

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

MAY 1, 2014

The meeting of the Advisory Commission on the Administration of Justice was called to order by Senator Tick Segerblom, Chair, on May 1, 2014, at 9:08 a.m. at the Grant Sawyer State Office Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and via simultaneous videoconference at the Legislative Building, Room 3137, 401 South Carson Street, Carson City, Nevada. The Agenda is included as Exhibit A and the Attendance Roster is included as Exhibit B. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMISSION MEMBERS PRESENT (CARSON CITY)

Connie Bisbee, Board of Parole Commissioners
Senator Greg Brower, District No. 15
Greg Cox, Director, Nevada Department of Corrections
Larry Digesti, Representative, State Bar of Nevada
Justice James Hardesty, Vice Chair, Nevada Supreme Court
Mark Jackson, Douglas County District Attorney
Jorge Pierrott, Department of Public Safety, Division of Parole and Probation
Richard Siegel, American Civil Liberties Union of Nevada
D. Eric Spratley, Washoe County Sheriff's Office

COMMISSION MEMBERS PRESENT (LAS VEGAS):

Judge David Barker
Assemblyman Wesley K. Duncan, District No. 37
Assemblyman Jason M. Frierson, District No. 8
Lisa Hibbler, Victims Advocate
Phil Kohn, Clark County Public Defender
Catherine Cortez Masto, Attorney General
Senator Tick Segerblom, Chair, Senate District No. 3

COMMISSION MEMBERS ABSENT:

Chuck Callaway, Police Director, Office of Intergovernmental Services, Las Vegas
Metropolitan Police Department

STAFF MEMBERS PRESENT:

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

OTHERS PRESENT:

John Witherow, President, Nevada Cure
Steve Rickman, Deputy Program Manager, OJP Diagnostic Center
Jessica Herbert, Diagnostic Specialist, OJP Diagnostic Center
Katherine Drake Schmitt, Policy Advisor, Office the Assistant Attorney General
Judge Dorothy Nash Holmes, Reno Municipal Court
Jerry Madden, Senior Fellow, Right on Crime
Matt Alsdorf, Director of Criminal Justice, Arnold Foundation
David Sonner, Captain, Division of Parole and Probation
Dwight Gover, Captain, Division of Parole and Probation
Kim Madris, Deputy Chief, Southern Command, Division of Parole and Probation
Nancy Flores, Nevada Department of Corrections
Dr. Darcy Edwards, Nevada Department of Corrections
Laurie Hoover, Nevada Department of Corrections
Wes Goetz

Chair Segerblom called the Advisory Commission on the Administration of Justice to order at 9:08 a.m. He requested a roll call of members present.

Mrs. Hartzler called the roll. A quorum was present for the meeting.

Chair Segerblom asked for public comment. There was no comment at this time. He asked for approval of the minutes from the March 5, 2014 meeting.

ASSEMBLYMAN FRIERSON APPROVED THE MINUTES OF THE MARCH MEETING.

ASSEMBLYMAN DUNCAN SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Segerblom invited Mr. Witherow to open his discussion regarding the ombudsman question.

Mr. John Witherow, President of NV-Cure, said he provided background information in his February 14, 2014 packet, Exhibit C. He also provided the Commission with the ombudsman process in Michigan and the laws governing it. He said the program in Michigan was independent of the prison system and was a legislative commission established in 1975 to review prisoner's grievances and problems related to health care. He said there was an independent overview of the actions of prison officials. The ombudsman conducted hearings under oath and attempted to resolve them. He said he had submitted letters from prisoners in Nevada concerning the grievance system. Grievances in Nevada were inspected by the Inspector General's office which was a part of the Nevada Department of Corrections. He said the first time grievance processes were established after the Attica rebellion in 1971.

Chair Segerblom asked Mr. Witherow about the Michigan ombudsman and if he worked for the legislature. He also inquired about the cost for an ombudsman.

Mr. Witherow replied, yes, it was a legislative commission. He said he did not know what the funding for the program cost.

Chair Segerblom asked for the types of complaints Mr. Witherow received with NV-Cure.

Mr. Witherow said they received complaints about the conditions inside the prison, about gang members, about medical care, misconduct by staff employees. They received numerous complaints about retaliation against prisoners for choosing the grievance process.

Chair Segerblom asked where NV-Cure took a complaint when they received one from a prisoner.

Mr. Witherow said they brought some of the issues to the immediate attention of Director Cox and various legislators. They educate the public on what is going on via media attorneys. They bring the problems to the public's attention and try to get resolution.

Chair Segerblom asked if his organization was an all-volunteer group.

Mr. Witherow said they were an all-volunteer organization that received no funding. He said they occasionally received a small grant and no one was paid for their activities.

Mr. Frierson asked if the ombudsman in Michigan was a volunteer or a paid position.

Mr. Witherow said the ombudsman and his office were state funded.

Mr. Frierson asked if Michigan was a full time legislature.

Mr. Anthony said he was unaware of the status of the Michigan legislature's ombudsman, but he would research the information.

Mr. Frierson asked how many other states had similar structures.

Mr. Witherow said he did not know of any others.

Senator Brower asked Mr. Witherow about the DOC inspector general. He said he assumed the inspector general would assume a role in dealing with complaints.

Mr. Witherow said it was his experience that the Inspector General did conduct investigations of prisoner complaints regarding staff misconduct and other matters. He said the Inspector General's office was staffed by the Nevada Department of Corrections personnel. He said it did not seem fair for the prisoners to have complaints against staff members investigated by other staff members. His experience with the Nevada DOC came from 26 years of incarceration from 1984 to 2010.

Senator Brower said as a legislator he expected the DOC Inspector General to independently investigate anything and anyone within the department and report directly to the Governor or the legislature without concern that a DOC employee was the subject of the complaint.

Mr. Siegel said the area mentioned by Mr. Witherow was one of the three or four main areas of work of the ACLU of Nevada for more than 40 years. He said there was a system-wide NDOC lawsuit in the 1970's and 1980's. They had a major suit in the Ely prison concerning health care services. He said the lawsuits cost the state many hundreds of thousands of dollars in attorney's fees. The concerns about money needed to be balanced against the substantial costs of the lawsuits. He said the ACLU received complaints from prisoners on an almost daily basis. He said there should be concern of potential lawsuits costing the state millions of dollars.

Director Cox said his department currently had a grievance process recognized repeatedly by the federal courts. He said the grievances had been recently audited by the Department of Administration. They had a federal mediation program and a litigation process. Inmates had the right to go to the ACLU with their issues and the process seemed to be working. He said Mr. Witherow provided him with information and a number of the issues were investigated after receiving the information. The inspector general's office was not liked by the inmates or the staff.

Chair Segerblom said he received complaints daily from prisoners. He opened discussion on Agenda Item VI, the Justice Reinvestment Initiative Process.

Justice Hardesty said the Commission had authorized an application be made to Justice Reinvestment for their support in evaluating Nevada's potential criminal justice reform measures. He said they had productive discussions but there was a delay as three states

were selected that did not include Nevada. He said Nevada would not be in line for support until late 2015 or 2016. He said it meant most of the issues would be deferred until the 2017 legislature. Chair Segerblom and he met with the Governor who endorsed the application. A letter was prepared on behalf of all three branches of the government to make the request for justice reinvestment support. He said Mr. Clement anticipated Nevada being accepted in the next round and they would provide some data research this summer to begin the process. He said there were a lot of demands on their support from other states. He was pleased Nevada was in line for their assistance in the future. He asked Mr. Anthony about the letter.

Mr. Anthony said the letter was still with the Governor's office for review. He hoped to hear very soon.

Chair. Segerblom said he thought they were still on for a discussion of B felonies for the next session of the legislature. He asked Director Cox to report on another source he had located.

Director Cox said the Diagnostic Group from the Federal Department of Justice was making a presentation today. He said his discussion was an update on the grant application for JRI, Exhibit D. He said a 1.75 million dollar grant was discussed and he also suggested they look at the opportunity for probation enforcement for the OPEN program conducted in Clark County at Casa Grande. He said the issue about the grant was the matching in-kind of 1.75 million. He had assembled a team from the department and contacted the grant office. The submission date for the grant was May 22, 2014.

Chair Segerblom asked if it was possible to get the money before the next session.

Director Cox said after submitting the grant application there was a possibility of the money this session. He said that was the goal, but the match was a challenge.

Mr. Siegel asked Justice Hardesty if there were other avenues independent of the Justice Reinvestment Initiative. He asked if there was comparable assistance by going directly to VERA or Pew.

Justice Hardesty said they discussed it with Pew and they provided funding to Justice Reinvest. He said those organizations were not available to us. He said he was concerned that it was delayed. He referenced a comment by Connie Bisbee referring to the many great professionals in the State who knew what needed to be done to help further the efforts. He suggested gathering the talented people in the state and having a meeting with everybody. He also said the presentation heard from Oregon at the last meeting offered a tremendous outline with which to work on what can be accomplished economically. He was particularly struck with their investment of \$15 million in general fund dollars to their specialty courts as a strong statement of how to improve the criminal justice system. He recommended using the resources and talent and intellect in the state to form a plan. Justice Hardesty said the meetings should have the press and the public present.

Chair Segerblom said the goal was a work session in October and to form a bill for the legislature.

Justice Hardesty suggested the Chair call for a summit or meeting within the next six to eight weeks with a collection of professionals in the state to discuss some of the alternatives they had heard.

Chair Segerblom requested that Justice Hardesty work with Mr. Anthony to put together a meeting.

Mr. Siegel said he would look at the two universities for help also.

Chair Segerblom opened discussion on Agenda Item VIII regarding category B felonies.

Mr. Steve Rickman, Program Manager, OJP Diagnostic Center, said Jessica Herbert was also present and Catherine Drake Schmitt, a policy advisor with the Office of the Assistant Attorney General.

Ms. Schmitt provided an overview of the Diagnostic Center. She said it was a technical assistance effort operated by the Department of Justice. The purpose was to help states, cities, counties and tribes build the capacity to use data to solve criminal justice problems. She said their funding stream allowed them to address criminal justice and safety issues across the spectrum, Exhibit E. They assisted with supplying resources to various communities. She said they were interested in using data to change critical public safety outcomes.

Jessica Herbert said Director Cox asked the Diagnostic Center to discuss the issue regarding category B felonies. She said they needed to look at the sentencing guidelines for all the felony offenses. She said they used evidence-based solutions, Exhibit F. She proposed a trip to Nevada to meet with the stakeholders.

Chair Segerblom asked what the time table was for them.

She said the time table was over the course of the next six months. They might have preliminary proposals within the six month period.

Mr. Rickman said they would work directly with Director Cox and his staff. They would also provide some broader views from other states.

Chair Segerblom asked if it was possible to focus on sentencing for drug abuses.

Ms. Herbert replied yes, there were over 200 felony offenses in category B. She said part of the process was to correctly identify key areas and concerns.

Mr. Rickman said they would ask what areas needed the most focus from his group .They wanted to narrow it down based on Nevada's input to move them to category A or C.

Mr. Siegel asked if the Office of the Diagnostic Center had an overriding approach or philosophy in terms of sentence guidelines or was it responsive to the leadership in a given state.

Ms. Drake Schmitt said that was a reasonable question. The value of the Diagnostic Center relied on the expertise they had in the process of identifying, using, and collecting data. She said they did not come with preconceived notions about the end result, but were guided by the preferences and data in order to allow the state to say what would be more or less cost effective.

Director Cox offered his thanks for the support they gave his staff. He liked the data driven approach which was not a political decision. It was based on the needs of the state, law enforcement, D.A's, and the public defender's office.

Mr. Rickman said his bias was bringing science to the process. He said it was using science and the data driven strategies they employed to bring clarity to make the right decisions.

Chair Hardesty asked Mr. Anthony about a survey that listed all the 200 category B felonies. He requested Mr. Anthony send the list to all the Commission members.

Mr. Anthony said the list was compiled several years ago. He said they would go through and update the list with any crimes that have been changed, added, or deleted in the last few sessions.

Chair Segerblom opened discussion on Agenda Item IX, a presentation on proposed legislation related to certain drug offenses.

Judge Dorothy Nash Holmes said she was one of 47 drug court judges in the state. The number was important because the state had less than three million in population. She said a judge in Florida said they were doing well because they had 78 drug courts for 15 million people. Nevada was way ahead of the curve. Judge Holmes said Kate High was present and was the development director of Transforming Youth Recovery.

Judge Holmes said she prepared a slide presentation and had included hard copy exhibits, Exhibit G. She was proposing two legislative areas that needed work this session. She said one proposal was an overdose prevention program and one added simple language to the Family Code Section dealing with best interests of the child. She said heroin was back as a popular, cheap drug of choice. Opioid drugs overdoses were rampant in the country. She quoted some facts from Exhibit G concerning overdose deaths, and outlined how overdoses occur. She said in Nevada there were over 7,500 deaths from 2000 to 2012.

She said the overdose she most often encountered was loss of tolerance to illicit opioids. Overdose killed more people each year than homicide or car crashes.

Judge Holmes discussed the Nevada Naloxone Program. She said 18 states allow a Naloxone program. She said Naloxone was a prescription which reversed the effects of opioid overdose within two minutes. She compared the drug to Epipens for allergies. She said information was contained in Exhibit H from the National Public Health which listed all the states and the legislation they passed. Nevada needed to create a policy favoring emergency aid to save lives from overdose. She said we needed a Naloxone access law which required amendments to change the sections of statute dealing with pharmacy. She proposed amending the Good Samaritan Law to encourage rendering aid. Naloxone can be applied with a nasal spray and was effective in two minutes. She said the drug worked for opiate products only. The cost was \$15 per kit. She proposed immunity for anybody bringing someone in with a drug overdose. She said in NRS 453.3335 there was a statute putting an affirmative duty on the drug provider to render assistance and get the person to the hospital if he provided the drugs killing the person. The law could exclude drug dealers. She said we needed a law for third party administration. She said we also needed a law making it legal to possess Naloxone if trained. She said volunteers could supply the drug without criminal or civil liability.

Judge Holmes said the other part of the program was a family law issue. Substance abuse affects families. A judge needed to know what was available to the kids. She said it needed to be considered in family law. She quoted the California law from March, 2012, Exhibit I. She said 10 percent of the adults in this country abuse alcohol. She said 60 to 70 percent of the people in county jails had drug or alcohol abuse and addiction problems and nearly 80 percent in prison. She said it was time for Nevada to look at Naloxone and to save lives in Nevada from opioid overdoses.

Ms. Masto agreed with Judge Holmes. She said she chaired a Substance Abuse Working Group looking at the issue of Naloxone and the Good Samaritan laws. She intended to prepare bill drafts as part of her bill packages. She asked Judge Holmes to be involved with her group. She said substance abuse was growing hugely in Nevada. She also mentioned a drug endangered children's alliance, DEC Nevada.org. She said they looked at the problems every day. She said her office would contact Judge Holmes to discuss the topics addressed today.

Judge Holmes replied that she would be glad to help adding that Mrs. Mathewson would also help.

Mr. Frierson asked Judge Holmes for assistance. He said he chaired the interim committee on Child Welfare and Juvenile Justice. He said the best interest of the child was the purpose of Chapter 432B and the statutes. He said in Clark County the domestic case was put on hold and the 432B case was resolved. He said he may ask her to make the same presentation to his subcommittee.

Judge Holmes said she would make the presentation on any day but Wednesday. She said in Nevada there had been different cases concerning family court. The court was currently trying to bring all the elements together in a one court-one judge situation. She said the juvenile master needed to know if a kid was living at home with an addict. There needed to be a way to open up some of the more confidential issues to each other.

Ms. Hibbler thanked Judge Holmes for the presentation. She mentioned a group called No Hero in Heroin where every member had lost a child to heroin. She said they would be a good group to give testimony.

Ms. Bisbee said she had 28 years in criminal justice and since 2000 she was a licensed addiction counselor in Nevada. She said this was “ground zero” for everything. She said it was a point where they could effect change. 87 percent of the national prison population was drug or alcohol related. She said if they can support Judge Holmes and broaden it they can truly make a difference.

Mr. Jackson said her proposed bill was discussed by the D.A.’s association, but they had not taken a position yet. He said they understood the law enforcement concerns. He wanted the record to be clear he was not speaking on behalf of the association, but as the District Attorney in Douglas County and his views of the possible amendment to the Good Samaritan Law. He said the last two heroin overdose cases in Douglas County where the provider was present resulted in a death and a permanent brain injury. He said in both cases there were other individuals there who were also ingesting the drug. He did not want to see any changes in NRS 453.335 which provided the additional penalty for a person convicted of either selling or providing the drug to the person who overdosed, or providing that which caused a death. He said the Good Samaritan Law under NRS 41.500 should be amended for other individuals to provide immunity for those also ingesting the drug so lives may be saved.

Judge Holmes said she was immediately aware of the issue because she had been a prosecutor. She knew about the law and it was why she put in language that excluded the drug provider from the Good Samaritan protection. She said it was critical that other people from the party were able to take someone for help without fear of prosecution.

Justice Hardesty said there were at least two components, a criminal component and the other was civil or semi-criminal in NRS 432B issues. He said language in 4F of NRS 125.480 was important because it addressed custody questions. He was sure the State Bar would have opinions in the context of custody decisions. He said the marijuana issue was a complex problem in custody issues. He said it affected a lot of different issues in the civil area. He said Judge Barker could forward material to the family court members of the association. He said he co-chaired the Juvenile Justice Reform Committee and they could look at whether the Commission should evaluate some of the chapter’s questions.

Judge Holmes said the Commission was the first place she presented because if the Commission said “no”, then she would put it away for a while. She said the state of

Washington did a hand-out on how to mobilize the community. She said it involved mobilizing all of the stake holders. The pharmacy board led the discussion in Washington. She was open to any suggestions they had about the topic. She tried to make the language of the proposed family law section broad enough to cover illegal, legal, controlled substances, marijuana and whatever.

Chair Segerblom said he had a bill creating a division of rehabilitation taxed cigarettes, marijuana, alcohol and gambling. The money would provide rehabilitation services for addicted people.

Judge Holmes said two other areas in the statutes surprised her. One was NRS 484C.400B3, which said a failure to complete treatment on a second DUI offense was guilty of another misdemeanor. She said treatment was a treatment issue rather than a crime issue. The other statute was NRS 212.160 which talked about penalties. She said a person convicted on possession of one ounce of marijuana or less had to be examined by a mental health treatment professional or be fined \$600. She said it was a “may” on the first offense, but on the second it was a “shall.” She said it a problem.

Chair Segerblom opened discussion on Agenda Item X, with Jerry Madden.

Jerry Madden said he had someone from the Arnold Foundation today to testify. He said he represented Right On Crime. The group was formed in 2010 as an organization out of the Texas Public Policy Foundation. They were the national conservative spokesmen for criminal justice change in the United States. He said he was a senior fellow with the organization. He said they would support the Commission if they brought other conservatives along with the ideas of the criminal justice changes. He referenced his document called the Statement of Principles, Exhibit J.

Chair Segerblom asked Mr. Madden if his organization could help within the next few days.

Mr. Madden replied it would be longer than that, but they were quicker than a lot of other organizations. He said they could provide a lot of detailed research. He said he was not a lawyer, but he was named chairman of the Corrections Committee. The Speaker told him not to build prisons because they cost too much. Mr. Madden gave a brief overview of all the groups and committees in which he participated. He said this year three states had passed major justice reinvestment legislation, Mississippi, Idaho and Alaska. He recommended Nevada look at other states and see what they had done in the area. He said there were two kinds of prisoners; the ones we are afraid of and the ones we are mad at. The dangerous ones should not be roaming the streets. He said they needed to figure out how to change the ones we are mad at in such a manner that we are no longer mad at them. He made various suggestion of how to deal with the prisoners. He said in Texas they talked to many different groups and gathered ideas from everybody. They gathered a lot of data to review and study. He said it was important to know how much it cost in dollars. He said they saved billions of dollars with their plans. He recommended the

Commission look at what Georgia did to save money and improve the system. He said Georgia made sweeping changes to criminal and juvenile justice. He also recommended looking at Kentucky and their actions. He summed up by saying data was important and risk analysis was extremely important. He said programs had to be broad enough to apply statewide.

Chair Segerblom said the problem he saw was the need to spend money in one budget to start new programs based on the idea that they were going to save money over the years.

Mr. Madden recommended looking at model legislation in criminal justice. He said Texas put together several ideas of what to do. He recommended looking at justice reinvestment for programs.

Mr. Siegel asked about sentencing reform. He asked if the group, Right on Crime, and the related organizations focused on issues like mandatory sentencing and life sentences.

Mr. Madden said they already had a lot of things in place and did not focus on sentencing reform.

Mr. Segerblom said Matt Alsdorf, with the Laura and John Arnold Foundation, was the next speaker.

Mr. Alsdorf discussed measuring and managing risk at the earliest stages of the criminal justice process. He also wanted to insure that the system operated as fairly and cost efficiently as possible. He provided an overview of the Arnold Foundation which was started five years ago. He said originally they focused on education reform and government accountability. In 2011 they decided to invest in criminal justice reform. He said they hired Ann Milgram from New Jersey and Mr. Alsdorf joined shortly thereafter. He said the Arnold's ask them to identify the areas of criminal justice with the greatest need for transformative change and where they could make a meaningful difference. He said they focused on the front-end of the criminal justice system. Key decisions at the front-end of the system were often made with limited access to critical information and objective data. He said most jurisdictions did not have objective research based tools to evaluate and measure the risk among different groups of defendants. He said the low risk group of defendants represented 40 to 50 percent of all the people in jails. The high risk was generally 5 to 10 percent. He said often 50 percent of the high risk people were released before trial. The majority of low risk defendants generally get out, but not all and it was a large number of people. He said risk assessment tools have been shown to be effective but only 10 percent of jurisdictions use them due to cost. They looked for common factors to be used for risk assessments that would minimize financial and human resources. He said they wanted to measure new criminal arrests, and failure to appear, but also the risk that a defendant would commit a violent crime during the pretrial period, Exhibit K. He said they tested hundreds of correlations. They found with nine data points on each defendant they could create a risk assessment that was equally or more predictive than existing tools. The assessment predicted violence with a high degree of accuracy. He

said all nine factors can be gathered without interviewing a defendant from an administrative record. The tools were made up of three six point scales; new criminal activity, new violent criminal activity, and failure to appear, Exhibit K. He said the tools were meant to provide data to the decision makers. They were not meant to replace the decision maker's discretion. He said judges and others were always aware of facts and other circumstances of the alleged criminal activity. The ultimate goal of the foundation was to make the tools available to everyone at no cost. He said the Arnold Foundation was willing to help.

Chair Segerblom asked if there were questions for Mr. Alsdorf.

Mr. Frierson asked Mr. Alsdorf about the reception among stakeholders. He said the implementation of whatever the legislature required needed buy-in from everybody, including judges, law enforcement and district attorneys.

Mr. Alsdorf said they focused on those areas wherever they present risk assessment. They made an effort to have open and honest dialog with the stakeholders to make sure everyone was on board with the notion of using risk assessment to inform decisions. He said the reception was generally positive. He said it reduced the jail population and the cost.

Mr. Frierson asked if adopting this kind of policy resulted in a bigger sentence for someone. He asked if he had seen cases that resolved in a greater penalty in anticipation of release.

Mr. Alsdorf said they did some research on how pretrial release or detention affected sentencing. He said the ones released were significantly less likely to be sentenced to jail and prison and served longer sentences if they were sentenced. He said people who were released, failed, and put back in jail still received lower sentences than people who were detained during the entire pretrial period.

Ms. Masto asked what pretrial risk assessment tool was utilized by the judges.

Judge Barker replied that they had a pretrial service through Las Vegas Metropolitan Police Department. He said there was a form with the most basic information. He asked Mr. Alsdorf if his organization could come in and use the tools being used at the pretrial level now. He asked if the tools used were tailored to a specific responsibility or entity, such as a law enforcement tool versus a tool a judge might use at various sentencing levels.

Mr. Alsdorf replied that it was one of the things they were working on at this time. Ultimately, the core of the tool was going to be the same because it was informing an essential decision.

Judge Barker asked if the nine point analysis was independent of input from an individual.

Mr. Alsdorf replied yes, but it may change. He said they were trying to think through if there were going to be necessary modifications. He said there might be something in addition to the nine factors that would be necessary to inform other decisions. The core was what risk did somebody pose during the pretrial period and it would be the same across the board. He said this tool was not designed to inform a decision of what to do at sentencing, but just the pretrial.

Judge Barker asked if they had pilot programs and if he wanted another source.

Chair Segerblom asked if they had dealt with a state with a mandatory risk assessment, or did they deal with a city or county.

Mr. Alsdorf said Kentucky had a state-wide integrated court system and a state-wide integrated pretrial system. He said all the groups reported up to the same body so they were able to integrate the system. He said in a lot of states it was individual counties.

Justice Hardesty said there may be differences in the pretrial risk assessment approach in the different counties. He said Washoe County had a pretrial service which generated a lot of information for the justices of the peace. He felt it would be productive for Mr. Anthony to request each of the judicial district's pretrial risk assessment tools.

Mr. Alsdorf said he would make a similar presentation to different counties if they wished.

Mr. Kohn said Clark County was putting a large sum of money into the detention center. He said bails were set by the justices of the peace and he had no idea what assessment tool they use.

Chair Segerblom opened discussion on Agenda Item XI.

Kim Madris, Deputy Chief of Parole and Probation, said Captain Dwight Gover and Captain David Sonner would make the presentations. She said Captain Gover was presenting on the supervision side and the assessment tool they used for supervision, and Captain Sonner was presenting from the court services or presentence investigation side.

Captain Sonner opened his presentation with the Presentence Investigation Report, PSI, Exhibit L. Captain Sonner read the information in the exhibit. He said the information gathered by a P&P specialist was compiled in the PSI. The Division was mandated by statute and NAC to provide an evaluation of every defendant who came before them for sentencing.

Chair Segerblom asked if the information taken in was entered into a computer.

Captain Sonner said the information was also utilized to determine appropriate sentence recommendations utilizing calculations derived from the PSP form and utilized in the SRSS form. He said the Nevada Administrative Code mandated an evaluation of every person convicted of a felony by the Division. He said the Probation Success Probability (PSP) form was also codified in the NAC. He said factors A through P involved information relating to the defendants criminal history and the incident offense, Exhibit L. The Sentence Recommendation Selection Scale, (SRSS) was a numeric score from the PSP and applied to the SRSS to determine the type of appropriate sentence recommendation. He summarized his presentation by saying the PSP, criminal history, and offense score determined the recommended sentence range. The combined reports plus the SRSS determined the recommendation for incarceration or probation. He said all the information was within the Offender Tracking Information System, (OTIS) and was calculated electronically. The Commission received copies of the two forms, PSP and SRSS in Exhibit M.

Mr. Kohn said the form was almost 25 years old. He asked if it had been validated in the recent past. He asked if there was a better form.

Captain Sonner said he was not aware of any efforts to validate the two forms.

Mr. Kohn asked how the tool came into use.

Captain Sonner said he did not have that information.

Mr. Kohn said he had discussed with Captain Sonner the possibility of using the number of arrests for the report. He said he did not see the number of arrests on the form.

Captain Sonner said the court should be fully informed on the criminal history of the defendant and arrests were part of the history.

Mr. Kohn said arrests without conviction were also listed. He said it was not part of the authority under this statute.

Captain Sonner referred to Item H in Exhibit L. The information did not specifically say arrest, but they did form a complete picture of the history of the criminal defendant.

Mr. Kohn said arrests were based on probable cause and convictions were based on a plea or proof beyond a reasonable doubt.

Justice Hardesty said in 2010 representations were made to the Commission that these instruments were or had been updated. He said he was surprised they were using instruments from 1990.

Captain Sonner said the instrument validated on several occasions was the Risk and Needs Assessment which related to supervision of the offenders.

Justice Hardesty said he understood the scores were to be included in the PSI reports. He asked if that had happened or was it included and then withdrawn.

Captain Sonner said yes, they were at one time included in the report. He said when the Division attempted to streamline the report the information was eventually eliminated from the body of the report.

Justice Hardesty said there was concern in 2010 and 2012 that the importance of providing the scores was an addition error could create a different result and the defendant and the State had a right to know the assessments on the individual items. He asked who decided the information should be discontinued.

Captain Sonner said it was the decision of a prior administration of Parole and Probation.

Justice Hardesty said it continued today with the scores not released or provided. He asked if the State or the defense asked for copies of the assessments, did P&P disclose it.

Captain Sonner said if there were requests for the information, they disclosed the information. He added that the blank forms they used were on the internet for viewing by defense counselors. He said they had some requests from defense counsel to score the instruments themselves.

Justice Hardesty asked Judge Barker if he had seen any of the instruments or scores.

Judge Barker replied he had not seen the form or the work product of any sentence or cases presented to him. He said there was a lot of discretion in terms of decisions. He said it was clear they needed skilled individuals making the assessments in the forms.

Mr. Frierson said that the notion was that somebody was going to be exposed to judgment based on arrest and the possibility that it was reflective of where they lived. He said in certain neighborhoods individuals were subject to more frequent arrests by virtue, almost, clearly of where they live. He said it was concerning as was the subjective nature of some of the items such as honesty, attitude and cooperation. He said the questionnaire included the factual basis for the offense. He was curious if there was a mechanism to take into account different actions of the parties.

Captain Sonner said the offense report in the PSI was taken from the arrest reports.

Mr. Frierson said the defendant was contacted to be interviewed. He asked what happened when the defendant was not available to be interviewed.

Captain Sonner said they contacted the defense attorney if they were unable to contact the defendant. He said they made every effort to try to locate the defendant for the interview.

Mr. Digesti asked about the two forms, SRSS and PSP. He said the information was made available to defense counsel if requested. He asked if there was a particular contact person within P&P to whom the request was directed.

Captain Sonner said any number of people who work in the court services unit can be contacted.

Mr. Digesti asked if the information was available on the request of the defense counsel, or did it require an order of the court.

Captain Sonner did not think an order of the court was required in the past.

Mr. Digesti asked if the defense counsel requested the information at the time of entering a plea, and before sentence was imposed, the information was entered into the order at that point, and the department would abide with the order.

Captain Sonner agreed.

Justice Hardesty said Mr. Anthony was keeping a list. He said this subject was a significant area for the Commission to address and make recommendations for statutory change to the Legislature. He said the status of the tool and instruments were of concern to him. The availability of scores and how they were computed to the court, as well as the parties, was a concern to him. He said they needed addressing statutorily by the Legislature.

Captain Dwight Gover gave a presentation on the Offender Assessment and how they utilized their tools. He said the NRS established a level of supervision for the probationer or parolee under their charge, Exhibit N. They were to reevaluate the offender every six months and notify them of any changes. The history of risk assessment tools dated back to the 1920s. He said it began with parole boards wanting to be able to estimate the probability of success or failure of prospective parolees. He said P&P in Nevada used an assessment tool based on the Wisconsin Client Management System. They utilized the assessment tool to aid in offender supervision levels, Exhibit N. Within the first 30 days of supervision, officers were required to complete an initial risk and needs assessment. He outlined the data for the risk and needs assessment. He said he included offender population by supervision. He said there were approximately 13,000 offenders under active supervision, Exhibit N. The risk assessment tool was validated in October, 2007, by the National Council on Crime and Delinquency (NCCD). He said there were recommendations in the report to enhance the needs assessment by utilizing drug and mental health screening tools. Once a person was granted probation, they were required to have a mental health or a substance abuse evaluation by a provider in the community.

Captain Gover said he had additional information regarding the validation of the study. He said they found for new convictions within their categories of minimum, medium, or max the rates mirrored where the Division had people in categories. He said the

revocation rates showed an equal similarity. He said that told the people doing the evaluation their assessment tools were within the ballpark of revocation rates and new criminal activity.

Mr. Kohn asked what percentage of the people put on probation were honorably discharged.

Captain Gover said anybody who gets off probation, honorable or dishonorable discharge, they had completed the requirements of probation. He said people may receive a dishonorable discharge for a variety of reasons including court ordered, or a financial reason.

Ms. Madris said they were at about 68 percent success for probation, but it was not broken down as far as honorable or dishonorable discharge. She said a discharge from probation was considered a success.

Mr. Kohn said they do not go to prison or reoffend.

Ms. Madris replied he was correct.

Chair Segerblom asked how the 68 percent related to other states.

Ms. Madris replied Nevada's success rates were very high compared to other states. She said she had research from the past session with the numbers and she would forward it to the Chair.

Chair Segerblom said in 2011 the current risk assessment was evaluated and said to be reasonable, recommendations were made, but they were never followed.

Captain Gover said after someone was granted probation or parole and they had a condition of supervision or treatment of some sort, they were evaluated and reassessed and the information was taken into account.

Chair Segerblom asked if they were reassessed during the course of probation or parole.

Captain Gover said once they came on to probation there was an initial assessment and then a reassessment every six months or as needed. He said if there was a supervision level change, they were required to notify the offender of the change.

Justice Hardesty said he suspected a lot of the dishonorable discharges were associated with unpaid restitution. He said it would be helpful if that was broken out. He wanted to know the status of the Division's ability and effort to collect restitution and how many of the dishonorable discharges were related to unpaid restitution.

Ms. Madris said she would reach out to headquarters to see what sort of report they could generate.

Justice Hardesty said when he was a judge they requested a monthly or quarterly report of the status by defendant of restitution payments. He asked if the report was provided to district judges currently.

Ms. Madris said they did not distribute that type of report to the district judges.

Chair Hardesty asked when they stopped providing the information or why they stopped.

Ms. Madris said she did not have that information. She said in the Las Vegas area the number of individuals sentenced to probation and required to pay restitution was very large. She said they notified the courts with incidence reports as far as status restitution if someone fell behind in payments. They used other methods to report to the court on an individual's status concerning restitution payments.

Justice Hardesty said he was interested in having the information provided to the Commission. He was also interested in the status of collections by the Division on restitution, fines, and fees. He said in 2009 the Attorney General and he tried to improve collections on restitutions, fines and fees. He said they went to civil confessions of judgment to try to give the victims something to use to continue their collection efforts. He requested the information from Parole and Probation.

Judge Barker concurred with Justice Hardesty. He said restitution had been problematic.

Ms. Madris said she would provide the report by the next meeting.

Ms. Bisbee said she was discussing the Nevada Parole Board Risk Assessment, Exhibit Q. She said age at first arrest, whether or not there was a conviction, was one of the static factors on the Parole Board Risk Assessment. She said it was a validated factor. The age at the first arrest was an indicator of recidivism. She said the Risk Assessment was done at intake with the NDOC. The second Parole Board Risk Assessment occurred when the NDOC case worker did a board report reviewed by the inmate. The third time was for a file for the parole hearing. She said it was done a fourth time at the actual hearing with the Commissioner and inmate present.

Chair Segerblom asked if it was the same risk assessment all four times.

Ms. Bisbee replied it was the same and they rarely ever had an appeal based on errors in a risk assessment. She said the instrument was revalidated, by statute, every two years. She said the risk assessment was used, combined with the offense severity, and resulted in a recommendation that the Board considered. She said the primary recommendation for deviation for parole when the recommendation was to deny, was when someone had multiple sentences. She said once the parole order was produced the risk assessment was

attached to the order. She added it was also considered public record. She said people working with Senator Segerblom requested the public record of 750 of the orders. The Parole Board staff collected the information and sent it to them. She said in considering risk when somebody is set for a violation hearing, they provide the most current needs risk assessment to the Board. They put it on the violation report when they request a retake order. She said they use that decision for making a matrix for parole revocation. She said they just started as a result of an NIC grant which brought the DOC and P&P and the Parole Board together to look at the items. She said all the information was on their website.

Chair Segerblom asked if the risk assessment was assigned to a company or name.

Ms. Bisbee said it was developed by Jim Austin. She said they had used versions of it since legislative action in 2007 and they started using it in 2008. It had been revalidated three times.

Chair Segerblom asked if this was also used in regard to sex offenders.

Ms. Bisbee said they used a sex offender assessment, one of many tools the DOC found to be validated. She said the last page of Exhibit O was the actual risk assessment. She said in terms of a general risk for recidivism, the assessment tool generally shows the sex offender as a low risk.

Chair Segerblom said for sex offenders they used multiple forms.

Ms. Bisbee replied in accordance with the statute, the tool best for that population was used by the Department of Corrections and they used multiple tools.

Mr. Kohn asked about the age of first arrest factor. He asked if it was validated by Dr. Austin.

Ms. Bisbee replied yes, absolutely. She said looking at other risk assessments, it was always used. She said Senator Segerblom put her in touch with people in New Jersey and it was used there also. She said when recidivism was discussed, first arrest was the first question on static factors.

Justice Hardesty noted that the parole board's parole rate was among the highest in the country. He thanked Ms. Bisbee and her colleagues for their work.

Director Cox said Nancy Flores was presenting a power point presentation of her classification instrument for the Commission's information. He said the classification instrument was validated by the University of Cincinnati through the National Institute of Corrections in 2011. He said Dr. Austin testified that he thought the classification instrument was a good instrument.

Nancy Flores said she was a classification and planning specialist for the NDOC. Her presentation was in regard to the classification on assessment they used for the NDOC. She said the classification told them what custody level they sent an inmate to and which institution they sent an inmate to. The inmate was assessed at the intake; the second time was within the first thirty days in the prison system. They were then assessed every six months with periodic classifications using the reclassification schedule. She said there were interim classification schedules used to determine if an inmate may be considered for a different program or institution.

Ms. Flores said objective classification was used by the NDOC to decide where an inmate belonged within the prison system. She said risk factor scores provided a foundation for an inmate's likeliness to escape. The purpose of objective classification was to protect staff, inmates, and the community. She said institutional files were developed when an inmate came into the system. They used the PSI in making determinations in calculating scores along with a judgment of conviction. She said Administration Regulation 521 had custody categories and criteria. She said it was the foundation for the classification of inmates to different custody levels.

Ms. Flores said two different assessment tools were used for inmate placement consideration. She said a caseworker asked various questions of the inmate including information concerning substance abuse history and any other factors that might have a different score than the reclassification instrument. She said risk assessment may score higher including other information. Intake assessments provided a guideline for new and returning inmates to the DOC. She said there were different sections in the instrument, A, B, and C. Section A and section B gave the recommended custody level. She said section C included exclusions such as an inmate with a low score, but was on death row, and will never make minimum custody. She said felony convictions for sex offenses did not go to minimum custody per NRS. One year from a felony violent episode precluded them from minimum custody. She said they also had other discretionary exclusions to use. She said they always used judgment. They had programs for juvenile inmates less than seventeen years old. Staff judgment and selective criteria was a critical tool when using the objective instrument. She said the instrument had been used for over 20 years.

Chair Segerblom asked where it originated.

Ms. Flores replied she did not know.

Deputy Director Cheryl Foster said this type of institutional assessment instrument was used widely across the United States. She said the instrument had been updated and revalidated through the years. She said in 2011 the National Institute of Corrections revalidated the instrument.

Mr. Digesti asked if corrections were made to the PSI report at the time of sentencing. How did the corrections get to the file of the PSI if the file was not corrected by some type of expansion or comment by the court?

Ms. Flores said most of the casework staff had access to OTIS. They were able to pull any updates or changes from the OTIS system.

Mr. Digesti asked if the only information was on the transcript of the sentencing and there was no written follow up correcting the PSI report. He said it might just be oral comments by the judge at the time of sentencing.

Ms. Flores said if they requested them, they might be able to get the court minutes if ordered to substantiate the inmate's claim.

Mr. Digesti asked how they knew to make such a request.

Ms. Flores said the inmates told them their record was incorrect and the case worker requested the information.

Mr. Digesti asked if there was anything the court or attorney can do to ensure the information was in the file. He was concerned they might ignore the inmate's comments. What other way were they sure the corrections were in the PSI report. He was concerned the inaccuracy in the report could have a detrimental effect on the inmate.

Ms. Flores said if an inmate approached his case worker with his complaint and the case worker failed to follow through correcting the problem, the inmate can file a grievance.

Mr. Digesti wondered if there was a better procedure or way to do it. He asked if there was anything the courts could do to be sure the correction was made at the time of sentencing

Ms. Flores said an inclusion or addendum from the attorney or the courts would be highly appreciated.

Judge Barker asked Ms. Flores if, in the review of the JOC received from the court, she had noticed any special findings or corrections on the document. He said that was the way they addressed the issue.

Ms. Flores replied she had never seen one.

Ms. Bisbee said the special findings were on the JOC provided to the Parole Board.

Dr. Darcy Edwards, Nevada Department of Corrections, said she was the quality assurance manager for behavioral services. She said in this case it meant substance abuse and mental health. She said one of the things they did was look at practices already validated from the public domain with some upfront costs. A system called the Ohio Risk Assessment was a dynamic risk needs assessment used with offenders. She said they needed a program that most mediated the criminogenic risk factors for the person. The offender was involved from the beginning. The Ohio Risk Assessment System was

developed in 2006. She said the DOC adopted the system in 2003 and was granted permission to name it the Nevada Risk Assessment System. She said 10 other states use the system. She said the major goal was to effectively allocate resources in a manner that reduced the likelihood an offender would commit future crimes. There were four primary tools in the system. A pretrial tool informed the court of the defendant's risk of failing to appear at a future court date. A tool for community supervision was used with offenders on parole or probation and designated community supervision levels and guides. The prison used the prison intake tool designated to provide case managers with information used to prioritize prison based interventions. She said they also used the reentry tool designed to be used with inmates within six months of release from prison. The system covered antisocial attitudes, behavioral problems, antisocial associations and lifestyle, education, employment and finances and substance abuse. The Nevada Risk Assessment System predicated the likelihood of rearrests and recidivism at different points across the system. It allowed for professional discretion and overrides. She said it was cost effective and sustainable. She said there was no cost once the facilitators were trained to use the instrument.

Chair Segerblom asked Dr. Edwards if she had the resources to implement the plans when inmates came into the system.

Dr. Edwards said it depended on their needs. She said substance abuse needed more resources.

Laurie Hoover said she was a licensed psychologist assigned to High Desert State Prison. She was present to discuss Static-99 and other assessments used for sex offender recidivism. She said the Static-99 was the most widely used instrument for sex offender risk assessments.

Chair Segerblom said there were multiple instruments used. He asked if they looked at the person to determine how they picked the risk assessment tool.

Ms. Hoover said the Static-99 was not appropriate for certain types of populations of offenses. She said it was not appropriate for use with female offenders. They used the Sexual Violence Risk 20, SVR 20.

Chair Segerblom asked if the Static-99 was the instrument used for male offenders.

Ms. Hoover said the Static-99 was the current instrument used since Senate Bill 104.

Chair Segerblom asked if she wanted to use a different instrument.

Ms. Hoover replied historically they used several different instruments. She said the Static-99 was a robust instrument and it was used throughout the United States and Europe and translated in six languages. She said there was a lot of research done on it. She said it was not appropriate for use with juveniles.

Chair Segerblom said up to 20 percent of the prison population had a sex offender component to their past or their sentence.

Ms. Hoover said she was not familiar with that percentage, but she was not surprised if that were the case. She said the Static-99 was an actuarial risk assessment and had statistical weighted variables to estimate the risk of committing a new sexual offense. It was proven to be more accurate than clinical judgment or unstructured interviews. She said female offenders and offenders under the age of 18 were excluded. Offenders who had been on parole for over 10 years without a new sexual offense were also excluded from the Static-99.

Chair Segerblom said he liked the idea of having a uniform evaluation throughout the state at every level.

Ms. Cortez Masto said she had a list prepared of the members of the Victims of Crime Subcommittee, Exhibit P. She said they had one meeting on April 14, 2014. The meeting was to acclimate everybody to the work of the Advisory Commission and identify agenda items from the Commission and future items they want to work on.

Chair Segerblom said there were three subcommittees needing appointments. He said with respect to the marijuana subcommittee, it was authorized the first of April. They appointed people to the subcommittee even though several slots were not yet filled, Exhibit Q. The three subcommittees listed were Arrestee DNA, Sex Offender, and Marijuana. He said for the record the DNA committee had Steve Gresko, Renee Romero, Bertral Washington, Rachel Anderson, Steven Yeager, and Tracy Birch. He asked if there were any objections to the nominees. He asked Mr. Yeager to chair the subcommittee.

ASSEMBLYMAN FRIERSON MOVED TO APPROVE THE MEMBERS.

JUDGE BARKER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Segerblom said the sex offender subcommittee was looking at the Adam Walsh bill and the current Supreme Court appeal. He was interested in any legislation they might propose. He listed the appointees; Maggie McLetchie, Tod Story, Vanessa Spinazola, Jorge Pierrott, Emily Troshynski, and Justine Terry. He asked Mr. Story to be chair.

Ms. Masto asked if this was a committee created by statute. She wondered why it was top heavy with ACLU people and not a better-rounded group.

Chair Segerblom said it was a committee he asked for and the nominees were people who said they wanted to be on the committee.

Mr. Pierrott requested two people who worked on the bill draft proposed by Parole and Probation be on the subcommittee as well as somebody from the Attorney General's office and a prosecutor from one of the counties.

Chair Segerblom said they will add whoever they wanted to the subcommittee.

Ms. Masto said they created, through statute, a committee to address Adam Walsh and sex offenders. She wanted to be sure they were working in conjunction with this Committee. She said everyone needed to work together and proceed in the same direction.

Mr. Pierrott suggested Tom Healy and David Helgerman be placed on the subcommittee.

Chair Segerblom said the Attorney General would make her recommendation and he would also find a district attorney to appoint to the subcommittee. Chair Segerblom said there was no rush for the subcommittee, so they could vote on it at another meeting. He said the main object today was the Marijuana Subcommittee. He read the names of the people recommended in Exhibit Q for the subcommittee. Chair Segerblom said he would chair the subcommittee. He said they did not have a holder of a card yet or someone from the Department of Health, or manufacturer or dispensary.

ASSEMBLYMAN FRIERSON MOVED TO APPROVE THE MEMBERS.

JUDGE BARKER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

Chair Segerblom asked if there were any potential topics for the Commission. He said they plan to meet in late June and again in August with a work session in October. He asked if there was any public comment.

Wes Goetz commented on the Static-99. He said when he was in prison he had low risk on the Static-99 three times when he had the psych panel but they told him he was a high risk. He said the psych panel was no longer there and the Parole Board was making their decision about the Static-99. He said it usually gave a lot of low risk for recidivism rates but he believed the Static-99 was not being used properly. He said sex offenders were getting dumped.

Chair Segerblom asked if he was saying they were getting out of prison, or they were not getting out.

Mr. Goetz said they were not getting out of prison.

Chair Segerblom said that was a topic scheduled for the next meeting. He asked what Mr. Goetz's second issue entailed.

Mr. Goetz said they needed more licensed psychologists in the prisons. He wanted to know if Ms. Hoover was actually licensed in the state of Nevada or just in another state. He said he wanted to be on the sex offender committee as he was a registered sex offender and might have more information. He also knew a lot of psychologists who were working for sex offenders, getting them treatment and assessing sex offenders in Reno. He wanted a licensed psychologist who was working with sex offenders on the subcommittee. He said the psychologists were Earl Nielson and Robert (unknown last name).

Chair Segerblom said he would reach out to the people named and see if they wanted to be on the subcommittee. He asked if there was any further public comment. As there was none, he adjourned the meeting at 1:49 p.m.

Respectfully Submitted:

Olivia Lodato, Interim Secretary

Approved By:

Senator Tick Segerblom, Chair

Dated: _____

EXHIBITS

Committee Name: Advisory Commission on the
Administration of Justice

Date: May 1, 2014 Time of Meeting: 9:00 a.m.

	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
	C	John Witherow	NV-CURE
	D	Greg Cox	Justice Reinvestment Initiative
	E	Catherine Drake Schmidt	OJP Diagnostic Center
	F	Jessica Herbert	Evidence-Based Solutions
	G	Judge Dorothy Nash Holmes	Legal Interventions to Reduce Overdose Mortality
	H	Judge Nash Holmes	Overdose Prevention Program
	I	Judge Nash Holmes	NRS 125.480
	J	Matt Alsdorf	Right on Crime
	K	Matt Alsdorf	Public Safety Assessment

	L	Captain David Sonner	Division of Parole and Probation
	M	Captain Sonner	Probation Success Probability
	N	Captain Dwight Gover	Offender Assessment Overview
	O	Nancy Flores	Recidivism Risk & Crime Severity Guidelines
	P	Attorney General Cortez Masto	Subcommittee Members
	Q	Chair Segerblom	Subcommittee Members (3 committees)

DRAFT