



WORK SESSION DOCUMENT

COMMITTEE TO STUDY THE ADVISABILITY AND FEASIBILITY OF TREATING CERTAIN TRAFFIC AND RELATED VIOLATIONS AS CIVIL INFRACTIONS (*Assembly Concurrent Resolution No. 9*)

August 24, 2018

The following “Work Session Document” was prepared by the staff of the Committee to Study the Advisability and Feasibility of Treating Certain Traffic and Related Violations as Civil Infractions. Pursuant to *Nevada Revised Statutes* (NRS) 218D.160, the Committee is limited to five legislative measures and must submit its bill draft requests (BDRs) to the Legal Division of the Legislative Counsel Bureau for drafting by September 1, 2018, unless the Legislative Commission authorizes submission of a request after that date.

This document contains a summary of BDRs and other actions that were presented during public hearings, suggested to individual Committee members, or submitted directly to the Committee. It is designed to assist the Committee members in making decisions during the work session. The Committee may accept, reject, modify, or take no action on any of the proposals. Concepts contained in this document are arranged by topic under broad categories to allow members to review related issues. The Committee may choose to: (1) propose legislation to amend NRS or propose resolutions; (2) include statements in the Committee’s final report; and (3) send letters of recommendation or support to specific persons or entities.

Committee members should be advised that Legislative Counsel Bureau staff may, at the direction of the Chair, coordinate with interested parties to obtain additional information for drafting purposes or to be included in the final report. The recommendations may be modified by combining similar or related proposals or by adding necessary legal or fiscal information. Some recommendations may contain an unknown fiscal impact.

Additional recommendations may be considered based on discussions held and presentations made at the August 24, 2018, hearing. Please see the agenda for details concerning scheduled presentations on topics to be considered at that hearing. The approved recommendations for legislation resulting from these deliberations will be prepared as BDRs and submitted for introduction as bills to the 2019 Legislature.

RECOMMENDATIONS

PROPOSALS RELATING TO THE CONVERSION OF MINOR TRAFFIC AND RELATED VIOLATIONS TO CIVIL INFRACTIONS

1. Propose legislation to impose civil penalties for minor traffic and related violations. Such legislation would include, without limitation:
 - a. Establish one or more categories of civil infraction based on the severity of the violation. Serious traffic and related violations will continue to be criminal matters.
 - b. The removal of discretion to make an arrest solely for a minor traffic or related violation unless other grounds for arrest arose during a traffic stop and the service of a civil complaint on the person alleged to have committed the minor traffic or related violation.
 - c. Procedures whereby a defendant who does not wish to challenge the complaint may enter a plea and make a payment over the internet, by mail or in person at the court and whereby a defendant that wants to challenge the complaint may enter a plea or challenge a ticket over the internet or by mail or by appearing in court personally or through an attorney for a contested hearing.
 - d. Encourage the early payment of citations for traffic or related violations by authorizing a reduction of the charge if payment is made prior to a court appearance.
 - e. Revise the uses of fees paid by persons who have been issued a citation for a traffic or related violation to obtain a reduction in the severity of a violation.
 - f. The applicability of the rules of evidence that are applicable in other civil cases.
 - g. A standard of proof that requires the violation to be proved by a preponderance of the evidence.
 - h. The entry of a default civil judgment upon failure to appear in court with the opportunity to file a motion to set aside the judgment in exceptional circumstances.
 - i. Upon the failure to pay a civil penalty within the time required by the court, the court will analyze whether the civil penalty is within the ability of the defendant to pay and collectible. If the civil penalty is within the ability of the defendant to pay

and collectible, the court will enter a civil judgment against the defendant. If the civil judgment is not paid within the time established by the court, the following collection actions may be taken: attachment or garnishment of the defendant's property, wages or other money, or the suspension of the defendant's driver's license. If a defendant has the ability to pay a civil penalty and willfully avoids paying the civil penalty, the court may hold the defendant in civil contempt of court.

- j. The creation of a model form for default judgment to be used by courts when entering a civil judgment.

PROPOSALS CONCERNING MINOR TRAFFIC AND RELATED VIOLATIONS IF SUCH VIOLATIONS REMAIN CRIMINAL VIOLATIONS

- 2. Propose legislation to revise the procedure followed in cases involving minor traffic and related violations as summarized below:

- a. Amend NRS 484A.610 to authorize traffic enforcement agencies in this State to use a model format for traffic citations that are designed in a manner that uses behavioral science to reduce failures to appear.(See Tab A)

(Proposed by Dana Hlavac, Court Administrator, Las Vegas Municipal Court)

- b. Amend NRS 484A.630 to authorize a peace officer to collect from a person halted for a traffic or related violation the person's email address and cell phone number to enable the court to communicate with the person via email or cell phone.
- c. Amend NRS 481.063 to authorize the Department of Motor Vehicles to share with a court, upon request of the court, the mailing address and contact information of persons who have been issued traffic citations for the purpose of enabling the court to provide notifications concerning the traffic citation to such persons.
- d. Amend NRS 484A.630 to remove the ability of a person who has been issued a traffic citation to request a hearing on the violation earlier than 5 days after the alleged violation.
- e. Amend NRS 484A.710, 484A.720, 484A.730, 484A.740 and 484A.760 to clarify the procedure to be followed by a court when a person who has allegedly committed a traffic violation is arrested and either authorized or required to be brought before a magistrate "without unnecessary delay."
- f. Amend NRS 484A.700 to prohibit the issuance of a bench warrant when a person fails to appear in response to a citation for a parking violation when notice of the violation was returned to the court as undeliverable.

- g. Authorize a person who has been issued a citation for a minor traffic or related violation to enter a plea and make a statement of his or her case by mail or electronic means.
- 3. Draft legislation to revise provisions governing the penalties, assessments and fees imposed in connection with minor traffic and related violations as summarized below:
 - a. Create a separate class of misdemeanor for minor traffic and related violations to reduce the maximum penalty for minor traffic and related violations, which is currently 6 months imprisonment in jail or a fine of not more than \$1,000.
 - b. Create a uniform range of fines for minor traffic and related violations for use throughout the state.
 - c. Amend NRS 176.065 and 176.075 to increase the amount of credit that an offender receives against his or her fine for each day of incarceration served by the offender. Under existing law, an offender receives \$75 in credit against his or her fine for each day of incarceration.
 - d. Amend NRS 176.087 to require a court to provide a credit toward a fine of at least \$10/hour for each hour of community service performed by an offender.
 - e. Specifically authorize a court to allow a person who has committed a minor traffic or related violation to attend traffic school to obtain a fine or charge reduction.
 - f. Specify the order in which payments by an offender with multiple violations or multiple cases are to be applied to outstanding fines, assessments and fees.
 - g. Revise the order in which payments are applied to fines and administrative assessments to specify the order in which payments are applied to fees imposed by a court, including, without limitation, warrant fees and collection fees.
 - h. Amend NRS 176.065 and 176.075 to define when a person is indigent such that the court may not order the imprisonment of the person for failure to pay certain amounts due.
 - i. Amend NRS to specify that if a person is cited for a traffic or related violation which a local government is prohibited from enacting into its ordinances pursuant to subsection 3 of NRS 484A.400, any fine or bail forfeiture paid by the person for that violation must be remitted to the State and placed in the State Permanent School Fund.

- j. Encourage the early payment of citations for traffic or related violations by authorizing a reduction of the charge if payment is made prior to a court appearance.
 - k. Revise the uses of fees paid by persons who have been issued a citation for a traffic or related violation to obtain a reduction in the severity of a violation.
4. Draft legislation to revise provisions relating to the collection of unpaid fines, assessments and fees imposed on persons who commit minor traffic and related violations as summarized below:
- a. Amend NRS 176.064 to:
 - i. Clarify the order in which the collection remedies specified in the section must be undertaken.
 - ii. Revise the collection fee which a court is authorized to charge when a person who has committed a minor traffic or related violation has failed to pay a fine, assessment, fee or restitution within the time required by the court.
 - iii. Remove the authority of a court to request that the prosecuting attorney undertake collection efforts by attaching or garnishing the offender's property, wage or other money receivable.
 - iv. Comply with federal law by removing the authority to report a delinquent fine, assessment, fee or restitution to a credit reporting agency.
 - v. Remove the authority of a court to order the suspension of the driver's license of a person who is delinquent in the payment of a fine, assessment, fee or restitution.
 - vi. Create a model form for a confession of civil judgment and order of confinement.
 - b. Establish criteria for determining when an unpaid fine, assessment or fee is uncollectible and the consequences of finding that a fine, assessment or fee is uncollectible.

PROPOSALS CONCERNING CURRENT HANDLING OF MINOR TRAFFIC AND RELATED VIOLATIONS

5. Draft a letter for distribution to municipal and justice courts in this State encouraging those courts to update or configure information systems to enable the court to report sought in the survey to the courts. (See Agenda Item V)

6. Draft a letter for distribution to municipal and justice courts in this State asking those courts to consider the impropriety of imposing fines and commencing collection activity against a defendant who has not yet appeared in court to make a plea and, thus, has not yet been adjudicated guilty of an offense.
7. Draft a letter for distribution to municipal and justice courts in this State asking those courts to examine the fees charged by the courts in connection with minor traffic and related violations, including, without limitation, fees to enter into a payment plan, credit card processing fees, collection fees and warrant fees, to ensure that the amount of the fees charged by the courts are not excessive in relation to the actual cost of taking the action for which the fee is imposed.
8. Draft a letter for distribution to municipal and justice courts in this State stating that under NRS 484A.400, local governments are prohibited from enacting ordinances related to certain traffic and related violations and, thus, courts must consider those offenses violations of state law and the fines paid for those violations must be remitted to the State and placed in the State Permanent School Fund for the financial benefit of public education in Nevada.
9. Draft a letter for distribution to traffic enforcement agencies in this State to encourage any traffic enforcement agency that issues handwritten citations for traffic and related violations to issue electronic citations for those violations to allow for faster transmission of the citation to the appropriate court.
10. Draft a letter for distribution to municipal and justice courts, traffic enforcement agencies and district attorneys in this State encouraging these entities to form working groups after the 2019 Legislative Session to consider the implementation of a program to allow a person cited for a minor traffic or related violation to pay the citation at the time the citation is issued and any changes in the laws of this State needed to implement such a program.