

**STATE OF NEVADA
RIGHTS OF VICTIMS AND SOURCES OF FUNDING
FOR VICTIMS OF CRIME SUB-COMMITTEE**

MINUTES OF MEETING

Monday, April 12, 2010 at 2:00 p.m.

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701

Present in Carson City

Sharnel Silvey, Gayle Farley, Chris Lovass-Nagy, Tracy Dory, Ben Felix,

Present in Las Vegas – Video Conferenced

Andrea Sundberg, Elynne Greene, Barbara Aupperle,
Maria Outcalt

Present by Phone

Sue Meuschke, Lori Fralick, Bill O'Donohue, Suzanee Ramos

Public Present

Debra Scott, Eve Lawton, Sheila MacDonald, Dorene Whitworth

Attorney General's Office staff present

Attorney General Catherine Cortez Masto, Chair
Kareen Prentice, Domestic Violence Ombudsman
Dionna B. Negrete, Legal Secretary II
Liz Greb, Grant and Project Analyst

1. Call to order, roll call of members and introduction.

Attorney General Catherine Cortez Masto called the meeting to order at 2:00 p.m. and roll call was performed.

2. **Review and approval of the minutes from February 10, 2010.**
Sue Meuschke moves to approve. Traci Dory seconds the motion. Minutes from February 10, 2010, unanimously approved.
3. **Sue Meuschke, Executive Director, NNADV, and Christine Lovass-Nagy, Clinical Program Planner II, Division of Child and Family Services, regarding domestic violence funding.**

(#9 on the Agenda – heard out of order)

Chris elaborated on the funding fees obtained from marriage licenses, certified copies, justice of the peace and/or commissioner civil service marriages. The current status of the funds up to February is about \$2.4 million. General Masto asked if this is with the new law changes. These figures are with the new change in the law adding \$5 in additional fees to the marriage licenses, and an additional \$5 fee for certified copies. The expected amount is to be \$3.3 million largely in part due to SB14 having a significant impact on the monies increasing when there has been a steady seven percent decline in the past seven years.

Sue elaborated on SB14 and its positive effects on funding. The original surcharge on marriage licenses was put in place in 1981 as a vehicle to fund domestic violence programs. The fund currently is funding 17 domestic violence programs throughout the state. The fund has been seeing declines due to lower marriage numbers in past years and there was difficulty in determining where the additional funds would come from. They looked at different funding sources, one from the banking system to receive interest on real estate monies that are held in escrow, but that was very complicated and that idea was quashed. A group of folks along with Bernice Matthews, Senator from Washoe County, decided to try to obtain funds from the marriage license fees once again. The majority of both houses were convinced that this was a good use of these funds. With the marriage license and certified copy fees it has helped to rejuvenate the funds and bring the monies back up in these trying times.

Andrea Sundberg asked how the provision for accessing of funds for the sexual assault programs and how it relates to the domestic violence funds. Chris Lovass-Nagy replied that there is a stipulation in the statute and it is based on population. Once the population for a county reaches 400,000 the fund is mandated to allocate a portion to the sexual assault program in the area. It is a critical interaction and an important link. NRS spells out specifically how the monies are formulated.

4. **Brett Kandt, Senior Deputy Attorney, Office of the Attorney General, regarding BDR proposal to overturn Abbott v. State [122 Nev. 715, 138 P.3d 462 (2006)], which subjects sexual assault victims to forced psychological testing.**

Brett Kandt is requesting this committee to recommend a BDR to address the Nevada Supreme Court Opinion of Abbot V. State, which subjects sexual assault victims to forced psychological testing from the defense side, which overruled previous precedence. Brett is requesting this committee to consider whether it would be interested in proposing legislation to address Abbott v. State and return Nevada law to the prior case law of Romano v. State. If the committee is willing to go forward with this request, he is willing to work with prosecutors and draft the legislative proposal for the committee's consideration and to provide all the necessary testimony in support of any legislative proposal.

Gayle Farley asked for clarification about whether he wants to overturn the law that the victim does not have to be forced to psychological testing for the defense at their control. Due process would require that the state intends to have the victim undergo a psychological exam and that they would provide notice to the defense. If the defense shows compelling reasons why they should be allowed to have their own experts conduct an exam then the court could consider that and allow that opportunity. Abbott as it stands places that power in the defense hands independent of whether the state has any intention of having the victim examined. As it stands the defense counsel can use this as a tool to intimidate victims.

There was a question as to whether the bill process will be the same as last time. General Masto, asks if the District Attorney's would take this forward as a bill or would it be through this committee? Brett understands that any bills through this sub-committee would still have to be approved by the Advisory Commission. He feels this avenue is the best as the District Attorney's association and the private associations can no longer bring bills forward. That is why he has proposed it to this committee, knowing that it would be thoroughly addressed by the Advisory Commission because there are attorney's from both sides which will give this a fair analysis. Should this committee be supportive, Brett would develop the language and provide experts for testimony in support of the bill. Gayle Farley moves to have Brett work with the District Attorney's to put together a bill to overturn Abbott. Sharnel Silvey seconds the motion. **(Sue Meuschke or Lori Fralick)** by phone made suggestions and discussion was heard to make the language broader. Brett indicated he is willing to go forward with the bill as proposed to him regarding Abbott and if the committee wants to expand they could do so, but would need to provide the appropriate testimony beyond Abbott in support of anything broader. Issues discussed and broader language suggestions made by

the Nevada Coalition Against Sexual Violence. General Masto asked why this wasn't brought to the legislature in 2007 and 2009. Brett indicated that it was not brought to his attention prior to the end of the 2009 session. He indicated that sometimes it takes time for a Supreme Court opinion to shake out. It has not been proposed prior. Gayle Farley amended the prior motion brought for the Coalition to work with the District Attorneys on bringing forth change in the law regarding Abbott, and other issues brought forth today with broader language and that the proposed BDR or legislation would be brought forth to the Advisory Commission for approval or disapproval. Amended motion seconded by Sharnel Silvey. Motion approved unanimously.

5. Brett Kandt, Senior Deputy Attorney, Office of the Attorney General, Executive Director, regarding an update on the strangulation law recently passed in the 2009 legislative session.

Brett gave an update on the law and answered questions regarding the new law on and what effects it has had in the North and South. Brett provided background as to how the bill became a law. The categories of the felonies were explained. The definition of strangulation was passed with some modifications. The law has been successfully utilized to make arrests and prosecution is going forward. State wide numbers were not available to Brett, but Las Vegas Metro has made 600 arrests and charges under the new statute.

General Masto asked if Brett is working with Washoe County and going over this law with them. Brett indicated he has not worked directly with Washoe County. Brett indicated when a new law is passed it is always good to have education and training. There have been several trainings held and will continue to be held throughout the state. It is important to educate the judges and in many cases there will still be the need of medical testimony to substantiate the bodily harm, even if it is not evident.

Andrea Sundberg asks if Brett had conviction numbers to coincide with the arrests. He did not have those statistics. Elynne Green indicated that many of the cases are still in process so the number of convictions would not be accurate at this time. Elynne adds that they are getting more pleas due to the new law.

6. Sheila L. MacDonald, Nevada Supreme Court, Administrative Office Of the Courts, Lead Court Services Analyst, regarding Justice Hardesty's Protection Hearing.

General Masto asked her to come to this committee to elaborate on Justice Hardesty's Protection Hearing. She is on the Standardized

Protection Order Committee which deals with all protection orders including those for domestic violence and sexual assault. Some issues came up in a number of areas regarding the protection orders particularly on the more recent issue for a sexual assault protection order. It was brought to Justice Hardesty's attention as she works with Justice Hardesty on the Access, Preservation and Sealing of Court Records Commission, and he felt the issues were important enough that he will be holding a public hearing on June 3, 2010, at 9 a.m. in the Nevada Supreme Court Courtroom and via videoconference to the Nevada Supreme Court Courtroom in Las Vegas.

The concerns are that these records are open to the public. Questions being asked regard whether the Supreme Court should adopt rules governing the retention of records in all types of TPO's and provide guidelines and/or rules as to how these records should be handled. The issues at hand are that of redaction, electronic access, who maintains these files that are presumptively confidential with regard to limited public and media access.

The bench, bar and public are invited to submit written comments on the issues in the order by 5 p.m., May 31, 2010. If you wish to attend the hearing please notify the Clerk no later than May 31, 2010. This sub-committee is invited to be a part of Justice Hardesty's committee. General Masto and Kareen will be working on getting the information out to everyone and obtaining thoughts of the committee, and compiling them for Justice Hardesty, so that this committee will be represented at the hearing.

7. Andrea Sundberg, Executive Director, Nevada Coalition Against Sexual Violence, regarding gaps in services update.

Andrea indicated there is not an update yet. Upon trying to develop the survey, the sub-committee ran into some administrative technicalities with having to follow Open Meeting Law, and is now asking the committee for permission to go ahead with the development and distribution of the survey to obtain information on service gaps. The sub-committee is hopeful to get together and complete the survey within the next few weeks. The committee approves the development, distribution and analysis of the survey. Kareen will coordinate the next meeting time with the sub-committee.

8. Andrea Sundberg, Executive Director, Nevada Coalition Against Sexual Violence, regarding SART/SANE update.

(PowerPoint handout provided) Debra Scott, Executive Director of the Nevada State Board of Nursing is present. Currently there are three

SANE units and thirteen certified SANE nurses in the State of Nevada. There is a gap in charges and services. The Rose Heart facility serves Clark County and the Pagel Center services Washoe County. Ben Felix indicated that there is a certified SANE nurse out in Elko. General Masto asked Debra why more nurses are not becoming certified.

She could not say exactly why except that the process appears to be more complicated than it actually is and it is a very specialized care. General Masto asked if there was a pay difference for SANE certified nurses. It depends on the agency. It was discussed what the requirements to become a SANE certified nurse; why it is hard to get nurses to commit to obtaining this certification. It is also hard for the nurses to get the 40 hours of time off to become certified and the cost is not always feasible. The certification must also be maintained every three years with 45 hours of continuing education. General Masto asked if the training to become SANE certified could be incorporated into the nursing curriculum. The nurses must already be an RN for two years before seeking to obtain the SANE certification, therefore it cannot not be included in the curriculum.

Ben Felix also stated that during the process of being certified the nurse becoming certified must also have another RN work along side them, which, a number of the agencies are resisting due to the cost of paying both nurses. Doctors must also be willing to supervise the process. Additional things being offered to streamline this process is the Telemedicine program offered through U.C. Davis, practicum days to practice these exams, development of protocols for more specific procedures on conducting these exams and looking at obtaining funding for nurse scholarships to help more nurses becoming SANE certified. Andrea indicated that our state is lacking advocates to support these survivors throughout the exam and when they leave the facility.

Debra Scott brought forth a suggestion that the nursing schools do have simulation labs and she just saw an email indicating that the schools would like to see others use these labs, which would give an opportunity for the nurses wanting to become certified to use for practicum. Ben Felix indicated that part of the enhancements to the communities having operating programs is the attitudes of the District Attorney's and the policies that are set judicially. If that mind-set isn't apparent the community tends to ignore the issue. Andrea discussed the experience of some backlash in the South with the Jane Doe exams. Lori Fralick indicated that partnerships with the nursing schools would be pro-active in recruitment of nurses and could boost the interest in more nurses becoming certified. Debra Scott suggested that Lori write an article for the nursing newsletter which is circulated to RN's, LPN's, CNA's, the legislature, etc. Liz Greb indicated that by having access to the IAFN

(International Association of Forensic Nurses) website it has helped to identify more SANE certified nurses.

Liz Greb discussed that since this is an evidentiary procedure we can use some monies from the STOP fund. Lori Fralick advised that an action plan is needed to rectify this issue, whether it is an actual shortage or the fact that there are just too many sexual assaults for the amount of nurses that are certified to conduct these exams. Liz Greb may have the resources to conduct the research needed to contact the counties to resolve some of these issues. Liz works with a University of Phoenix intern to contact law enforcement throughout the United States to gather information regarding sexual assaults and how the exams are given. The hope is that this committee would put together some legislative issues on the agenda as far as how the state handles forensic exams and this whole issue. All counties seem to have different procedures as to who pays and how the evidence is obtained and handled, etc.

General Masto indicated that to put an action plan in force, we would have to figure out where to start. Some counties have been contacted already. The consensus is that in order for this action plan to work it will have to be county by county. Ben Felix elaborated as to the logistical differences between certain counties. There is no standardized protocol and the differences are what seem to be confusing everyone. Liz Greb said she may be able to work with three counties to deal with the issues at hand with the Recovery monies before the monies run out in December.

General Masto asks if the committee feels they have enough of a game plan to begin to move forward. It was suggested to start with Douglas County. Lori indicates her main interest to move forward now is to assist in identifying and resolving issues in Washoe County. General Masto indicates this issue should be an ongoing agenda item as the committee moves forward.

9. Gayle Farley, member, Advisory Commission on the Administration of Justice, regarding update on re-classification of felonies.

Gayle has no update at this time. A handout was provided. The next meeting is Thursday, April 14, 2010, at 1:00 p.m. at the Legislative Building, Room 3137 and via videoconference to Las Vegas, if anyone is interested in attending.

There was some discussion regarding the information provided on the handout. Gayle indicates she wants to bring the voices of this committee as to what changes if any they would like to see.

10. Determine future meeting agenda items.

Sue Meuschke - material witness warrants and holds.

General Masto – ongoing BDR’s.

Gayle Farley – continued, update on re-classification of felonies.

General Masto – Victims of Crime Compensation Fund. Brian Nix will be invited to give update. Elynne indicates there may be a law enforcement issue on how/when statements are being taken from the victims, etc.

General Masto – continued ongoing update SART/SANE issue and addressing the nursing shortage.

11. Next meeting.

Linda Fitzgerald will coordinate.

12. Comments from the public.

No comments.

13. Adjourn.

3:45 p.m.