



## CRIME COMMISSION

### INTERIM SPECIAL REPORT Created by Chairman Patricia Lee

May 20, 2013

Members as of last regularly scheduled Commission Meeting i.e. March 20, 2013:

Patricia Lee (present)

Chris Perry (present)

[Terry Johnson](#)

Greg Cox (absent)

Michael Wilden (present)

David Gustafson (absent)

Leo Drozdoff (absent)

Claudia Vecchio (absent)

Shawn Reid (present)

Richard Clark (present)

Richard Varner (present)

Connie Bisbee (present)

Dick Gammick (present)

Doug Gillespie (present)

Robert Fisher (present)

Greg Smith (absent)

Tom Lozich (present)

Lucas Foletta (absent)

Robert Roshak (present)

[Bruce Breslow \(present\)](#)

#### EX-OFFICIO MEMBERS

Stephen Herkins ATF (absent)

Kevin Farvreau FBI (absent)

Paul A. Rozario, DEA (present)

Michael Harris ICE (absent)

#### ADMINISTRATIVE STAFF

Linda Herron, Executive Secretary  
(present)

Michael Jensen, General Counsel  
(present)

**SUMMARY/OVERVIEW** : As the 2013 Legislative Session comes to a close, the Commission is focused on monitoring the status of selected crime related bills which are or may be of interest to the Office of the Governor. Because of the relatively short duration of the Legislative Session, the Commission has added 3 additional meetings, the last of which will convene on May 22, 2013. The following report and recommendations is therefore a consolidated account of the interim meetings held by the Commission on both January 9, 2013 and March 20, 2013.

## **I. BDR 137 – SB 243** (*Revises provisions relating to DNA testing of person arrested for and convicted of certain felonies*)

### **A. Brief Recap**

As noted in the Commission’s last report, the “All Felony Arrestee DNA” bill, more commonly known as “Brianna’s Law,” proposes to mandate the taking of DNA samples from all persons arrested on felony charges (versus taking samples at the time of conviction). The objective of the law is to increase the effectiveness of solving cold cases and identifying suspects in sexual assault cases.

### **B. Concerns**

The Legislature appears to have addressed some of the concerns articulated in the Commission’s last report by crafting language that purports to address (1) funding; (2) logistics of expunging records for those felony arrestees who are not convicted; and (3) certain due process/privacy rights concerns. As previously stated in the Commission’s last report, the Commission supports the collection of DNA from all felony arrestees, however, would not recommend support if there were not adequate funding for the law.

- (1) **Funding:** The bill appears to propose funding in the form of an increased assessment on the Courts in the sum of \$2.00. Additionally, any felony arrestee that was ultimately prosecuted, would also pay a \$2.00 fee. According to the Criminal History Repository, there were approximately 26,000 felony arrestees last year. There is also an opportunity to capitalize on a portion of \$30 million dollars in grant money earmarked by the Obama administration for disbursement to states enacting all felony arrestee laws. Accordingly, if enacted, there would be an opportunity to get in line with the other 28 states that have enacted similar legislation. There was also some discussion about amending the bill to include funding from another proposed bill assessing civil fines for minor traffic infractions. Notwithstanding, there is still a concern that the bill’s proposed funding sources will not cover the projected costs which are estimated to be approximately \$3 million dollars. It is estimated that it would cost an estimated \$75.00 per arrestee to actually process the collected DNA samples.
- (2) **Expunging DNA:** Another concern, voiced by the ACLU and undoubtedly others, was the mechanism for expunging the DNA if the felony arrestee is found not guilty of the crime for which he has been arrested. Because the State is deficient in resources, it will be unable to track cases and then expunge samples when warranted. Accordingly, the bill places the burden on the felony arrestee to seek to expunge his or her own DNA sample. It is contemplated that the felony arrestee will be given information and/or instructions on how to logistically purge his DNA sample if exonerated, but even in this scenario, there is no guarantee that they will be purged from CODIS which is managed by the Federal Government.
- (3) **Due Process/privacy:** The ACLU and others have further voiced concern about whether or not the collection of DNA evidence upon arrest, violates the arrestee’s right to due process and rights to privacy since potentially otherwise protected information would be

subject to discovery, such as health or other genetic information. The matter itself has not yet been examined by the Nevada Supreme Court, but there is currently a case pending in the United States Supreme Court that may materially impact the constitutionality of this law. *See Maryland v. King*. It is contemplated, however, that the DNA samples taken under Brianna's Law, would be restricted to matching only. According to testimony given at the Legislature, there are millions of identifiers that can be gleaned from DNA, and the samples taken under this law would be restricted to only 13 identifiers.

### **C. Recommendations/Status**

As of May 15, 2013, the bill was approved by the Assembly Judiciary Committee with an 11-2 vote. The bill has already passed all Senate votes and is awaiting a final vote from the Assembly floor. Notwithstanding the articulated concerns, the Commission believes that the ability to identify perpetrators of heinous crimes sooner, outweighs the articulated concerns. The Commission therefore recommends support for this bill, so long as there is adequate funding to support it.

## **II. BDR 89 / SB 374 (Revises provisions relating to the medical use of marijuana)**

### **A. Brief Recap**

This proposed legislation would legalize the establishment of a certain number of tightly regulated marijuana grow houses in Nevada, which would legally dispense marijuana to those with valid medical marijuana cards and would further make it a misdemeanour to forge or counterfeit a medical marijuana registry identification card for users and primary caregivers.

### **B. Concerns**

The Commission previously expressed concern about the apparent conflict between the Federal law, under which marijuana remains illegal for any purpose, and Nevada law, which allows those with valid registration cards to possess limited quantities of marijuana for medicinal use. Although Mr. Paul Rozario, the ex-officio DEA member of the Crime Commission, continues to maintain that any dispensaries or grow houses would be targeted, raided and shut down by Federal Agents, a brief conversation with U.S. Attorney for the District of Nevada, Dan Bogden, did not necessarily leave an impression of pedantic prosecution. Rather, Mr. Bogden indicated that he, along with other State's Attorney Generals, are seeking additional guidance from Eric Holder, who has yet to definitively weigh in on the conflict one way or another.

The bill itself has gained some traction in the legislature with some of the Senators even travelling to Arizona to inspect that state's dispensaries first-hand. Despite the interest in making medical marijuana legally accessible to registered card holders, the legislators have seemingly struggled with the proposed language. At the time of the Commission's March 20, 2013 meeting, some of the material provisions in the bill included:

1. The Department of Health and Human Services will oversee the administration of certifications for dispensaries;

2. The dispensaries cannot be any closer than 500 ft. from any public or private school;
3. There must be a medical director that is assigned to each facility;
4. The dispensary would be “non-profit” in nature (not necessarily in the IRS sense)
5. The authorized directors of the dispensaries would be subjected to fingerprinting and background checks and no person with any felonies or misdemeanors would be permitted to obtain certification;
6. The authorized directors of the dispensaries would also need to be over the age of 21, not be in arrears in his or her child support, certification must be renewed on an annual basis and any person who has had any professional licenses suspended, would not qualify for certification;
7. The number of pharmacies would be limited to 1 for every 10 pharmacies unless there is a county that has less than 10 pharmacies, then they would be permitted to have one;
8. The application for certification would only be open for a 10 day window each year;
9. Before the law was implemented, the Department of Health and Human Services would be tasked with performing a study to determine the number of dispensaries that would be appropriate to ensure that they are not excessive or deficient;
10. If there are more applicants than grow houses necessary, they will select the applicants via lottery;
11. The facility itself would have to be tightly secured with an alarm system and other bells and whistles;
12. Consuming the product on the premises would be prohibited and each individual consumer would be limited to receiving 2.5 oz within a 14 day period.

The Commission also discussed possible abuses of medical marijuana registration and whether the establishment of grow houses would result in a proliferation of the abuse. Some of the Commissioners also expressed concern that the sanctioning of grow houses may lead to the all out legalization of marijuana for recreational use, which was actually proposed by AB 402. This concern, for now, however is moot as AB 402 was rejected by the Legislature.

### **C. Recommendations/Follow up**

At the time of the Commission’s last meeting, the bill was still in draft form and the Commission retained concerns about how the dispensaries would be regulated. The Legislators have proposed criminalizing the personal/private growth of marijuana in light of the proposed dispensaries (the former of which is currently legal in designated amounts). In any event, because the bill itself had not yet been finalized by the Commission’s last meeting, the Commission reserves its recommendations pending a final version of the bill. The Commission will again address this bill during the May 22, 2013 special meeting.

## **III. BDR 14-94/AB 104 (*Revises provisions governing aliens unlawfully present in the United States*)**

### **A. What is it?**

This proposed legislation sought to curtail aliens unlawfully present in the United States, but adopting legislation similar to Arizona’s laws.

**B. Concerns**

The Commission fully incorporates the prior articulated concerns memorialized in its last report as if set forth fully herein.

**C. Recommendations/Follow up**

Because the bill has been rejected by the Legislature, and is therefore “dead,” the Commission’s recommendations at this point are moot.

**IV. BDR 137/ AB 143/SB 223 – (*Campus Carry Legislation*)**

**A. Brief Recap**

Allows the holder of a concealed carry firearms permit to carry a concealed firearm on property of the Nevada System of Higher Education except at sporting venues with at least 1,000 seats.

**B. Concerns**

The Commission fully incorporates the prior articulated concerns memorialized in prior reports as if set forth fully herein.

**C. Recommendations/Follow up**

Because both the Assembly and Senate versions of these bills have been rejected by the Legislature, and are therefore “dead,” the Commission’s recommendations at this point are moot.

**V. AB 62 – (*A bill that would, among other things, exempt from POST certification of bailiffs and deputy marshals hired by Justices of the Peace in Counties under 700,0000*)**

**A. What is it?**

This bill, drafted by the Nevada Supreme Court, proposes that bailiffs or deputy marshals be exempt from POST certification so long as they were at one time or another, POST certified in any state.

**B. Concerns**

The Commission’s collective and unanimous concern is that exempting retired bailiffs and deputy marshals from POST certification, simply because they were, at one time or another, POST certified, would be ill advised. Retired law enforcement agents retire for any number of reasons,

not all of which would be consistent with allowing them to go back into law enforcement without the proper vetting and re-training. As discussed during the March 20, 2013 Crime Commission meeting, law enforcement agents may retire in lieu of discipline for infractions ranging from dishonesty, drug abuse, health related issues and even criminal activity. Under the proposed legislation, peace officers would not need to obtain POST certification and therefore would not be subjected to a background check, training, continuing education, and would generally not be held to the standards of POST. The existing law mandates that any peace officer that has had a break in service for more than 5 years be re-certified through POST, which the Commission believes is the more sound policy.

### **C. Recommendations**

Because the bill has been rejected by the Legislature, and is therefore “dead,” the Commission’s recommendations at this point are moot.

## **VI. Recommended Support for a National Commission on Crime**

Sheriff Doug Gillespie presented the idea of a National Commission on Crime, (“NCC”), for the Crime Commission’s consideration. There have been some earnest discussions amongst major national organizations, including the International Association of Chiefs of Police and the National Sheriff’s Association, to establish an NCC. The President of the United States, Barak Obama, has also strongly supported the establishment of an NCC and has encouraged various organizations to work collaboratively to resurrect it. The proposed model is intended to mimic the NCC established under Lyndon B. Johnson’s administration<sup>1</sup>. The NCC would, among other things, seek to promote the standardization of law enforcement techniques, training criteria, equipment and community policing. It would be made up of a large cross section of law enforcement, community leaders and those working in the private sector in order to promote education, formulate crime-related solutions, reduce recidivism, discuss prison management, ferret out the best practices for law enforcement, and most importantly, prevent violent crimes. It is anticipated that there will be some outreach to the Governor’s Association nationally to garner some support for the proposed NCC, and the Crime Commission recommends that the Governor fully embrace and support the proposed national commission.

## **VII. Conclusion**

The current 77<sup>th</sup> Session of the Legislature is slated to end on June 2, 2013. The Commission has one special meeting left before then. The next report and recommendations will therefore follow closely on the heels of this one. Thereafter, it is anticipated that the Commission will resume its regularly scheduled quarterly meetings to address the other items with which it has been tasked.

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<sup>1</sup> Sheriff Gillespie stated that the current 9-1-1 emergency response system was borne out of the prior NCC.