

**MINUTES**  
**CRIME COMMISSION QUARTERLY MEETING**

**DATE:** January 9, 2013  
**TIME** 1:40pm – 2:50pm

**LOCATION:** Department of Public Safety – Headquarters Training Room  
555 Wright Way, Carson City, NV  
NHP Southern Command – Sunset Room  
4615 W. Sunset Rd., Las Vegas, NV

**METHOD:** Conference    **RECORDER:** Linda Herron

<b>MEMBERS</b>	<b>PRESENT</b>	<b>ABSENT</b>	<b>PROXY</b>
Patricia Lee	X		
Chris Perry	X		
Bruce Breslow	X		
Greg Cox	X		
Michael Wilden		X	
David Gustafson	X		
Leo Drozdoff	X		
Claudia Vecchio	X		
Shawn Reid		X	
Richard Clark	X		
Connie Bisbee	X		
Robert Roshak		X	
Dick Gammick	X		
Doug Gillespie	X		Chuck Callaway
Robert Fisher		X	
Tom Lozich		X	
Greg Smith		X	
Lucas Foletta		X	
Richard Varner	X		
<b>EX-OFFICIO MEMBERS</b>			
Stephen Herkins ATF			
Kevin Favreau FBI			
Paul A. Rozario DEA	X		
Michael Harris ICE			
<b>ADMINISTRATIVE STAFF</b>			
Michael Jensen Gen. Counsel	X		
Linda Herron Exec. Sec.	X		

## **#1. CALL TO ORDER AND ROLL CALL**

Chairwoman Lee called the meeting to order at 1:40pm. Linda Herron called the roll and a quorum was established.

## **#2. COMMENTS BY THE CHAIRWOMAN**

Chairwoman Lee noted that today's meeting would focus exclusively on the BDR's or potential BDR's that will be coming out in the 2013 Legislative Session that the Governor has expressed interest in.

## **#3. PUBLIC COMMENT**

There was no public comment.

## **#4. APPROVAL OF THE OCTOBER 10, 2012 MINUTES**

Chairwomen Lee asked if there were any changes to the October 10, 2012 meeting minutes. Mr. Rozario said he suggested that a representative from the US District Attorney's Office Dan Bogden, be present at the next meeting, the minutes stated a representative from the Attorney General's office. The change was made in the revised minutes by Linda Herron and sent to the Commission members before the Jan 9<sup>th</sup> meeting. He also requested that we correct the spelling of his last name. Linda Herron will make the correction. Richard Varner made the motion to approve the amended October 10, 2012 minutes, Richard Clark seconded the motion. Motion passed.

## **#5. DISCUSSION OF SEMI-ANNUAL REPORT SUBMITTED TO THE GOVERNOR ON DECEMBER 31, 2012**

Chairwomen Lee asked if there were any concerns or changes to the Semi-Annual report. Sheriff Gillespie questioned if the report was presented to the Governor with the changes and amendments that were discussed at the last meeting. Chairwomen Lee responded yes. We will note a correction to Mr. Rozario's name on the report. Richard Gammick requested that his name be taken off the report because he didn't attend the last meeting. Chairwomen Lee said the list indicates members of the Commission, not that Mr. Gammick was present. Mr. Gammick responded that he would like his name taken off because he did not agree with some of the things in the report. Chairwomen Lee suggested she would attach the roll call to the report to make it clear to the Governor who was present at the last meeting. Connie Bisbee would like a change on Page 2 – "*several legislators*" and page 6 the correct spelling of *Assemblyman Settlemeyer's* name. Mr. Rozario would like page 8 changed to show *one hundred million lbs.* Chairwomen Lee then entertained a motion to accept the Semi Annual Crime Commission Report as amended per the proposals put forth that day. Sheriff Gillespie made the motion to approve the changes to the Semi Annual Report, Greg Smith seconded the motion, and Richard Gammick abstained. Motion passed.

**#6. REVIST AND CONTINUE TO DISCUSS VARIOUS ISSUES ASSOCIATED WITH THE BDRS THAT ARE LIKELY TO BE PRESENTED FOR CONSIDERATION DURING THE 2013 LEGISLATIVE SESSION**

**BDR 137 - Revise provision of DNA testing for a person arrested for and convicted of certain felonies also known as Brianna's Law**

Chairwomen Lee opened the discussion - Senator Smith was working with the Nevada Sheriff and Chiefs Association to hammer out some of the funding concerns that come along with this bill – Lucas Foletta raised the point whether this would be something were the DNA collected and tested or how much DNA would be tested, it would be a substantial impact of cost.

Chuck Callaway stated the Washoe Crime lab has been working closely with Senator Smith in the past session, there have been concerns over the bill, the funding and how it would be carried out so they are working to address those issues. Linda Porter from the Las Vegas Crime Lab and Renee from the Washoe Crime Lab had some model legislation based on language from a Federal model which gives the definitions of the DNA samples and swabs. There was also discussion on the funding; two ideas were brought forward – assessment fees, a \$1.00 fee from every person arrested or cited would go to fund DNA, there may be some opposition to this , also some revenue generated from cell phone citations since the new law passed last session. Those are two areas being looked at – the intent of the law would be when a person is arrested for a felony their DNA would be taken at the time of arrest via swab but the sample would be not be tested and entered in Cotis, but would instead be held until the time of conviction or probable cause is established, the sample would be tested then and entered into Cotis. If the charges are dismissed the suspect must petition for the sample to be expunged.

Dick Clark questioned if they would potentially look at court assessments to fund the testing – Mr. Callaway said that was mentioned during the last legislative session – at that point it was a \$2.00 fee then amended to a \$1.00 fee but the bill never passed the Senate on the last day of the session. The court has had issues with assessment fee – they were looking at the cell phone fees. Chris Perry responded that the Criminal History Repository and Nevada POST are both funded through court assessments. As everybody knows, court assessments have significantly dropped over the last 4 years. There is no room for dipping into that amount of money. Mr. Callaway agrees and they are looking into other alternative revenues. It has been expressed to Senator Smith that the funding is vital to us and we couldn't pursue felony arrestee testing without the funding to back it. Chris Perry asked if there is an estimate in the southern jurisdiction what that means monetarily. Mr. Callaway said they did a fiscal note on the bill and he thinks it was an average of 12 million dollars, 24,000-30,000 felony arrests and based on a \$30.00 fee for each of the arrests, he could try and get the actual figure for the Commission. Mr. Perry feels this would be very important because the upcoming session will be extremely tight when it comes to money. Washoe was much lower at 3 million dollars.

Chairwomen Lee questioned if the funding was the main concern, Mr. Callaway replied that the funding would be the first concern and expunging of the record would be the second concern. He doesn't think there would be a way to follow and track each case. Chairwomen Lee reiterated that the arresting individual would have to expunge the

record. Mr. Callaway said this has been an issue with the civil rights groups. Chairwomen Lee asked if anyone had spoken to Michelle Hamilton from OCJA regarding funding. Chris Perry said that funding maybe available through such avenues as Burn Jag, Cops Grants, but all the grants have been reduced because of the issues in Washington, He will talk to Michelle Hamilton and see what information she brought back.

Brent Kandt from the Attorney General's office said one of the last Act's passed by the past Congress at the end of the year is intended to provide funding to state for DNA upon arrests. He's not sure if the President was going to sign it and no other information but if it becomes law it would be something to look into for possible funding source. For those States that have this law it would provide funding to assist. Chris Perry asked if there is funding appropriated in this bill; he heard it was going to be an unfunded mandates passed along to the state. Brent Kandt only knows it was being sent to the President, Director Perry said there was no money attached to this bill.

Bruce Breslow asked if any other states have passed similar laws and what revenue streams they used to make it happen in their states. Mr. Callaway replied that New Mexico passed a law and it was based on assessment fees. Richard Varner commented that other associated costs must be tracked through the court, and regarding the expungement issues what are the additional costs for the manpower? Mr. Callaway said the fiscal note included the additional personnel but would have to do the testing and the expungement. Chairwomen Lee asked if this would include more physical space. Mr. Callaway wasn't sure if that was included. Chairwomen Lee asked if the BDR has been drafted, Mr. Callaway said the bill language has not been released yet, the Senator has a draft that has been passed around and changes have been made, she isn't ready to put the BDR out yet.

Dick Gammick asked if they were to get rid of the expungement if there was probable cause for the felony arrest; the same way fingerprints have been treated for a lot of years, the ACLU hasn't prevailed in stopping it, if we would remove those items wouldn't that be a positive impact on the amount of money needed? Dane Claussen from the ACLU of Nevada spoke regarding the issue of minimally invasive, the issue is not if the procedure is invasive but the information collected by the procedure. He compared it to entering a house without a locked door. DNA collection is collecting a huge amount of data from a person's DNA. Expungement should be automatic, and required to be automatic. Mr. Gammick liking this to entering a house – there is case law as to what you can and cannot do in that instance. Fingerprints are unique to the individual and they are kept on file. The same for DNA, it is the same as fingerprints and this information is used as a very valuable tool – they have been extremely successful in bringing people to justice for murder all the way down on DNA hits and he doesn't see a due process issue with it. Mr. Claussen doesn't think fingerprints should be compared with DNA because there is a greater amount of information you get with a DNA swab. Mr. Callaway said there is a Supreme Court case pending on the Constitutionality of DNA upon arrest for felonies and an outcome should come in February or March and that may have an impact on how this will go.

Chairwomen Lee asked Mr. Claussen if there is any writing material on this issue. Mr. Claussen says the National ACLU may have some material and his position would be the same as National.

Chairwomen Lee stated we have some additional information but it appears that the position of the Commission remains the same which is, *the Commission appears to support the law however if there is no funding for the law the Commission cannot support it.* Chairwomen Lee will entertain a motion and will make a recommendation to the Governor. We will continue to monitor the progress of the bill through Mr. Callaway and Senator Smith and as developments come up we will reserve the right to change or amend our opinion but as of now it is the same as the last meeting with more discussion. Dick Gammick made the motion, Doug Gillespie seconded the motion. Motion passed.

### **(BDR 40-46 & 89) – Revises provisions relating to the medical use of marijuana**

Chairwomen Lee - Senator Segerblom was generous enough to come to the meeting and field any questions we had. There was a heated debate at our last meeting and Senator Segerblom is the best person to answer the questions. He questions the BDR he hasn't seen it at this point so he is speaking about what he requested, a bill that creates medical marijuana dispensaries similar to what Colorado initially had and from what he understands that Arizona has. They are a very self-contained facility which are heavily monitored but does allow someone with a medical marijuana card to purchase marijuana legally, something we don't have currently in Nevada. The impetus of this bill is a couple of things – 1. District court decision by Judge Mosley last March – he found a lot of discrepancies on how medical marijuana can be distributed and it's created a problem for both the users and the criminal justice field, for the judges, the district attorney's and the Public Defenders because you have a constitutional amendment that allows you to have it but no in place for obtaining it. If a process is in place it would enable law enforcement to go after those who are improperly dispensing medical marijuana and free up the people who need the medical marijuana to obtain it and also ideally somehow be taxed and use the profits to pay for DNA testing. He hasn't seen the BDR – talking to the LSM Council a suggestion was made to be as detailed as possible as opposed to limited laws because that would be a more explanative process 2- draft it so the agency that would supervise the dispensaries itself would be the Gaming Control Board – they have similar processes such as monitoring casino cages, they monitor private gambling facilities so they have video conferencing abilities to look at a room, they have a lot of the techniques developed that the health department may not have. The thought would be there would be very few restricted places where they would grow and make it available with a card which we already have could go and purchase marijuana. As the constitution of Nevada says passed twice by the voters 60% legislature shall make marijuana available.

Chairwomen Lee asked for input or questions. Sheriff Gillespie is questioning why the Commission is addressing the issue of Medical Marijuana. We are not talking about decriminalization. This is an issue for another aspect that includes Legislators to deal with. Mr. Segerblom has made a great case but he feels this issue gets clouded when brought to a forum like this because of the discussions of legalization of marijuana not the medical use of marijuana. Mr. Rozario again reiterated that the federal stance on marijuana is there is no legitimate medical use for marijuana. As said the situation in Colorado where in Denver there are more dispensaries than Starbucks and McDonald's combined. It is a

problem, this is a step towards legalization of recreational use as Colorado has just approved. It is a big problem. Dick Gammick said because of all the abuses reported in Montana and California that lead to all the raids in Los Angeles, and for abuse on all the medical marijuana issued cards from ingrown toe nails to just about anything under the sun, will that issue be written into the BDR regarding abuses. Mr. Segerblom responded that currently Nevada Law allows for a medical marijuana card holder to legitimately buy marijuana and they would have a limited number of locations to see how it all works out. Dick Gammick for the record agrees with Sheriff Gillespie.

Chairwomen Lee said the reason this issue was brought to the Crime Commission's attention is a matter of a first impression because of the conflict with the federal law and whether or not the federal government would start raids on the legal grow houses for our purposes but illegal for the Federal government purposes. She asked if anyone has had a discussion with the US Attorney's Office about if they would be hands off or the DA's office for that matter. Mr. Segerblom said the two states that we are modeling this after have not had that issue and in Arizona there was a law suit that was thrown out because the state law is the law and there was no case. He's optimistic that the President is going to change this from a category one to something less; he has already indicated that the President doesn't think medical marijuana is a big issue for him.

Chris Perry said he doesn't believe this issue belongs in this forum and Sheriff Gillespie agreed saying Law Enforcement has a very vocal position on this which is contrary to this BDR. He also doesn't believe that discussing medical marijuana at the Crime Commission meeting is the forum for that nor should the Crime Commission with its task to provide direction to the Governor has to support or not support. He feels there is another forum for this to be discussed, debated and input in regards what the bill would contain that would move forward to the legislators. Chairwomen Lee asked Sheriff Gillespie what is the Law Enforcement position; Sheriff Gillespie said they are not supporting medical marijuana, they realize that the voters approved it but they have significant issues with dispensaries not coming close to following what the law entails. The checks and balances associated with this or any distribution of any drug and to single a drug out for a specific location for them to dispense where others are not is very concerning. Director Perry says this is the consequences of this bill and more things will come of it and they will have to clean up the mess. If we were to amend the language and say here are the 15 locations or so – again other things come along with it that will cause problems. Chairwomen Lee agrees that is what the Governor wanted to hear, we are an advisory board to the Governor.

Dick Clark made a motion suggesting tabling this issue from the Commissions standpoint until the language is proposed, unless there is some interest in going further and withdrawing the Commission's interest in the bill. Chairwomen Lee said the Governor asked that we look at this issue, we can give our opinion to the Governor that we are not the right venue to debate this issue, we could put that forward or we could say we would like to table it incorporating all the comments along with our position from today's meeting which would help the Governor. We would inform the Governor the Commission doesn't have a position until the language has been drafted. Dick Gammick seconded the motion. Motion passed.

**BDR 14-94 Revises provisions governing aliens unlawfully present in the United States.**

Chairwomen Lee was unable to get ahold of the drafter of the bill; she left a couple of messages so she doesn't have any new information to add for the discussion. It is a highly political issue; we didn't know what the language is going to look like. The proponent of the bill was going to try to make this bill look like a stripped down version of the Arizona bill. The bill would allow Law Enforcement to ask for someone's proof of residence status based on the suspicion that this person is not legally here in the United States. This is a controversial bill, struck down in Arizona and trying to gain traction in Nevada.

Dick Gammick has concerns about this, he personally would like to wait until we see the language because what happened over the last couple of years, there has been a push in Washoe County for both he and Sheriff Haley to take on more responsibility for this without additional funding, manpower or assets. They refused to do it simply because of the economic situation and the number of people they lost, they couldn't take on Federal law. Mr. Gammick would like to table it until the Commission could review the actual language on what's intended. Chairwomen Lee has a motion from Dick Gammick to table the issue, Doug Gillespie seconded the motion. Motion passed.

Public Comment from Dana Claussen - The ACLU had a filing in the Supreme Court and it's available on the National website;

**BDR 40-3366/AB 56 - Increases the penalty for the first offense of unlawfully selling a controlled substance to a minor**

Chairwomen Lee asked Brett Kandt to present what the bill is proposing. AB56 addresses what Law Enforcement and Prosecutors perceive as a gap in the existing law. It was initially identified by the District Attorneys Association and their concerns and proposed solutions were also endorsed by Nevada Sheriffs & Chiefs Association. Briefly the law as you can see in the copy of the bill amends the existing law NRS .453.334 which currently provides for a penalty for a second or subsequent offense of selling a controlled substance to a minor. The way they viewed this is that the statute failed to provide a penalty for a first offense. This is a gap in the existing law, LCB viewed it differently they felt that a person for a first offense would face prosecution under NRS 453.321 which is selling a controlled substance to a person not to a minor. Whichever way you view it they are asking for support for the notion that an individual convicted on a first offense of a sale to a minor should face a greater penalty than an individual selling drugs to an adult. That is what AB 56 would accomplish.

Connie Bisbee was asking how to define a minor. Mr. Kandt replied anyone under the age of 18. Her concern with Pardons Board action over the last three Governors is that sometimes when you talk about a second drug offense involving a potential life sentence that seems rather draconian, drug law and those often get pardons action. What she has seen over the last 10 years when it comes to pardons action, they are perceived to be an extreme sentence. Mr. Kandt replied that the current law already provides for a life

sentence for a second or subsequent offence, it just doesn't address the first offense, and that is what they are trying to remedy with this bill. Once again the policy consideration which the Commission considers and base your recommendations to the Governors upon is whether an individual is selling drugs to kids should face a greater penalty on the first offense in addition to second or subsequent events. Greg Smith asked if we have any data to know how often this is occurring. Mr. Kandt doesn't have the data at this time but he could research it. Mr. Smith feels it would be helpful to see raw numbers and see how often this is occurring we might be addressing an issue already taken care of.

Richard Varner said he used to be a drug agent and this happens quite often where young children are buying drugs or being sold drugs by adults, it happens numerous times every day. Other than when someone has been arrested he wasn't sure how you would get the statistics. Mr. Kandt replied that part of the problem is you can't charge someone on the current statute because it doesn't address the issue of the first offense you would have to charge them under the general statute NRS 453.321 selling to another person there is no distinction if it's a minor or not. It's hard to capture that data. Bruce Breslow said there isn't anything that says it's an adult selling to a minor, as we know kids are selling to kids, he wasn't sure if that's where you want to first and second offense to lie. He was curious if there was something that conveys its meaning adult selling to a minor. Mr. Kandt asked if the Law Enforcement wanted to speak about that. No response

Chairwomen Lee asked if this statute says anyone selling to a minor, she assumes there are other laws that would overlap if you're a minor selling drugs and that treats minors differently. Mr. Kandt explains that looking at the existing statute it doesn't make that distinction in sub-section 1, in sub-section 2 in the existing statute it allows for additional penalties in the case of an adult selling to kids. The initial sub-paragraph 1 doesn't make that distinction in prescribing the penalty. Chairwomen Lee questioned as to what the difference in the penalty between selling to an adult and selling to a minor. or just selling drugs. NRS 453.321 the sale is punished by a category B felony punishable by imprisonment not less than 1 year to a max term of 6 years, a class 1 or 2 substance. A category C felony punishable 1-5 scheduled classified as a 3-4 or 5 substance.

Chairwomen Lee said as a member of the community she would support this bill draft. Doug Gillespie made motion that we as the Crime Commission would support this bill draft as it is. Chris Perry seconded the motion, he said he sat through about three hours of meeting on sex trafficking and listened to sheriff's folks that do this for a living, they talked about how minors are enticed into this environment and this is one of the ways by giving drugs to minors. Motion passed.

Public Comments – Judicial notice of the ACLU on this issue.

### **BDR 15-337 /AB55 Imposes an additional penalty if an attempt or conspiracy to commit certain crimes against older or vulnerable persons**

Chairwomen Lee asked that Brett Kandt take the floor and explain the BDR. Brett Kandt said this bill proposes to address a gap in the existing law originally identified by the District Attorney's Association with a proposed fix which was endorsed by the Nevada Sheriff and Chiefs Association in concept. This makes an amendment to an existing

statute again NRS193.167 which provides the Elder Enhancement Penalty – for certain crimes committed against those over the age of 60 and if you look at the existing statute murder and attempted murder is listed but it doesn't mention attempt or conspiracy to commit the crime. We felt this was a gap or shortcoming to the existing law that individuals should face the enhanced penalty when they attempt or conspire to commit these crimes against an elderly person or senior person whether they succeed or not to commit the crime. Chairwomen Lee asked for a summary of what the BDR is proposing in terms of the penalty. Mr. Kandt said it doesn't change the existing penalty it expands the enhancement to include the crime and the conspiracy to commit those crimes. Dick Gammick would like to make a motion to support this bill. Doug Gillespie seconded the motion. Motion Passed.

No Public Comments

**#7. SET SPECIAL SESSION OF THE CRIME COMMISSION TO BE HELD PRIOR TO OR DURING THE 2013 LEGISLATIVE SESSION.**

Chairwomen Lee asked for a suggested date to meet – Doug Gillespie motioned to hold the next date for Special Session to be March 20<sup>th</sup> at 1:30 pm. Bruce Breslow seconded the motion, motion passed.

**8. PUBLIC COMMENT**

No Public Comment.

**9. ADJOURNMENT**

Dick Clark motioned for adjournment, Dick Gammick seconded the motion, Motion passed.

The meeting was adjourned at 2:50 pm

The next meeting was scheduled for March 20, 2013 1:30pm

\*\*Meeting notes completed by Linda Herron. For questions, contact (775) 684-4556 or email lherron@dps.state.nv.us