

ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS

Minutes of the April 16, 2014, meeting of the
State of Nevada Advisory Council for Prosecuting Attorneys -

held at the Office of the Attorney General – First Floor Executive Conference Room
100 N. Carson Street, Carson City, Nevada 89701-4717

with Videoconference access to the Office of the Attorney General
Grant Sawyer Building, 555 East Washington Avenue, Suite 3315
Las Vegas, Nevada 89101

I. Call to Order and Roll Call. Council Chairman Masto called the April 16, 2014, meeting of the Advisory Council to order at 10:05 AM.

Members Present:

- Catherine Cortez Masto, Chair
- Arthur Mallory, Vice Chairman
- Jim Dixon (represented by Charlotte Bible pursuant to NRS 241A.050(2))
- Richard Gammick
- Josh Reid ((represented by Bob Zentz pursuant to NRS 241A.050(2))
- Brett Kandt, Executive Director (recording secretary)

Members Absent:

- Neil Rombardo

Other Attendees: See attached sign-in sheet

II. Public Comment. None.

III. Discussion and possible action on approval of December 20, 2013, meeting minutes. Upon a motion by Arthur Mallory, seconded by Richard Gammick, and carried unanimously, the Council approved the December 20, 2013, meeting minutes.

IV. Chairperson's Report. No report.

V. Executive Director's Report. Executive Director Brett Kandt reported as follows:

A. Budget status and expenditures – B/A 1041. Kandt reviewed to the budget for the current biennium, and noted that court assessments continued to fall short of projections.

B. NVPAC events calendar. Kandt reported that events currently scheduled include:

- Identifying Drug Endangered Children: A Collaborative Approach – April 29, Chaparral High School, Las Vegas
- Identifying Drug Endangered Children: A Collaborative Approach – May 1, Regional Public Safety Training Center, Reno
- 2014 Nevada Government Civil Attorneys Conference – May 7-9, Harveys Resort, South Lake Tahoe
- Intellectual Property Theft Seminar – July 22, Nevada Legislative Building
- 2014 Nevada Prosecutors Conference – September 10-12, Harveys Resort, South Lake Tahoe

C. Grant funding for training and technical assistance. Kandt reported the Council was awarded \$5,000 under VAWA STOP Subgrant No. 2013-VAWA-47 for sex trafficking prosecution training and \$5,000 under Nevada Office of Traffic Safety

Project No. LFD-2014-Ad Council-PA-00029 for DUI prosecution training. Both grants will be utilized for the 2014 Nevada Prosecutors Conference.

D. Executive Director's service on state boards and task forces. No report.

VI. Discussion of development and implementation of state regulations and local ordinances regulating the operation of medical marijuana dispensaries as mandated by NEV. CONST. art. 4, § 38, and Senate Bill 374. Kandt reported that the Nevada Supreme Court had scheduled a May 6 hearing in ADKT No. 0495 regarding an attorney's ethical ability to counsel, assist and represent clients in the regulation, enforcement and operation of medical marijuana dispensaries under state law, in response to a petition from the State Bar's Board of Governors seeking amendment of RPC 1.2. Richard Gammick noted the U.S. Justice Department's revised policy on marijuana enforcement and indicated that his office would not render legal advice on medical marijuana due to the conflict with federal law.

VII. Report from Solicitor General on cases pending before Nevada Supreme Court of possible interest and discussion of recent federal and state court rulings. Kandt reported that two recent Nevada Supreme Court cases of interest included:

- *City of Reno v. Howard*, 130 Nev. Adv. Op. No. 12 (February 27, 2014), wherein the Court ruled that in light of the U.S. Supreme Court ruling in *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009), the substantial-and-bona-fide-dispute requirement of NRS 50.315(6) impermissibly burdens the right to confront the declarant [overruling *City of Las Vegas v. Walsh*, 121 Nev. 899, 124 P.3d 203 (2005)].
- *Meisler v. State*, 130 Nev. Adv. Op. No. 30 (April 3, 2014), wherein the Court ruled that law enforcement officers with an arrest warrant for a defendant where not required obtain a search warrant in order to retrieve the defendant's cell phone GPS coordinates from his cell phone service provider for the purpose of locating the defendant, reasoning that "an arrest warrant that justifies the physical invasion of the home also justifies a digital invasion into a defendant's cell phone for the purpose of locating the defendant."

VIII. Discussion and possible action on proposals for legislation for the 78th (2015) Nevada Legislative Session. Kandt reported that proposed legislation was being developed as follows:

- Amending NRS 179.045 to authorize application for and issuance of search warrants by electronic transmission. Upon a motion by Charlotte Bible, seconded by Bob Zentz, and carried unanimously, the Council approved submission of a BDR for this purpose.
- Amending NRS 179.460 to authorize the interception (bugging) of an oral communication in a barricade or hostage situation. No action.
- Amending NRS 179.530 to expand authority for the use of pen registers, trap and trace, and mobile tracking. No action.
- Amending NRS 50.315 to conform to *City of Reno v. Howard*, 130 Nev. Adv. Op. No. 12 (February 27, 2014). Upon a motion by Charlotte Bible, seconded by Bob

Zentz, and carried unanimously, the Council approved submission of a BDR for this purpose.

- Amending NRS Chapter 484C to conform to *Missouri v. McNeely*, 133 S.Ct. 1552 (2013). Upon a motion by Arthur Mallory, seconded by Richard Gammick, and carried unanimously, the Council approved submission of a BDR for this purpose.
- Enacting Good Samaritan 911 law to provide limited immunity from arrest or prosecution for minor drug law violations for persons who summon help at the scene of an overdose. Chairman Masto reported that the goal is to address the overdose problem in Nevada; similar laws in other states will be researched to determine any impact.
- Expanding mandatory reporting of child "abuse or neglect" as defined by NRS 432B.020(1) to include child sex trafficking victims and enacting stronger penalties for solicitation under NRS 201.354. Upon a motion by Arthur Mallory, seconded by Richard Gammick, and carried unanimously, the Council approved submission of a BDR for this purpose.
- Amending NRS 574.100 regarding crime of felony animal abuse. Richard Gammick indicated that the amendments to this statute in SB 223 from the 2011 Legislative Session created conflicts with other misdemeanors and also may be unconstitutionally vague; his office will provide a memo with analysis.

IX. Discussion of the following commissions:

A. Nevada Supreme Court Indigent Defense Commission (ADKT No. 411). Richard Gammick reported that the last three IDC meetings had been cancelled.

B. Nevada Advisory Commission on the Administration of Justice (NRS 176.0123). Mark Jackson reported that the Commission had met January 27 and March 5 and was next scheduled to meet on May 1; the Commission will revisit the reclassification of B felonies and the burglary statute. Chairman Masto reported that the Commission would be considering the Justice Reinvestment initiative from the Council on State Governments. Brett Kandt indicated that the responses to the requests for data he submitted on behalf of the Council had demonstrated the need to increase resources for parole and probation.

C. Nevada Crime Commission (Executive Order 2011-24). Richard Gammick reported that the Commission had no recommendations or proposals to date.

X. Report from the Attorney General on the following boards:

A. Nevada Technological Crime Advisory Board (NRS 205A.040). Kandt reported that he was in the process of exploring ways to leverage the resources of federal law enforcement agencies to bring technical assistance and training to state and local law enforcement, including instruction from the U.S. Secret Service on digital evidence at the 2014 Nevada Prosecutors Conference, and the possible creation of a national Tech Crime Resource Prosecutor Initiative.

B. Nevada Substance Abuse Working Group (NRS 228.820). Chairman Masto reported that that the Working Group was scheduled to sunset in 2015 and was focusing on prescription drug abuse, synthetic drugs that mimic the effects of existing illegal drugs, and the impact of medical marijuana.

C. Nevada Domestic Violence Prevention Council (NRS 228.490). Kandt reported that a team of victim advocates had developed a set of Victim Advocate Model Protocols for use as a best practice guideline and a training tool.

XI. Council comments. Brett Kandt reported on development of the agenda for the 2014 Nevada Prosecutors Conference. The next Nevada Sheriffs' and Chiefs' Association meeting is scheduled for April 30 in Carson City. Arthur Mallory and Richard Gammick will attend the meetings of the Nevada Sheriffs' and Chiefs' Association scheduled for July 23-24 in Ely. Richard Gammick reported that the Washoe County Child Advocacy Center received \$600,000 in donations and would hold a grand opening on June 13 at 3:30 PM.

XII. Discussion and possible action on time and Location of Next Meeting. Kandt will coordinate a meeting date in conjunction with the next meeting of the Nevada District Attorneys Association.

XIII. Public Comment. None.

XIV. Discussion and possible action on adjournment. The Council adjourned at 11:35 AM.

CERTIFICATION OF SECRETARY

I, Brett Kandt, the duly appointed secretary of the State of Nevada Advisory Council for Prosecuting Attorneys, do hereby certify that the foregoing is a true and correct copy of the minutes of the April 16, 2014, meeting of the Advisory Council, as approved by the Advisory Council on _____, 2014.

Brett Kandt
Secretary
State of Nevada
Advisory Council for Prosecuting Attorneys