

STATE OF NEVADA SUBSTANCE ABUSE WORKING GROUP

MINUTES OF MEETING

May 27, 2014

Office of the Attorney General
Mock Courtroom
100 N. Carson Street
Carson City, NV 89701

VIDEOCONFERENCE TO:

Office of the Attorney General
Grant Sawyer Building
Room 4500
555 E. Washington Ave.
Las Vegas, NV 89101

1. Call to order and roll call of members.

Chairperson Catherine Cortez Masto called the meeting of the Substance Abuse Working Group to order at 2:00 p.m. Senior Deputy Attorney Henna Rasul called the roll.

Members Present:

Catherine Cortez Masto, Attorney General – Chair
Rory Planeta, Chief, Carson City Alternative Sentencing (Retired)
Mark Jackson, Douglas County District Attorney
Richard Whitley, Administrator DHHS, Behavioral and Public Health
Kevin Gehman, Chief, Fallon P.D. (Sheriff's and Chief's Rural Representative)
David Marlon, President, Solutions Recovery

Members Absent

Richard Varner, Washoe Tribe Chief of Police
Linda Lang, Nevada Statewide Coalition Partnership, EUDL Program
Kent Bitsko, Dir. NV HIDTA
Peter Mansky, M.D., Director Nevada Professionals Assistance Program

Others Present

Linda Fitzgerald, Executive Assistant to the Attorney General
Henna Rasul, Senior Deputy Attorney General, Office of the Attorney General
Heather Cooney, Legal Secretary, Office of the Attorney General
Jennifer Lopez, Public Information Officer, Office of the Attorney General
Dr. Tracey Greene, Chief Medical Officer, Division of Public and Behavioral Health
Chad Westom, Bureau Chief, Division of Public and Behavioral Health

2. Comments from the public

Chairperson Masto opened the floor for public comment.

Chris Ferrari, Consumer Healthcare Products Association, stated they plan to move forward in the 2015 session with legislation addressing dextromethorphan and the sales thereof and some tighter restrictions thereupon. California, New York, Louisiana, Virginia and Arizona have all passed legislation on this topic and they are reviewing the bills to see what should be incorporated in Nevada. They will bring back the information to the working group.

Chairperson Masto inquired if they have a legislator that will carry the bill and Mr. Ferrari confirmed that they did.

3. Review and Approve February 19, 2014 minutes.

Mark Jackson moved to approve the minutes. The motion was seconded by David Marlon and unanimously approved.

4. Update on the SAWG Impaired Driving Sub-committee, Rory Planeta, Sheriff's and Chief's Urban Rep. Chief (Ret), and Aaron Fleisher, Daniel Altavor, Secure Continuous Remote Alcohol Monitoring (SCRAM) re 24/7 sobriety programs.

Rory Planeta stated at the last meeting John Johansen gave an update on the Impaired Driving Strategic Plan. Between 2006 and 2010 they found 506 fatalities involving a blood alcohol level of .08 or above. The majority were in Clark County followed by Washoe, Elko and Nye. Two thirds of these occurred between 6:00 p.m. and 6:00 a.m. Part of the reason is our 24/7 state with grave yard shifts and the like. The two objectives are to reduce fatalities and reduce serious injuries. Three strategies are to (1) increase high visibility of DUI programs, (2) enhance programs for young offenders and (3) reduce repeat DUI offenders.

Regarding strategy number 3, most repeat offenders will continue to drink if there is not some sort of intervention. Some successful methods have been intensive supervision, home confinement with electronic monitoring or dedicated detention facility, DUI courts, and interlock devices. Screening, assessments, treatment, and rehabilitation are necessary to combat the problem.

The task force determined effective approaches to the problem include stronger interlock laws, support of mandatory evaluation of all offenders including first offenders. Mr. Planeta stated that this topic was discussed quite a bit at the meeting and the committee agreed that we should try to find some legislation or introduce legislation regarding mandatory evaluations so that Judges have a clear idea of who they are dealing with when it comes to sentencing. The third effective approach was to establish a court monitoring research program for misdemeanor DUIs.

There was also discussion regarding the need for additional members to the committee to include a specialty court member, a tribal member and a military member.

Chairperson Masto asked Henna Rasul if the Chair could reach out to prospective individuals and then submit the names to the board for approval at the next board meeting. Ms. Rasul confirmed that this procedure would be appropriate.

Dan Altavor of Alcohol Monitoring Systems made the following presentation regarding 24/7 sobriety programs:

Alcohol Monitoring Systems manufactures a device called SCRAM that supports the existing three 24/7 sobriety programs which are in North Dakota, South Dakota and Montana.

The program started in early 2005 in South Dakota with a five county pilot program as a response to jail overcrowding. 24/7 is aimed at repeat DUI offenders. Their motto is "If you fail, you go to jail." South Dakota has a 99% compliance rate.

South Dakota, North Dakota and Montana have included drug abuse in their 24/7 programs. 24/7 can be used as a condition of bond, probation or parole. The 3 existing 24/7 states use the program as an adjunct to interlock laws to motivate compliance. 24/7 is also used for offenders who are unable to install interlocks,

There are two testing methodologies. 1 protocol is a twice daily testing and the other is a transdermal protocol (SCRAM bracelet.) 65% of the total population is on twice daily Breathalyzer testing in which the offender comes into the police station and blows in to a Breathalyzer between 7 and 9 in the morning and again later between 4 and 6. There are pluses and minus to each methodologies. The twice daily testing is a major inconvenience to the offender but allows a window of opportunity for an offender. It is cheap, sanctions are immediate, swift and certain, if you blow hot you go immediately to jail.

The 24/7 SCRAM product is used on about 35% of the offenders. The sanctions are not as timely. It is all next day notification. One advantage to SCRAM is that it is a total abstinence based product. We recently did an Urban/Rural Use (NHTSA Feasibility Study) and their findings leaned toward using technology in large urban environments which speaks to the success of the program in the Vegas area. One drawback to the twice daily testing is you have thousands of people showing up at a testing center twice a day and parking is a logistical issue.

South Dakota and North Dakota's program went through a process including legislative committee, development of a pilot program and appropriation of over one million dollars to get the pilot program off the ground. Once the program is off the ground it is entirely offender subsidized so there is no need to go back seeking additional funds.

Montana was able to set up their program with minimal startup costs due to their existing multiple scam providers. Nevada leans heavily in the south on SCRAM of Nevada and in Reno there is the company Intercept which runs hundreds of SCRAM units. 50% of Montana's counties are now on board with 24/7 primarily with SCRAM.

There are pilot programs in seven other states as well as the United Kingdom. Programs are pending in three other states as well as Australia.

There have been two evaluations done on the effectiveness of 24/7. Neither has been peer review. The early findings show a fairly significant reduction in recidivism for repeat offenders. First time offenders that are placed in this program have a higher chance of recidivism than first time offenders not in the program because first time offenders placed in the program typically had an extremely high BAC so they are hard core first offenders. In the Interlock program, studies show a 13% reduction for first time offenders. Interlock is effective at capturing people that made a judgment error that are not going to recidivate. Reasons 24/7 works include abstinence, inconvenience, and public awareness.

Rand will be releasing the first peer review recidivism study at the end of this year using matched data comparing a control group to a sample. Their first recidivism study showed that DUI's are reduced by 12%, domestic violence in the counties with 24/7 programs was reduced by 9%, countywide traffic crashes among males was reduced by 4%.

In terms of program needs and costs Nevada would need staff to test the offenders but could use the existing testing facilities. You would need a facility with a holding cell and communication between the testing facility and the courts in the event an offender tests positive.

24/7 program objectives include mandating abstinence, enforcing abstinence requirements of the court, addressing the root cause of impaired driving (alcohol and drug misuse), tackling drugged driving and poly-drug use, addressing the likelihood offenders will drive impaired during periods of license suspension/revocation, and creating an offender funded, self-sustaining program to deal with high risk alcohol offenders.

Chairperson Masto asked for clarification between the 24/7 program and SCRAM.

Mr. Altavor stated that 24/7 sobriety program contains the two testing methodologies, the twice daily testing and SCRAM. Each testing center is using those two testing methodologies. Some offenders may be ordered by the court to the twice daily testing program and others to the SCRAM program. SCRAM is a bracelet monitoring for beer and alcohol used within 24/7. Alcohol is secreted off of the skin which produces a transdermal alcohol content.

Mr. Altavor stated they are looking for committee backing to help start a pilot program where there are criteria in place to capture all second and third degree offenders instead of just a few jurisdictions here and there.

Chairperson Masto asked for a list of the criteria they are seeking. Mr. Altavor responded that he could provide South Dakota, North Dakota and Montana's criteria to see how they fit with Nevada's laws. Mr. Altavor will send the criteria to Linda Fitzgerald for review.

Kevin Gehman asked if there was any nexus between their bracelet and drug monitoring or just alcohol. Mr. Altavor stated that the SCRAM bracelet does not monitor

drug use and the estimate for that being available if fifteen years out. States have partnered with firms like Pharm Chem that do drug patches to effect 24/7 drug sobriety.

Aaron Fleisher of SCRAM Nevada stated that they are utilizing Pharm Chem's transdermal patch down south. In some instances the transdermal patch is used in conjunction with the SCRAM bracelet.

5. Discussion and possible action regarding funding for pilot programs in Nevada.

Mark Jackson stated he strongly supports the alcohol continuous monitoring as well as SCRAM. He added he is not prepared to make a motion regarding funding until he sees what the criteria are from these other states and that the committee was not to be involved in the funding or allocation portion. He moved that the Substance Abuse Working Group support a pilot program for continuous alcohol monitoring of impaired drivers.

Mr. Planeta commented the funding portion of this agenda item was to have the committee's support to go forward and look for funding such as from NHTSA.

Chairperson Masto asked if NHTSA was taking the lead to develop a pilot program and funding for the program. Chief Planeta responded that NHTSA would just be involved in the funding.

Mark Jackson stated that the members of the working group and the sub-committee can talk with representatives of other private or public agencies and report back to the group but the committee and sub-committee have no authority to approve funding but rather make recommendations, file the report which goes to the legislature who can then look at potential funding sources.

Mark Jackson's motion was seconded and opened for discussion.

David Marlon stated that any program should include treatment. Mark Jackson agreed but added that this program focus is the public safety component.

The motion to support a pilot program for 24/7 sobriety in the State of Nevada was passed unanimously.

Chairperson Masto asked the sub-committee to look into some of the communities that might be interested in developing this pilot program. Mark Jackson added that the support of the judiciary was necessary for any pilot program's success.

6. Medical marijuana update – Presenters: Dr. Tracey Green, Chief Medical Officer and Chad Westom, Bureau Chief, Division of Public and Behavioral Health.

Dr. Tracey Green made the following presentation:

Per NRS 453 A, the following conditions qualify for the recommendation and obtaining of a card: AIDS; cancer; glaucoma; post-traumatic stress disorder; cachexia; persistent muscle spasms (including multiple sclerosis); seizure (including epilepsy); severe

nausea; severe pain. The number one indicator for a recommendation is severe pain. New conditions can be potentially approved by the Division if a person petitions under NRS 453A.710.

The term recommendation is used because this is not an FDA approved drug so physicians do not make a prescription for medical marijuana but instead make recommendations.

Marijuana is a plant that can be smoked, vaporized or eaten/drunk and can also be used topically. Labels on edibles will be required to look very much like a prescription in order to prevent edibles from appearing as a “treat” or being mistaken in any other way.

Chairperson Masto asked if it was true that edibles have a higher level of THC than ingesting the marijuana in other ways. Dr. Green responded that it depended on the type of and amount of baked good ingested. It is possible that you could eat more than you would smoke but it will be labeled with the amount and the concentration within the edible.

Synthetic Marijuana (Spice, K2) is not marijuana at all. These are herbal and chemical mixtures that produce experiences similar to marijuana but are very dangerous and sometimes lethal. These are not the substances we speak to when speaking of medical marijuana.

Marijuana contains over 60 cannabinoids. The main active cannabinoid is THC. These cannabinoids stimulate the body’s cannabinoid receptors and can trigger pleasure, memory, thinking, concentration and coordination.

The number one abuse and dependence drug is nicotine with a lifetime risk of dependence of 32%. Alcohol has a 15% lifetime risk of dependence and marijuana a 9% risk.

There are several “off label” studies going on using marijuana for many different conditions. There are no current FDA studies but the World Health Organization is doing studies. There are studies in nausea, appetite, pain relief, muscle spasm, Tourette’s and epilepsy. Other going clinical trials include lung disease, COPD, Crohn’s disease, brain tumors and dementia.

Synthetic THC medications available in the U.S. for nausea/appetite stimulation include Dronabino (Marinol) which is FDA approved for HIV, and Nabilone (Cesamet) which is approved for cancer; HIV.

Other synthetic THC medications being studied by the FDA include Nabiximols (Sativex) a mouth spray for pain relief, muscle spasms; Rimonabant (Accomplia, Zimulti) (currently used in Europe) for treatment of obesity and nicotine dependence. The benefit of FDA approved THC medications as opposed to medical marijuana are they are effective, safe and properly labeled.

The FDA cannot evaluate medical marijuana as a drug since it is a plant. It is different everywhere, depending on how it is bred, under what conditions it is grown, etc. It can also be contaminated by pesticides, mold or fungus.

The data surrounding medical marijuana and HIV is probably the most highly studied. Medical marijuana is used to treat the symptoms but is not a cure for the disease itself and is also used to allow patients to engage in their treatment. The neurologic effects can create a sense of calm that allows them to tolerate and receive treatment.

One of the most painful and severe conditions of late stage HIV is Neuropathy which is numbness and pain in the hands and feet. Some studies looking at medical marijuana for neuropathy have shown a lot of effect.

Chad Westom made the following presentation regarding the Medical Marijuana Program:

The Medical Marijuana Program's statutory mandate is from the Nevada Constitution, Article 4, Section 38 and codified in NRS 453A. The program issues registry identification cards to Nevadans who meet the statutory requirements in conjunction with DMV and DPS. These ID cards allow them to grow their own marijuana or in conjunction with a caregiver of their choice who is also registered.

As a result of the passing of SB374 we will be certifying medical marijuana establishments including independent testing laboratories, cultivation facilities, facilities for the production of edible marijuana products or marijuana-infused products and medical marijuana dispensaries. With the passage of S.B. 374 the Medical Marijuana program is comprised of two authorized groups, medical marijuana cardholders and the larger portion which is medical marijuana establishments (MME).

After consulting a physician, there are seven steps in obtaining a registry identification card:

1. \$25 fee to get the application;
2. \$75 fee when the application is returned to the program;
3. Patient is deemed to be on the program at point application is accepted;
4. Division does a background check of applicant or caregiver;
5. Division verifies the attending physician who signed the "Attending Physician Statement" is licensed to practice medicine;
6. If no disqualifying conditions, the program issues an acceptance letter;
7. Patient takes acceptance letter to the DMV to get the card.

If the applicant is under 18 years of age, the program requires a minor release form signed by the designated primary caregiver of the minor. The primary use for medical marijuana in children is for seizures.

The total number of active patient cards is 5,865. Total number of active caregiver cards is 274. Clark County has 71% of the cardholders, Washoe County 12% and the balance of the state 17%

Chairperson Masto asked if there was reciprocity with other states. Mr. Westom stated there is reciprocity such that if someone has a medical marijuana card from another state they will be able to purchase here.

Regulations were drafted prior to April 1, 2014. The regulatory process was transparent and inclusive of all stakeholders, including local governments. The adopted regulations provide processes for accepting and renewing applications, awarding medical marijuana certificates, registering agents who work in establishments, establishing the different parameters by which we will be regulating, inspecting and auditing the facilities.

Nevada will be unique in that we will be testing medical marijuana when it is harvested and when it changes form. The laboratories will be certified, independent and not associated with the grower. There will be strict guidelines on labeling and packaging including child proof packaging and prescription style labels.

The application at the division level will be a competitive process. The Division will provide 45 days' notice before opening up the 10 day application period during which we will be accepting all applications for all facility types and will review them within ninety days.

The applicants will be ranked in a respective jurisdiction and the top candidates will be issued a provisional license and will then be in contact with local government for approval at that level. Local government will focus on zoning and business licensing and will have the authority to supplement the Division's regulations. We will be working with them on complaint investigations as applicable.

In counties with populations 100,000 or more, no more than 25% of the total number of dispensaries that may be certified in the county can be located in any one governmental jurisdiction within the county. The percentage can be increased by county commissioners for good cause.

An establishment location will not be within 1,000 feet of a public or private school or within 300 feet of a community facility. Inspections will occur at least annually and can be made without notice. Upon complaint an inspector may conduct an investigation but will not investigate cost of services, efficacy or related customer service issues. The revenue is from fees. There will be stringent security requirements for the protection of the patients, and the public and to prevent inappropriate diversion of the product.

Deficiencies in the operation or in the provision of services may result in the establishment's certificate being suspended and a written plan for correction for each deficiency may be required including times within which the deficiencies are to be corrected.

Chairperson Masto asked if a business can operate as more than one type of establishment. Mr. Westom responded that a business would have to apply for each business separately but it is possible.

Chairperson Masto asked what the criteria were for the merit based application and if there was an appeal process. Mr. Westom responded that S.B. 374 outlines the requirements and the regulations outline the different categories including security, ownership, background checks of the primary operators, transportation plan of the product, inventory control, etc. No appeal process was provided for in the statutes.

Chairperson Masto asked how many FTEs were hired to implement this new program. Mr. Westom responded that 12 were hired and temporary contractors will be brought on to review the applications.

Bruce Nelson asked if a citizen of any state could purchase medical marijuana here. Mr. Westom responded that a citizen of any state could purchase medical marijuana here but that it would be need to be used here to avoid transporting the drug across state lines.

Rory Planeta asked if this program will do away with the caregiver cards. Mr. Westom responded that if there is no dispensary within 25 miles or the strain recommended is not available within 25 miles, the patient or caregiver can grow their own.

Mr. Planeta also asked if there would be any limits to the amount a patient can get and if there would be monitoring such as the prescription monitoring program. Mr. Westom responded that a patient cannot receive more than 2.5 ounces in 14 days and monitoring is a part of the program via inventory control and the amount received.

7. Follow-up on video contest between High schools to combat substance abuse. Dave Marlon, President, Solutions Recovery, INC.

Mr. Marlon distributed a copy of the draft flyer for the contest and stated the Governor's office and the Attorney General's Office are both supporting this project. The program will be accessed via YouTube, Instagram or Vine Video so they participants can use their handhelds. They will be able to submit the video to the website where they can be prescreened before they are made live on the website. The website can be found at www.NV-PSA.com and is live now.

Jennifer Lopez stated she had talked with Governor's Chief of Staff who stated that the Governor is interested in supporting this project and that she had provided several ways they could get involved, including being a judge of the final video, allowing the finalist to meet the governor, etc. She stated they are waiting for a response from the Governor as to what level he would like to be involved and also his schedule.

Chairperson Masto stated that the contest would be introduced in August, 2014 to the teachers and school administrators for roll out at the beginning of the school year. The final winners would be announced November 3, 2014.

8. Discussion regarding possible legislation during the 2015 Legislative Session.

Brett Kandt stated if this group wished to submit Bill Draft Requests, the deadlines are between August 2nd and December 10th for legislators, August 1st for the executive branch and September 2nd for other constitutional officers, including the Attorney General.

Linda Finch from MADD stated they are looking for support for a bill that would require first time offenders be required to install interlock devices in their car. She reported that should the bill be passed grants are available from NHTSA up to \$173,000 to administer the program.

Chairperson Masto stated that the Chair of the Impaired Driving Committee was going to bring proposed legislation before this group for possible votes on approval or non-approval and that this issue would be included in that. Chairperson Masto added that this group was not able to vote at this time because it is not on the agenda for that reason today.

Mark Jackson asked about the status of the proposed Good Samaritan Law. Brett Kandt reported that there is not yet draft language. There is language from other states that could be used but one concern is whether there is demonstrable evidence that the enactment of these laws has actually reduced the instance of overdoses in those states. Mr. Kandt stated he has not been able to identify that type of evidence. Many of these laws were just enacted in the last year. Mr. Jackson asked if there was a legislator willing to move forward with the BDR. Mr. Kandt stated he has not discussed any of the legislative proposals that have been discussed in this group with any specific legislator.

Chairperson Masto stated that Judge Holmes gave a presentation to the Committee on the Administration of Justice on this topic and had proposed language on how Nevada's statutes could be tweaked to address this issue. Keith Munro has talked with Judge Holmes about pulling her into this discussion and looking at her recommendations for a BDR and the proposed language and would then bring the information back before this group.

Brett Kandt offered to work with the Chair to identify those legislative proposals that were discussed that have not already been picked up by a legislator. He stated that many proposals having to do with the prescription monitoring program have been picked up by Assemblywoman Kirkpatrick who will have an omnibus comprehensive bill that will deal with most aspects of improving the program. One piece she is not going to carry is the issue of allowing law enforcement to the PMP database to determine if illegal activity is taking place. This would require an amendment to NRS 453.1245, the confidentiality statute.

9. Comments from the working group members.

Mark Jackson stated that the working group expires at the end of this year. Brett Kandt added that the sunset for this group is June 30, 2015 which allows the 2014 legislative session to determine if it is appropriate to extend the life of the group.

Mark Jackson stated the group will need to meet in August given the deadlines for submission of Bill Draft Requests and he would like the issue of the sunset included on that agenda.

10. Schedule future meetings and agenda items.

Chairperson Masto recommended that the group continue to allow Linda Fitzgerald to schedule meetings with the thought that based on Mr. Jackson's recommendation that we attempt to schedule a meeting in August.

11. Comments from the public

There were no public comments.

12. Adjournment.

The meeting was adjourned at 4:22 p.m.

DRAFT