2012. He said it would realign the Division of Parole and Probation either within the Nevada Department of Corrections or the Parole Board. He said there had been earlier discussion of the possibility of placing P&P under the supervision of the judicial system. He requested Judge Barker canvass his association as to their views about that topic. He was interested in Ms. Bisbee's and the NDOC's views on the subject.

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Chair Horne said he had a conversation with Director Cox on this topic. He said Mr. Cox was meeting with people today to discuss how other jurisdictions had merged P&P with the Department of Corrections. He said they were discussing how and if a merger would work in Nevada. Chair Horne said the last week of September was projected for the work session meeting.

Chair Horne adjourned the meeting at 11:10 a.m.

RESPECTFULLY SUBMITTED:

Olivia Lodato, Interim Secretary

APPROVED BY:

Assemblyman William C. Horne, Chair

DATE: _____

EXHIBITS

Committee Name: Advisory Commission on the Administration of Justice

Date: AUGUST 28, 2012

Time of Meeting: 9:09 a.m.

[illegible]