



STATE OF NEVADA

**ADVISORY COUNCIL FOR PROSECUTING ATTORNEYS**

CATHERINE CORTEZ MASTO  
*Council Chair*

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*Executive Director*

**COUNCIL MEMBERS**

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**MINUTES**  
**ADVISORY COUNCIL for PROSECUTING ATTORNEYS**

Minutes of the April 26, 2013, meeting of the  
State of Nevada Advisory Council for Prosecuting Attorneys -

held at the Office of the Attorney General - Mock Courtroom  
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 26, 2013, meeting of the Advisory Council to order at 10:05 AM.

Members Present:

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

Other Attendees: See attached sign-in sheet

**II. Public Comment.** None.

**III. Discussion and possible action on approval of December 14, 2012, meeting minutes.** Upon a motion by Dick Gammick, seconded by Art Mallory, and carried unanimously, the Council approved the December 14, 2012, meeting minutes.

**IV. Chairperson's Report.** The Chair announced that agenda items V and VIII would be taken out of order.

**V. Presentation from Nevada Highway Patrol on Dräger Drug Test® 5000 Analyzer.** NHP Sargent Eddie Bowers conducted a demonstration of the unit and reported that it had been in use by NHP as a voluntary test to supplement DRE's since 2009 and it was very accurate when followed up by evidentiary lab tests. The unit has been used nationally as a preliminary test and NHP had proposed a preliminary test

under Nevada law prior to Missouri v. McNeely, 569 U.S. \_\_\_, No. 11-1425 (2013). The unit is calibrated to threshold levels that exceed the Nevada illegal *per se* levels.

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

**A. Budget status and expenditures – B/A 1041.** Kandt referred to the budget for the current biennium.

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

- 2013 Nevada Government Civil Attorneys Conference – May 1-3, Harveys Resort, South Lake Tahoe
- Mortgage Fraud Investigation and Prosecution Seminar – May 22-23, Las Vegas Marriot, Las Vegas, NV
- 2013 Nevada Prosecutors Conference – September [date TBD], Harrah's Laughlin - Laughlin, NV
- Effectively Investigating and Prosecuting Domestic Violence Multidisciplinary Seminar – October [date TBD], Reno, NV

**C. Grant funding for training and technical assistance.** Kandt reported the Council received \$10,000 in VAWA STOP subgrant funding (subgrant no. 2011-STOP-47), pending applications for Byrne JAG funding and NHTSA funding, and in excess of \$10,000 in residual funding from Capital Litigation Improvement Initiative Technical Assistance Award No. 2005-DD-BX-K182.

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

**VII. Discussion and possible action on the Council's positions on any bill or bill draft request listed on the Nevada Legislature website for the 77<sup>th</sup> (2013) Nevada Legislative Session.** (<https://www.leg.state.nv.us/Session/77th2013/>) Kandt referenced the list of Attorney General BDR's and the BDR watch list in the supporting materials. The Council discussed AB 116 (revises laws regarding accessory to a crime), SB 71 (aggregates consecutive sentences), and SB 103 (revised the statute of limitations for child sexual abuse). Dick Gammick reported that his office was developing OHV ordinance language for consideration in other jurisdictions to ensure uniformity.

**VIII. Report from Solicitor General on cases pending before Nevada Supreme Court of possible interest and discussion of recent federal and state court rulings.** Solicitor General Wayne Howle reported on selected Nevada Supreme Court Decisions of Note as detailed in his written report, and also reported that a writ petition had been filed with the U.S. Supreme Court in Coalition for the Protection of Marriage v. Sevcik, No. 12-6589. Howle then introduced Senior Deputy Attorney General Bob Weiland, who reported on Missouri v. McNeely, 569 U.S. \_\_\_, No. 11-1425 (2013). The Council discussed the impact of McNeely, including challenges rural law enforcement face with the unavailability of a magistrate to issue a warrant and distances to a hospital. Charlotte Bible stated that LVMPD wants a streamline electronic search warrant statute. Michael Macdonald was concerned about allegations of coerced consent if the subject is already handcuffed. Neil Rombardo is advising law enforcement not to read implied consent but to request consent. Ted Beutel questioned

if the 2-hour limit in NRS 484C.110(1)(c) creates an exigent circumstance. Dick Gammick and Art Mallory provided written materials detailing new warrant procedures for law enforcement. Brett Kandt and John Jones reported that narrowly-tailored proposed legislation was developed to revise Nevada's implied consent law to comport with McNeely during the current legislative session if possible.

**IX. Discussion of the following commissions:**

**A. Nevada Supreme Court Indigent Defense Commission (ADKT No. 411).** Dick Gammick reported that an en banc hearing on a writ petition regarding the Early Case Resolution program was scheduled for May 7 before the Nevada Supreme Court. Chris Lalli reported that the IDC is developing a mission statement and may be moved into the executive branch to focus on rural issues and caseload standards.

**B. Nevada Advisory Commission on the Administration of Justice (NRS 176.0123).** The Council briefly discussed two of the Commission's legislative proposals: AB 91 (revise provisions relating to the eligibility for regimental discipline) and AB 423 (revises provisions relating to presentence investigations and reports).

**C. Nevada Crime Commission (Executive Order 2011-24).** Kandt reported that the Crime Commission's legislative proposals: AB 55 (add attempt and conspiracy to the elder enhancement statute, NRS 193.167) and AB 56 (amend NRS 453.334 to provide for a 1<sup>st</sup> offense penalty for selling drugs to minors).

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

**A. Nevada Substance Abuse Working Group (NRS 228.820).** Chairman Masto reported that the Working Group would focus on treatment at its next meeting.

**B. Nevada Domestic Violence Prevention Council (NRS 228.490).** Kandt reported that the Council's Criminal Justice Committee was developing victim advocate model protocols and a standard notification form for the detention, concealment or removal of a child pursuant to NRS 200.359(8).

**C. Nevada Domestic Violence Fatality Review Statewide Team (NRS 228.495).** Chairman Masto reported that DVFRST had issued its first report and had initiated its second fatality review of a case in Elko County.

**XI. Council comments.** None.

**XII. Discussion and possible action on Council review and approval of DUI Prosecution Manual.** Kandt reported that Bruce Nelson, Chief Deputy with the Clark County District Attorney's Vehicular Crimes Unit and the designated the Nevada Traffic Safety Resource Prosecutor, had drafted a DUI Prosecution Manual for review and comment. The manual will be revised to account for Missouri v. McNeely, 569 U.S. \_\_\_, No. 11-1425 (2013).

**XIII. Discussion and possible action on time and Location of Next Meeting.** Upon a motion by Dick Gammick, seconded by Neil Rombardo, and carried unanimously, the Council instructed the Executive Director to coordinate a meeting date in conjunction with the next meeting of the Nevada District Attorneys Association.

**XIV. Public Comment.** None.

**XV. Discussion and possible action on adjournment.** Upon a motion by Dick Gammick, seconded by Art Mallory, and carried unanimously, the Council adjourned at 12:15 PM.

**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 26, 2013, meeting of the Advisory Council, as approved by the Advisory Council on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Brett Kandt  
Secretary  
State of Nevada  
Advisory Council for Prosecuting Attorneys