

**MINUTES OF THE 2017-2018 INTERIM
COMMITTEE TO STUDY THE ADVISABILITY AND FEASIBILITY OF TREATING
CERTAIN TRAFFIC AND RELATED VIOLATIONS AS CIVIL INFRACTIONS**

June 26, 2018

The meeting of the Committee to Study the Advisability and Feasibility of Treating Certain Traffic and Related Violations as Civil Infractions was called to order by Chair Steve Yeager at 9:07 a.m. at the Grant Sawyer Building, Room 4412, 555 East Washington Avenue, Las Vegas, Nevada, and via videoconference at the Legislative Building, 401 South Carson Street, Room 3138, Carson City, Nevada. Exhibit A is the Agenda, and Exhibit B is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT (LAS VEGAS):

Assemblyman Steve Yeager, Assembly District No. 9, Chair
Senator Tick Segerblom, Senatorial District No. 3
Assemblywoman Dina Neal, Assembly District No. 7

COMMITTEE MEMBERS PRESENT (CARSON CITY):

Senator Donald Gustavson, Senatorial District No. 14
Assemblyman John Ellison, Assembly District No. 33

COMMITTEE MEMBERS EXCUSED:

Senator Kelvin Atkinson, Senatorial District No. 4

STAFF MEMBERS

Bryan Fernley, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau
Angela Hartzler, Secretary, Legal Division, Legislative Counsel Bureau
Jordan Haas, Interim Secretary, Legal Division, Legislative Counsel Bureau

OTHERS PRESENT:

Judge Mason Simons, Justice of the Peace, Elko Township, Department A
Randall Soderquist, Court Administrator, Elko Justice and Municipal Courts
Dirk Marler, Chief Legal Counsel/Court Services Director, Administrative Office of the Courts, State of Washington

Assemblyman Steve Yeager (Assembly District No. 9, Chair):

I will now open the fourth meeting of the Committee to Study the Advisability and Feasibility of Treating Certain Traffic and Related Violations as Civil Infractions.

Please mark Senator Atkinson as absent-excused. He has double duty today. He's in two meetings, so he'll probably be bouncing back and forth. But for purposes of the record, please mark him absent-unexcused for portions of the meeting that he won't be able to make.

I will open agenda item III, public comment. Seeing none, I will close agenda item III and open agenda item IV, which is approval of the minutes of the April 30, 2018 meeting (Agenda Item IV). Committee members, I did have a chance to review the minutes, and as usual, our staff did an excellent job. I did not have any corrections to the minutes. Did anyone else have any corrections? If so, let me know, or if not, I would take a motion to approve.

SENATOR SEGERBLOM MOVED TO APPROVE THE MINUTES OF THE
APRIL 30, 2018 MEETING.

ASSEMBLYWOMAN NEAL SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

I will now close agenda item IV. Committee members, I'm going to go slightly out of order. We do have some presenters from the outside today, then we have some internal presentations. What I'd like to do is make sure that we have our guests be able to present first, because I know they have other things that they need to be getting to today as well. I'm going to go at this time to agenda item VI, which is a presentation from the Elko Justice and Municipal Courts. I believe we have Judge Simons, and perhaps someone else, in Carson City to present. Good morning and thank you for joining us. I know it's not just down the road, so we appreciate you making the effort to get here, and we look forward to your presentation.

Judge Mason Simons (Justice of the Peace, Elko Township, Department A):

It's a pleasure to be here, as it is always. I've testified here before, and it's always a pleasure to be here. I presently serve as the Elko Township Justice of the Peace for Department A and the City of Elko Municipal Judge. I appreciate the opportunity that has been afforded me to testify on this important topic, and I also have with me Randall

Soderquist, who serves as the Court Administrator of the Elko Justice and Municipal Courts.

Let me just provide a bit of background about our court, the number of traffic matters that are handled each year by our combined Justice and Municipal Courts and the processes that are currently in place for handling these matters. The Elko Judicial Township serves a population of approximately 42,000 people, according to the 2017 population estimate from the State Demographer. Our judicial township includes the communities of Elko, Spring Creek, Jiggs, Lamoille, Ruby Valley, Tuscarora, Jarbidge, Mountain City and Owyhee. In January of 2017, the Elko Township Justice Court added a second justice of the peace and has been operating as a 2-judge court for the past 18 months. During Fiscal Year 2017, approximately 5,200 traffic cases were filed with the Elko Justice and Elko Municipal Courts. When a person is issued a citation that corresponds to our court, the citation provides a date by which the person must pay the citation or appear to contest the citation. Our court provides defendants with 60 days from the date they are cited to either pay or appear on the citation to be arraigned and initiate further proceedings. Most of the law enforcement agencies that feed into our court use Brazos electronic citation equipment to complete the citation process. These citations are typically received electronically by the court approximately 72 hours after the citation was issued to them by the citing officer. The clerical staff of the court must then do manual data entry to input the citation received into our electronic case management system. If a defendant contacts the court immediately after they are cited but before the citation has been received from the law enforcement agency and wants to pay the citation, payment will not be accepted until the original citation has been received from the citing agency. Once the citation has been received and entered into our electronic case management system, the defendant can pay the citation in person, mail in payment, make payment online or over the phone. While the hours for in-person payment are somewhat limited, payments online and by phone can be made 24 hours a day, 7 days a week.

The Elko Justice Court recently implemented the use of a new electronic case management system. Our case management system has been programmed to automatically follow a set of business rules when a citation has been logged into the case management system and the payment deadline has been missed. I will describe that process for you. One business day after the citation arraignment date has been missed, a warning postcard is automatically generated by our case management system and is mailed to the last known address of the defendant. A \$50 late fee is then assessed on the case. Four weeks and one day after the citation arraignment date has been missed, a failure to appear (FTA) notice is generated by the case management system and is sent to the Department of Motor Vehicles (DMV). After the DMV receives the FTA notice, the DMV mails a notification to the defendant informing them that they have a period of 20 days to resolve the matter with the court or their driver's license will be suspended. Eight weeks and one day after the citation arraignment date has been missed, a bench warrant is generated but not yet entered into the Nevada Criminal

Justice Information System (NCJIS) and the matter is referred to the County Collections Department. The Elko County Collections Department makes a report of the unpaid obligation to the credit reporting agency Trans Union and notifies the defendant by mail that the matter has been referred to collections. Twelve weeks and one day after the citation arraignment date has been missed, the bench warrant is sent to the entering agency, the Elko County Sheriff's Office, the Elko Police Department or the Nevada Highway Patrol (NHP) for entry into NCJIS. If the defendant was ultimately arrested on the citation for which they failed to appear, the defendant would typically be assessed a \$300 warrant fee, but the court has the discretion to waive the assessment of this fee in addition to the fine and fees typically associated with the offense that was cited. Defendants that owe financial obligations related to traffic citations are afforded an opportunity upon request to establish a payment plan to satisfy the unpaid obligation in installments or to convert the financial obligation into community service if they are unable to pay. They can also request the waiver of assessed late fees or warrant fees.

This generally describes the traffic citation processes of our court. Chair Yeager also asked that I address more broadly the question being considered by this Committee and the possible ramifications of such a change and how it might impact the courts and Elko County more broadly. As you are well aware, the Nevada Judges of Limited Jurisdiction (NJLJ), the organization that represents the limited jurisdiction courts in the State of Nevada, has taken no formal position on this matter, and the opinions I'm expressing during my testimony today are my own personal opinions and not the opinions or formal positions of the NJLJ. I think the issues with this sort of dramatic change can be placed into three broad categories. Number one, funding issues related to the present use of administrative assessment fees to fund the Administrative Office of the Courts (AOC), the Supreme Court, the Central Repository and other criminal justice-related activities. Two is possible declines in collections, and three is the reduction in the ability of law enforcement to use searches incident to arrest to intercept criminal activity in their communities. On the first issue related to the use of administrative assessment fees, it is my understanding that John McCormick of the AOC gave a presentation at one of your recent hearings on the history of administrative assessments and the reliance that has developed on that funding mechanism for the operation of various court and criminal justice-related purposes. Depending on the details of how the civil infraction concept is implemented, that funding mechanism could be dramatically impacted and could require a wholesale reexamination of how those entities are funded. Second, as it relates to the ability of cities and counties to collect outstanding monies owed on traffic charges, I would estimate that the overall collections on these traffic matters will likely go down, not up, if this change is implemented. Collecting on traffic tickets already poses a challenge for the courts. Even with the ability that the courts have to use a big stick, namely the issuance of a bench warrant in the event that they don't pay, taking that option away from the courts and restricting courts only to the use of collections in the event of nonpayment will likely result, in my estimation only, in more failures to pay. Third is the impact on law enforcement. While I as a court have no particular vested interest in how law enforcement is affected, I do see this playing out on a day-to-day

basis, and a dramatic change in how traffic citations are handled would certainly impact this issue, and policymakers should be aware of this impact. Bench warrants on outstanding traffic citations frequently serve as the basis for an arrest by law enforcement, a search of the defendant's person or vehicle and oftentimes a seizure of drugs, contraband or the discovery of evidence related to other criminal activity. If there are no more bench warrants on traffic citations, this tool will no longer be available to law enforcement, and the overall criminal justice process in the community will obviously be impacted.

Thank you for allowing me to make this presentation. I am more than willing to answer any questions that you might have for us. Thank you.

Chair Yeager:

Thank you for your presentation.

Assemblyman John Ellison (Assembly District No. 33):

One of the questions I do have, I know that the court system uses the assessment fees for computer upgrades, office upgrades. Without that, you'd have to go back to the county and try to get that money when the county's in a shortfall as it is now. Is that correct?

Judge Simons:

That is correct. There are obviously several different funds that the courts can use for various purposes at the court. One is the administrative assessment fund, which can be used for training and other necessary purposes. There is also a court facility account that is used for upgrades. If those accounts were to go away, I think all the courts are largely dependent on the availability of those funds to make upgrades and enhancements at their courts. If those funds were to be taken away, obviously it would have a dramatic impact on our ability to do our job.

Assemblyman Ellison:

I'm looking at the other counties also: Ely, Eureka, White Pine, all these small justice courts. They depend almost 100 percent on that fee. Is that not correct for training? Because it looks like to me that the courts that I talked to said if we did make this change and it changed how the amount goes to, like, the Nevada Highway Patrol or the Supreme Court or whatever, this impact would almost put them into a major deficit. Is that correct? Have you talked to the other courts?

Judge Simons:

Yeah, I think you're exactly right. If those funds and the accessibility of those funds were to go away, it would have a dramatic impact. Many of those entities that I mentioned in my remarks, I don't think they're wholly funded through these administrative assessments, but it's a large portion of their budget. Yeah, if this were to go forward and that sort of financial mechanism that's in place now where those entities are funded through administrative assessments were to go away, it's going to require a wholesale reexamination of how you fund all these various entities, and this goes back for decades in terms of this structure has existed for a very long time. If this body is interested in examining a wholesale restructuring of how all these entities will be financed, I guess that's up to this body.

Assemblyman Ellison:

Thank you.

Assemblywoman Dina Neal (Assembly District No. 7):

When you mentioned the bench warrant, the \$300 warrant fee, do you have any data on how many times you've actually waived that fee? Also, I wanted to know the data around payment plans that were actually offered. Like, how often, how frequent?

Judge Simons:

I don't have specific data in front of me, but I can just sort of give you anecdotally what my experience has been, if the Court Administrator would like to weigh in and give you some data as well. I routinely waive the warrant fee. We see a fair amount of people in custody that get picked up on bench warrants, and it's fairly common practice for me—and I'm only speaking for myself; we're a two-judge court—that I fairly routinely waive that fee just to try to get these things taken care of and closed out. For payment plans, if a person comes in and requests a payment plan on traffic citations, they're always given a payment plan. If a person comes in and requests it, it pretty much universally will be granted if requested, that sort of a deal. We don't have a policy of denying that. If a person has a financial need and wants a payment plan, we give them a payment plan if they'd like one. Usually, the issue is just people blowing the citation off altogether. That's the bigger issue. But when a person comes in and wants accommodations in terms of taking care of their obligation, it's pretty much given to them 100 percent of the time.

Randall Soderquist (Court Administrator, Elko Justice and Municipal Courts):

Yes, with both departments. It is almost universal that a warrant fee is waived in court. Warrant fees are typically only paid if someone is not arrested and instead they realize

that they have received a warrant and they are just trying to pay it and take care of it without actually coming into court. I don't have specific numbers, but if they are actually arrested, and then of course they are seen, the warrant fee is almost always waived. If they are not arrested, then typically it is paid.

Chair Yeager:

Thank you. I have a number of questions, and I fully understand that some of these you may not be in a position to answer today, but I just want to unpack a little bit of the process that you talked about. Before I get there, I do want to ask, in your experience, when folks come into court either because they've missed a court date and they're able to get there before a warrant issues—which I understand the actual warrant doesn't get transmitted, it sounds like, for 120 days or more after the first failure to appear. But whether they come involuntarily or get arrested, in your experience, are you able to shed any light on what those individuals say in terms of why they didn't come to court in the first place? Was it that they didn't know, they forgot, they were trying to blow it off? Do you have any insight in your experience as to why, at least in Elko, folks might not be coming to court for traffic citations?

Judge Simons:

I think probably the most common thing I hear is just that they forgot about it. It was just an oversight on their part. On a rare occasion, I might have someone tell me that they deliberately didn't take care of it, but that's by far the exception to the rule. It's usually just an oversight. At least, that's what we're told. Whether or not that bears out as the truth or not, I don't know, but that's sort of the typical rationale that we're given as to why it wasn't paid on the original deadline.

Chair Yeager:

As a follow up to that, I think you had indicated that, and I'll probably get the timing wrong, but I know after somebody misses that first court appearance, you said that there is a postcard that is sent out to the individual at the last known address. Do you know where that address information comes from? Is that from the DMV? Is it from the citation itself?

Judge Simons:

It's the information provided on the citation, which would come from the person's driver's license. We also subscribe to a skip trace service as well, so if we get a bad address, we have an ability to try to track down a better address from somebody. But yeah, the information that will go into our case management system associated with that citation would have been the information that was provided to the officer by the defendant, which would have come off their driver's license.

Chair Yeager:

You may not know the answer to this, but any idea what percentage of those postcards get sent back to the court for undeliverable or bad address or something like that? What I'm trying to get at is, I'm of the belief that people do want to come to court and take care of the citations, so I think as a Committee we're interested in trying to figure out how we can more effectively remind them. I'm not saying a postcard is not effective, but if you think about a dentist appointment, you probably get a text message, an email, a postcard, and I'm just wondering if that's not an effective way, maybe there are other ways that the court could notify. Maybe we would have to change some statutory language or some authorizations, but either by text message, email or what have you.

Judge Simons:

I couldn't give you data about what percentage of that, but I think you bring up an interesting point. That is, when a law enforcement officer interacts with the defendant on the roadway, at present, I don't think they capture cellphone information from the defendant, but that's certainly perhaps a statutory change that this body could consider that would enable the courts using various services that are now available to courts to use that data that was captured off of those citations and then send reminder messages to folks, but that would probably require either an administrative code change or a statutory change that would enable them to capture that or require that they capture that data from the defendant, if possible.

Chair Yeager:

We have talked to law enforcement about that, and I also think we've talked to the DMV about potentially trying to capture some of that information. For instance, when someone applies for a driver's license, perhaps they have the option of capturing a cellphone or an email address then, and perhaps reminders could be a little more effective. I just throw that out as a potential solution, and this Committee knows that we are sort of looking at that and how we could make that happen statutorily, but the hope would be that it would increase participation in the court process so you wouldn't have so many of these warrants. Your process sounds pretty similar to what I've heard from other courts, and particularly this ability that when someone gets a citation, they can just choose to pay it upfront and not have to come to court. My question there is, when somebody chooses to do that, how does your court catalog that? Is that a guilty plea? Is that an adjudication? Does the payment of that citation result in a report to the DMV about what the violation was, or is there some kind of reduction that comes along with the payment?

Judge Simons:

It's a bail forfeiture, so it would be treated essentially as a conviction. If the person posted \$150 on a speeding ticket and asked that it be forfeited, yeah, it would eventually get reported back to the DMV as a conviction.

Mr. Soderquist:

Yes, as soon as they make a payment, it is considered a bail forfeiture. If they are set up on a payment plan, with that first payment, it is considered adjudicated and a report of conviction is sent to the DMV at that point. But we don't have circumstances where individuals come in and they want to enter a guilty plea and we allow them just to do a bail forfeiture. If they want it to be formally adjudicated, then we let them go to court.

Chair Yeager:

In that procedure where someone can go online and pay before coming to court, or send it by mail or by phone, is there an option given to do traffic school to get a reduction, or is it simply the option of you paying everything and your case is over, or you come to court and contest it in some fashion?

Mr. Soderquist:

It's a general Elko County policy that we do not offer traffic school. The District Attorney's Office and the City Attorney's Office will sometimes plea bargain these cases, but the individual would need to contest their citation and request a pretrial hearing first. If an individual wants traffic school, we let them know once it has been adjudicated that they can contact the DMV either here in Nevada or in the state that they're licensed in and they can inquire with them about possibilities for traffic school that could remove some demerit points from their record.

Chair Yeager:

Thank you. I'm sorry I'm getting a little bit into minutiae, but I figure that I have the experts here so I want to ask while I have you. For instance, if someone were to get a speeding ticket and they're given the citation, if they want to pay and not contest it, how is it determined what the actual fine amount is that's associated with that infraction? Is there a schedule that you use? Because my understanding is that in the statute there's a range of fine amounts, so how do you land on whatever amount it is that the offender has to pay?

Judge Simons:

I think it varies by court, but in our particular region in the North Central Judicial Council region, which is Elko, Carlin, Wells, Wendover, Battle Mountain, that's sort of the northern portion of the state there, I think we're fairly universally doing \$10 per mile per hour over the speed limit. So, if you had gone 15 over, it would be a \$150 fine, or 5 over would be a \$50 fine. But I would imagine that varies broadly based on whatever jurisdiction you're in.

Chair Yeager:

When someone decides to contest a ticket and they come to court—first, let me back up and ask, the process that you laid out today, is that the same process for Elko Justice Court and Elko Municipal Court, generally speaking?

Judge Simons:

Yes.

Chair Yeager:

Okay. So, when the defendant decides they want to contest the ticket and they actually have a court appearance, are the local prosecutors, whether it's county or city prosecutors, do they prosecute all of those, or is there a mechanism in place where—obviously, there are some ethical concerns, but where the judiciary can engage in negotiations under the purview of guidance given by the local prosecuting attorneys?

Judge Simons:

There is an ethical opinion from the Ethics Panel that advises judges about this, and basically it requires that in order for a judge to be involved in that process at all, there must be sort of like a written memorandum of understanding (MOU) between the District Attorney's Office and the court that states, "If X is the situation, you can give them Y as an outcome." I know there are some courts in the state that have an arrangement like that. We don't have a written MOU, so we don't engage in anything along those lines. If they come to court and they want to contest it, we take their plea, obviously. We set it for what's called a pretrial conference. They would come back to court, have an opportunity to meet along with other defendants with the prosecutor. They bring a copy of the driving history printout to that meeting, and I would say probably 90 percent of the time, it results in some sort of resolution of their case, usually reduced charges or dismissed charges or some sort of negotiated resolution. But it's the District Attorney's Office that is involved in that, and our particular court doesn't take any direct involvement. I think that's the case in all the courts in our county.

Chair Yeager:

You'd mentioned payment plans. Is there any fee that's associated with getting on a payment plan in the Elko Justice or Municipal Court?

Judge Simons:

No, no fee to do a payment plan.

Chair Yeager:

You had mentioned the possibility, I think, of doing community service to satisfy fines. Is there a particular amount of credit that's given per hour of community service?

Judge Simons:

Ten dollars per hour.

Chair Yeager:

I remembered something you'd talked about earlier. We were talking about the administrative assessment fees, and obviously under statute, there's a breakdown of administrative assessment fees and the priority that they're paid and what goes where, but I understand there are also local fees that are assessed. We've talked about the \$10 court improvement fee, and I think you talked about an additional fee for training. Do you know what the practice of the courts is when an offender makes a partial payment but not a full payment? Are the local fees, for instance the \$10 court improvement fee, is that collected first, or where does that fall in the line of the collection priority?

Judge Simons:

I couldn't spell it out specifically for you, but it is statutorily defined. When partial payments come in, by statute, they have to be given a particular priority, and that's all laid out in statute. I don't recall right off the top of my head what the priority is, but it is all statutorily defined. Our case management systems are all designed to allocate those funds based on the required statutory priority.

Chair Yeager:

Great. I know you expressed some potential concern about collection of those fees, the administrative assessment fees, and I know that this Committee is obviously concerned about that as well. When we get to the point where we're going to make recommendations, I think we'll have a look at that statute, because I think you're right. Most of the fees are set in statute priority-wise, but we've learned on this Committee

that there are a couple, such as in a domestic violence case, which is not a traffic case, obviously, but there's a domestic violence fee, or potentially in drug cases there's a chemical testing fee that doesn't really fit somewhere in the priority, but we'll certainly want to make sure that we don't disrupt the priority of those collections if we are to make some kind of change.

Just a couple more questions. You'd mentioned a \$300 warrant fee, and I understand that that sometimes gets waived, but do you have any sense of where the \$300 came from? The reason I ask is that it seems like the courts around the state are kind of all over the map on this. Some of them have a \$50 warrant fee, some have a \$150 warrant fee. I've heard a \$300 one. Is that just kind of local, or is that tied to some actual amount that would be required to execute the warrant?

Judge Simons:

I think there is probably a wide variety of what those fees are. I think the authority for the imposition of those types of fees, there's a case called the Blackjack Bonding case from the Nevada Supreme Court which provides that the courts have inherent authority to assess certain fees, so warrant fees are an example of one of those areas where the courts have inherent authority to impose certain fees. I don't know where that number came from. That's just historically been the number that's been imposed by our court, and I think we're probably sort of middle of the road with other courts in the state in terms of what that fee is. But I can't say that I can tie it to some—I've never done some sort of cost breakdown in terms of the work that is involved in issuing a warrant, but obviously, that is a significant process within the court for issuing a warrant on someone. But I can't say that I've researched what the particular cost is associated with. This is a fee that was at one point in time set by one of my predecessors.

Chair Yeager:

So, here's kind of a hypothetical, and you might tell me that this never happens, and if so, that's fine. But let's just say someone has a misdemeanor citation, and with all the fees and fines it comes out to \$500. They don't make it to court, and there's a \$300 warrant assessment fee eventually assessed. If that offender comes to court, is there a scenario where that fee does not get waived and they make some kind of partial payment? Then my question is, does the warrant fee get satisfied first in the collection priority, or is it the administrative assessment fees, followed by the fine and followed by the warrant fee? Because the warrant fee, being a local option, it's not talked about in statute. As you alluded to, the authority is by the Blackjack Bonding case as a local assessment. Do you know where that falls in the collection priority in the case that not a full payment is made?

Mr. Soderquist:

The way that we have set it up, it isn't statutorily defined, but we do satisfy all of the administrative assessments first. That includes the ones that aren't specifically spelled out, like the domestic violence assessment or the chemical analysis fee. Payments are allocated to those obligations first, then to any fines, and finally they would be to any warrant fees. The warrant fees would be the last thing that payments would be allocated to.

Chair Yeager:

Do any of the Committee members have any more questions before we let these two head back to Elko?

Senator Donald Gustavson (Senatorial District No. 14):

The way the system is today compared to what the change could be, how's it working today compared to what you see in the future if we were to change this law?

Judge Simons:

My personal preference would be to leave the system alone, but obviously there are other states that have gone this route, and I certainly can't say that I'm intimately aware of how that process has gone in every other state and whether or not they view that as a positive overall outcome from the changes they've made. My personal preference is to leave the system alone, but obviously I'm not the one tasked with making that decision, and so I leave it to your judgment.

Senator Gustavson:

Thank you for your opinion. I appreciate it.

Assemblywoman Neal:

My question on the—I'm calling it the collection hierarchy that was just discussed—do you have any knowledge of how the other counties tier it out?

Judge Simons:

No, I can't speak definitively to what any other county does, but as I stated before, that hierarchy, other than those fees that are not included in that range that's defined by statute, the priority is statutorily defined, so there really should be no tinkering going on with how those are collected and what priority they're assigned to. Now, when it gets to the fees that are not spelled out in that hierarchy, I can't say how that's working, but my

personal opinion would be that I concur with my Court Administrator that those additional fees that are not spelled out in the hierarchy should be at the very bottom of the list.

Chair Yeager:

And now I remembered I had just a couple more questions. You talked about collections. Does Elko use an outside collection agency, or is the collection work done in-house?

Judge Simons:

We have an in-house Elko County Collections Department, I think with a staff of one person who does the collection work for our county. We just turn it over to that Department and it all happens in-house.

Chair Yeager:

Any idea sitting here today what the collection rate is for Elko for fines and fees? I know we've had some other jurisdictions that were able to give us rough estimates. If you're able to provide that, great. If not, maybe something you could provide at a future time.

Mr. Soderquist:

It's not something I can provide any specifics on right now, but typically we'll have maybe 5 warrants that are paid every 2 weeks. It's not a huge collection rate, but one of the big benefits to Elko County Collections is that they do not charge a collection fee. There is nothing added for individuals that they have to pay in order to satisfy their warrants through collections. Whatever the bench warrant was issued for, whatever the bail amount is on that bench warrant, that's all that they pay to the Collections Department.

Chair Yeager:

Again, I know you probably don't have that in front of you, but I guess if you could provide at a future date if you're able to, if your system could provide—I'm curious how many offenders just sort of pay and get done with their case without having to go to collections. I know that could kind of be broken down in two ways: we could do number of offenders or actual revenue assessed versus collected. If you're able to provide any of those numbers, I would say in the next 2 weeks to 30 days, I think that would be helpful for us, because one of the things we're looking at is obviously if we make a change to this, we would like to see the collection rate increase, not decrease, so it helps us to kind of know what the local governments and what the courts are actually

collecting in terms of either a percentage or number. If you could provide that, it would be helpful. Again, I won't hold you to it today.

Judge Simons:

We'll try to put some information together for you. The vast majority of citations involve a payment upfront by the defendant and they never come to court, so that's the vast majority of cases. Very few people even contest their citation. But we do have a certain number of people that won't pay, and that's why we're talking about all of this, but the vast majority of people simply pay their obligation.

Chair Yeager:

Great. Thank both of you for being here today and for presenting. I think this was very helpful for us going forward. If we have additional questions, we will certainly reach out, but safe travels back to Elko.

Judge Simons:

Thank you. We appreciate the opportunity.

Chair Yeager:

I will now close agenda item VI. Just so Committee members know and our guest on the phone knows as well, what I'm going to do next is I'm going to go to agenda item VII, and then following that, we're going to hear a telephonic presentation under agenda item VIII, and then we'll kind of circle back to the beginning of the agenda. But I think the next two items go well together. At this time, I'm going to open up agenda item VII, and we have our own legal counsel, Mr. Fernley, who is going to do a brief overview of laws of other states concerning treatment of traffic and certain related violations. You have a handout that's associated with this as well ([Agenda Item VII](#)). Basically, the front page says "Introduction" and has "Recommendation 2.4" up in the left corner.

Bryan Fernley (Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau):

As the Chair stated, I am the legal counsel for the Committee. I am just going to give a very brief overview and a very broad overview of laws of other states in this area. In doing research in this area, there are 22 states that have decriminalized minor traffic and related violations and impose penalties that are civil in nature for those violations. Just a few of those western states would be Alaska, Arizona, Colorado, Idaho, and there are many others, Florida being one of them.

Current law in Nevada does allow a law enforcement officer to stop and temporarily detain a motorist when the officer has probable cause to believe the motorist has violated a traffic law. States that have adopted civil penalties for traffic and related violations have not impacted that authority of law enforcement. In those states, law enforcement officers continue to be authorized to stop, temporarily detain and cite a motorist for a suspected traffic violation. Another aspect of these laws of other states: in Nevada, the current law is that a person who is stopped and temporarily detained by a law enforcement officer for a suspected traffic violation is required to provide satisfactory evidence of identity. States that have adopted civil penalties do retain this requirement in their law and continue to impose misdemeanor criminal penalties for failing to produce valid identification upon request of an officer who made a valid traffic stop.

Also, currently in Nevada, a motorist is required to sign a promise to appear in court when a traffic citation is issued, or as a result of the passage of Assembly Bill (A.B.) 68, the motorist may refuse to sign a promise to appear but accept service of the citation. Generally, in states that impose civil penalties for traffic violations, a written promise to appear is no longer required, but the approach set forth in A.B. 68 is followed so that the person is served with a traffic ticket but does not sign a promise to appear.

As has been indicated by presentations from the various courts, currently in Nevada, a person may pay a traffic ticket without making an appearance in the court, or the person may appear in person or through a representative and make a plea and have a trial date set. In states that impose civil penalties for traffic and related violations, there are really many different types of procedures whereby a defendant who doesn't wish to challenge the citation may enter a plea and make a payment. These include making payments over the internet, by mail, in person at the court, and there are also procedures whereby defendants that want to challenge a ticket don't necessarily have to appear in court to make the plea or challenge the ticket. There are procedures where a defendant could submit a written statement to the court and a written plea to the court without having to appear in court.

Another aspect of the civil systems: in Nevada, a defendant who fails to appear in court may have a warrant issued by the court for their arrest. In states that impose civil penalties for traffic violations, the failure to pay or to appear does not result in the issuance of warrant and is usually not the basis for additional punishment of the defendant. Typically, the failure to appear results in a default judgment against the defendant and there is usually no additional punishment beyond the punishment for the traffic violation itself. These states also generally have a procedure to seek relief from a default judgment if that relief is sought within a specified period of time. I've seen usually 30 days or so. Someone who didn't appear in court has a default judgment and is usually given somewhere around 30 days to seek relief from that default judgment.

Under current law, because traffic and related violations are criminal offenses, the U.S. Constitution and the Nevada Constitution require the facts constituting the offense to be proved beyond a reasonable doubt. Adoption of a system of civil penalties would enable the Legislature to adopt a different standard of proof. Many states have adopted the preponderance of the evidence standard that is typical of other civil cases, but the Legislature could also adopt a higher standard of proof if it chose. For example, Idaho enacted its system of civil penalties but maintained the burden of proof and rules of evidence required for criminal trials. So in Idaho, even though it's a civil system, the burden of proof remains beyond a reasonable doubt. With respect to the punishments for persons convicted of traffic and related violations, under current law, because traffic and related violations are misdemeanors, theoretically, the punishment is a confinement in county jail for not more than 6 months or a fine of not more than \$1,000, or both fine and imprisonment, unless a specific statute sets forth a different punishment. By statute, people convicted of a traffic or related violation are authorized to do community service in lieu of the fine or imprisonment. In civil systems adopted by other states, there is no possibility of imprisonment as the punishment for a traffic or related offense. States with civil penalties will impose monetary civil penalties and add on various fees and assessments to those penalties.

Finally, states that impose civil penalties only impose civil penalties for minor traffic and related violations. Generally, the laws in those states provide that any violation of a chapter or title setting forth the traffic laws is a civil infraction or a noncriminal infraction, unless a different penalty is stated for a particular offense. What happens in these states is the legislature goes through the traffic and related laws and determines which offenses are serious enough to warrant being a criminal offense. There is variation among the states. For example, looking at Arizona, just a few examples: driving under the influence is still a criminal offense, driving without a driver's license is a criminal offense, reckless driving continues to be a criminal offense, a second occurrence of aggressive driving within 2 years would be a criminal offense, failure to comply with lawful orders or directions of an officer authorized by law continues to be a criminal offense. Finally, driving faster than 35 miles per hour when approaching a school crossing also continues to be a criminal offense. Causing death by use of a vehicle continues to be a criminal offense. States really do vary in what they deem to be more serious and worthy of being considered a criminal offense.

The most recent development in this area is what the handout is about, and this is from California (Agenda Item VII). The California Commission on the Future of California's Court System did a review of the state's court system and how court operations could be improved. One of their recommendations here, Recommendation 2.4, which is what the handout addresses, was to implement a civil model of adjudication for less serious traffic violations. That recommendation has resulted in A.B. 2655 in the California Legislature, which would require the Judicial Council of California to develop a proposal to implement the civil adjudication model for minor traffic violations. The deadline for the proposal would be January 1, 2021, and the Judicial Council would be required to hold

public meetings to develop the proposal and report periodically to the legislature. That's been the most recent development in this area that I just wanted to inform the Committee of. This bill is still going through the process in California, so it has not been passed yet.

Chair Yeager:

Thank you, Mr. Fernley. Any questions for Mr. Fernley?

Senator Gustavson:

You were listing down the traffic violations that would still be criminal offenses. I did not hear you mention about running red lights. Would that not be a criminal offense?

Mr. Fernley:

The states do vary quite a bit. I haven't looked through all of the states. The one I did look at was Arizona, and I think that running a red light there is a civil penalty. There might be circumstances that cause it to become a criminal penalty. For example, if an accident occurred and someone was killed, that might be a criminal penalty, or if it rose to the level of reckless driving. I think that would also be a criminal penalty. But if it's just running a red light or running a stop sign, that would be a civil matter in Arizona.

Senator Gustavson:

What about Nevada? Would that be in Nevada also? I understand that it can be enhanced with an injury or something like that there, but just normally. We have epidemic proportions of running red lights in Clark County, Washoe County and some of the other areas, and it's not being enforced like it should be, in my opinion, so I just wondered if—I'd hate to see that just be a civil penalty.

Mr. Fernley:

In Nevada, that is currently a misdemeanor. If this Committee decided to propose the enactment of a civil model for traffic offenses, it would be up to the Committee to decide which particular offenses would become civil, which would stay criminal, so that would be an issue that the Committee could consider.

Senator Gustavson:

Thank you.

Assemblyman Ellison:

As I'm looking through the states, what you've got here, and you're looking at the states, every state varies a little bit different, but other than California, it's not that big a change, is that correct? Because you've got Wyoming.

Mr. Fernley:

Just in looking at the states that do this, a lot of western states do have this: Washington, California looks like they're going to propose it, Arizona has civil, Colorado has civil, Idaho has civil penalties. The states around Nevada have this system. I don't know if that answers your question.

Assemblyman Ellison:

It does. I've got a bill in, it's a bill draft request (BDR) right now, and it's on commercial private property where an incident happened with, and I hope it doesn't affect what we're looking at, but I had a young man killed in a Walmart parking lot walking out of the parking lot, and a young man was driving at a higher speed texting, no driver's license and no insurance, and he was found not guilty of all charges. So, I'm putting a bill in that I'm hoping we can look at some of these situations on private property and commercial parking lots. I hope it doesn't affect this, but I will be coming with that bill. I think that's important that we look at some of these issues.

Assemblywoman Neal:

It was mentioned that in other states they use default judgment and not warrants, but what I want to know, and I don't know if this is a proper question, is the default judgment more effective in the collection activity versus having a warrant that's attributed to the citation?

Mr. Fernley:

I don't know the answer to that question. I haven't been able to find any information from these states as to what happens with their collection rates. I also want to add that, in addition to default judgments, those default judgments usually require the civil penalty to be paid within a certain amount of time, for example, 30 days. If it's not paid, the other sanction that comes into play is driver's license suspension, so that's something that these states do impose when the civil penalties are not paid in accordance with the judgment.

Assemblywoman Neal:

Were you able to get any information on the driver's license suspension, because maybe that anecdotally will say what's happening?

Mr. Fernley:

I don't have any information on that.

Chair Yeager:

Seeing no further questions, I am going to close agenda item VII, and we're going to open agenda item VIII, which I think kind of dovetails nicely off what we just heard and may answer some additional questions. We're very fortunate to have with us on the telephone Dirk Marler from the State of Washington, who is the Chief Legal Counsel and Court Services Director. He's going to tell us about Washington in terms of civil infractions, and perhaps answer some of these questions or provide some guidance to Nevada. Thank you for spending some time with us here this morning. We do have a copy of your presentation (Agenda Item VIII), Mr. Marler, so if you can take us through your presentation, when you're finished, I will open it up for any questions.

Dirk Marler (Chief Legal Counsel/Court Services Director, Administrative Office of the Courts, State of Washington):

I appreciate having the opportunity to spend a few minutes with you talking about Washington's experience with decriminalizing minor traffic offenses. As the Chair indicated, I am currently the Chief Legal Counsel and the Director of the Court Services Division with the Washington State Administrative Office of the Courts. Previous to that, I spent about 8 years practicing law in this area, served as a fulltime judge in one of our district courts in central Washington, then spent a stint with our State Department of Licensing, the equivalent of your DMV, and then joined the AOC in 2004. I've been working in and around these issues for quite some time.

On slide two (Agenda Item VIII), the plan this morning is to talk a little bit about Washington's process for changing from the criminal process, which sounds fairly similar to that which was described by your guest from Elko earlier today, to the civil process that we currently use, and that happened in about 1981. I'll then walk through the current process that we use sort of at a high level. I'll briefly describe some of the impacts on that change in our state on revenue, expenditures, safety and the public experience. I'll conclude by offering some observations about what appear to be the positive and negative aspects of the process that I hope will be helpful to your Committee's work, and then have an opportunity for some questions. As the judge who testified earlier indicated when expressing his opinions, that they were his and not those of the association that he represents, in general, the opinions that I'm going to present

to you today are those from my experience and not necessarily the official positions of the AOC, and certainly not of the Washington Supreme Court.

On slide three, on January 1 of 1981, Washington became the twelfth state to decriminalize minor traffic offenses. Ours was really part of a broader effort that was led by our judiciary to reduce court congestion, and that included increasing the civil jurisdiction of our district courts, our limited jurisdiction courts, authorizing mandatory arbitration in certain civil actions, and also modifying procedures for appeals from those courts of limited jurisdiction. While those actions were designed for an overall system benefit and to reduce the workload of our superior courts, which are our courts of general jurisdiction, those changes, as well as corresponding changes to the requirements for electronically recording all limited jurisdiction court proceedings, placed additional pressure on our limited jurisdiction courts. In the early 1970s, state and federal courts, as you know, had decided that there was a right to be represented by appointed counsel in cases where jail time was a possible punishment, even if it was exceptionally rare that jail time was actually imposed for the offense. At that time, most Washington traffic offenses were punishable by fine and imprisonment, even though about 80 percent of those were disposed of by posting and forfeiting bail. Again, it sounds similar to the experience in Elko from earlier this morning. But the concerns about the cost of appointing counsel for minor offenses and the cost to prosecuting them also coincided in Washington with an increasing belief that jail time really wasn't either an appropriate or a necessary sanction for most of the more minor traffic offenses. Our Washington State Judicial Council established a Taskforce on Decriminalization of Minor Offenses in 1976, and that taskforce drafted legislation that was first introduced the following year, 1977, which managed to pass in our senate, not in the house. A couple of years later, they took another run at it with a revised bill that passed in 1979 and was signed into law. Technical amendments were made to address implementation changes in 1980 and 1981, and as I indicated before, then we sort of went live with our new process in January of 1981.

On slide four, as these changes were working their way through the process, our limited jurisdiction courts actually supported the legislation because they argued that the change was necessary for them to continue functioning well in light of the changes to their jurisdiction and procedure that were being proposed at the same time. Law enforcement wanted a system that allowed them to keep more officers on the street instead of testifying in court on minor traffic cases. Our prosecutors wanted a system that freed them from handling minor traffic cases so that they could focus more time on the more serious offenses. The change in law also supported a view by our policymakers that it was important to have a more consistent and uniform system for adjudicating traffic offenses throughout the state, because at that time, there were significant variations in how the cases were being handled across the state, what the penalties were, what the process was, so that led to considerable confusion by the public and had an impact on the trust and confidence in the justice system itself.

On slide five, once the bill passed, a number of traffic infraction rules were prepared by the State Judicial Council and later adopted by the Supreme Court to operate statewide. Those rules included a monetary penalty schedule for infractions and, also consistent with the statute itself, required the use of uniform citations and notices of infractions that were prepared by what is now my office, the AOC. The Supreme Court emphasized that the infraction rules are to be construed to secure the just, speedy and inexpensive determination of every traffic case.

On slide six (Agenda Item VIII), you'll see a somewhat simplified, although seemingly complex, depiction of how our process now works in Washington. Washington's approach essentially presumes that all traffic offenses are infractions unless specifically deemed criminal by the legislature. As Mr. Fernley indicated before, similar to Arizona and others, that major traffic offenses, reckless driving, driving under the influence and the like, are clearly criminal, but speeding tickets and other more typical and less serious offenses are handled as civil matters. The process in Washington generally works like this: a law enforcement officer will initiate a stop and issue a notice of infraction, the ticket. In most cases, that happens when the individual is pulled over and happens alongside the road, but it can also be issued later on following an investigation. In that case, the infraction is served on the defendant by mail typically, or it can be in person. In Washington, statewide, about 86 percent of all of these tickets are now created and filed with the courts electronically with a statewide application that our law enforcement officers use, and it's maintained by our state patrol. Those tickets are required to be filed with the court within 5 days, excluding weekends and holidays. For those that are electronic, it's exceptionally rare that the ticket is not filed for processing in the court within a matter of hours, so it's now a fairly rare instance where an individual will try and take care of or pay a ticket before it's actually been filed with the court, which at one time was an issue. With our process, the notice of infraction, according to our statute, represents a determination that the infraction has been committed, and that's a final determination unless it's contested by the defendant by taking action with the court. The violator is provided with this notice of infraction, the ticket, that gives them 15 days to respond. They may respond in one of three ways. First, they can pay the ticket in full. They can do that by mail, by appearing in person. In most courts, they're able to also pay that online or by phone. They may also request a mitigation hearing, which is an opportunity to ask for a penalty reduction or for timed payments, or they may ask for a contested hearing to actually challenge the infraction. If the person pays the infraction, then the case is adjudicated by the court. The disposition is then sent to our State Department of Licensing, and there is no court appearance either scheduled or held.

On slide seven, with the case of a mitigation hearing, the person requests a mitigation hearing. The court will then send the notice for a hearing. That must occur with at least 14 days' notice to the individual, but is required to take place within 120 days of the date that the notice of infraction was issued. Our courts may also, by local rule, permit a defendant to submit a statement by mail or by email in lieu of personally appearing for that mitigation hearing. The court will send them information about that option, and

sometimes a form that the person may fill out, along with the hearing notice. If the person chooses to submit a written statement instead of appearing in court, the court informally reviews the police report, the person's driving record and the written statement. They will notify the person of the decision and the payment amount and a payment deadline. Our courts may also permit a defendant to appear for these mitigation hearings by telephone or by videoconference, although that still must be in open court and on the record. The mitigation hearings are very informal. The rules of evidence do not apply. In more than 14 years of hearing these cases in my experience as a judge, I can never recall the prosecuting attorney or a police officer appearing in court for a mitigation hearing. At the end of the mitigation hearing, the court can usually reduce the penalty, provide a community service option, permit timed payments, and our law also gives courts some limited discretion to defer a finding on an infraction for a period of time, and then eventually dismiss it once every 7 years for either a moving or nonmoving violation. In the case of mitigation hearings, also there is no right to appeal, so it's simply a determination from the court about the amount of money and how it's going to be paid.

On slide eight, we talk about the process for contesting the infraction. If a person requests a contested hearing, the court sends a hearing notice, again with at least 14 days' notice and not more than 120 days down the road. Similar to the mitigation hearing, the court may by local rule permit a contested hearing to be based upon the officer's report and a written statement that is submitted by the defendant either by mail or by email. There is no appeal, however, in the case of a decision that's based on a written statement. At a contested hearing, both sides have the opportunity to subpoena witnesses, including the officer. If demanded by the defendant, limited discovery must be provided by the prosecuting attorney. That would include the officer's statement, access to video or photographic evidence and the name of any witnesses that are not otherwise identified in the police report. Again, the discovery is automatic but very limited. The defendant may be represented by counsel, but again, since this is a civil matter, the counsel is not appointed at public expense. By local rule, the court may require the prosecutor to appear. As a practical matter, in most courts, prosecutors appear only on cases where there may be a defense counsel or a significant accident case, if at all. These cases are all tried to the bench. There's no right to a jury trial. The rules of evidence do apply at contested hearings, however the court may consider the information that's on the notice of infraction, the face of the ticket, if you will, or the officer's report on the back of the ticket, may consider as evidence any other statement made under oath by the officer who wrote the ticket or was the basis for the officer issuing the ticket. The plaintiff is then required to prove by a preponderance of the evidence or more likely than not that the defendant committed the infraction. If the burden is satisfied, the court finds the infraction committed and assesses an appropriate monetary penalty, which may not exceed the amount that is in the state schedule from the Supreme Court. If the burden is not met, the case is dismissed. Neither party in an infraction case is entitled to court costs or attorney fees, and with these infractions, they are based upon state statute and statewide penalty schedules, so we don't have local

costs that are added to the infraction, even though there are numerous distributions to other state accounts for various purposes, including court technologies, which was mentioned earlier from the situation in Elko.

On slide nine (Agenda Item VIII), if the defendant at any point fails to respond to the initial notice, the court will find the infraction committed, essentially the default judgment as described previously by Mr. Fernley. The court assesses the monetary penalty, and then adds a \$25 penalty on top of that for the failure to appear and then notifies the Department of Licensing of the infraction. If the infraction is a moving violation, then the Department will notify the defendant of their intent to suspend the driving privilege until the infraction is either paid or removed based upon some adjudication by the court. If the defendant fails to appear at a hearing they had requested, a mitigation or a contested hearing, basically a similar result, that the Department of Licensing is notified and the default judgment is entered, and then the individual is notified that the driving privilege would be eventually suspended.

On slide 10, we talked a little bit about the process for collecting on these infractions. As indicated before, a committed infraction is considered a civil judgment, and it can be collected through the ordinary civil process. Most of our courts of limited jurisdiction assign these cases out to private collection agencies after a period of time rather than doing in-house collections. Once assigned, collection costs are added to the debt. Again, this is a local option, and the state law permits a reasonable fee to be added as a collection cost. That can be up to 50 percent of the debt in these cases, the rationale being that the cost of collection should not reduce the amount that's owed to the governmental entity and is passed upon to the debtor or the consumer. The actual amount of that collection fee though, up to that 50 percent, is based upon contracts that at this point are negotiated by individual courts with collection agencies.

Slide 11 talks about evaluating the impacts from Washington's change from the criminal to the civil process based on unfortunately fairly limited studies that were done afterwards. One of the most immediate effects that Washington experienced was that there was actually a significant increase in the penalty for many of the traffic violations. This was really due to two different things. One was that the people who set the basic penalty schedule, those on our Judicial Counsel and eventually ratified by the Supreme Court, felt that a higher penalty was appropriate for some violations because of the significant number of related accidents, frankly, so a number of those were increased. For some, the penalty was set a bit higher, and for certain rule-of-the-road-violations, we also added an accident penalty that was hoped to be something of a greater deterrent. Those things may account for the increase in some of the penalties when this initially took effect. Immediately after the decriminalization, several trends were noted. There was a very small increase in the overall number of traffic filings. There was a large increase in the number of criminal traffic charges filed, however. The infractions and the crimes needed to be filed on separate charging documents, separate types of tickets, because the notice provisions were different, so the officers tended to write only

the most serious violations at that time. Now that the process is generally electronic in our current environment, that's not necessarily the case. That same incentive doesn't necessarily exist. It's almost as easy to write multiple tickets as it is to write one. In the first 7 months after our process took effect, our Department of Licensing received 58 percent more notifications of failure to respond. There were several factors with that. The higher penalties may have deterred some of the defendants from responding. They were used to lesser penalties. But one of the other aspects was that there was a significant amount of training for court personnel around the state, so it was also felt that it was likely that they were better trained at that point and knew better about what their requirements were to forward the notices of failure to appear under law.

One slide 12, in terms of the case dispositions, we found that there was essentially no change in the rate at which a guilty or committed finding was entered. Before the law took effect, about 81 percent of these cases were resolved by bail forfeitures. The data immediately afterwards showed that about 65 percent were paid without court intervention. Fewer people wanted to talk with someone about their case, and when they did, it was really only to talk about the penalty, not whether they committed the infraction at all. Again, those are very simple and quick proceedings and don't normally involve a prosecutor and never involve a police officer being on the hook to come to court. In recent terms, court revenue from traffic cases actually increased substantially, but we can't tell from the available data how much of that might have been the result of the increased filings on more serious cases, or because of the higher penalties that were assessed at about the same time. There really weren't good controls in place for being able to differentiate and be able to tell what caused that result.

On slide 13 (Agenda Item VIII), maybe some other considerations that prior to the change, we had about 1,300 appeals from these cases per year. In 2017, there were 33 appeals of determinations in traffic infractions out of nearly 2,000,000 cases that were resolved. In 2017, Washington courts resolved 832,000 infraction charges. About 13 percent of those were contested. About 11 percent resulted in a mitigation hearing. About 35 percent were paid in full outright. About 1 percent were found not committed, the equivalent of a not guilty. Our data suggests that right now, about 57.5 percent of those contested hearings where the person effectively pleads not guilty do not involve either a prosecutor or a defense attorney appearing in court. About 92 percent of all traffic infractions were resolved without a police officer being subpoenaed or appearing in court. Our overall statewide collection rate is about 37.4 percent of the amount ordered. That's an average over about the last 8 years. Some years are higher, some years lower, and some courts have a higher rate than others. But roughly, the statewide average is about that 37.4 percent.

On slide 14, there are some observations. Trying to enforce tickets by suspending driver's licenses creates some significant problems in its own right. While we've dramatically reduced the involvement of prosecutors and eliminated the need to consider appointing defense counsel in minor traffic cases by this decriminalization

effort, to a significant extent, some of those savings and efficiencies have been balanced or even overcome when those who don't pay are charged with driving while suspended and then come to court to have to resolve those. When we overlay that with the data that suggests that there are disproportionate impacts on racial and ethnic minorities, disproportionate impacts on the poor, in Washington, we've taken a number of steps to mitigate that impact. Our legislature in 2013 eliminated driver's license suspensions for failure to appear or respond on what are considered nonmoving violations that again seem to have a disparate impact on the poor and didn't directly impact traffic safety. When we did that, that alone reduced the number of failures to appear suspensions in our state by about 49 percent overnight. Our notices of infraction, our tickets, now tell people about the availability of payment plans, and our courts are more willing to allow timed payments or community service alternatives than they once were. Many courts have special programs or processes to work with drivers to get them relicensed and insurance.

A final point is that, like most jurisdictions around the country, Washington is experiencing a reduction in filings over all, and particularly a reduction in the number of traffic tickets. This has been a trend for several years across the country, and I would suggest that in a post-Ferguson world, one in which we're really seeing an increase in automation and traffic safety devices in vehicles, that's a trend that's probably going to continue. It would be increasingly problematic for cities and states to look to traffic tickets as dependable or even appropriate sources for revenue, and certainly a discussion that we're having within our state as we're seeing declining filings and declining revenue from these traffic tickets. It seems to me that your state would do well to look at that trend, and perhaps focus on defining processes for efficiency, for cost reduction or cost avoidance, and convenience to the public, because it's likely that that revenue source again will be increasingly problematic in future years.

With that, I appreciate your time and am open to any questions that you may have.

Chair Yeager:

Thank you very much for your presentation. That was a lot to absorb, but I think it was very helpful in giving information to this Committee about Washington's experience. I know we have a number of questions.

Assemblywoman Neal:

You mentioned the collection rate on slide 13 (Agenda Item VIII), but I was wondering—I have two questions associated with that. What was the prior rate before this implementation? The second question related to that is, when you said some courts have higher rates of collection, I wondered why. Could you get a little bit deeper into that?

Mr. Marler:

First of all, I don't have good data, unfortunately, to give you on collection rates before. At least, the ability that I've had to pour through data from the 1970s, the data just isn't readily available to me. In terms of the collection rates and the differences there, I think that has a lot to do with the demographics of the community as much as anything else. You're going to see a higher rate of collection in more affluent communities than in those that have a different socio-economic demographic.

Assemblywoman Neal:

So, you're saying that courts that reside in or have residents that come in from the poorer communities, you actually have a lower rate of collection? That's what you're saying?

Mr. Marler:

It's more difficult to get money from people who don't have money.

Assemblywoman Neal:

True statement. When you made the statement on slide 14 that reliance on ticket revenue is problematic, what are some of the lessons that you learned, or how did you guys supplant or move away from this reliance on ticket revenue, or have you?

Mr. Marler:

Well, I think we really have not, at this point. I heard some discussion earlier as an example about some of the assessments that are used to fund technology in courts, and to use an example here in Washington, our judicial information system account, which is a dedicated legislatively appropriated account for court technology, that comes from assessments on traffic tickets. We are now experiencing a decline in revenue. Three or four years ago, the Supreme Court increased the amount of that assessment on the ticket so that we could sort of keep up, both with the demand on our end for resources for technology projects, but on the other hand make up in part for some of the decrease in the revenue that was coming in from the traffic ticket filings. We are right now in the early stages, and I would suggest and have suggested that we are probably behind the curve in trying to look for alternatives. I'm not sure anybody's come up in our state with a very good alternative to that declining revenue source at this point.

Assemblywoman Neal:

You were listening to the prior presentation. When we were discussing the collection hierarchy, do you guys have a certain way that you guys collect the fees in statute?

Mr. Marler:

Yes. Generally, we offer a statewide case management system. We have a couple of jurisdictions at this point that are not using it, but the prioritization process is set up and enforced by our case management system based upon the legislative priorities generally. Those assessments that are mandated and can't be required are sort of the first that get paid, but again, these are all set legislatively. There are not local fees and taxes that get tacked on, so it's really the same process of prioritization throughout the state. We have a number of fees on our infractions. I mentioned before that we have the portion that goes to our court technology. We have a trauma care account at the state level, an auto theft prevention account, a traumatic brain injury account that's funded from these, and then the balance goes into either the state general fund or is apportioned into the local general fund. Those that can't be waived sort of get paid from the top, but the way the system is set is that when payments get made, they get applied proportionally to fill all of those buckets.

Chair Yeager:

Did I understand you to say that when this initially was implemented that the fine schedule was something that was created by the courts rather than the legislature?

Mr. Marler:

Yes. The statute actually requests that the Supreme Court adopt the penalty schedule and that they periodically update it to reflect inflation. It was originally developed by the Judicial Counsel. Now, the Judicial Counsel at that time in Washington was a statutorily created body, and the membership included some legislators as well as members of the judiciary. That group developed it, proposed it, brought it to the Supreme Court that adopted the schedule, and then periodically now adjustments get made by the Supreme Court.

Chair Yeager:

Okay, that is helpful. Are violations—we'll call them minor traffic infractions, I guess, whether moving or nonmoving. Are those always violations of state law, or do your local governments in Washington have the ability to criminalize those events as well?

Mr. Marler:

In general, the state preempts the field with respect to traffic enforcement. Those offenses that are covered at the state level by state law, locals can't enact their own version with their own separate penalties. There are some cases where a local jurisdiction may be able to adopt a violation by local ordinance that is not covered in state law. One example of that is that our state law does not have a violation for

inattentive driving, and yet there are a number of local ordinances for inattentive driving. We have negligent driving. We have reckless driving at the state level. The locals would not be permitted to have a reckless driving or a negligent driving offense which is substantially similar to the state law. They would be preempted from doing that.

Chair Yeager:

My question as a result of that was that you had mentioned that local court systems can enter into collection efforts, so I guess when I step back, I'm looking at—I guess the violation of state traffic infractions, is there some kind of a revenue sharing that happens between the states and the collecting entity? I guess the question is why would the local court want to even engage in the collection efforts unless they receive some of that revenue as well? I know that's kind of a detailed fiscal question, but is there a difference between state versus local infractions and how that money is spent?

Mr. Marler:

Not really. That's part of the reason. There is a split on all of the traffic infractions. For example, take a typical infraction. It might average \$136. Out of that—and I might have the exact amount. Out of a \$136 ticket, local government retains \$47.94. The state general fund gets \$48.06. The state judicial information system account receives \$23, the trauma care account \$5, auto theft prevention \$10, the brain injury account receives \$2. Even though there are no local assessments that get added, no local costs that get added, local government decides how they're going to use that \$47.94 in their own community.

Chair Yeager:

You had mentioned that courts have a local option to allow offenders to either mail or email statements in. Are those forms consistent amongst the courts, or does each court sort of have the option of what exactly that process looks like?

Mr. Marler:

There is some ability to be creative at the local level. There is a statewide form that's available, however, and I can make it available to counsel, if you'd like.

Chair Yeager:

Yeah, that would be fantastic, if you could provide us with a sample of that.

Mr. Marler:

Sure.

Chair Yeager:

You had mentioned that in most of the contested hearings, for the most part, no attorneys show up, including prosecutors. I was curious, if we have a situation where subpoenas had to be issued to, say, an officer on the scene, is it still the prosecuting agency who's responsible for sending those subpoenas, or does the court sort of become involved in making sure that the evidence is there?

Mr. Marler:

The court really isn't responsible for making sure evidence is there. Our philosophy is that that still is a prosecution responsibility. What happens is that our courts are required to notify the defendant of the process for issuing a subpoena, including a subpoena for the officer, and then the defendant would be responsible for issuing the subpoena if the defendant requests that the officer be present. Prosecution could do it as well, but they typically do not. Specifically, the prosecution is going to rely on the officer's report.

Chair Yeager:

In a contested hearing when there is a prosecutor involved, and I guess I understand that there aren't many times that that happens, but can the defendant be compelled to testify in that hearing, or do they retain a Fifth Amendment right to not testify?

Mr. Marler:

It's a civil action, so they could be compelled.

Chair Yeager:

I think I understood you to say, but let me make sure, when you have an offender who decides just to pay the fine without ever coming to court, does that operate as an adjudication on the merits such that essentially whatever infraction that is gets reported to your equivalent of the DMV?

Mr. Marler:

Yeah, that's correct.

Chair Yeager:

Okay. I think that's all the questions that I have. I know we asked a lot of questions, but do other members have any remaining questions that haven't been answered yet?

Assemblyman Ellison:

On page 9, it says infractions committed add \$25. The notice went to the Department of Licensing. It says here “suspended.” Was that the \$25 suspended, or is that the license suspended?

Mr. Marler:

Yeah, that’s the license that ends up getting suspended if there’s a failure to appear or respond.

Assemblyman Ellison:

Okay. What happens if that person gets picked up again driving then on a suspended license? Is that incarceration or a fine, or what is that?

Mr. Marler:

At that point, once they’re suspended, if they’re picked up for driving while their driving privilege is suspended, they can be charged with a crime that carries a penalty of up to 90 days in jail and a \$1,000 fine, plus all of our costs and assessments that get loaded on top of that.

Assemblyman Ellison:

The collection average is on page 13, 37.4 percent. Isn’t that pretty low? Isn’t that a burden back on the taxpayers?

Mr. Marler:

Well, I guess that’s a value judgment I’m not necessarily prepared to make. I guess I would also indicate that it sounded like even with the criminal process that it seems like there’s a relatively low collection rate, that the rate of collection doesn’t necessarily include those where—well, I guess maybe I should stop at that point. It’s not a high rate of collection, I’ll certainly grant you that. I don’t know how it compares to the current experience in those states that are using a criminal process and whether or not it balances out, because as I indicated before, you can look at the collection rate on the one hand, on the other look at what the cost is of collecting that by a process that appears to involve more court proceedings, more court time, the possibility of incarceration and arrest warrants. That’s just sort of a balance and a policy judgment that policymakers will need to make.

Assemblyman Ellison:

Thank you.

Senator Gustavson:

You talked about congestion in the courts, and this was one reason why you want to change—or you've been that way since 1981 on civil infractions. But what percent of minor traffic citations actually go to court? Do you have that figure?

Mr. Marler:

Currently? I'm trying to recall. I know I cited that, I think, in here somewhere. Currently, about 13 percent are contested, about 11 percent are mitigation. So, those that would involve some sort of court proceeding would be roughly 24 percent of the total.

Senator Gustavson:

Okay, thank you. I thought you'd mentioned that, but wasn't sure. I was trying to write it down. Thank you.

Chair Yeager:

Okay, I think those are all the questions that we have. Again, Mr. Marler, I want to thank you for presenting to us by phone today. I think this was really helpful, and I appreciate that you provided your contact information because I suspect I'll be reaching out to you probably before we get to our work session with some additional questions. Again, thank you so much, and please have a good rest of the day.

Mr. Marler:

You're welcome. Thank you very much.

Chair Yeager:

I'll go ahead and close agenda item VIII.

THE CHAIR CALLED FOR A BRIEF RECESS.

Chair Yeager:

We'll move now to agenda item V. Committee members, you may recall at the last meeting we had a presentation essentially about the money that gets paid to the state for traffic fines and where that money goes and how the interest gets distributed to the

Distributive School Account (DSA), so we've asked Mr. Fernley to come back today and answer some additional questions that were posed at the April 30 meeting on that information.

Mr. Fernley:

You will have in your packets a table (Agenda Item V), and it might look very similar to the table that was provided at the last meeting. It's a table of revenue figures. At the last meeting, if you remember, I presented on the requirements of the Nevada Constitution. Article 11, section 3 requires state criminal fines to be used solely for education. The way that has been implemented is that there is a Permanent School Fund, and you'll see in the first two columns of the table the amount of criminal fines that have been transferred into the State Permanent School Fund in fiscal years beginning in Fiscal Year 2001 until the last fiscal year. You'll see district court fines and justice court fines. What we've done in response to questions from the last meeting about how much actually gets into the DSA, the Fiscal Division gathered information and added this third column to the table that shows the actual amounts that have been transferred to the DSA from the Permanent School Fund. Again, there are several sources of revenue that go into the Permanent School Fund, so it's not just state criminal fines that go into the fund. Also, it is the interest only on the money in the Permanent School Fund that is distributed to the DSA. The principal of the fund just collects money from the sources of revenue that go into the fund and just continues to grow. It is the interest that actually gets transferred to the DSA and distributed to counties for education. Those are the amounts in the third column there that was added. I'd be happy to answer any questions.

Senator Tick Segerblom (Senatorial District No. 3):

So, you're saying if we're earning \$4,000,000 in interest, then how much money is actually sitting there?

Mr. Fernley:

The Fiscal Division contacted the Controller's Office, and the information provided to us is that as of the end of Fiscal Year 2017, there is approximately \$350,800,000 as the principal of the fund. You'll see on that principal, roughly \$4,600,000 in interest was earned and distributed to the DSA.

Senator Segerblom:

And their interpretation is that's what the constitution requires, that it sits there?

Mr. Fernley:

Yes, the constitution does require that it is interest only earned on money, and I can read directly from it. Article 11, section 3 says, "The interest only earned on money derived from these sources must be apportioned by the Legislature among the several counties for educational purposes." The Permanent School Fund takes in money from all the sources of revenue that go into the Permanent School Fund. The money in the fund is invested, and the interest earned on those investments then goes to the DSA.

Senator Segerblom:

And we can't spend the \$350,000,000?

Mr. Fernley:

No. Under the state constitution, it's restricted to only the interest being spent.

Assemblywoman Neal:

In the notes, the accounting procedure change that was made in 2013, can you break that out a little bit more, because they were saying there was a timing difference in how the interest was calculated?

Mr. Fernley:

I will actually go back and get more information on that. You'll notice there in Fiscal Year 2013, the amount of interest transferred from the Permanent School Fund to the DSA was \$0, and in conversations with the Controller's Office, that was the result of a change in their accounting procedures, not really anything substantive. But I will go back and maybe get a fuller explanation of what that change was, and I can provide that to the Committee.

Assemblywoman Neal:

Yeah, because it would be interesting to find out, because the amounts got lower, and then when you look at the actual recession years, really 2009, 2011, the interest was a little bit higher, so I'm just super curious about what happened.

Mr. Fernley:

Certainly. I will get in contact with the Fiscal Division and the Controller's Office and I'll put something together for the Committee and I'll send it out to everybody.

Senator Gustavson:

I'm just kind of curious. I'm not sure where this money is invested. If we're only able to use the interest on that money, that probably only amounts to about 1 1/4 percent that we're receiving, which in today's market, if it's in a bank, that's good. But I know our State Treasurer and Controller invest this money or state funds in many different accounts. I just wondered if this is limited to certain accounts, or can it be invested like the rest of the funds that are in the state?

Mr. Fernley:

I will actually get more information on that too. I don't have an answer off the top of my head, but I will get in touch with the Controller's Office and get a breakdown of where the money in the Permanent School Fund is invested. I'll also send that out to the Committee.

Assemblyman Ellison:

With the interest in the DSA, does that go equally throughout the whole state based on population? Is that how that works, that interest rate? Do you know that?

Mr. Fernley:

I don't know that. The money goes into the DSA and it would be distributed as other money in the DSA is distributed. I don't have great knowledge of how education funding works and how the money in the DSA then gets from the DSA to the county school districts, but I can also get some more information on that and provide it to the Committee.

Assemblyman Ellison:

The reason I ask that is because I didn't know if it went into the general fund or if it went for special things. It says down on here at the bottom, "Education K-12," but is that for driving, or just in general?

Mr. Fernley:

Again, I'm not sure. The method of funding education is not my expertise, but I will take that question and I'll put together answers to all of these and get them distributed to the Committee.

Chair Yeager:

Seeing no further questions, I'll ask Mr. Fernley to try to follow up on some of that, at least in a cursory manner. I think it would be helpful for the Committee to know. I do think the point of this chart, if it wasn't made clear, was that the monies that we're talking about that get entered into the Permanent School Account from district court fines and justice court fines, keep in mind, those are the amounts of fines associated with state traffic infractions. That's the money that's remitted from the local courts for state infractions. I know we had some testimony in a couple of other meetings about how various violations are characterized, whether they're characterized as state, county or city, and just keep in mind, if it's a county or city infraction and that's how it's adjudicated, that money does not go into the State Permanent School Fund, so one of the reasons I asked for this chart was really simply to see what the amount of fines were over time that were being remitted to the State Permanent School Fund. We go back almost 16 years here, and we do see a drop, obviously, in justice court fines. I am aware that we're seeing reduced revenue across the board, and probably as you'd expect, when the economy was good, we saw more money going into there, but it does look like in Fiscal Year 2017, we're at one of the lowest levels in the last 16 years. It does concern me that that interest goes to the DSA which goes directly to public education in our state, so we want to make sure the state is capturing the money that it should be capturing for the Permanent School Fund.

Senator Segerblom:

Looking at the fines themselves, it looks like they actually peaked during the recession. It looks like maybe the government tried to make up for shortfalls by increasing the fines. This also doesn't include the fees too, right? This is just the fines?

Chair Yeager:

Correct. What you have on the chart is simply the fines that were assessed for state traffic infractions. This would not include any of those administrative assessment fees, court improvement fees. Those all statutorily go to other places. That's what you're looking at here on this chart, and I thought it would be helpful just to see that over time.

Senator Segerblom:

Could we get a chart for the fees too?

Chair Yeager:

I believe we might have had one from Mr. McCormick, but I can look into that. I know there was some issue of how to account for those because the AOC of course is going to know the fees that come to them, but getting information from some of the locals was

a little more difficult. But I am going to try to get some of that information for us so we can sort of better understand what's happening here.

Senator Segerblom:

That might be a BDR too, just something for future reference.

Chair Yeager:

I will close agenda item V, and I will go now to agenda item IX. There is a document that it entitled "Some Considerations for Work Session," and I do want to go over some of those areas that are on there. Before I do that, I want to hand it over to Mr. Fernley, because he's going to correct the record a bit in terms of what exactly this Committee is tasked with doing at our work session.

Mr. Fernley:

I do have to correct the record. At the first meeting when I went over the Committee's duties and responsibilities, I did say that the Committee did not have BDRs. After consulting with Legislative Counsel, I was informed that the Committee in fact has five BDRs that the Committee can request at its work session. The BDRs have to be related to the subject matters that are under review by the Committee, but at the work session, the Committee will have the ability to request up to 5 BDRs and also make other recommendations or proposals that it finds appropriate. Those 5 BDRs requested by the Committee do have to be approved by two members of each house, so two members of the Committee from the Assembly and two members of the Committee from the Senate have to concur in requesting the BDR.

Chair Yeager:

Thank you, Mr. Fernley. Before I get started, I did want to say there is a disclaimer on the top of this document (Agenda Item IX). This is a document that I put together for discussion purposes only. Not everything on here is likely to end up in the work session, and there may very well be things that are not yet on here that end up on the work session document. My intent in putting this together was simply to start a discussion going into the work session. Just taking you through the document, we have three main categories of ideas. One is concepts that I think are going to apply whether traffic violations are considered criminal or civil, and then the next two, if they stay criminal, there are perhaps some recommendations or ideas we can consider, and then if converted to civil is the final category.

Just taking you through very quickly the first category of concepts, one thing we've talked about on a regular basis is capturing better information about how to interact with offenders, whether that be through the courts, through DMV, through the officer in the

field, with the idea being that if we communicate better with folks and remind them about their court appearances, they're probably more likely to come. The idea here would be, do we need state legislation? Does this need to be an opt-in procedure? Could we make dissemination of this information part of your privilege of driving in Nevada? So again, I think that would apply whether they stay the same or they go civil.

Along with that, the second bullet point, we have better information sharing between the DMV and courts with respect to mailing addresses or home addresses. As you know, we had an issue where you're capturing the information on the offender's driver's license, which may or may not be the correct address. I know DMV came and spoke, but I think we can look at potential better information sharing there.

Going down to the next bullet point, one of the things we've talked about and we heard from Washington today was perhaps allowing offenders to communicate with the court without having to come to court, whether that's through internet or through mail. Whether we keep this criminal or civil, is there a possibility of allowing folks to plead guilty with an explanation? In that particular case, do we allow the court to act on that, and in what way? I did note there that I found information about a pilot program used in the 61st District Court in Grand Rapids, Michigan that does exactly that, that tries to make this process more convenient for those who are interacting with the court. Perhaps we can put something into statute allowing that.

The next bullet point would be re-looking at the range of fines and fees for various infractions. I think we've heard that we're kind of all over the map as a state. That's not necessarily a bad thing, but I think for consideration of this Committee, do we want to tighten up those infraction ranges? Do we want to add a local option?

The next bullet point would be perhaps looking at some kind of revenue sharing between state and local jurisdictions (Agenda Item IX). As we just talked about with the State Permanent Fund, where the money goes really is a function of how the citation is adjudicated by the court, how it's characterized. Do we want to look at that? Do we want to do something else rather than allowing that kind of discretion? Keep in mind, in Nevada Revised Statutes (NRS) 484A.400, there are some areas that are preempted by state law, so that exists in statute already.

The next point would be how do we apply payments when an offender has multiple offenses in one case or multiple cases? I think there's some inconsistency in how payments are applied. Do we want to standardize that in any sort of way?

The next bullet point would be a reexamination of the amount of financial credit given per day of incarceration. Currently under our statutes, you get \$75 a day in credit for incarceration. Is that an appropriate amount? Should it be more? Perhaps that's something we want to consider. I know here in Las Vegas, particularly in the Clark County Detention Center, it costs approximately, depending on who's telling you,

between \$130 and \$150 a day to incarcerate someone. Perhaps that amount should be more aligned with the actual cost.

Community service would be the next bullet point. I think around the state it sounds like \$10 an hour is sort of what folks are routinely giving for community service. Do we want to put a floor into statute that's the minimum that should be given, or do we want to continue to allow flexibility to the local courts?

The next bullet point would be traffic school. I think there is some ambiguity in the law about a court's ability, I believe, to impose traffic school and under what circumstances. To make matters more complicated, we heard through the DMV that they allow a traffic school to reduce points on your driving record, but not if the court allowed the traffic school, so it's a little bit complicated there. Do we want to look at that and maybe come up with some better guidance about who's going to impose traffic school and what would be the impact of doing traffic school?

The next bullet point we have is a reference to NRS 176.064. Now, this is a statute that I will submit to you I think is probably not well understood, but it does lay out a particular course of action when an offender does not pay fines and fees. It lays out a particular course of action in a preferred list. I think that statute perhaps needs to be reworked a bit. It talks about a civil confession of judgment even in a criminal case, but there isn't really much guidance in terms of when that happens what that civil confession of judgment looks like. There's some reference in there to getting a prosecutor involved in collection efforts, which I think, practically speaking, doesn't really happen in any of our jurisdictions, so that may be something we want to look at potentially removing from that statute. We've talked about the suspension of driver's licenses. Do we want to continue to do that, and when in the process do we want to do that? The final provision of NRS 176.064 talks about an order of confinement when someone doesn't pay and they are not indigent, so they're willfully not paying. Do we want to put a sample order of confinement there? Do we want to put some standards in the statute about what it means to be indigent for purposes of paying traffic fines? I don't think it's the same as indigency for whether you qualify for an attorney. That seems to me to be a different standard, but I think that statute could use some clarification. We also have in that same statute that late payments are reported to credit reporting agencies. I think that's happening. I think we can debate about the propriety of whether a late payment of a traffic fine or citation is something that should be reported to a credit reporting agency. Typically, you have debts that you sort of voluntarily incur that get reported, but that may be something to look at.

Credit card payment processing fees is the next one. I know courts are a little all over the map on this, and there is some statutory guidance about what's allowed to be charged. But we may want to look into that.

For payment plans, do we want to standardize that in any way? We heard today that Elko doesn't charge a fee. I know other courts do charge a fee, maybe multiple fees, so do we want to look at limiting the amount of fees that can be charged for a payment plan?

On the second page at the top (Agenda Item IX), we have potentially looking at that administrative assessment fee collection schedule. Really my intent there was I think there are some orphan fees that are not included in the collection hierarchy. Do we want to put those somewhere in the hierarchy, or do we want to just keep them where they are? That could be another area of consideration. Again, I think all those considerations really apply no matter what we do, at least in terms of areas we can think about.

Moving on to if these stay criminal, I think there's potentially a real due process issue that we are assessing fines and sending matters to collections without an adjudication of guilt. That happens, I think, in every court in the state, and I think it probably makes sense to step back and ask if that's appropriate. I don't think we do that in any other sort of criminal realm, where we essentially assess fees and fines and send someone to collection without a finding of guilt or a plea of guilty. I understand this happens every day, but do we want to look at revamping that process in some way?

We heard today, and I think this is consistent in our state and certainly sounds consistent in the State of Washington, that when an offender just chooses to pay the full amount online, if it's criminal, that really does act as an adjudication of guilt and that person is found guilty of the offense charged and the offense itself is reported to the DMV with a full amount of points assessed to the offender. I bring that up because it seems like that's the kind of behavior we would want to incentivize for offenders, to pay up front and not use our court resources. Yet it seems like they're kind of taking the brunt of it on the backend. They're not really getting any kind of benefit from doing that, so do we want to look at that process? Do we want to allow courts to maybe reduce moving violations to nonmoving violations in that scenario?

Next, further clarification of what constitutes a bail forfeiture and when it is appropriate. I think most courts here characterize that exact kind of payment I just talked about as a bail forfeiture, even though it sure looks like a plea of guilt and a fine adjudication. I know bail forfeitures cause some discomfort when we start talking about those, but do we want to look at putting some kind of guidance into statute?

What about fees and fees that can be collected? Obviously, the courts have inherent authority under the Blackjack Bonding case for court fees to collect those fees, but do we want to look at what fees are out there? Do we want to look at capping those or just taking a look, or do we want to leave it where it is now where courts essentially are going to impose whatever fees they want in whatever amount they want?

Bench warrant fees: obviously the court can charge a bench warrant fee. Interestingly enough, there isn't really much in our traffic statute that provides guidance for a court actually issuing bench warrants, so do we want to look at putting some statutory guidance there about when bench warrants can be issued and perhaps what the fees would be?

If we keep these criminal, do we potentially want to have a couple different levels of traffic infractions, maybe one that comes with less of a fine or less jail time? I know other states have category one/category two misdemeanors or class A/class B. Do we potentially want to do that? Perhaps the more minor ones, instead of a full 6 months of jail time, do we want to limit that in some way, maybe to less jail time?

We've talked about this next one a little bit, but what does indigency mean in this case? Our statutes talk a lot about not being able to incarcerate indigent people for paying fees and fines. Maybe it's time to put a standard in, what exactly does that mean? Perhaps we should give the courts, the prosecutors and defense attorneys some guidance about what that means.

Some of the rest of this is kind of cleanup language. There are some areas of 484A that really just don't comport with local practice. When someone gets a traffic infraction, they have the ability under the statute to request a hearing sooner than 5 days. Practically speaking, the court could not accommodate that, I think, with the volume we have, at least here in Clark County, so we might want to look at some cleanup there to remove some of those inconsistent procedures.

Nevada Revised Statutes 484A.700 actually allows for warrants to be issued for parking tickets if the parking tickets are not deliverable. So, I guess, ask yourself if we should authorize the issuance of a warrant for someone for a parking ticket when the ticket was not deliverable, meaning they had no notice that they actually got the ticket, maybe through their own fault. I don't know how often that happens, but if the answer is that it doesn't ever happen, then maybe it doesn't need to be there in statute.

Then, we have this issue of judges being involved in negotiations. We heard today from Elko that they don't do that. I think our judges down here are involved in negotiations and there is a schedule that was set up by the District Attorney's Office, and I think it probably makes sense to look into that a little bit. There's an ethical opinion that says what judges can and cannot do, and I certainly don't want to impede on their judicial discretion about what's possible and what's not possible, but I think there are some concerns. I had a look at that, the guidance given to judges, and in my mind it's a little more flexible than I think it probably should be in terms of judges deciding how many points to assess, what fines, what amount the fines should be. So, do we want to look at that? Again, I'll try to get some more information on some of these points. Obviously, we have 17 counties, and we have all kinds of justice courts and municipal courts so we're all doing different things. One of the things I'm going to try to do after this meeting is

collect some more information so we can make some better decisions based on what's actually going on.

The final area before I'll stop and open it up for discussion would be if we do convert these to civil infractions, these are some considerations (Agenda Item IX). What's going to be considered proper notice of a citation? Right now, there is a statute that really requires the offender to sign the citation, and in some cases if the offender won't sign, Highway Patrol or the officer can write "served." But if this is civil, that process can probably be streamlined. Simply the officer saying it was served upon the person, I think, would be enough.

What does it look like when someone doesn't come to court in a civil system? We heard from Washington, and it sounds like what they use is default judgments, which anyone involved in the civil system is going to have some familiarity with those. But essentially a default is entered, and keep in mind that this might get us around that issue of adjudicating and the problem with adjudicating in the criminal system without someone ever showing up to court. If it's not criminal, we don't have those same concerns because the due process is quite a bit less.

Another consideration is who acts as a prosecutor if someone wants to contest a citation. I think we've heard today that it typically tends to be the prosecuting agencies, but there seems to be some wrinkles in there about what a court can and can't do and when a prosecutor has to show up, so it's something we'll want to get input on from our prosecuting agencies.

What's the standard of proof going to be? Is it going to be preponderance of the evidence? Is it going to be clear and convincing? What about admitting hearsay in these proceedings? Should we do that? What should we allow? Should the citation itself come into evidence? Is the officer testimony required? Can the offender be compelled to testify? I think these are all open questions from other states.

If we go civil, do we want one category of infractions? Two categories of infractions?

Of course, the huge one we talked about, and this was brought up I know by Assemblyman Ellison and Senator Gustavson. What exactly would remain criminal under this kind of a scenario? I think we all agree that there are certain ones that are listed that should remain criminal: driving under the influence (DUI), reckless driving, vehicular manslaughter, driving without a license, driving without insurance. Those should remain criminal, but what about the ones beyond that? What will we characterize as civil versus criminal?

Finally, what do we do in the case that someone either refuses to pay or doesn't come to court and there's a default judgment? What process would we have in place for trying to collect on that? Again, I reference NRS 176.064 because that is the current process

that's in place under the statute now for courts. Would that be appropriate in a civil setting, or would we want to make some changes?

Again, I just throw these out as discussion points, because what I didn't want us to do is get to the work session and then foist upon everyone a list of recommendations. I wanted to put these out there. If anyone has any comments or wants to further discuss, that would be appropriate now. If you want to have some time to digest and talk about this either with me after today's meeting or at the next meeting, I think that would be appropriate as well. At this point, I'm going to stop talking and open it up for any discussion, comments, concerns about what was presented here.

Assemblyman Ellison:

It's good to have three lawyers on that panel down there, because you bring a lot to the table we don't understand. But one thing that was brought up, and it's been brought up to us quite a bit, and actually I just talked to the judge about it, in Elko, sometimes it takes forever to get the tickets from the agencies, mostly like Highway Patrol or whatever. These people are trying to pay their fine in a timely manner, and it's pulling the system down really bad. I'd like to make a recommendation that they have a time period and it gives the authorization to the judge to either throw it out after so much time or to change the ticket around. But right now, I don't know if you'd want to talk to the judge here about it, but Washington said the same thing. They're having a hard time getting these citations up in a timely manner. They can do these things electronically, and this has not happened. I get a lot of calls at my office in Elko saying, "We're trying to pay this fine and we called justice court and they said, 'We don't have the ticket.'" It prolongs the action on this. But I'd like to take that into consideration also, if we could.

Chair Yeager:

Thank you, Assemblyman Ellison, and that experience is not unique to Elko. I can tell you I've had a number of instances here where folks have come to me and provided me with their ticket, and then I go online and it's not there yet, so there is a delay here as well. That's something I think we can perhaps gather some more information about. It's probably an issue in some places more so than in others, but I will definitely add that to the roster for consideration at the work session.

Assemblyman Ellison:

Thank you very much.

Senator Segerblom:

Can we add that maybe the cops could just have one of the things where you put your credit card right there, like they have with iPhones. They have the little thing, and you'd

just be able to pay when you get the ticket and just say, "You pay it now, there's no record of it. Take off and go about your business. Go back to California."

Chair Yeager:

I will add that for consideration. Not sure about the practical impact of it. Might be a little bit too much too fast, but we certainly can ask some questions about it and see if it's possible.

Assemblywoman Neal:

I just was wondering, for the Blackjack case, does that mean that the Legislature has no ability to go in and try to frame this up? We haven't put in any statutory authority since that case? That doesn't close the door for the Legislature to set what the law is. Oh, it's complicated? Okay.

Chair Yeager:

Yeah. I recommend if you get a chance to read the Blackjack Bonding case. It's a pretty interesting case. It's a bail bonds agency that sued, I think, a municipal court here seeking refund of bond fees that were assessed. If I remember correctly, I think the district court ordered the municipal court that they had to refund those fees, and then our Supreme Court overturned that and basically said that the court has inherent judicial powers to assess fees—and I'm going to put my own spin on this—for items that are sort of integral in the court function and proceedings. To answer your question, I don't think that the Legislature is unable to regulate in that space, but I think there's really kind of a gray issue of when you cross over to inherent judicial function and something that relates directly to the administration of the courts. I think if the Legislature were to try to regulate in that space that there could be a challenge to it. How that would work out, I don't know, but I remember the Supreme Court in Blackjack Bonding I think had specifically referenced that there wasn't really anything precluding bond fees. I recommend reading that case, and we can seek some clarification when we get to the bill drafting stage of exactly what the Legislature would be constitutionally authorized under the separation of powers to do.

Assemblywoman Neal:

If we go to the default judgment, I know how it works in credit land, which means you could potentially have a lien down the road. So, is that something we're looking at, where then it's not a warrant but it's a default judgment and then their credit—or potentially money can actually be taken from your account if you have a lien and a default judgment from the court, right?

Chair Yeager:

I think what would happen, and I can ask Washington as well, but the default judgment itself would likely be the county or the city who would be the holder of the actual default judgment, because they're really the ones that are owed the money, with some complication there because some of the money goes to the court as well. But you would get a default judgment, which essentially is a piece of paper saying that you have a default judgment, but whoever holds that judgment would still have to go through court processes to try to—for instance, if they wanted to garnish someone's wages or if they wanted to try to execute on that default judgment, there's another court procedure for that. It wouldn't be automatic, and I suspect the local government would probably have to make that decision of what their process would be to try to execute on that. Of course, that can be sent to collections as well, and my guess is that would probably be the first avenue of potential recovery is to send it to collections to try to have a collection agency help. The question would be if it's uncollectable or if the collection agency deems that the person has the money but isn't paying, what's the remedy after that? That's something we can look at. If we go civil, do we want to put something in NRS 176.064 or the equivalent about what that procedure would be? But to answer your question, there's some protection there. They can't just reach in and start grabbing money. There would be a court process.

Assemblywoman Neal:

That's what I was wondering, because I would just want to make sure that was tightened up and we didn't have collateral consequences on your credit or how it's viewed. It's like, now you have a lien from the government, which is viewed in a different way, which could then land in different things. We have a default judgment process for water, so they try to take property. Anyway, I had another question around the proper notice on citation, because there was like a really small discussion about A.B. 68, which was, I believe, you could choose not to sign or to sign in the presence, so I just wanted to know how this new idea would affect that bill.

Chair Yeager:

I think it was A.B. 68 like you referenced. It was pretty interesting. The way that came about was there was a provision in a statute that basically said if a traffic offender declined or refused to sign the citation, then I think it was a mandatory arrest under the statute, and the Legislature was a bit concerned about that, particularly because there were a lot of people who were being cited who thought signing it was an admission of guilt rather than an admission that they'd been served with a citation. So, what A.B. 68 did was allow law enforcement if they tried to get a signature—this is my reading of it—and the person refused, they could simply write “served” on the line for the signature and that would constitute proper service. I think there have been differences of interpretation and opinion in courts about whether that statute requires the law

enforcement officer to actually try to get a signature or whether they can just write “served” on the citation absent trying to get a signature. That’s an open question, but beyond all that, if we went to a civil system, I don’t think you’d have the same service issues. I think we could very clearly authorize in statute that the citing officer or highway patrolman could just simply indicate when the citation was given and the time and date and then sign it, and I think much like a process server, that would be effective. A process server doesn’t have to get a signature from the receiving party, they simply have to have essentially what’s an affidavit saying, “I served it on the following day in the following manner to the following person,” and the court will accept that absent somebody coming in and contesting the validity of the affidavit, so I think we could put that kind of procedure into place, which would hopefully in the field save the officer from having to hand over a tablet or get an actual signature. They simply could print out a copy, give it to them and indicate when service was made.

Assemblywoman Neal:

I like a majority of your ideas. I like what we talked about, which was defining indigency, because it has an interplay into several of these. I also thought defining indigency will help in another area with the pretrial services, so I think that would be a good move. This DMV ambiguity in the law of when you can impose, I think that just needs to be cleared up in general, because it seems like if it is legally incorrect, it’s certainly something that needs to happen right away. I’d like to think more about it, but a lot of these are really interesting and some of them can be condensed into themselves.

Chair Yeager:

Is there any further discussion on agenda item IX, which is discussion of potential recommendations? Seeing none, I will close agenda item IX. I will go to agenda item X, which is a discussion of potential topics, dates and locations for future meetings. I think the plan at the moment is to likely have one additional meeting which would be a work session but would potentially involve additional testimony. I know one presenter that we wanted to hear from but we haven’t been able to coordinate yet would be the collection agency here in Clark County, Harris and Harris, who I think is the collection agency for the Las Vegas Justice Court, and perhaps others. I wanted to open this up. First, I’ll let Committee members know I don’t have a date set yet for that work session. My feeling is that it will probably be sometime in July, perhaps into early August if we can get that kind of time. That’s the timing that we’re looking at, but I did want to ask about potential topics of discussion. Before I got there, I wanted to remind the Committee if I didn’t already that I am going to attempt to get some more information from some of the courts just about what their practices actually are, so I’m putting something together for that, so hopefully when we get to the work session we might have some data about what fees are collected, what the amounts are, fine ranges, things like that. It may be wishful thinking, but I’m going to try to get some of that information. With that being said, are

there any other topics that anyone on the Committee can think of that you'd like to hear about before we move into a work session?

Senator Gustavson:

No, I think we've got it pretty well covered, it looks like to me.

Assemblyman Ellison:

No, I think you pretty well covered it.

Chair Yeager:

Thank you. Any additional topics beyond hearing from a collection agency and sort of how they process these tickets currently?

Assemblywoman Neal:

Is there any way to get more discussion around—I don't know if that relates to the bail forfeiture and the process so we can get—if the hypothetical is that we're going to move to a civil setup, then what would now be the triggers associated with that? I just want to know, like bail forfeiture, how would that work? Also, maybe getting a little bit more conversation around DMV and this traffic school and where they felt that their authority in the law came from to impose this. I don't know about the default judgment, because like, the City of Las Vegas currently has a process for default judgment in place, but I don't know if we should ask them hypothetically, "If you now have to apply this system in another context, what will this then look like?" Does that make sense? Okay.

Chair Yeager:

And I'll ask too. I don't know that we've submitted this to the Committee yet, but I'll ask counsel. There was a group that met, much like ours, back in 1999. There's a bulletin that was issued, and it's Bulletin 99-6 called "Fees, Fines, Forfeitures and Administrative Assessments Imposed and Collected by Courts," so I'll ask that we distribute that to Committee members for consideration (Agenda Item X). Much like us, they took testimony and made some recommendations. They actually had a BDR to the Legislature. I don't believe any of those were enacted, but I think there is some overlap here. You can see that some of these issues have been going on for quite some time. There were also some legal opinions attached as part of that with respect to bail forfeitures and what those are and when they're appropriate. I'll just note for the record that that committee was chaired by Assemblyman Bernie Anderson and had members Assemblywoman Barbara Buckley, Assemblyman John Carpenter, Assemblywoman Segerblom, Senator Augustine, Senator James and Senator Titus. These issues are not new, but I enjoyed reading that. I thought it was enlightening, so we'll have that

distributed to Committee members. If you can find time in your day to get through a 236-page bulletin, or maybe just read the highlights, that might be helpful as well.

Anything else on agenda item X? Seeing nothing else, I'm going to close agenda item X. This takes us to agenda item XI, which is our second round of public comment. Seeing none, I will close agenda item XI, public comment.

Members, look soon for an email or some kind of scheduling notice to try to put together what will likely be our final meeting. Again, I encourage anyone on the Committee to reach out. I know you all know how to reach me. Or anyone who's here in person or has been watching on the internet, we're trying to do our best, but we're not experts in this, so if we have missed something, by all means please contact us and let us know where we've gone astray or let us know if you have some additional recommendations for us. I will now adjourn this meeting at 11:55 a.m.

RESPECTFULLY SUBMITTED:

Jordan Haas, Interim Secretary

APPROVED BY:

Steve Yeager, Chair

Date: _____

Exhibit	Witness/Agency	Description
A		Agenda
B		Attendance Roster
Agenda Item IV	Jordan Haas, Interim Secretary	Draft Minutes from the February 2, 2018 Meeting
Agenda Item V	Bryan Fernley, Senior Principal Deputy Legislative Counsel, Legal Division, Legislative Counsel Bureau	Permanent School Fund Fines and DSA Interest Income Transfer
Agenda Item VII	Commission on the Future of California's Court System	Implementing a Civil Model for Adjudication of Minor Traffic Infractions
Agenda Item VIII	Dirk Marler, Chief Legal Counsel/Court Services Director, Administrative Office of the Courts, State of Washington	Presentation on Traffic Infractions in the State of Washington
Agenda Item IX	Chair Steve Yeager, Assemblyman, Assembly District No. 9	Discussion of Potential Recommendations of the Committee
Agenda Item X		1999 Report of the Committee to Study Fees, Fines, Forfeitures and Administrative Assessments Imposed by the Courts