

**MINUTES OF THE MEETING OF THE LEGISLATIVE COMMISSION'S
SUBCOMMITTEE ON FEES, FINES, FORFEITURES AND
ADMINISTRATIVE ASSESSMENTS IMPOSED
AND COLLECTED BY COURTS (S.C.R. 10)
Grant Sawyer State Office Building
Las Vegas, Nevada**

March 20, 1998

The fourth meeting of the Legislative Commission's Subcommittee on Fees, Fines, Forfeitures and Administrative Assessments Imposed and Collected by the Courts (S.C.R. 10) was held on Wednesday, March 20, 1998, at 9:45 a.m. in Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was simultaneously videoconferenced to Room 1214 of the Legislative Building, 401 South Carson Street, Carson City, Nevada.

SUBCOMMITTEE MEMBERS PRESENT:

Assemblyman Bernie Anderson, Chairman

Senator Kathy Augustine

Assemblywoman Barbara E. Buckley

Senator Mark A. James

Assemblywoman Gene Wines Segerblom

Excused:

Assemblyman John C. Carpenter

Senator Dina Titus

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Risa B. Lang, Principal Deputy Legislative Counsel

Leslie Hamner, Deputy Legislative Counsel

Allison Combs, Principal Research Analyst

Debbra King, Program Analyst

Gary Crews, Legislative Auditor

Rocky Cooper, Audit Supervisor

Charlene Adamson, Secretary

Emiko Mitchell, Secretary

Diana Silsby, Secretary

Opening Remarks by the Chairman

Chairman Anderson called the meeting to order at 9:45 a.m. A copy of the meeting notice and agenda is attached as Exhibit A. After reviewing the topics discussed in the last Subcommittee meeting, Chairman Anderson stated that the focus of the Subcommittee in this meeting will be limited to the collection procedures used by courts in this state.

The 1995 Audit Report of the State of Nevada Judicial Branch of Government Administrative Oversight of the State Court System ("Audit Report"), previously presented to the Subcommittee, addressed concerns about the court collection procedures and indicated that improvements to those procedures could result in the addition of millions of dollars collected for the state. As well as being concerned with the inefficiencies in the collection procedures, Chairman Anderson noted the importance of maintaining law and order and ensuring that defendants who are fined pay their debt to society. When defendants successfully avoid their responsibility to pay the fines imposed upon them, it creates a mockery of the court system and removes the deterrent factor from the penal fine. Therefore, Chairman Anderson stated that he hoped the Subcommittee could come up with a collections system that is acceptable both to the Legislature and the courts which ensures that defendants cannot ignore their responsibility to pay the fines imposed by the courts.

Review of 1995 Audit Report Concerning

Collections by State Courts

Gary Crews

Gary Crews, Legislative Auditor, provided the Subcommittee with a review of the 1995 Audit Report. Mr. Crews first reminded the Subcommittee that the figures in the Audit Report dealt specifically with the circumstances that existed in 1993. Because 5 years have lapsed since the compilation of the statistics, the figures most likely are considerably higher today. Mr. Crews also noted that in each of the 53 courts visited by the legislative auditors, an audit was conducted to determine the accuracy and validity of the information presented in the Audit Report.

Mr. Crews then discussed the percentages of court fines collected. In Justices' and Municipal Courts, only 60 percent of the fines imposed in the year considered were collected. However, in the three District Courts that were audited, the courts collectively had only collected 12 percent of the fines imposed. One of the District Courts had only collected 2 percent of the mandatory DUI fines imposed on defendants. The total fines imposed by courts statewide in 1993 was approximately \$40 million. Using the collection rate of the Justices' and Municipal Court collection rate of 60 percent, uncollected fines totaled approximately \$30 million in 1993 alone. In closing, Mr. Crews acknowledged the financial concerns that the courts have in maintaining their operations, but stated that the Audit Report indicated that improved collection efforts could provide additional court revenues which may alleviate some of their concerns.

Rocky Cooper

Rocky Cooper, Audit Supervisor, provided the Subcommittee with additional details regarding the Audit Report. Mr. Cooper stated that in the evaluation of Nevada Highway Patrol citations, it was determined that more than \$15 million in fines and administrative assessments were imposed by Justices' and Municipal Courts during the 1993 fiscal year. Of the \$15 million assessed, the actual amount collected was \$9.5 million. If the statewide collection average was improved from 60 percent to 80 percent, \$12 million would have been collected in that year. Mr. Cooper indicated that he believes that an 80 percent statewide collection rate should be obtainable and is often exceeded by courts that use effective collection procedures.

Mr. Cooper further indicated that of the 53 courts audited, 15 courts had collection rates that exceeded 90 percent. Five courts in one county collected nearly 87 percent of the imposed fines and administrative assessments. Some of the collection techniques used in that county included sending late notices, sending notices of intent, issuing bench

warrants, notifying the county collection office, notifying credit agencies and sending failure-to-appear notices to the Department of Motor Vehicles and Public Safety.

Mr. Cooper stated that the National Center for State Courts suggests that offenders must be told what is expected of them, where and how to pay and what the consequences will be for nonpayment. The National Center for State Courts also recommends notifying offenders of nonpayment by mail and telephone and issuing warrants. The Audit Report identified one court which used procedures similar to those suggested by the National Center for State Courts and that court had collected 100 percent of the fines and administrative assessments it had imposed, despite the fact that 18 of 25 citations examined were issued to offenders with out-of-state driver's licenses. Several courts were identified as using bench warrants and failure-to-appear notices in fine collection. Although these efforts are good, they are not highly effective unless they are used in combination with other collection methods. Relying on bench warrants has limited the effectiveness in collecting delinquent fines, particularly for out-of-state residents. According to statistics provided by the Nevada Highway Patrol ("NHP"), as of September 1994, more than 74,000 bench warrants were outstanding on citations issued by the NHP. Mr. Cooper estimated that these warrants represented another \$16 million in uncollected fines and administrative assessments.

Mr. Cooper stated that improved collection procedures would benefit both the State of Nevada as well as local governments. He also indicated that because a majority of the citations that are processed by Justices' and Municipal Courts are issued by local law enforcement officers, most of the fines collected by the courts go to the local governments of the cities and counties. Therefore, better collection procedures by Justices' and Municipal Courts should increase the funding for local governments.

Mr. Cooper stated that the Audit Report indicated that collection efforts by District Courts are inadequate and many District Courts have not assumed responsibility for collecting fines and administrative assessments. Instead the responsibility to collect fines has been assumed by other staff or agencies such as parole and probation officers. Relying on entities unrelated to the court to collect fines has resulted in the collection of only a small percentage of the imposed fines and assessments by the District Courts that were audited. Although District Courts remitted approximately \$595,000 in fines to the state during the 1993 fiscal year, Mr. Cooper noted that this amount could increase significantly if the District Courts were to implement effective collection procedures. Although the District Courts accepted fine payments when offered, he noted that there was little or no enforcement action taken upon an offender who does not pay. Mr. Cooper indicated that 50 convictions were tested in each of the three District Courts audited. Of the total \$97,000 in fines imposed, the District Courts collected only 12 percent, or approximately \$12,000. The collection rate for administrative assessments in the three courts was 18 percent. In one District Court, Mr. Cooper indicated that the fines collected from the mandatory fines imposed on 48 DUI convictions were tested during the audit. The collection rate on the mandatory fines imposed in DUI cases with convictions occurring between July 1, 1990, and June 30, 1992, was 2 percent. Stated in monetary terms, this District Court was only able to collect \$1,800 of the \$96,000 in mandatory DUI fines imposed during that time. These low fine collection rates highlight the need for District Courts to establish collection policies, assign responsibility for collection or explore other options for increasing the collection of fines. The District Courts that were audited did not have formal collection procedures in place. In closing, Mr. Cooper stated that the dollar amounts he presented to the Subcommittee were from violations occurring several years ago and that those amounts most likely have increased.

Responding to a question from Chairman Anderson, Mr. Cooper recognized that the courts have established some better fine collection procedures since the Audit Report. However, because of the population growth and the changes in judges, it is an issue that the Subcommittee must continue to consider. Mr. Cooper noted that at the time the audits were conducted, the courts could not supply information concerning the amount of fine receivables because of the inadequate recordkeeping system in use at that time. Until a better recordkeeping system is established, the true fine collection rate of the courts will be difficult to determine.

In response to a question from Senator James concerning the collection figures versus the ability of offenders to pay the fines imposed, Mr. Cooper stated that the audit did not account for the improbability of collecting imposed fines from offenders sentenced to lengthy prison sentences. However, he also noted that the determination of an offender's ability to pay is not being made because there is no procedure in place to make such a determination.

Presentation Concerning Collection Procedures **in State Courts**

John Matthias

Chairman Anderson introduced Mr. John Matthias, a Senior Staff Attorney for the National Center for State Courts in Colorado. Mr. Matthias provided an overhead presentation on the collection procedures used in state courts, based on his book "Current Practices in Collecting Fines and Fees in State Courts." A copy of his overhead presentation is attached as Exhibit B. Mr. Matthias explained the basic premise of the National Center for State Courts that a fine will have rehabilitative, punishment, and deterrent effects only if it is collected. Mr. Matthias outlined his presentation by indicating that he would discuss statewide, local and outsource programs which are used in various states. He further stated that the outsourcing of fine collection can be done at the state level.

Possible Approaches to Collections

Mr. Matthias outlined the "Maine Central Violations Bureau Program" ("Maine Program"). The Program is a statewide program that is used in similar forms in Maine, Connecticut, and Rhode Island. In the Maine Program, a motorist who pleads guilty of a traffic violation must remit payment to the Central Violations Bureau located in Lewiston. Mr. Matthias noted that certain manual activities associated with receiving these fine remittances, such as opening envelopes, depositing and sending the money to the Central Violations Bureau, have been outsourced.

If a motorist pleads not guilty of a traffic violation, the Central Violations Bureau schedules a hearing at the court located closest to the place of residence of the motorist, which is advantageous both to the motorist and the officer issuing the citation. If the motorist is convicted, the case is sent to the Central Violations Bureau to initiate the collection procedure. The offender is instructed to pay the fine to the Central Violations Bureau located in Lewiston within a certain number of days. In instances in which the offender does not pay, the Central Violations Bureau will follow up with various sanctions, including sending late notices, imposing a late fee, or suspending a driver's license. Mr. Matthias stated that the Maine Program has been very successful, obtaining a fine collection rate of 98 percent. He further noted that the information on the Maine Central Violations Bureau was obtained 3 years ago and his presentation is current as of that time.

Mr. Matthias noted that, by signing the issued citation, motorists in Maine provide the state with permission to use their social security numbers, which can be a very useful and effective tool in collections. Additionally, the Maine Central Violations Bureau has computer access to current residential addresses, provided by their Department of Motor Vehicles. Summarizing the Maine Program, Mr. Matthias indicated that the operations and staff are centralized and the collection procedures are automated. He further indicated that when compared on a national level, the number of cases which proceed to hearings is minimal. Mr. Matthias reiterated that the Maine program has been very successful and has obtained good results in collecting fines.

Mr. Matthias then outlined the comprehensive enforcement program in New Jersey ("New Jersey Program"). The money collected from fines in New Jersey is deposited into the Comprehensive Enforcement Program Fund to enable the program to be self-sustaining. The New Jersey Program successfully has increased the amount of fines collected. Money from the fund is also being used to build a new computer system for all of the Superior Courts in New Jersey.

Mr. Matthias then described the process of the New Jersey Program. When a defendant does not pay a fine in New Jersey, the Superior Court issues a notice requiring the defendant to appear in court at a specific date and time. Because motorists are aware of the effectiveness of the program, most defendants appear in court at the designated time. The hearing is presided over by a hearing officer who informs the defendant that because he has appeared he will not be incarcerated. The hearing officer then informs the defendant that he will not be required to return as long as he pays and continues to pay in the manner agreed. Mr. Matthias noted that minimizing the number of court appearances that a defendant must make is an important factor in discussing staff-based and judge-based fine collection programs.

In the New Jersey Program, defendants are informed that the court will work with them to establish a payment program with the assistance of on-site financial officers. Additionally, the defendants are given the option of setting their own fine payment schedules, with the understanding that a fee of \$2 per installment payment will be added to their fines. Once a defendant has negotiated a payment schedule with the financial officer, he will appear before the hearing officer who may ask additional questions and impress upon the defendant the importance of paying the fine and what actions might be taken by the court if the fine is not paid. The payment schedule must be acceptable to the hearing officer and each installment payment must be more than \$5. The recommendations of the hearing officers are

most often approved by the Superior Court judge.

Mr. Matthias then described the actions that are taken when the defendant does not pay as agreed. Sanctions may be imposed on the defendant, including suspension of the driver's license or the imposition of enforced community service. The enforced community service aspect of the New Jersey Program has had a significant impact on the overall effectiveness of the program. The "Sheriff's Labor-Assistance Program," operates the enforced community service in all of the 23 counties of New Jersey. Defendants are informed that if they fail to appear at the jail to provide community service, they will be incarcerated. Each defendant is required to pay a \$15 enrollment fee in addition to a \$2 daily participation fee, which is deposited in the Comprehensive Enforcement Program Fund. Completion of community service does not discharge the original fine imposed upon the defendant. Enforced community service makes the defendant aware of the importance the courts place on the payment of fines. A fine may be commuted or written off if the judge finds that the defendant is unable to pay.

Twenty-five percent of the money collected from the New Jersey Program is used to pay for the program, pay the salaries of the two to three hearing officers, and pay the salaries of the administrative staff. The balance of the money collected goes into the State General Fund. By New Jersey statute, the Municipal Courts are allowed to opt into and assign their fines to the New Jersey Program at their own discretion. Although he did not have specific collection rate statistics, Mr. Matthias informed the Subcommittee that the New Jersey Program has been very successful.

Mr. Matthias summarized the New Jersey Program as a judge-based program, which allows dockets to be established and defendants to be notified of mandatory court appearances. The program also provides follow-through on defendants who are not in compliance with their fine payments and provides sanctions when necessary.

In response to a question from Assemblywoman Buckley, Mr. Matthias noted that the Maine Program is limited only to traffic violations. However, Mr. Matthias indicated that because the Superior Court is the court of general jurisdiction in New Jersey, the New Jersey Program is for all violations. Assemblywoman Buckley also asked Mr. Matthias to comment on the issue of costs incurred by local entities in processing the state highway patrol citations. Mr. Matthias was not able to provide specific information and indicated that different states use different funding structures.

Senator James asked Mr. Matthias to address his concern about the ability of defendants to pay the fines imposed upon them and the fairness of imposing fines without taking into account the defendants income. Mr. Matthias indicated that a problem common to many states is the inability to collect substantial fines imposed on defendants sentenced to prison. He noted that some states such as Alaska have instituted a "day fine" system which is a system by which the severity of the offense and the financial means of the defendant are taken into account when the fine is assessed. He noted that when a defendant is sentenced to prison with a \$5,000 or \$10,000 fine, there is no opportunity for him to pay. When the defendant is placed on parole, the parole and probation agencies tend to be concerned mainly with integrating an offender back into society and rehabilitative efforts. Thus, the outstanding fines are not given much recognition and often are written off. Collections in District Courts are particularly difficult because the fines imposed are higher than fines imposed in lower courts. The concern of whether the fines are ever payable is an issue. He noted that with mandatory fines and fees, the judges are restricted in their actions. With the other fines and fees, he indicated that most judges will impose fines based on the environmental situation of their communities.

Assemblywoman Segerblom asked Mr. Matthias to comment on the feasibility of staff-based programs, such as the ones he has described, in the rural areas of Nevada where staffing resources may be limited. Mr. Matthias noted that some type of staff-based program may be advantageous for rural areas. He noted that Maine is also a very rural state which is sparsely populated and suggested that having hearing officers may be a good idea for Nevada. He suggested that a docket could be set once a month in a rural area such as Elko where the hearing officer could travel or where the Justice of the Peace could preside. He noted that the Administrative Office of the Courts could establish policies and procedures with the existing staff in the rural areas to create such a program. He further noted that New Jersey is different from Nevada demographically and thus, the New Jersey Program may require some adaptation if it were to be considered for Nevada.

Chairman Anderson noted that establishing fines on a sliding scale could pose problems since many defendants have fluctuations in their levels of income and employment. Mr. Matthias replied that some programs screen defendants to determine whether they have the ability to pay a fine or whether they should be allowed to make installment

payments. He also noted that when an impartial third-party reviews the financial resources of the defendant, the results are more accurate than in other situations in which self-reporting is used.

Mr. Matthias reviewed the Arizona Judicial Collection Enhancement Fund. The Arizona Judicial Collection Enhancement Fund is funded through several revenue resources, including a 15 percent surcharge on all collected fines, a \$5 surcharge on traffic schools and a \$12 fee for the privilege of making installment payments. From the \$12 fee, \$9 reverts to the fund and the balance remains with the local government. By filing a grant application, the local courts may seek to receive funding to hire a person to handle collections in the local courts. With funding for one year for this position and with the assistance of the Administrative Office of the Courts, Mr. Matthias stated that the goal of the local court will be to increase significantly the amount of fines collected and encourage the county to assume the funding of this position after the first year. He further noted that the program has been very successful in Arizona and similar programs have met with equal success in Colorado.

Mr. Matthias continued by reviewing the elements of judge-based collection programs and staff-based programs. The main collection activity in judge-based collection programs is summoning defendants into court, either by serving or mailing a notice to appear. Typically, in judge-based programs defendants are given the option of paying the fine or appearing in court to explain why the fine has not been paid. Sometimes the judge requires immediate payment, in which case, if the defendant pays he does not have to appear. In some instances, the court will make the fine payment due within a specified time such as 30 days, 2 weeks or based on a deferred payment plan. For the defendants who appear in court, the judge either decides that payment must be remitted in full or may opt to put the defendant on one of the payment plans. Defendants who fail to appear may face contempt of court charges or incarceration, which may serve as motivation to pay the fine or as a method to pay off the fine owed to the state. In some localities, a hearing officer or a special master is used in place of a judge, which may be an economical benefit to the localities since the salaries of officers and special masters tend to be lower than the salaries of judges.

Mr. Matthias indicated that judge-based programs require a significant amount of judicial effort. In his experience, some judges understand that collection and enforcement of judgments are an inherent part of the judicial position. If collecting fines is done effectively and efficiently by the courts, it can create respect for the justice system. However, some judges do not believe that collections is part of their job, or for some other reason do not concern themselves with collections. The effectiveness of a judge-based program depends on the judge. In addition, Mr. Matthias noted that it is important if there is more than one judge in a given community that the judges have the same attitude and approach towards collection of fines. If one judge is easy and another strict, it sends a mixed message to the community about how serious the court is concerning the collection of fines. He noted that judges who are trained and oriented concerning collections do a better job. In addition to training, judicial leadership is an important factor in the fine collection efforts. When the state Supreme Court places importance on the collection of fines, the judges are more likely to give the issue equal importance in their courts and actively collect the fines imposed. The judge-based program is the traditional method by which fines are collected and the method is used, in one form or another, in every state in the country. These programs can be very effective if operated properly by persons who give weight to the importance of collecting fines.

Regarding staff-based programs, Mr. Matthias noted that the typical court order for payment of a fine includes deferred or installment payments. A staff-based program can handle the various activities associated in collecting these types of payments. In some courts, the staff will provide the defendant with a financial statement and, based on that form, will determine if the defendant is able to pay the fine in full or if the defendant is eligible to make installment payments. Mr. Matthias indicated that the staff may be used to impress upon the defendants the importance of paying their fines and what consequences they may face if payments are not made. Unlike judge-based programs, staff-based programs use staff to screen defendants, monitor payments, issue notices of delinquent payments, file forms for suspending driver's licenses, contact defendants or do whatever is necessary. If screening is done properly, the staff knows who the defendants work for, it has contact phone numbers, names of relatives and all other kinds of information that collections agencies use to make contact with and get payment from defendants. In his experience, Mr. Matthias stated that staff-based programs may operate from different localities. In some courts, the staff is based in the court clerk's office. In other courts, the state operates as an independent unit which reports to the judge or the court administrator. The collection staff may also be based in the probation department, although this does not occur frequently because the primary focus for the probation agencies is behavioral changes and not the collection of fines.

Mr. Matthias continued with a discussion of the statewide pilot collection program which Colorado began in 1983.

Upon the initiation of the program, \$54,000 was used to fund the position of three fine collectors in three counties. The net gain realized from the collection efforts of the personnel in these three counties totaled \$328,000. Mr. Matthias indicated that because the program was so successful it was expanded into all judicial districts in Colorado. He noted that on a county basis, Colorado also has county courts and municipal courts. Some of those courts have also funded a collection investigator position to assist the fine collector. Under the Colorado program, if a defendant declares he is unable to pay a fine, the judge refers him to the collection investigator who is located in a separate office down the hall. The collection investigator determines the ability of the defendant to pay based on a financial evaluation form and affidavit completed and signed by the defendant. Approximately 40 percent of the defendants decide to pay right immediately than deal with the forms and the investigator. The Arizona courts that use similar screening personnel have reported similar statistics to those reported in Colorado.

Although collections staff employed by the government are not subject to the Fair Debt Collections Practices Act, Mr. Matthias stated that the State of Colorado has chosen to abide by the federal law to maintain a high level of professionalism. The Colorado collections staff operates similarly to a private collections staff. The staff handles collections, sends reminder notices, implements garnishments and recommends issuance of warrants if defendant are not cooperative. The program has been very successful and other states, such as Arizona, New Hampshire, Oklahoma and Michigan have shown interest in implementing similar programs in their jurisdictions. The issue of fine collections has become an important topic of discussion in many states. Mr. Matthias further noted that in several states this issue has been addressed at the local level rather than on a statewide basis.

In summarizing the staff-based fine collection program, Mr. Matthias indicated that a lower-paid staff is used to operate the collections activities, which allows the highly paid judges to focus on judicial work and to supervise the performance of the collection staff. Furthermore, Mr. Matthias indicated that for every dollar invested in funding the salary and fringe benefits of a collection position, a court may collect up to seven times that amount.

Next, Mr. Matthias discussed the feasibility of outsourcing collections. Mr. Matthias indicated that jurisdictions which choose to outsource collections submit an account, an unpaid fee or fine, to a collection agency. Although there are variations from court to court as to when the unpaid fees and fines are submitted, the collection agency performs the same functions as staff in a staff-based collection program. It sends letters, makes telephone calls, and performs other similar functions. However, it does not deal with issuing notices to appear in court once the matter is delegated to the collection agency.

Contracting with and making payments to collection agencies can be an issue of discussion for state and local entities. With the recent passage of a Senate Bill No. 29 in Nevada during the last legislative session which authorizes some payment of fees, Mr. Matthias noted that Nevada may not encounter the same problem as other states in remitting payment to the collection agencies. Contracting with a collection agency may be done on either a local level or a statewide level. Most often, the collection agency is contracted to work with the local courts. However, Mr. Matthias also noted that the court must be of adequate size and staff to issue a request for proposals to select a collection agency and to evaluate the proposals. He further noted that court expertise is also beneficial when selecting a collection agency. Maryland has begun a pilot program with three courts. Kansas has also contracted with a collection agency for statewide collections, but allows the courts and counties to decide whether or not to use the collection agency selected.

Mr. Matthias indicated that Colorado, Michigan and Maryland use centralized collection programs within state government, such as within the Department of Revenue. These centralized collection programs act as collection agencies. He suggested that this may be one approach for dealing with the rural court issue in Nevada. The local entities may make the initial attempt to collect the fines. If unsuccessful, the account could then be remitted to a central collections bureau, which would operate as the collection agency.

Outsourcing the collections activities may provide several cost benefits to the state and local entities. Mr. Matthias indicated that outsourcing has become increasingly prevalent because funding for a permanent staff and office space is not necessary. Collection activities requiring a great deal of staff time and effort, such as skip tracing, credit reporting, legal processes and garnishments, are delegated to a private agency, freeing the governmental and court staff to fulfill their responsibilities. However, Mr. Matthias emphasized the importance of controlling and evaluating the performance of the contracted agency. Because collection agencies are required to abide by the Fair Debt Collection Practices Act, Mr. Matthias noted that most collection agencies are professionally operated.

In summary, Mr. Matthias stated that another option in choosing a collection program is to combine several elements of the programs previously discussed. In addition to judges who understand the importance of fine collection to the courts, Mr. Matthias indicated it is also important to have staff, either in the court, the court system, or outsourced, to do all of the manual efforts required in collections.

In response to Debbra King, Mr. Matthias indicated that the Kansas fine collection program placed the responsibility of monitoring the collection agency performance on the Chief Judge of the District Court. He further emphasized the importance of carefully evaluating the collection agency, but did not suggest a specific person or agency which should hold this responsibility.

Legislated Collection Tools

Mr. Matthias continued with a discussion of the various fine collection tools he has studied throughout the states which may be useful to Nevada. The first tool, a time-payment fee, is currently being charged in Arizona for the Judicial Collection Enhancement Fund and is also charged as part of the Colorado program. Mr. Matthias indicated that the premise behind the use of this fee is to charge the defendant for the privilege of paying imposed fines on an installment payment schedule, analogous to the interest charged on a credit card account.

The second tool in collection of fines is the nonrenewal of motor vehicle registrations, which has been very successful in Arizona. Mr. Matthias indicated that the tool is successful because law enforcement agencies throughout the country will issue citations to a motorist driving without current registration tags.

The third tool is the suspension of driver's licenses. Mr. Matthias noted that most states provide for suspending driver's licenses under certain circumstances. He stated that in Arizona, the suspension was expanded to include failure to pay imposed fines. Although a percentage of motorists will drive regardless of the loss of their driver's license, Mr. Matthias indicated that many motorists will pay the fines imposed upon them if threatened with license suspension. In addition to license suspension for failure to pay, Arizona statutorily instituted an amnesty program, which Mr. Matthias explained works as a public relations program within the Municipal Court. The Glendale, Arizona Municipal Court advertised its amnesty program through the local media, offering a moratorium or a reduction of unpaid fines and certain violations, for a limited time. Once the time frame has passed, Mr. Matthias stated that the court more rigorously pursues the collection of the fines. By offering reduced fines and violations, the court offers the community an incentive to resolve the debt. Additionally, the amnesty allows the reduction of the total number of outstanding fines, which creates a more realistic total for enhanced enforcement of the remaining fines to be collected. Although amnesty programs can be successful, an amnesty should only be offered on a limited basis of not more than once every 5 or 10 years. If offered more frequently, debtors may not pay the imposed fines in anticipation of the next amnesty.

The fourth tool used in the collection of fines is accepting credit cards as payment on fines. Mr. Matthias suggested that the credit card service fee imposed by the credit companies be passed on to the defendants who choose to pay their fines by this method.

A fifth tool may be providing immunity from liability for injuries incurred as a result of community service. Every court in the country has community service because there are defendants who cannot afford to pay their fines. A cost consideration for courts is the liability for injuries incurred by defendants while providing community service. In Missouri, the court and the government are provided with immunity from liability for workers' compensation related injuries.

Another legislated tool is statutorily authorizing the use of social security numbers for the purpose of collecting outstanding fines. The motorist gives the state permission to use his social security number by signing a waiver at the point the traffic citation is issued. Mr. Matthias emphasized the importance of the court giving consideration to the privacy issues involved in using the social security number for collection purposes.

Finally, Mr. Matthias suggested that fines should not be imposed for revenue-raising purposes. The goal should be the efficient, safe flow of traffic and justice when looking at traffic citations. He urged the Subcommittee to consider measures which ensure that traffic fines are used for promoting safe traffic and promoting the goals of justice.

Organizational Change Issues

In traveling to court jurisdictions throughout the United States, Mr. Matthias indicated that the issue of collecting fines is receiving a lot of attention. However, resistance to courts providing collection services exists in some jurisdictions. In moving courts toward encouraging fine collections, Mr. Matthias stated that organizational changes will rarely proceed without some resistance. He further stated that organizational changes in fine collection will take time, and he urged the Subcommittee not to be too impatient if the changes do not occur quickly. Furthermore, with the Director of the Administrative Office of the Courts, Karen Kavanau, being relatively new to the leadership position, Mr. Matthias also noted that time must be given both to the leader in developing the leadership role and to the other participants involved in allowing them to acclimate to the new leader as well as to the changes being considered. Mr. Matthias also urged the Subcommittee to give the persons successful in fine collections leadership roles in establishing the policies and procedures. In closing his presentation, Mr. Matthias urged the Subcommittee to provide the courts with the resources necessary to accomplish the goals of fine collection.

Chairman Anderson thanked Mr. Matthias for his presentation and noted that he presented testimony similar to others who have previously testified that judges should be given the opportunity to have jurisdiction to use policies and procedures which are best-suited for their particular courts. The Chairman also stated that the Subcommittee will attempt to bring some level of uniformity to the policies and procedures being used by the courts.

Report on Affiliated Court Technology

Initiative of Nevada ("ACTION")

Karen Kavanau

Karen Kavanau, Director, Administrative Office of the Courts, provided the Subcommittee with testimony on the "Affiliated Court Technology Initiative of Nevada, or "ACTION." Her written statements are attached as Exhibit C. Before beginning her presentation, Ms. Kavanau provided the Subcommittee with the definitions of two terms. The first definition, "system" as used in the term "uniform system of judicial records" refers to the complete set of operating strategies employed by Nevada's courts and the policies, procedures and business practices of the courts. The second definition, "uniform," as used in the same term, implies consistency, timeliness and accuracy.

Ms. Kavanau stated that the Administrative Office of the Courts ("AOC") was severely criticized in the Audit Report for not having a statewide automation plan that would promote uniform data collection. Additionally, the AOC was criticized for not providing effective leadership in establishing a uniform system of judicial records. In response to such criticism, the AOC implemented, with legislative concurrence, a planning and analysis division to effectively plan and establish a uniform system of judicial records to ensure collection and dissemination of uniform data.

Ms. Kavanau emphasized technology as a critical component of a uniform system of judicial records and this importance is reflected in the name of the overall plan, "Affiliated Courts Technology Initiatives of Nevada," shortened to its acronym, "ACTION." Ms. Kavanau offered the mission statement of ACTION to the Subcommittee: "In collaboration with representatives of the Nevada justice community, effectively plan, coordinate and facilitate the application of technology to the work of the Nevada judicial branch in order to improve judicial administration, enhance public service, and ensure timely, equal access to accurate court information." Ms. Kavanau stated that ACTION is a collection of many projects.

Ms. Kavanau indicated that the first phase of ACTION was initiated last October with the financial support from the 1997 Legislature. The AOC, assisted by a consultant, assessed the technology established and used in the 91 courts in Nevada, outside of the Supreme Court. The results of the assessment were released in January in their publication, "Nevada Trial Courts Technology Assessment Report."

The second phase of ACTION, initiated in January, is devising a strategic plan which will identify the courts' overall, long-term goals and objectives in pursuit of a uniform system of judicial records. It is anticipated that this plan may be published as early as April. The third phase of ACTION will be the development of an implementation plan that will specifically address short-term projects and initiatives planned to achieve the goals and objectives defined in the strategic plan.

The focus of the projects will include establishing a minimum technology standard for all the courts, which will enhance court procedures by improving record keeping, developing uniform policies and procedures, developing

uniform data standards to provide timely, accurate and consistent reporting, forming consortia for the purpose of seeking federal funds, and planning and conducting training for court personnel to establish uniformity in their daily operations. Ms. Kavanau and the AOC anticipate that one project to be undertaken will be the development of uniform collection policies, procedures and support systems.

In the fourth phase of ACTION, the focus will be on the completion of the projects defined in the implementation plan. Upon approval by the courts, the AOC will form committees, with members representing court and justice personnel, to develop standard collection policies and procedures. It is the intention of the AOC to work with the courts to initiate several different projects concurrently to maximize progress.

Ms. Kavanau stated that ACTION, with legislative support in terms of funding, will yield a variable, uniform system of judicial records, in the near future. In closing, Ms. Kavanau stated that in her experience, in her short time as the Director of the AOC, that the Nevada court system is very willing to work with the AOC to develop, implement and practice common and effective collection procedures.

Chairman Anderson noted that the number of judges giving up their court time to join the hearings indicates to the Subcommittee that the judges are concerned and interested in ensuring that the recommendations from the Subcommittee will facilitate the process to allow the procedures to be carried out expeditiously. The Chairman asked Ms. Kavanau to comment on the inclusion of court personnel in providing input to the AOC on the technology used in fine collections. Ms. Kavanau commended the courts which have been very effective in fine collections and expressed the AOC's interest in accepting their input on the processes and procedures they are using. She further stated that it is the intention of the AOC to accept input from court personnel, as well as judges, to select the most effective of the procedures used in their courts and to determine which procedures will be used as a basis for the uniform procedures and policies used throughout the state.

Report Concerning Collections in

District Courts

The Honorable Nancy A. Becker

Judge Nancy A. Becker, Eighth Judicial District Court, provided the Subcommittee with testimony concerning the collection procedures used in District Courts. Judge Becker preceded her comments on the topic by stressing to the Subcommittee that the District Court handles very minimal few misdemeanor cases, such as the traffic cases discussed earlier. She further emphasized that the District Court's only authority over such cases is limited to appeals from the Justice and Municipal Courts and to the occasional case where a felony is pleaded down to a misdemeanor. However, Judge Becker stated that less than one percent of the total fines and fees imposed in the District Court are involved in the collection processes discussed in earlier testimony.

Judge Becker indicated that the District Court procedure for nonpayment of an imposed fee or fine is simply to calendar the defendant. If the court is satisfied that the defendant has the ability to pay the fine and refuses, the defendant is incarcerated. If the court determines the ability to pay is questionable, the judge may mandate community service and the case is closed out in this manner. Judge Becker informed the Subcommittee that the majority of the District Court cases involve gross misdemeanors and felonies, and the same procedures are followed.

Judge Becker indicated that if a defendant pleads guilty or is found guilty, the defendant may be sentenced to prison or may be sentenced to prison with a suspension of the sentence and placed on probation. Judge Becker stated that the court has the authority to assess fines appropriate for the crime, but if the defendant is incarcerated, fines are not assessed unless they are mandated by state statute. Clarifying her comment, Judge Becker noted that a defendant is charged with a \$25 drug analysis fee, restitution charges and other similar assessments. However, once the defendant is incarcerated, the District Court no longer has jurisdiction in the matter and has absolutely no authority to engage in collection activities.

Judge Becker reiterated her comment on the lack of jurisdiction the District Court has over a defendant who has been incarcerated. She stated that the Subcommittee would find that the District Court is also limited by the recordkeeping process of the office of the court clerk, who is a separate constitutional officer. In addition, the computer application currently being used for recordkeeping is designed for case management, not financial management and is, therefore,

also limited in that capacity.

Rather than being sentenced directly to incarceration, Judge Becker explained that a defendant may instead receive a suspension of the prison sentence and be placed on probation. A defendant is assessed a number of fees and fines, including fees such as a fee for an administrative assessment, drug analysis, probation supervision, restitution, drug and/or alcohol counseling, sex offender's counseling and electronic monitoring. However, there is no indication by statute as to which of these fines and fees takes priority in the collection process. Once again, Judge Becker highlighted the lack of jurisdiction the District Court has over the defendant after the fines are assessed. At that point, the District Court must wait for the Department of Parole and Probation to act on the nonpayment issue. If the Department of Parole and Probation determines that the person has the financial means to pay the imposed fine but refuses to pay, the Department may then request the Office of the District Attorney to put a motion on calendar to revoke the probation privileges of the person. Judge Becker stated that the District Court is given no constitutional authority to do this on its own. The judges of the District Court have the constitutional responsibility to maintain an independent, neutral magistrate status.

Judge Becker noted that once the revocation proceeding comes before the District Court, revocation of probation cannot be based solely on the nonpayment of a fee or fine unless willful failure to pay has been determined. Willful failure to pay is determined based on information received from the Department of Parole and Probation and the defendant has the right to contest, if desired. In Judge Becker's experience, the majority of the defendants simply do not have the financial means to pay their fines in full. If partial payment is made, the defendants are not returned for revocation of their probation.

Judge Becker explained that a cost-benefit analysis has not been done to determine if there is a benefit of implementing fine collection procedures with respect to gross misdemeanors and felonies is greater than the cost of collecting. Judge Becker stated that it is okay if a collection agency pursues outstanding fines and collects a fee, but it should be the executive branch, not the courts, making the final decision.

Because the court clerk does not account for assessments by the nature of the case, for example, mandatory fines or jail time, it is difficult to determine the total amount of fines assessed. However, based on her estimates from time spent in the courts, Judge Becker stated that the number of cases in which she has levied fines is very limited. Her concern and priority in these cases are focused on assessing restitution fees, parole and probation fees and mandating counseling. She gives these priority because when she places a defendant on probation she does not want to see him coming back into the court system.

The time given to a defendant to pay an imposed fine is another issue for consideration. As an example, Judge Becker stated that the maximum probation time in a gross misdemeanor case is 3 years and in a felony case it is 5 years. If the defendant is assessed with fees totaling \$5,000 and assuming he is earning \$5 to \$10 per hour, the monthly payment over the 3-year period will be substantial. She further indicated that the financial evaluation performed by the Department of Parole and Probation has determined that most of the probationers are using their incomes to support their families and pay living expenses. The constitutional authority of the District Court does not extend to collections, unless a revocation proceeding matter appears on the court calendar.

Judge Becker estimated that a cost of \$50,000 to \$100,000 would be necessary to update the current computer system being used by the court clerk's office to allow for improved recordkeeping and data collection needed in fine collection. However, she stated that proposed improvements would be dependent upon cooperation from the court clerk's office and funding from the county. With a better tracking system established, Judge Becker stated a cost-benefit analysis could be performed to determine the direction of the fine collection program, where the responsibility for fine collection should lie, and what additional steps need to be taken to improve the collections of fines. Judge Becker estimated, based upon the existing data, that 85 percent of the total outstanding fines in the Clark County District Court are from mandatory fines and prison sentences. She noted that this amount is not collectable by the District Court. The uncollectability of the sizable mandatory fines is creating false fine collection figures because of these figures and are assessed against persons who will, in all probability, never have the resources to pay the debt. Judge Becker indicated that the judges, by and large, encourage the defendants to pay a \$25 fee before being placed on probation. However, she also indicated that the judges lacked the sanctioning powers against defendants if they refused to pay this fee.

Judge Becker offered several suggestions to the Subcommittee in their consideration of the fine collection procedures

used in district courts. First, a determination must be made on the priority of the collection of the assessments, specifically, which assessments must be collected first. Second, determination must be made on how and when payment is to be made, whether income-based using a sliding scale, a set fee per month, or some other method. The current determination procedure used in the Department of Parole and Probation is similar to the sliding scale. Third, a determination must be made on the most cost-effective way of processing the payments to provide victim restitution. Additionally, she suggested assembling a committee, possibly consisting of representatives from the Assembly, the Senate and the Audit Division of the Legislative Counsel Bureau, to work closely with the local courts and the District Attorneys to analyze the most appropriate and effective collection system which will benefit all participants.

Because the court system is not unified in Nevada, Judge Becker indicated that the budgeting process is another difficulty facing the Nevada District Courts. Whereas most states receive a state court system budget which funds all state courts, the state court budget is given to the Administrative Office of the Courts and the Supreme Court, with the balance of the court expenses absorbed by the local governments. Judge Becker stated that, as a result, the court must obtain funding from both state and local governments. Totalling the intake from both the court clerk's office and the fines and assessments collected, Judge Becker indicated that a total of \$14.5 million in revenue is produced yearly. The total operating cost of the district court and the court clerk's office is \$23 million. This figure does not include the operational costs of the Offices of the District Attorneys or the Public Defenders. Judge Becker highlighted the \$9.5 million as a cost which is absorbed by Clark County to maintain operation of the criminal justice system. Because the \$14.5 million also includes state fines assessed, the judge noted that a portion of that total revenue will be returned to the state, increasing the funding burden on Clark County. In response to Senator Augustine's questions, Judge Becker indicated that the \$14.5 million figure is representative of the revenue received from filing fees and similar fees as well as the assessed court fees and fines. Judge Becker cited the amount in the Audit Report which indicated that the court had \$40 million uncollected fees and fines.

Judge Becker indicated that it has been the position of the District Court that if the assessed fine is uncollectible because the defendant lacks the financial means to pay the fine, the statistic is just a number on the book. Collection agencies can be contracted to pursue collection of fines, but judges cannot.

Assemblywoman Buckley asked for an estimate of what was realistically collectible from the \$40 million figure cited in the Audit Report. Judge Becker answered between \$2 million and \$4 million. Assemblywoman Buckley noted that it is important to consider whether the District Courts are assessing unrealistic fines on people who cannot pay. She suggested that the courts need to consider assessing fines that are more realistic. Assemblywoman Buckley further commented that the governing rules should be clarified, and, if necessary, similar fine assessment rules should be implemented in the lower courts for situations specific to those courts.

Judge Becker reemphasized the importance of bringing together members of the Legislature and its Audit Division and the court personnel to work together on a frequent basis to develop effective and efficient policies and procedures to enhance the fine collection system. She noted that the court administrative staff is also willing to work with the auditors in this project. Concurring with Assemblywoman Buckley, she stated that the issue is calculating what is truly collectable and commented that assessments should not be made if collection is doubtful.

Chairman Anderson asked whether Judge Becker thought that the independence of the magistrates is breached when they are given the responsibility of making an income determination before assessing fees or fines on a defendant. To the extent that it becomes mandatory, Judge Becker stated, in her opinion, it would create a breach. She stated that the purpose of a judge is to look at cases and provide a fair judgment in a given situation. If the data on the defendant's ability to pay is available to the judge, Judge Becker agreed that this information should be considered in terms of applying an appropriate punishment to an individual. Although she concurred with applying available background and income data to decide an appropriate punishment, Judge Becker expressed her disapproval of using a sliding-scale system to calculate assessments, because income levels would need to be determined for every defendant to make the assessment. Judge Becker noted that in this sliding-scale calculation, the system would require a person to investigate the income of the defendants.

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Report Concerning Collections in Justice and Municipal Courts

Judge Robey B. Willis

Judge Robey B. Willis, Justice of the Peace and Municipal Court Judge for Carson City, testified next. Judge Willis submitted two documents to the Subcommittee. The first document, "A Resolution in Defense of Bail Forfeitures and Amendment of Citations in Misdemeanor Cases, Recognizing Local Government Costs to Maintain the Criminal Justice System and Supporting Minimum Court Accounting Standards," is attached as Exhibit D. The second document is a fine collection flow chart and statistics from the Carson City Justice and Municipal Court, attached as Exhibit E. Judge Willis indicated that after the legislative audit and the Rose Commission, the courts have improved their fine collection efforts. Judge Willis cited that the collection rate of the Carson City Municipal and Justice Court as 91.65 percent. He indicated that this collection rate is not uncommon in many of the courts around the state and the figure indicates the importance the courts have placed on improving their collections of fines. Collection rates around the state will continue to improve, due in part to the legislation provided by the Legislature allowing the courts to employ collection agencies and in part to the efforts provided by the Nevada Judges' Association.

Senator James noted that one of the purposes of the truth-in-sentencing bill from the 1995 Legislative Session was to take away mandatory fines. He also noted his concerns that assessing fines may not be an appropriate punishment in some cases and that the responsibility of the courts extends much farther than the collection of fines. He suggested that the Subcommittee consider this issue.

Chairman Anderson, in reference to Judge Becker's testimony, stated that it has been the legislative intent to provide independence to magistrates and to separate the judges from the monetary issues to avoid the perception of judgments being tainted by money. However, he agreed that judges should have the latitude to decide each case on its own merit. Because of the unique circumstances of having a combined Municipal and Justice Court, Judge Willis, responding to the Chairman, indicated that nearly all of the traffic fines collected remain in Carson City. Judge Willis explained that all traffic citations issued within the city limits of the city are remitted to the Municipal Court. Because of the uniqueness of the Carson City municipality, the surrounding area is inclusive as being within the city limits of Carson City.

Judge Victor J. Trujillo

Judge Victor J. Trujillo, Justice of the Peace for Mineral County, spoke on behalf of the Nevada Judges' Association. He informed the Subcommittee that one of the major problems in the rural counties is the increasing crime rate. This increase coupled with the lack of available resources has burdened many of the rural county court systems. In his court, Judge Trujillo stated that 10 day letters are issued to people who fail to appear in court. After the 10 days have passed, a warrant is issued for the person's arrest. Within 60 days of issuing the warrant, the account is submitted to a collection agency. The use of the collection agency improves the chances of collecting the fine assessed within 60 days, before the defendant has the opportunity to change residences two or three times.

Judge James EnEarl

Judge James EnEarl, Justice of the Peace, East Fork Justice Court, Douglas County, submitted several documents to the Subcommittee which are attached as Exhibit F. Judge EnEarl began his testimony with some remarks concerning legislative mandates. He stated that each new mandate sets up some part of the system for failure. As an example, he stated that mandatory jail time or mandatory fines, take discretion away from the judiciary, breach the independence of the magistrate and make resolution more difficult. Domestic violence cases provide a recent example where the Legislature established mandatory jail time, fines, counseling to be paid by the defendant, and community service. He noted that this type of system sets someone up for failure, either himself to try to collect the fine or the defendants who may not be able to pay it and end up in alternative sentencing or jail.

Judge EnEarl changed his focus to collections. He informed the Subcommittee that the majority of the defendants in the Justice and Municipal Courts are fined. The defendants who do not pay imposed fines must be held accountable for their conduct. However, Judge EnEarl stated that these defendants are in the minority in his community and throughout Nevada.

In his fine collection program, Judge EnEarl has attempted to implement a system which is fair to the defendants, to

the court, to the people of Douglas County and to the people throughout the State of Nevada. At the point Judge EnEarl assesses a fine upon a defendant, he also asks if the defendant has the financial means to pay the fine in full at that time. Differing from the procedure in Judge Willis' court, Judge EnEarl informed the Subcommittee that he does not accept installment payments for fines assessed. If the defendant indicates he or she will be able to pay the fine following their next paycheck, Judge EnEarl establishes a court date, 2 to 3 weeks from the original appearance, to return and pay the fine in full. The time he sets for payment of imposed fines is always scheduled for a Monday, at 11:00 a.m. If the defendant has not paid the fine by this time on the date established, the defendant must appear in court to explain why payment was not paid as agreed. At the time the defendant is adjudicated guilty or at the time a continuance is granted the defendant signs the notice of his next court date as shown on the court document, "Judgment/Order." By signing this form, the defendant is made aware that payment of the fine is expected on the date and time specified on the form.

Each Monday, at 11:00 a.m., Judge EnEarl calls a regular calendar to hear those individuals who have fines due. Once payment is made, the defendants are removed from the calendar. If the defendant is called but does not appear, Judge EnEarl signs a bench warrant for his arrest at 11:15 a.m. The third option available to the defendant is to appear and explain why he has not paid the fine as agreed. Judge EnEarl emphasized that the defendants appearing with an explanation have never received warrants for their arrest and are never incarcerated. He encourages the defendants to find the financial means to fulfill their fine debt.

Judge EnEarl noted that his primary concern is to hold persons accountable for their actions and stated this is a concern shared by numerous judges throughout the state. The judge stated a 100 percent rate of collection on fines is unattainable. However, every defendant appearing in his court has paid an imposed fine or has an outstanding bench warrant for his arrest. For fines assessed on individuals residing outside the state, Judge EnEarl employs a collection agency to pursue the collection of that money. Additionally, he may threaten a defendant with a lien on his home and indicated this has made the defendants more willing to pay their fines and be accountable for their actions.

Referring to the chart he submitted to the Subcommittee, Judge EnEarl indicated the total fines collected for 1994, the year before he took office, was \$482,000. In 1997, the total was \$726,000. The judge emphasized that the increase in collections is attributable to the collection methods, not to his role as judge. Judge EnEarl indicated to the Subcommittee the traffic violations in Douglas County have not increased significantly and the population has remained relatively stagnant. Fine collections have improved dramatically because his court has held defendants accountable to a date and time specific for fulfillment of the debt. In situations where bench warrants are issued, Judge EnEarl clarified the bail on the defendant is a cash-only bail with an additional \$250 contempt charge added to it. As an example, he explained a court fine of \$64 becomes a bench warrant for \$314. Although he understands his methods may be perceived as being harsh, Judge EnEarl cited his fine collection statistics as evidence that the collection methods used in his court have been effective.

In response to Senator Augustine's questions, Judge EnEarl stated that his fine collection rate is approximately 85 percent. The defendants representing the remaining 15 percent have an outstanding bench warrant for their arrest. He stated that the Nevada Judges' Association has taken a very aggressive stance on improving the fine collection rates and noted that John Matthias from the National Center for State Courts has presented seminars to the association on the subject. Additionally, Judge EnEarl commented that the Nevada Judges' Association is seeking improvements in fine collections, not to increase revenue-generating resources, but to enhance the accountability of defendants for their actions.

Responding to Assemblywoman Buckley's question on the cost to the state versus the county, Judge EnEarl did not have the specific figure of fine collections which are returned to the state. However, he stated that his court returns all money collected on state fines and citations, such as fines mandated by the Nevada Revised Statutes and traffic citations issued by the Nevada Highway Patrol to the state, and he has never altered any documents to divert this money to the county.

Discussing the various obstacles encountered in collecting outstanding fines, Judge EnEarl indicated that when citations are issued on a quota-basis, the court receives "garbage tickets" and the defendants, many of whom reside outside the state, are not likely to appear in court on the citation. Additionally, Judge EnEarl informed the Subcommittee that the California Department of Motor Vehicles does not recognize failures-to-appear or warrants issued in the State of Nevada. Although Nevada may withhold a driver's license in such circumstances, California does not.

Report from Washoe County Collections Division

Beau Wiseman

Beau Wiseman, Director, Washoe Collections Division, testified concerning the fine collection procedures used in Washoe County. Initially, the Washoe County program began in the probation department. The success of the program allowed their services to be expanded to the public defender's office, other county agencies and then to the justice court system. Although the program originated in the Justice Court under Charles McGee, Mr. Wiseman noted the collections division is not a branch of the judiciary. Mr. Wiseman stated that the Washoe County Collections Division is a collection agency and referrals received from the courts that are serviced are handled as accounts receivable. As a collection agency, the collections division bills clients, issues late notices, initiates payment plans if the client is unable to pay in full and accepts credit cards for payments.

The Washoe County Collections Division must consider the issue of inability to pay when a payment plan is initiated for a defendant who does not have the financial means to pay a fine in full. Mr. Wiseman indicated that the division has numerous clients who are willing to pay the fine, but do not have the financial means to pay in full. He further indicated the division attempts to provide alternative financing plans, such as payment plans or using credit cards, to allow the defendant to pay their debt. The division operates its own in-house accounts receivable system, which was developed by the division with software and hardware services contracted from a local collections agency.

Mr. Wiseman informed the Subcommittee that one of the most effective collection tools employed by the division is the use of credit reports. This has been especially effective with the recent low-interest rates available for home buyers and individuals interested in refinancing their current mortgages. Because their credit report reflects unpaid fines owed to Washoe County, in many instances, the defendant is not approved for his loan.

In the District Court, the division provides collection services in domestic violence matters. In the Juvenile Court, collections are done for the court-appointed special advocate programs. Mr. Wiseman indicated that the division collects all of the detention bills for the sheriff's office. For the Risk Management Department, the division collects restitution for both the county and for victims of crimes. In summary, the Washoe County Collections Division acts as a collection agency, collects accounts receivable for the county and bills clients for current accounts. The collections division also receives delinquent accounts from the Reno Municipal Court, the only outside agency the division is contracted to work with, and their partnership with the Municipal Court has worked very well.

Mr. Wiseman indicated that the collection process in Washoe County includes all of the departments of the county as well as the courts. In the first year of operation, the fine collections totalled \$23,000. This year they expect to collect \$2 million. The division sends 15,000 statements per month to debtors. The division is a county agency which performs all the functions of a private collection agency, such as utilizing small claims court and show-cause orders. The operational costs of the division are less than \$400,000. In terms of costs-to-collections, the Washoe County Collections Division is spending about 20 cents for each dollar collected. The Collections Division has offered their services to assist Douglas County, Elko County, Carson City and Ely. The division has attempted to be a fine collection resource for jurisdictions interested in improving their collections process.

Report Concerning Collections System in

Clark County

Holly Gordon

Holly Gordon, Deputy District Attorney, Clark County, testified concerning the current collection procedures used in Clark County. In her assignment to collect delinquent accounts for the county departments, Ms. Gordon indicated that she was recently asked to create a resolution to establish a uniform collections procedure for all the county departments. Ms. Gordon stated the resolution, recently passed, along with Senate Bill No. 29 of the last legislative session, will allow Clark County to improve their fine collection program.

Ms. Gordon quoted Senate Bill No. 29, the section now codified as NRS 176.064, stating that "[t]he court may, on its own motion or at the request of the state or local entity responsible for collecting the delinquent fine, the administrative assessment fee or restitution, take any or all of the following actions." She noted that one of the actions

allowable is to request a prosecuting attorney to undertake collection of the delinquency, including the original, the amount and the collection fee, by attachment or garnishment of the defendant's property, wages or money receivable. Therefore, as an example, if a Justice Court is having a difficult time collecting a fine and has exhausted all of its own resources such as a bench warrant or suspension of a driver's license, then that court can ask the District Attorney's Office, specifically the collections deputy, for assistance in collecting that fine through the use of a garnishment or similar procedure.

In District Court, as Judge Becker noted earlier, many of the collection responsibilities lie with the Department of Parole and Probation. In her duties as the collections deputy, Ms. Gordon also assists the Department of Parole and Probation, upon request, in collecting fees and fines after their resources have been exhausted. Ms. Gordon noted that the Justices Courts, District Courts and District Attorney's Office are working together in the hope of enhancing and maximizing the collection efforts in Clark County.

Kimberly Maxson

Kimberly Maxson, Deputy District Attorney, Clark County, also testified on the current collections procedures used in Clark County. Ms. Maxson indicated that the District Attorney's Office, the AOC, the Nevada League of Cities and others have joined efforts to discuss implementation of a uniform process to streamline and improve the efficiency of the collection process. Specifically, Ms. Maxson expressed the interest of the District Attorney's Office to improve the handling of the collection responsibilities given to their office.

In response to Chairman Anderson's question on the procedures in place before the passage of Senate Bill No. 29, Ms. Gordon indicated that she has only been assigned to collections for one year and was not able to comment on the procedures in place before that time. Ms. Maxson then indicated that the efforts involved were simply those given to her as a prosecutor. In a Justice Court situation, a defendant charged with a misdemeanor may, through negotiations, be assessed a fine or ordered to do community service. If the fine is not paid or community service is not fulfilled in the time frame given by the judge, the sentence will be suspended. In her responsibility as prosecutor, Ms. Maxson advises the court that the defendant has not fulfilled the terms agreed to in negotiations and urges the court to impose a suspended sentence. Ms. Maxson indicated that defendants, most of whom are represented by the public defender's office, will request additional time, citing their inability to pay because of insufficient funds or because an employer will not allow the defendant to pay as required by the courts. Under these circumstances, she stated that the District Attorney's Office would suggest alternative sentencing, such as community service, house arrest, weekend arrest or other similar sentences.

In District Court, Ms. Maxson noted, as Judge Becker previously stated, the District Attorney's Office would handle the notice of revocation. The revocation is filed with the court and with the attorney representing the defendant, and the court is notified of the defendant's unwillingness to pay. Revocations because of unwillingness to pay do not occur very frequently because a majority of the defendants are simply financially unable to pay the fines assessed upon them.

Responding to the Chairman, Ms. Gordon confirmed that the District Attorney's Office did not have a collections process framework in place before the passage of Senate Bill No. 29. Also responding to Chairman Anderson, Ms. Maxson agreed with his comments that given the level of wages earned and the nature of uncollectible fines, over 50 percent of the uncollected fines are uncollectible because the defendants will never have the financial means to pay the fines imposed on them.

Senator Augustine asked Ms. Gordon whether a system such as the one Judge EnEarl outlined earlier, establishing a time and date certain for payment, is being considered within their uniform collections procedures. Ms. Gordon indicated that they have not yet established these requirements in their procedures. Senator Augustine urged them to consider including a time and date certain on imposed fines because it appears to be a very effective procedure within the Douglas County court system.

Following Ms. Maxson's discussion on issuing a letter 30 days following nonpayment of a fine, Senator Augustine raised concerns that there is no method in place to assure that the defendant has received the notice. In Judge EnEarl's court procedure, she noted that the defendant, by signing the triplicate form, is made aware that his fine payment is expected by a time and date certain. Responding, Ms. Maxson stated that the Justice Court system has been very effective in collections and case closures. She reminded the Subcommittee that closing a case does not necessarily

mean the fine originally imposed will be collected in its entirety. In many instances, the judge may, at his option, mandate community service in lieu of paying the fine. Ms. Maxson reiterated that the Justice Courts have maintained a high case-closure rate, approximately 80 percent, in large part because of the fact that the defendants are either doing their community service, paying their fine or serving a jail term for nonpayment of the fine.

Assemblywoman Buckley requested the deputy district attorneys to provide to the Subcommittee with a written report of the fine collection protocols and procedures followed both in the Justice Courts and in the District Attorney's Office. Additionally, she requested that the report include descriptions of the collection methods being used by the District Attorney's Office. With the report, she indicated that the Subcommittee can compare the procedures being used in Northern Nevada, which appear to be effective, to the procedures being used in Southern Nevada.

Discussion of Matters Previously Discussed

Vice Chairman Buckley noted that Ms. Lang, Principal Deputy Legislative Counsel, had prepared a letter summarizing the various issues and positions presented to the Subcommittee at the last meeting on February 6. A copy of the letter is attached as Exhibit G. Additionally, the vice chairman noted that the Subcommittee staff has prepared a report of the citations from Nevada Revised Statutes where the Legislature has provided specific authority to impose fees, fines, bail forfeitures and assessments, that is attached as Exhibit H.

Public Testimony

Before proceeding to public testimony, Chairman Anderson noted the submission of the resolution drafted by the Nevada Association of Counties, which is attached as Exhibit I.

Christy Magers

Christy Magers, Court Administrator, Reno Municipal Court, provided the Subcommittee with additional testimony on the collection procedures used in Washoe County. Following the meeting, Ms. Magers also submitted her written testimony to the Subcommittee, attached as Exhibit J.

Ms. Magers concurred with Mr. Matthias' comment that the most important aspect of fine collections is maintaining the integrity of the judicial system. In the collection procedure in Reno Municipal Court, the judge informs the defendant that all fines are due and payable on the day of sentencing. Ms. Magers indicated that no alternative payment plans are offered unless the defendant has pleaded an inability to pay. At that time, the judge refers the defendant to a judicial enforcement officer, who evaluates the defendant's ability to pay the assessed fine.

Ms. Magers stated that there are two full-time and one half-time staff members who review the defendants' applications for time payment plans. If it is determined the defendant does have the ability to pay the assessed fine, the staff works with the defendant to create a schedule of payments. If the defendant cannot pay the fine, the staff members have the authority to convert the fine debt to community service.

With fines being paid in scheduled payments, Ms. Magers emphasized minimum payments are required and most fines are scheduled for full payment within 6 months, as established in the guidelines set by the judges. The staff monitors the scheduled payments and telephonically notifies defendants if payments are not submitted as agreed. If telephone contact is not made, the staff will issue a letter of delinquency.

As required by Senate Bill No. 29, Ms. Magers also indicated that the defendants are notified that noncompliance with the conditions set with their payment plan may result in the imposition of a \$100 late fee. Additionally, a warrant is issued, the \$100 fee is attached, and the case is sent to either the Washoe County Collections Division or the warrant service provided by Reno police officers. The city council provided the necessary overtime funds to the officers serving the court's warrants.

The warrant service began in 1997, following a one-month amnesty program to allow defendants to resolve their fines to dismiss the warrant fees. Since its inception, Ms. Magers stated that the warrant service has resulted in an average of approximately \$1000 per warrant received. She further stated that this figure is representative of either money collected or jail time served. Although case loads and traffic filings are down, Ms. Magers noted that collections have

increased by 19 percent. In the first year of the new program, she indicated the court realized an additional \$170,000, surpassing their \$150,000 estimate.

Among the 1998-1999 goals for the Reno Municipal Court, one will be to improve the case management system to enable it to automatically generate delinquency notices. Additionally, the court is planning to add an automated telephone reminder program to their existing telephone system. The automated reminder program will automatically dial and notify defendants of upcoming fine payments becoming due. Ms. Magers also expressed the interest of the courts to use defendants' credit reports as another collection tool. By having access to the defendant's credit balance availability, Ms. Magers indicated the court would then be able to charge the fine debt to their credit card. In closing, Ms. Magers stated the court is also considering implementation of a program to provide recognition to those defendants who have made their payments in a timely manner.

Gary Crews

Gary Crews, Legislative Auditor, returned to the panel to clarify several points in early testimony given to the Subcommittee. Mr. Crews noted that the thrust of the work on the Audit Report primarily was with traffic violations in Municipal and Justice's Courts. Of these violations, Mr. Crews indicated that \$40 million was collected from the approximate total assessed \$70 million.

Clarifying the figures presented to the testimony by Judge Becker, Mr. Crews stated the correct estimation of outstanding District Court fines assessed is \$4 million, not \$40 million. He further noted the District Court fines have been a minor issue in the legislative audit of the fine collection system.

In examining the \$40 million in fines collected, Mr. Crews calculated the average fine collected to be \$41 and, in his opinion, this figure does not indicate inability to pay as a significant issue. Additionally, Mr. Crews emphasized the numerous bench warrants, approximately 74,000, represent a significant total of the outstanding fines. In closing his comments, Mr. Crews also highlighted the difficulties associated with collecting fines from California violations, representing 25 percent of the total fines imposed, and suggested the Subcommittee provide additional consideration to this issue.

Concluding Remarks

Chairman Anderson welcomed submission of any written information, direction or documents which may serve the Subcommittee in compiling their recommendations to the full Legislature. He reiterated the directive to submit such materials to Risa Lang, Principal Deputy Legislative Counsel, at the Legislative Counsel Bureau, no later than May 1, so that the staff will have sufficient time to distribute all the materials to the Subcommittee members by the work session.

Chairman Anderson also reemphasized his request for all Subcommittee members to be present at the Legislative Building for participation in the work session. Although teleconferencing to Las Vegas will be available, he expressed his hope that dialogue will be better facilitated if the Subcommittee members are assembled in one location. The Chairman also reiterated that public testimony and presentation of information will not be accepted at the work session. However, the Subcommittee may request individuals to present clarification on previous testimony and public testimony may be allowed following the work session.

There being no further business, the meeting was adjourned at 3:15 p.m.

Respectfully Submitted,

Emiko Mitchell

Committee Secretary

Approved:

Assemblyman Bernie Anderson

Chairman

Date

List of Exhibits

Exhibit A is the meeting notice and agenda.

Exhibit B is the overhead presentation by John Matthias, Senior Attorney, National Center for State Courts.

Exhibit C is the document, "Presentation by Administrative Office of the Courts to the SCR 10 Legislative Subcommittee, March 20, 1998," submitted by Karen Kavanau, Director, Administrative Office of the Courts.

Exhibit D is a proposed resolution entitled, "A Resolution in Defense of Bail Forfeitures and Amendment of Citations in Misdemeanor Cases, Recognizing Local Government Costs to Maintain the Criminal Justice System and Supporting Minimum Court Accounting Standards," submitted by Judge Robey B. Willis and signed by the Mineral County Commissioners.

Exhibit E is a fine collection flow chart and statistics from the Carson City Justice and Municipal Court, submitted by Judge Robey B. Willis.

Exhibit F includes the following documents submitted by Judge James En Earl, Justice of the Peace, East Fork Justice Court, Douglas County: An example of the judgment/order form; an example of the "Conditions of Alternative Sentence" form; an example of the court docket form and a chart indicating the total fines collected in the East Fork Justice Court, from 1994 to the present.

Exhibit G is the summary report prepared by Risa B. Lang, Principal Deputy Legal Counsel, dated March 18, 1998, to Chairman Bernie Anderson, summarizing the issues positions presented at the Subcommittee meeting held on February 6, 1998.

Exhibit H is the report "Compilation of Nevada Laws Concerning Authority of Courts to Impose and Collect Fees, Fines, Bail Forfeitures and Administrative Assessments," prepared and submitted by the Legal Division, Legislative Counsel Bureau.

Exhibit I is a resolution drafted by the Nevada Association of Counties, "A Resolution Defining Forfeiture, Recognizing Local Government Costs to Maintain the State's Criminal Justice System, and Supporting Minimum Court Accounting Standards," signed by Roberta Skelton, President, and Robert S.

Hadfield, Executive Director, Nevada Associations of Counties.

Exhibit J is a document, "Testimony Provided at Subcommittee Hearing on March 20, 1998," submitted by Christy Magers, Administrator, Reno Municipal Court.

Exhibit K is the attendance roster.