



**MINUTES OF THE MEETING  
OF THE  
LEGISLATIVE COMMISSION'S SUBCOMMITTEE TO  
STUDY CATEGORIES OF MISDEMEANORS  
(Assembly Concurrent Resolution No. 2  
[File No. 6, *Statutes of Nevada 2001*] 17<sup>th</sup> Special Session)  
November 15, 2001  
Carson City, Nevada**

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The first meeting of the Legislative Commission's Subcommittee to Study Categories of Misdemeanors (Assembly Concurrent Resolution No. 2 [File No. 6, *Statutes of Nevada 2001 Special Session*]) for the 2001-2002 interim was held on Thursday, November 15, 2001, commencing at 9:30 a.m. in Room 3138, 401 South Carson Street, Carson City, Nevada, and videoconferenced to the Grant Sawyer State Office Building, Room 4401, 555 East Washington Avenue, Las Vegas, Nevada. Pages 2 and 3 contain the "Meeting Notice and Agenda."

**COMMITTEE MEMBERS PRESENT IN CARSON CITY:**

Assemblyman Mark A. Manendo, Chairman  
Senator Mike McGinness  
Senator Maurice E. Washington  
Assemblyman Bernie Anderson  
Assemblyman John C. Carpenter

**COMMITTEE MEMBERS PRESENT IN LAS VEGAS:**

Senator Terry Care

**LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:**

Michelle L. Van Geel, Research Analyst  
Bradley A. Wilkinson, Principal Deputy Legislative Counsel  
Kelly E. Lee, Deputy Legislative Counsel  
Bonnie Borda Hoffecker, Senior Research Secretary

**MEETING NOTICE AND AGENDA**

Name of Organization: Legislative Commission's Subcommittee to Study Categories  
of Misdemeanors (A.C.R. 2 of the 17<sup>th</sup> Special Session)

Date and Time of Meeting: Thursday, November 15, 2001

9:30 a.m.

Place of Meeting: Legislative Building  
Room 3138  
401 South Carson Street  
Carson City, Nevada

Note: Some members of the Subcommittee may be attending the meeting and other persons may observe the meeting and provide testimony, through a simultaneous videoconference conducted at the following location:

Grant Sawyer State Office Building  
Room 4401  
555 East Washington Avenue  
Las Vegas, Nevada

*If you cannot attend the meeting, you can listen to it live over the Internet. The address for the legislative Web site is <http://www.leg.state.nv.us>. For audio broadcasts, click on the link "Listen to Meetings Live on the Internet."*

## **A G E N D A**

- I. Opening Remarks and Introductions  
Assemblyman Mark A. Manendo, Chairman
- II. Brief Overview of Current Nevada Law Concerning Misdemeanors and Discussion of Selected States' Categorization of Misdemeanors  
Michelle L. Van Geel, Research Analyst, Legislative Counsel Bureau
- \*III. Review of Nevada's Classification of Crimes and Overview of How Offenders Are Handled in the Judicial System  
Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office
- \*IV. Impact on Law Enforcement by Potential Changes in Misdemeanor Categories  
Jim Nadeau, Captain, Washoe County Sheriff's Office  
Stan Olsen, Lieutenant/Government Liaison, Las Vegas Metropolitan Police Department
- V. Public Comment
- \*VI. Discussion and Identification of Future Subcommittee Meeting Dates and Locations
- VII. Adjournment

\*Denotes items on which the Subcommittee may take action.

Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Research Division of the Legislative Counsel Bureau, in writing, at the Legislative Building, 401 South Carson Street, Carson City, Nevada 89701-4747, or call Bonnie Borda Hoffecker at (775) 684-6825 as soon as possible.

Notice of this meeting was posted in the following Carson City, Nevada, locations: Blasdel Building, 209 East Musser Street; Capitol Press Corps, Basement, Capitol Building; City Hall, 201 North Carson Street; Legislative Building, 401 South Carson Street; and Nevada State Library, 100 Stewart Street. Notice of this meeting was faxed for posting to the following Las Vegas, Nevada, locations: Clark County Office, 500 South Grand Central Parkway; and Grant Sawyer State Office Building, 555 East Washington Avenue. Notice of this meeting was posted on the Internet through the Nevada Legislature's Web site at [www.leg.state.nv.us](http://www.leg.state.nv.us).

## **OPENING REMARKS AND INTRODUCTIONS**

Chairman Manendo called the meeting to order at 9:32 a.m. At the direction of the Chairman, the Subcommittee's secretary called roll; all members were present. Chairman Manendo introduced the Legislative Counsel Bureau (LCB) staff that would be assisting the Subcommittee during the 2001-2002 interim.

**BRIEF OVERVIEW OF CURRENT NEVADA LAW CONCERNING MISDEMEANORS AND DISCUSSION  
OF SELECTED STATES' CATEGORIZATION  
OF MISDEMEANORS**

*Michelle L. Van Geel*

Michelle L. Van Geel, Research Analyst, Research Division, LCB, Carson City, provided the Subcommittee with an overview of current misdemeanors in Nevada. In addition to five categories of felonies (A through E) for major crimes, Nevada law has misdemeanor and gross misdemeanor categories for less serious crimes. In general, a misdemeanor violation carries a penalty of up to six months in jail and/or a fine up to \$1,000. Most minor traffic offenses are misdemeanors. Other examples of misdemeanor offenses include the following:

1. Disturbing the peace;
2. First and second offenses of driving under the influence without death or substantial bodily harm;
3. Hunting or fishing without a license;
4. Theft, if the value of the property is less than \$250; and
5. Unlawful deposit of garbage on a public highway.

Ms. Van Geel explained that gross misdemeanor violations usually carry a sentence of up to one year in jail and/or a fine up to \$2,000. Examples of gross misdemeanor violations include:

1. Killing or possessing a deer without a valid tag;
2. Making a false statement on a declaration of candidacy;
3. Tampering with evidence;
4. Terminating or threatening to terminate an employee because of jury duty;
5. Unlawfully using information derived from inspection of corporate records; and
6. Willfully making a false statement on a marriage certificate.

Ms. Van Geel indicated 15 states categorize misdemeanors for the purpose of sentences and fines. For example, the State of Arizona has three classes of misdemeanors:

1. A class 1 misdemeanor has a maximum sentence of six months in jail and/or a maximum fine of \$2,500;
2. A class 2 misdemeanor has a maximum sentence of four months in jail and/or a \$750 fine; and
3. A class 3 misdemeanor has a maximum sentence of 30 days in jail and/or a \$300 fine.

Ms. Van Geel explained that in addition to the classes of misdemeanors, Arizona has a petty offense category for which there is no jail sentence, only a \$300 maximum fine. She noted that Ben Graham, Chief Deputy District Attorney, Clark County District Attorney's Office, would provide additional testimony regarding this crime classification.

Concluding her remarks, Ms. Van Geel indicated she would have a complete list of all misdemeanors in Nevada law at the next meeting.

## **REVIEW OF NEVADA'S CLASSIFICATION OF CRIMES AND OVERVIEW OF HOW OFFENDERS ARE HANDLED IN THE JUDICIAL SYSTEM**

### ***Ben Graham***

Ben Graham, Chief Deputy District Attorney, Clark County District Attorney, Las Vegas, explained there would be many consequences if changes were made to the classification of crimes. Any change to the categories would increase the cost of handling cases. Gross misdemeanors usually do not go to trial; however, they do require an attorney and a court date. Mr. Graham could not recall a single instance in the past 24 years where a gross misdemeanor went to trial.

Mr. Graham reported that after polling 230 judges and prosecutors, he has determined there are currently three levels of misdemeanors:

1. The highest level of misdemeanor includes child abuse, domestic violence, and driving under the influence (DUI). In his view the sentencing structure for these offenses should remain the same.
2. Midlevel misdemeanors encompass assault, minor traffic offenses, and simple battery. Penalties for these offenses would involve lesser fines but no mandatory jail time.
3. The lowest level of misdemeanors includes building too close to the property line, building without a permit, dog barking, and weeds too tall.

Mr. Graham suggested the counties/local jurisdictions be given the authority to categorize certain offenses as minor infractions rather than criminal offenses and possibly impose jail time for failure to comply. Granting such authority would not interfere with fee structures, impair law enforcement's ability to enforce the law, or impede the efforts of municipal and justice courts to oversee and implement remedial action. If it were the will of the Subcommittee to follow this suggestion, the misdemeanor structure in place on a statewide level would remain intact, and the Legislature would give authority to local jurisdictions to treat certain misdemeanors as infractions. He stated he had some concerns about ensuring equal protection and due process that must be addressed and answered.

In response to a question by Chairman Manendo, Mr. Graham stated he had no objection with Arizona's classification process. He noted if Nevada chose to follow Arizona's model, Nevada's statutes would require major revision.

Responding to remarks by Assemblyman Carpenter, Mr. Graham explained there are monetary and procedural differences between misdemeanors and gross misdemeanors. The maximum potential sentence for a misdemeanor is six months in jail and/or a \$1,000 fine, while the maximum sentence for a gross misdemeanor is higher. Because the potential maximum sentence for a gross misdemeanor exceeds six months in jail, persons charged at this level are entitled to representation by counsel, a preliminary hearing in district court, and trial by jury. Mr. Graham indicated that Clark County uses the gross misdemeanor category as a bargaining tool to plead minor felonies down to gross misdemeanors in order to secure supervision of the offender by a probation officer. He cautioned that increasing jail sentences beyond six months would create a significant impact in Nevada.

## **IMPACT ON LAW ENFORCEMENT BY POTENTIAL CHANGES IN MISDEMEANOR CATEGORIES**

### ***Jim Nadeau***

Jim Nadeau, Captain, Washoe County Sheriff's Office, Reno, Nevada, offered assistance in addressing the issues set forth in A.C.R. 2 of the 17<sup>th</sup> Special Session, which "directs Legislative Commission to conduct interim study concerning misdemeanors." He suggested that the Subcommittee may examine a number of issues, covering the following points:

- \$ The only jail within Washoe County is the Washoe County Detention Facility. This facility is the sole location for housing misdemeanants upon arrest and those who are sentenced to serve time in jail.
- \$ Changes to the categories of misdemeanors would significantly impact jail populations throughout the state.
- \$ The dollar threshold separating misdemeanor and felony offenses in Nevada is \$250. This threshold should be periodically reviewed to ensure it accurately reflects current dollar values.

Please see Exhibit A for a copy of Captain Nadeau's written remarks.

### ***Stan Olsen***

Stan Olsen, Lieutenant/Government Liaison, Las Vegas Metropolitan Police Department (LVMPD), Las Vegas, stated during meetings with peace officers on this issue, many expressed concern with the possibility of losing the tools they use on a daily basis that give them the discretion to charge at the upper misdemeanor level. He pointed out that misdemeanors are the first level for probable cause that lead to discovery of more serious crimes and felonies. For example, a call of a prowler at night may lead peace officers to a suspect wanted on multiple felonies throughout various states.

Lieutenant Olsen also discussed the cost of incarceration. Currently, LVMPD is renting other facilities to house prisoners at a cost of \$20,000 to \$24,000 per day, and there is no room in the facilities for holding individuals arrested on misdemeanor charges. A normal county facility should house approximately 50 percent felon population; Las Vegas facilities have a felon population of 85 percent. There is a new jail under construction; however, it is expected that within two years after its scheduled opening, that facility will meet or exceed its capacity. By the year 2015, it is estimated the daily population will be about 5,000 prisoners. Eighteen months ago, category E felons were sentenced in county jails, which has had an annual impact of \$2 million on LVMPD.

Captain Nadeau pointed out it was a simple misdemeanor traffic stop in April 1996 that led to the arrest of Timothy McVeigh, who was later found guilty of bombing the Alfred P. Murrah Federal Building in Oklahoma City, on April 19, 1995. This is an example of how important those tools are to law enforcement.

In response to a question by Assemblyman Carpenter, Lieutenant Olsen explained LVMPD uses alternate sentencing such as court referrals, house arrest, and other types of referrals. The LVMPD also offers life skills classes within the jail to provide the prisoners with the tools needed to properly function in society. The voluntary program is taught by trained corrections personnel and has a high success rate.

Senator Washington asked the Subcommittee to consider the issue of domestic violence and changing of the mandatory jail sentence during future meetings. Assemblyman Anderson indicated three issues continue to be contentious: (1) child abuse; (2) DUI and inequities of sentencing; and (3) domestic violence offenders. He explained those issues need to be examined in their own venue so the Subcommittee is able to accomplish its primary purpose, which is to examine the categories of misdemeanors. Assemblyman Carpenter suggested studying the issue of domestic violence in the interim might save time during the legislative session.

## **PUBLIC COMMENT**

### ***Noel S. Waters***

Noel S. Waters, Carson City District Attorney, Carson City, explained gross misdemeanors are used as a plea negotiation tool. The Office of the State Public Defender and the defense bar are often interested in avoiding conviction for felony offenses since it has an impact on an offender's job opportunities, civil rights, and record. The District Attorney's Office prefers a more formal level of supervision for offenders, which comes with the Division of Parole and Probation, by monitoring that individual for up to three years. The most notable gross misdemeanors occurring in Carson City are child abuse; indecent exposure; occasional malicious destruction of property with resulting damages of between \$250 or \$5,000; and open and gross lewdness.

Mr. Waters stated offenses such as handicapped parking violations, operating motor vehicles without proof of

insurance, first offense graffiti violations, and first and second offense possession of marijuana are currently treated as minor infractions. While these are misdemeanor offenses, the punishment is only a fine. As a practical matter, if the potential maximum penalty for an offense is a fine, it can then be considered an infraction. Mr. Waters suggested using infractions versus an arrest in a manner similar to that used by police officers.

Continuing, Mr. Waters noted that concerns with categorizing certain violations as minor infractions and changing penalties for these offenses include how to regulate citizen citation or citizen arrest powers. He also offered the following scenario for consideration: A police officer arrests a person who commits a misdemeanor in his presence. The maximum penalty for the offense is a fine. Given these facts, under what circumstances would the Subcommittee authorize the peace officer to take the offender into custody?

### ***Robey Willis***

Robey Willis, Justice of the Peace/Municipal Judge, Nevada Judges Association, Carson City, suggested that the Subcommittee devote one of its meetings to examining penalty inequities with respect to domestic battery and DUI offenses.

### ***Jay Dilworth***

Jay Dilworth, Judge, Reno Municipal Court, Reno, explained to the Subcommittee that in addition to changing the law, there is also a message sent to the community. Retailers would be concerned if shoplifters were not going to receive jail time for their offense. If traffic offenses were decriminalized, Judge Dilworth would like to retain the right of the driver to face the officer. He noted that many times errors are made and the defendant is found not guilty. Judge Dilworth asked the Subcommittee to consider putting on the agenda the impact changes in misdemeanor categories would have on the courts.

Judge Dilworth acknowledged the purpose of the Subcommittee is to determine if the changes to the categories of misdemeanors have the intended outcome.

Chairman Manendo agreed that any changes made to the categories of misdemeanors would seriously impact NRS. He suggested that the Subcommittee explore eliminating antiquated misdemeanors and then review the result of those changes.

Senator Care requested an opinion from staff as to whether the statutory criminal code can vary within the counties based on population, e.g., if the same offense could be charged as a gross misdemeanor in one county but a misdemeanor in another.

## **DISCUSSION AND IDENTIFICATION OF FUTURE SUBCOMMITTEE MEETING DATES AND LOCATIONS**

Chairman Manendo announced the second meeting of the Subcommittee would be held on Friday, January 25, 2002, in Carson City, and videoconferenced to Las Vegas, starting at 9:30 a.m. The Subcommittee tentatively set its next meeting dates for March 1, 2002, and April 19, 2002, with the locations to be announced at a later date.

## **ADJOURNMENT**

There being no further business to come before the Subcommittee, Chairman Manendo adjourned the meeting at 11:32 a.m.

Exhibit B is the "Attendance Record" for this meeting.

Respectfully submitted,

Bonnie Borda Hoffecker  
Senior Research Secretary

Michelle L. Van Geel  
Research Analyst

APPROVED BY:

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Mark A. Manendo, Chairman

Date: \_\_\_\_\_

### **LIST OF EXHIBITS**

Exhibit A is a written copy of the remarks of Captain Jim Nadeau, Washoe County Sheriff's Office, provided by Captain Nadeau.

Exhibit B is the "Attendance Record" for this meeting.

Copies of the materials distributed in the meeting are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. You may contact the library at (775) 684-6827.

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