

*Fees, Fines, Forfeitures and
Administrative Assessments
Imposed and Collected by Courts*



*Legislative Counsel
Bureau*

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Assessments Imposed and Collected by Courts**

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SUMMARY OF RECOMMENDATIONS

This summary presents the recommendations approved by the Legislative Commission's Subcommittee on Fees, Fines, Forfeitures and Administrative Assessments Imposed and Collected by Courts (S.C.R. 10). The Subcommittee submits these proposals for consideration to the 70th Session of the Nevada Legislature.

RECOMMENDATIONS CONCERNING ACCOUNTING PROCEDURES USED BY STATE COURTS

1. Draft a resolution encouraging the Administrative Office of the Courts to develop standardized accounting procedures among the courts and to develop a minimum standard of technology within the courts to create more consistency among the courts to ensure that accurate audits may be conducted and the integrity and credibility of the judiciary maintained. (BDR R-176)
2. Draft a letter from the Subcommittee to the Director of the Administrative Office of the Courts requesting a report back by December 1, 1998, detailing the progress that has been made towards standardization and technology.

RECOMMENDATION CONCERNING TREATING MONEY PAID FOR A TRAFFIC CITATION IN LIEU OF APPEARING IN COURT AS BAIL FORFEITURE

3. Amend NRS to clarify that money paid on a traffic citation in lieu of appearing in court must be treated as a fine for the purposes of revenue, regardless of the manner in which the payment is characterized on the citation. Provide that the amount required to be paid by a defendant who mails in a traffic citation in lieu of appearing in court as specified on the traffic citation must include any administrative assessment that would be required if the defendant appeared in court. The payment of the administrative assessment must be included in addition to the amount paid as a fine on the traffic citation. Prohibit any entity from designating or treating payment for a misdemeanor traffic citation in lieu of appearing in court as a bail forfeiture. (BDR 43-175)

RECOMMENDATIONS CONCERNING COLLECTION
PROCEDURES USED BY COURTS

4. Amend NRS to authorize courts to accept payment for fees and fines by credit card and to charge a defendant who makes payment in such a manner an amount equal to the service charge incurred by the court, but not to exceed 4 percent of the total amount charged. (BDR 1-178)
5. Amend NRS to provide that a person who has failed to pay a fee or fine to a court in this state may not renew his motor vehicle registration or his driver's license until payment is complete. (BDR 43-177)
6. Draft a letter to the Director of the Administrative Office of the Courts and include a statement in the final report of the Subcommittee encouraging the Administrative Office of the Courts to assist courts to improve collections by establishing standardized procedures, providing education and support to judges and developing methods for quality assurance within the courts. This should include the creation of a task force consisting of judges, court personnel and representatives of the Administrative Office of the Courts. The letter will request a report back from the Director of the Administrative Office of the Courts by December 1, 1998, detailing the progress that has been made toward these goals.

**REPORT TO THE 70TH SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE ON
FEES, FINES AND ADMINISTRATIVE ASSESSMENTS
IMPOSED AND COLLECTED BY COURTS**

I. Introduction

The Nevada Legislature passed Senate Concurrent Resolution No. 10 (S.C.R. 10) during the 69th Legislative Session (File No. 141, *Statutes of Nevada 1997*, at p. 3718) directing the Legislative Commission to appoint a Subcommittee to conduct an interim study concerning the fees, fines, forfeitures and administrative assessments which are imposed and collected by the courts of the State of Nevada. See Appendix A for the text of the resolution. The Legislative Commission appointed a Subcommittee of seven Legislators (four Assemblymen and three Senators) to carry out the provisions of the resolution.

The following Legislators served on the S.C.R. 10 Subcommittee:

Assemblyman Bernie Anderson, Chairman
Assemblywoman Barbara E. Buckley
Assemblyman John C. Carpenter
Assemblywoman Gene Wines Segerblom
Senator Kathy Augustine
Senator Mark A. James
Senator Dina Titus

The following staff of the Legislative Counsel Bureau provided services to the Subcommittee:

Risa B. Lang, Principal Deputy Legislative Counsel, Legal Division
Leslie Hamner, Deputy Legislative Counsel, Legal Division
Allison Combs, Principal Research Analyst, Research Division
Debbra King, Program Analyst, Fiscal Analysis Division
Charlene Adamson, Secretary, Legal Division
Nancy McPherson, Secretary, Legal Division

The Subcommittee held four meetings, including a work session, during the course of the study. Two of the meetings were held in Las Vegas and two meetings, including the work session, were held in Carson City. Each public hearing was conducted through a simultaneous video conference between meeting rooms at the Legislative Building in Carson City and the Grant Sawyer State Office Building in Las Vegas.

During the course of this interim study, the Subcommittee received extensive testimony and correspondence from experts, members of the judiciary and their staff, the Administrative Office of the Courts, the Office of the Attorney General, district attorneys, law enforcement agencies, local governments and other members of the public. These persons offered information and suggestions concerning the current practices of courts, law enforcement and local government with respect to the imposition and collection of fees, fines, forfeitures and administrative assessments in this state. During the first meeting of the Subcommittee, the Subcommittee received background information, an overview of the 1995 Audit Report of the State of Nevada Judicial Branch of Government Administrative Oversight of the State Court System ("1995 Audit Report") and a report concerning the perspective of local governments and the Nevada Taxpayers' Association. A copy of the 1995 Audit Report which was the basis for this interim study is included in Appendix B. During the second meeting of the Subcommittee, the Subcommittee considered the accounting procedures used by state courts, the duplication of state statutes in local laws, the treatment of Nevada Highway Patrol citations that are written as NRS violations as violations of local laws and the treatment of money paid in advance for a traffic citation as a bail forfeiture. The Subcommittee also received a report concerning the effect on state finances from undeposited revenue in the State Permanent School Fund. The third meeting of the Subcommittee focused on collection procedures used by courts and local governments. During that meeting, an expert in the area of collection procedures from the National Center for State Courts gave a presentation concerning efforts among the various states to improve the rate of collections by state courts.

At its fourth and final meeting and work session, the Subcommittee adopted six recommendations, including four bill draft requests for consideration by the 1999 Legislature.

This document presents the findings and recommendations of the Subcommittee in a concise form. Considerable information was gathered during this study. Copies of written information received by the Subcommittee and the minutes of the meetings of the Subcommittee are on file with the Research Library of the Legislative Counsel Bureau and are available for review.

This report is transmitted to the members of the 70th Session of the Nevada Legislature for their consideration and appropriate action.

II. General Background Information About State Courts

Article 6 of the Nevada Constitution establishes the judicial branch of government. Below is a discussion of the courts that compose the judicial branch. A flow chart of the structure of the Nevada court system is also included in Appendix C.

A. Supreme Court

1. Number of Judges: Section 2 of article 6 of the Nevada Constitution establishes the Nevada Supreme Court. It provides for a chief justice and two or more associate justices as may be provided by law. Currently, NRS 2.010 provides for four associate justices. Assembly Bill No. 343 of the 1997 Legislative Session increased this number to six associate justices. The additional two associate justices will be elected at the general election to be held in 1998 and will take their positions in January of 1999. However, the authority for these two additional associate justices is removed if the Nevada Constitution is amended to create an intermediate court of appeals. *See* Chapter 433, Statutes of Nevada 1997, at page 1529.

2. Funding: The salaries of the justices are established in NRS 2.050 and are paid through legislative appropriation. The primary sources of funding for the supreme court are legislative appropriations and administrative assessments.

3. Jurisdiction: Section 4 of article 6 of the Nevada Constitution establishes the jurisdiction of the Nevada Supreme Court. It states that the Nevada Supreme Court has appellate jurisdiction in all civil cases arising in district courts, and on questions of law alone in all criminal cases in which the offense charged is within the original jurisdiction of the district courts. The Court may also issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and other necessary writs. *See also* NRS 2.090 (jurisdiction to review on appeal) and NRS 2.110 (power on appeal).

4. Rules: NRS 2.120 grants the Nevada Supreme Court the authority to establish rules for its own government, the government of the district courts, and the government of the State Bar of Nevada, except that the rules must not be inconsistent with the constitution or the laws of this state.

5. Administrative Office of the Courts: The Administrative Office of the Courts is created in NRS 1.320. The court administrator is appointed by and serves at the pleasure of the Nevada Supreme Court. NRS 1.330. The duties of the court administrator are set forth in NRS 1.360 and include, without limitation, examining all aspects of the state court system and making recommendations and developing procedures for the operation of the state court system.

B. Proposed Court of Appeals: Currently, the Nevada Constitution does not provide for an intermediate appellate court. However, Senate Joint Resolution No. 14 which was passed during the 1997 Legislative Session proposes to amend the Nevada Constitution to create an intermediate appellate court. *See* Senate Joint Resolution No. 14, File No. 106, Statutes of Nevada 1997, at page 3670. If approved again during the 1999 Legislative Session, S.J.R. 14 will be placed on the ballot during the general election to be held in the year 2000 for approval by the voters of this state. If approved by the Legislature and the voters, the Court of Appeals will then be created. Once created, the Legislature would determine the jurisdiction of the Court of Appeals and

the manner in which decisions of that court would be appealed. The Court of Appeals would consist of at least three judges or such greater number as the Legislature provides by law.

C. District Courts

1. Number of Districts and Judges: Section 5 of article 6 of the Nevada Constitution establishes nine judicial districts in this state. The counties included in each judicial district are set forth in NRS 3.010. The number of judges for each judicial district is specified in statute. Before the 1997 Legislative Session, there were a total of 48 district judges. *See* NRS 3.011 to 3.019, inclusive. However, four additional district judges were added during the 1997 Legislative Session. After those judges take office, there will be a total of 52 judges. *See* chapter 462, Statutes of Nevada 1997, at page 1733; chapter 468, Statutes of Nevada 1997, at page 1753.

2. Funding: The salary of the judges of the district courts is established in NRS 3.030 and is paid out of the District Judges' Salary Account of the Supreme Court. The operational costs of the district courts are paid by local governments and administrative assessments. *See* Audit Report in Appendix B at p. 7; *see also* NRS 3.100 (courtroom, office and facilities to be provided by county).

3. Jurisdiction: The jurisdiction of the district courts is set forth in section 6 of article 6 of the Nevada Constitution. The district courts have original jurisdiction in all cases in which the justices' courts do not have original jurisdiction. Therefore, the district courts hear cases dealing with torts, contracts and real property in which the sum claimed exceeds \$7,500. The district courts have jurisdiction over domestic relations, mental health, estates and other civil matters. The district courts hear felonies and gross misdemeanors and have exclusive jurisdiction in juvenile cases. The district courts also have appellate jurisdiction in cases that commence in justices' courts and municipal courts. In addition, the district courts have authority to issue writs.

In counties whose population is 100,000 or more the judicial districts are required to designate family courts. *See* NRS 3.0105. The family courts hear juvenile matters as well as all other matters affecting families, including proceedings for divorce, custody and visitation, proceedings related to child and spousal support, parentage, adoptions, termination of parental rights, minors' disabilities and judicial emancipation of minors, guardianships, cases related to child abuse and neglect as well as many other types of proceedings. NRS 3.223. A separate study was conducted during the 1997-1998 interim concerning the family courts. *See* Assembly Concurrent Resolution No. 32, File No. 140, Statutes of Nevada 1997, at page 3716.

D. Justices' Courts

1. Number of Courts and Justices: Section 8 of article 6 of the Nevada Constitution provides that the Nevada Legislature determines the number of justices of the peace and their qualifications, terms of office and limits of their jurisdiction. NRS 4.020 requires the establishment of one justice's court in each township for which at least one justice of the peace must be elected. Additional justices of the peace must be elected based on the population of the county. *See also* Chapter 613, Statutes of Nevada 1997, at page 3062 (authorizing an additional justice of the peace in certain counties). Currently, there are 65 justices of the peace.

2. Funding: The salaries of the justices of the peace are established by the boards of county commissioners of each county. NRS 4.040. Thus, both the salaries and operational costs of justices' courts are paid by the local governments and administrative assessments. *See* Audit Report in Appendix B at p. 7.

3. Jurisdiction: NRS 4.370 sets forth the basic jurisdiction of the justices' courts as follows:

1. Except as limited by subsection 2, justices' courts have jurisdiction of the following civil actions and proceedings and no others except as provided by specific statute:

(a) In actions arising on contract for the recovery of money only, if the sum claimed, exclusive of interest, does not exceed \$7,500.

(b) In actions for damages for injury to the person, or for taking, detaining or injuring personal property, or for injury to real property where no issue is raised by the verified answer of the defendant involving the title to or boundaries of the real property, if the damage claimed does not exceed \$7,500.

(c) Except as otherwise provided in paragraph (l) in actions for a fine, penalty or forfeiture not exceeding \$7,500, given by statute or the ordinance of a county, city or town, where no issue is raised by the answer involving the legality of any tax, impost, assessment, toll or municipal fine.

(d) In actions upon bonds or undertakings conditioned for the payment of money, if the sum claimed does not exceed \$7,500, though the penalty may exceed that sum. Bail bonds and other undertakings posted in criminal matters may be forfeited regardless of amount.

(e) In actions to recover the possession of personal property, if the value of the property does not exceed \$7,500.

(f) To take and enter judgment on the confession of a defendant, when the amount confessed, exclusive of interest, does not exceed \$7,500.

(g) Of actions for the possession of lands and tenements where the relation of landlord and tenant exists, when damages claimed do not exceed \$7,500 or when no damages are claimed.

(h) Of actions when the possession of lands and tenements has been unlawfully or fraudulently obtained or withheld, when damages claimed do not exceed \$7,500 or when no damages are claimed.

(i) Of suits for the collection of taxes, where the amount of the tax sued for does not exceed \$7,500.

(j) Of actions for the enforcement of mechanics' liens, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed \$7,500.

(k) Of actions for the enforcement of liens of owners of facilities for storage, where the amount of the lien sought to be enforced, exclusive of interest, does not exceed \$7,500.

(l) In actions for a fine imposed for a violation of NRS 484.757.

(m) Except in a judicial district that includes a county whose population is 100,000 or more, in any action for the issuance of a temporary or extended order for protection against domestic violence.

(n) In small claims actions under the provisions of chapter 73 of NRS.

(o) In actions to contest the validity of liens on mobile homes or manufactured homes.

(p) In any action pursuant to NRS 200.591 for the issuance of a protective order against a person alleged to be committing the crime of stalking, aggravated stalking or harassment.

2. The jurisdiction conferred by this section does not extend to civil actions, other than for forcible entry or detainer, in which the title of real property or mining claims or questions affecting the boundaries of land are involved.

3. Justices' courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute.

4. Except as otherwise provided in subsections 5 and 6, in criminal cases the jurisdiction of justices of the peace extends to the limits of their respective counties.

5. In the case of any arrest made by a member of the Nevada highway patrol, the jurisdiction of the justices of the peace extends to the limits of their respective counties and to the limits of all counties which have common boundaries with their respective counties.

6. Each justice's court has jurisdiction of any violation of a regulation governing vehicular traffic on an airport within the township in which the court is established.

To summarize, the justices' courts hear tort, contract, real property and small claims actions valued at \$7,500 or less. The justices' courts also consider certain traffic violations, protective orders and liens on mobile homes or manufactured homes. Justices' courts conduct preliminary hearings in criminal matters and have jurisdiction over all misdemeanors.

E. Municipal Courts

1. Number of Courts and Judges: Section 1 of article 6 of the Nevada Constitution authorizes the Nevada Legislature to establish municipal courts. Section 9 of article 6 of the Nevada Constitution states that if such courts are established, the Nevada Legislature shall prescribe the powers, duties and responsibilities of the courts as well as the jurisdiction of the courts. NRS 5.010 provides that there must be a municipal court in each incorporated city and town. *See also* NRS 266.550 to 266.595, inclusive. Currently, there are 28 municipal judges. Eleven of these municipal judges also serve as the justice of the peace.

2. Funding: The salaries of municipal judges are paid by the city in which the municipal court is located. NRS 5.030. The operational costs of the municipal courts are also paid through local governments and administrative assessments. *See* Audit Report in Appendix B at p.7.

3. Jurisdiction: The jurisdiction of the municipal courts is set forth in NRS 5.050 as follows:

1. Municipal courts have jurisdiction of civil actions or proceedings:
 - (a) For the violation of any ordinance of their respective cities.
 - (b) To prevent or abate a nuisance within the limits of their respective cities.
2. The municipal courts have jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities.
3. The municipal courts have jurisdiction of:
 - (a) Any action for the collection of taxes or assessments levied for city purposes, when the principal sum thereof does not exceed \$2,500.
 - (b) Actions to foreclose liens in the name of the city for the nonpayment of those taxes or assessments when the principal sum claimed does not exceed \$2,500.
 - (c) Actions for the breach of any bond given by any officer or person to or for the use or benefit of the city, and of any action for damages to which the city is a party, and upon all forfeited recognizances given to or for the use or benefit of the city, and upon all bonds given on appeals from the municipal court in any of the cases named in this section, when the principal sum claimed does not exceed \$2,500.
 - (d) Actions for the recovery of personal property belonging to the city, when the value thereof does not exceed \$2,500.
 - (e) Actions by the city for the collection of any damages, debts or other obligations when the amount claimed, exclusive of costs or attorney's fees, or both if allowed, does not exceed \$2,500.
4. Nothing contained in subsection 3 gives the municipal court jurisdiction to determine any such cause when it appears from the pleadings that the validity of any tax, assessment or levy, or title to real

property, is necessarily an issue in the cause, in which case the court shall certify the cause to the district court in like manner and with the same effect as provided by law for certification of causes by justices' courts.

To summarize, municipal courts hear tort, contract, real property and small claims actions valued at \$2,500 or less. The municipal courts also hear civil actions for the violation of any city ordinance and actions to prevent or abate a nuisance within the city.

III. Accounting Procedures Used by State Courts

The first major topic that was considered by the Subcommittee was related to the accounting procedures used by the courts in this state. The 1995 Audit Report that was conducted by the Legislative Auditor of the Legislative Counsel Bureau (Appendix B) found that the state courts in Nevada "use a number of different methods to classify, record, and distribute fines collected from N[evada] H[ighway] P[atrol] citations." The 1995 Audit Report also stated that many courts had not established adequate internal accounting controls for collecting, recording and depositing fines. The Subcommittee heard additional testimony indicating that substantial differences also exist in the manner in which courts classify and report money collected. As a result, it is difficult to determine and evaluate the manner in which the courts are using and distributing the money that they collect. However, the Subcommittee also received testimony indicating that some measures have been taken to ensure consistency in accounting procedures by courts.

During its work session, the Subcommittee considered whether legislative action was necessary to ensure the establishment of uniformity in accounting procedures and to provide accountability and consistency among the courts. Members of the judiciary and the Administrative Office of the Courts indicated that measures are already being taken to achieve uniformity and improve procedures. Because of the length of time that it has taken for improvements to be made in this area, Subcommittee members noted that they remained concerned about this issue. However, members felt that mandatory legislation without the full support of the judiciary might hinder rather than assist the efforts to improve accounting procedures. Thus, the Subcommittee voted to send a letter to the Director of the Administrative Office of the Courts indicating the support of the Subcommittee for several recommendations provided by Mary Walker, Director of Finance and Development for Carson City, concerning technology in the courts and standardized accounting practices within the courts. The Subcommittee further voted to request a progress report from the Administrative Office of the Courts describing the progress of the courts with respect to achieving minimum technology and standardizing accounting practices by December 1, 1998. See Appendix D for the text of the letter from Mary Walker outlining these recommendations.

The Subcommittee further voted to recommend that the Legislature:

Adopt a resolution encouraging the Administrative Office of the Courts to develop standardized accounting procedures among the courts and to develop a minimum standard of technology within the courts to create more consistency among the courts to ensure that accurate audits may be conducted and the integrity of the courts maintained.

**IV. Treating Nevada Highway Patrol Citations
that are Written as NRS Violations
as Violations of Local Laws**

The second major topic which the Subcommittee addressed during its study was the treatment of Nevada Highway Patrol citations that are written as NRS violations as violations of local laws. The 1995 Audit Report found that many courts in this state change traffic citations issued by the Nevada Highway Patrol ("NHP") that are written as violations of the Nevada Revised Statutes ("NRS") to violations of local ordinances. This situation has been caused in part because municipal courts in this state have limited jurisdiction and are not authorized to hear matters related to violations of NRS. In addition, according to the testimony presented to the Subcommittee, many courts change citations to local ordinance violations to ensure that local governments may keep the fine imposed rather than transfer the money to the state treasurer to be used for educational purposes as required for state penal fines pursuant to section 3 of article 11 of the Nevada Constitution. However, the testimony before the Subcommittee indicated that this practice is not consistent among the courts and many courts in this state do not change traffic citations issued by NHP to local ordinance violations. In addition, some justices' courts change citations from NRS violations to local ordinance violations even though those courts are authorized to hear issues related to violations of NRS.

The Subcommittee received conflicting information regarding the legal authority for this practice. Some attorneys asserted that this practice is not prohibited. However, the Legislative Counsel opined that for this practice to be lawful certain procedures would have to be followed. First, official action of the judge would be necessary to change the citation. Second, the person would have to appear before the judge, be informed of the different charge and enter a plea to the different charge. Others objected that those procedures are not required when the person pays a citation without appearing in court because such payment does not constitute a finding of guilt. A copy of the opinion letter from Legislative Counsel to Chairman Anderson, dated March 18, 1998, outlining the positions presented on these issues is provided in Appendix E.

The effect of courts changing citations from NRS violations to violations of local ordinances is that fines which would otherwise be transferred to the state to be placed in the State Permanent School Fund are retained by the local governments.

Money that is diverted away from the State Permanent School Fund must be replaced with money from the State General Fund, which diminishes the amount of money that is available for other programs. See Appendix F for analysis from Fiscal Analysis Division of the LCB concerning the impact of changing citations from NRS violations to violations of local ordinances on the State General Fund.

The Subcommittee considered several possible actions concerning NHP citations. In discussing this issue, some members of the Subcommittee noted concern about the inconsistent treatment of citations among counties, and stressed the importance of uniformity among the courts. Some members were concerned that the current practice does not reflect the intent of section 3 of article 11 of the Nevada Constitution which states that “all fines collected under the penal laws of the state are hereby pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses.” To carry out that intent, the Legislature enacted NRS 176.265 which provides that “[t]he full amount of all fines imposed and collected under and for violation of any penal law of this state shall be paid into the state treasury” which is then credited to the State Permanent School Fund. Other members of the Subcommittee remained concerned about the fiscal impact that any change in the current practice would have on local governments which provide the facilities and personnel to process citations.

Despite the concerns about the manner in which the courts and local governments are currently handling NHP citations and the money received from NHP citations, the members of the Subcommittee could not agree on the appropriate action to recommend regarding this issue. Thus, this issue remains unresolved and may need to be addressed again by the Nevada Legislature in the future.

V. Duplication of State Laws in Local Ordinances

The third major topic that the Subcommittee considered was the duplication of state laws in local ordinances. Cities and counties throughout this state have duplicated all or part of the traffic violations set forth in NRS in their city and county codes and ordinances. In addition, they enforce those local codes and ordinances on state highways within their city and county boundaries. The Subcommittee received conflicting testimony concerning the legal support for enforcing city and county codes and ordinances on state highways. However, testimony indicated that the procedures currently used appear to be working. Therefore, after consideration, the Subcommittee determined that it was not necessary to recommend any action concerning this issue.

VI. Treating Money Paid in Advance for a Traffic Citation In Lieu of Appearing in Court as a Bail Forfeiture

The 1995 Audit Report of the State of Nevada Judicial Branch of Government and Administrative Oversight of the State Court System (Appendix B) identified many state courts which classify money mailed in with a traffic citation, in lieu of appearing in person, as bail forfeiture rather than as a fine. However, if the person appears in court and pays the amount cited, the court will classify the payment as a fine. As a result of the classification of money paid in advance for a traffic citation as a bail forfeiture, the local government is able to retain the money. When the amount paid is classified as a fine, Nevada law and the Nevada Constitution require the fine to be remitted to the State Treasurer for credit to the State Permanent School Fund. The Audit Report estimated that two-thirds of the money collected from NHP citations is paid without a court appearance and thereby classified as bail forfeiture and retained by local governments. Thus, the classification of money has a significant impact on the amount of money remitted to the state.

The Subcommittee received extensive information and testimony concerning this issue. Some legal support for this practice was presented by district attorneys and judges in this state. A copy of the legal opinion of Noel Waters, Carson City District Attorney supporting this practice is included in Appendix G. However, the Legislative Counsel opined that the payment of a traffic citation without appearing before a judge has the characteristics of a fine rather than a forfeiture of bail, and that a court should treat such payment as a fine, regardless of whether the payment is called a fine or a forfeiture of bail. The arguments presented by the Legislative Counsel are summarized in the opinion letter found in Appendix E.

The Subcommittee considered several possible actions regarding whether money paid for a traffic citation in lieu of appearing in court should be treated as a bail forfeiture or a fine and the members expressed diverse opinions. One member of the Subcommittee supported amending NRS to define the payment of money in lieu of appearing in court so that such a payment is not treated as a fine, thereby specifically authorizing local governments to retain money so collected. There was disagreement among the members of the Subcommittee concerning whether carrying out such a change would require an amendment to the Nevada Constitution. This recommendation failed for lack of support. Some members of the Subcommittee expressed concern about the money local governments would lose as a result of specifically requiring money paid on a traffic citation in lieu of appearing in court to be treated as a fine. Other members expressed concern about money not being transferred to the State Treasurer for deposit in the State Permanent School Fund and the effect that has on the schools in this state.

After discussing the issues, the Subcommittee voted to recommend that the Legislature:

Enact legislation amending NRS to clarify that money paid on a traffic citation in lieu of appearing in court must be treated as a fine for the purposes of revenue, regardless of the manner in which the payment is characterized on the citation. Provide that the amount required to be paid by a defendant who mails in a traffic citation in lieu of appearing in court as specified on the traffic citation must include any administrative assessment that would be required if the defendant appeared in court. The payment of the administrative assessment must be included in addition to the amount paid as a fine on the traffic citation. Prohibit any entity from designating or treating payment for a misdemeanor traffic citation in lieu of appearing in court as a bail forfeiture. (BDR 43-175)

VII. Collection Procedures

The 1995 Audit Report of the State of Nevada Judicial Branch of Government and Administrative Oversight of the State Court System found that the justices' and municipal courts in this state collected only 60 percent of the fines and 74 percent of the administrative assessments imposed within 1 year after a citation had been issued by the NHP. The 1995 Audit Report notes that "[p]oor collection procedures have allowed millions of dollars in fines to go uncollected." The 1995 Audit Report further states that "[c]ollection efforts at most district courts are not adequate" and that many district courts have not assumed responsibility for collecting fines and administrative assessments. As a result, the 1995 Audit Report states that the district courts have collected only a small percentage of fines and administrative assessments imposed. The 1995 Audit Report acknowledges that it may be more difficult for district courts to collect money from offenders because offenders may be indigent or sentenced to lengthy prison terms. However, it notes that even a moderate increase in collection rates would result in a substantial increase in the amount of fines and assessments collected.

During the third meeting of the Subcommittee, John Matthias, Senior Staff Attorney for the National Center for State Courts, gave a presentation concerning the efforts of other states to improve collections by state courts. He also provided members with a copy of a book which he authored entitled "Current Practices in Collecting Fines and Fees in State Courts." A copy of his overhead presentation is included in Appendix H. Mr. Matthias indicated that many states have commenced collection procedures which have greatly increased the percentage of fees and fines collected. He emphasized that fines have a rehabilitative, punitive and deterrent effect

only if they are collected. Mr. Matthias described various programs established in other states to improve the collection of fees and fines and noted that different elements from the various approaches to collecting fees and fines may be combined to create a program which works for Nevada.

Several judges and persons involved in collections in this state also testified before the Subcommittee. This testimony indicated that some courts have procedures for collecting which have resulted in a high collection rate and others do not have such procedures which have a low collection rate.

After considering this issue, the Subcommittee decided that a statewide program for collecting fees, fines and administrative assessments was not advisable at this time. Rather, the Subcommittee determined that a better approach would be to allow the courts to continue to develop their own methods for improving collection procedures. However, the Subcommittee supported legislation that would assist the courts in improving collections. Therefore, the Subcommittee voted to recommend that the Legislature:

1. Enact legislation amending NRS to authorize courts to accept payment for fees and fines by credit card and to charge a defendant who makes payment in such a manner an amount equal to the service charge incurred by the court, but not to exceed 4 percent of the total amount charged. (BDR 1-178)
2. Enact legislation amending NRS to provide that a person who has failed to pay a fee or fine to a court in this state may not renew his motor vehicle registration or his driver's license until payment is complete. (BDR 43-177)

The Subcommittee also voted to encourage the Administrative Office of the Courts to assist courts to improve collections by establishing standardized procedures, providing education and support to judges and developing methods for quality assurance within the courts in the manner recommended by Mary Walker, Director of Finance and Development for Carson City. See Appendix D for the text of the recommendations. The Subcommittee further voted that the report to the Legislature from the Director of the Administrative Office of the Courts concerning technology and accounting practices should include a description of the progress that has been made toward these goals.

VIII. APPEARANCES

The following people appeared before or presented written material to the Subcommittee:

Sheriff Rod Banister
Carson City Sheriff
Carson City, Nevada

The Honorable Nancy A. Becker
Eighth Judicial District Court
Las Vegas, Nevada

The Honorable Max W. Bunch
Lander County Justice Court
Battle Mountain, Nevada

The Honorable Stephen J. Dahl
North Las Vegas Justice Court
North Las Vegas, Nevada

The Honorable James EnEarl
East Fork Justice Court
Minden, Nevada

Ms. Holly Gordon
Deputy District Attorney
Clark County District Attorney's Office
Las Vegas, Nevada

Mr. Thomas J. Grady
Executive Director
Nevada League of Cities
Carson City, Nevada

Mr. Ben Graham
Chief Deputy District Attorney
Clark County District Attorney's Office
Nevada District Attorneys' Association
Las Vegas, Nevada

Major Daniel Hammack
Deputy Chief
Nevada Highway Patrol
Carson City, Nevada

Mr. Michael Havemann
Court Administrator
Las Vegas Municipal Court
Las Vegas, Nevada

Mr. Martin Hefner
Nevada Taxpayers' Association
Carson City, Nevada

Mr. Brian Hutchins
Chief Deputy Attorney General
Office of the Attorney General
Carson City, Nevada

Ms. Karen Kavanau
Director
Administrative Office of the Courts
Carson City, Nevada

Ms. Stephanie Licht
Elko County, Nevada

Ms. Christy Magers
Court Administrator
Reno Municipal Court
Reno, Nevada

Mr. John Mathias
Senior Staff Attorney
National Center for State Courts
Court Services Division
Denver, Colorado

Ms. Kimberly Maxson
Deputy District Attorney
Clark County District Attorney's Office
Las Vegas, Nevada

Mr. Zane S. Miles
Deputy District Attorney
Eureka County District Attorney's Office
Eureka, Nevada

Mr. Steve Morris
Administrative Services Manager
Las Vegas Municipal Court
Las Vegas, Nevada

Chief David Mullin
Nevada Sheriffs' and Chiefs' Association
Boulder City, Nevada

The Honorable Victor J. Trujillo
Mineral County Justice Court
Nevada Judges' Association
Hawthorne, Nevada

Ms. Carole A. Vilardo
President
Nevada Taxpayers' Association
Las Vegas, Nevada

Ms. Mary Walker
Director of Finance and Redevelopment
Carson City, Nevada

Mr. Noel Waters
Carson City District Attorney
Carson City, Nevada

The Honorable Robey B. Willis
Carson City Justice and Municipal Court
Carson City, Nevada

Mr. Beau Wiseman
Director
Washoe County Collections Division
Reno, Nevada

IX. SELECTED REFERENCES

EnEarl, Judge James, Justice of the Peace, East Fork Justice Court, Douglas County (March 20, 1998). An example of the judgment/order form; an example of the form setting forth the "Conditions of Alternative Sentence,"; an example of the court docket form; and a chart indicating the total fines collected in the East Fork Justice Court from 1994 to present.

Grady, Tom, Executive Director, Nevada League of Cities (February 1998). Packet of letters from city officials from various Nevada cities addressed to Mr. Grady concerning practices of local government.

Hammack, Major Daniel G., Deputy Chief, Nevada Highway Patrol (January 22, 1998). Packet of information concerning the citation and complaint procedures used by the Nevada Highway Patrol.

Havemann, Michael R., Court Administrator, Las Vegas Municipal Court (February 5, 1998). Letter concerning the Court Administrator, accounting procedures, accounting controls and the procedure followed to ensure that money designated for the State of Nevada from court collections is transferred to the State Treasurer.

Havemann, Michael R., Court Administrator, Las Vegas Municipal Court (March 18, 1998). Letter concerning the collection efforts of the Las Vegas Municipal Court.

Hutchins, Brian, Chief Deputy Attorney General, Transportation and Public Safety Division of the Office of the Attorney General (February 6, 1998). Document concerning local ordinances incorporating state traffic laws, and the treatment of Nevada Highway Patrol citations as violations of local ordinances or treating money paid in advance as bail forfeiture.

Kavanau, Karen, Director, Administrative Office of the Courts (February 4, 1998). Letter concerning the role of the Administrative Office of the Courts ("AOC"), the AOC's experience and ability to establish internal controls for the state courts, and actions taken by the AOC in response to the 1995 Audit Report.

Kavanau, Karen, Director, Administrative Office of the Courts (March 20, 1998). "Presentation by Administrative Office of the Courts to the SCR 10 Legislative Subcommittee."

King, Debbra, Program Analyst, Fiscal Division, LCB (February 1998). "Revenues Collected by Courts for State Purposes," and "Court Collections for Local Purposes."

Nevada Association of Counties (February 6, 1998). "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 Association of Counties.

Nevada Judges Association (January 1998). "A Resolution in Defense of Bail Forfeitures and Amendment of Citation in Misdemeanor Cases, Recognizing Local Government Costs to Maintain the Criminal Justice System and Supporting Minimum Court Accounting Standards," signed by members of the Nevada Judges Association.

Walker, Mary C., Director of Finance and Redevelopment, Carson City, (January 16, 1998). "Agreed-Upon Procedures Report on Costs Associated with Processing Nevada Highway Patrol Citations," prepared by Kafoury, Armstrong & Co.

Waters, Noel, Carson City District Attorney (January 13, 1998). "Fines, Fees, Forfeitures and Administrative Assessments Imposed and Collected by the Courts--A City/County Perspective."

Willis, Judge Robey B., Justice of the Peace and Municipal Court Judge for Carson City, (March 1998). Fine collection flow chart and statistics from the Carson City Justice and Municipal Court.

Wiseman, Beau, Administrator, Washoe County Collections Division (May 18, 1998). Facsimile regarding the collection program in place in Washoe County.

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APPENDIX A

Senate Concurrent Resolution No. 10 of the 1997 Legislative Session

Senate Concurrent Resolution No. 10-Committee on Legislative
Affairs and Operations

FILE NUMBER 141

SENATE CONCURRENT RESOLUTION--Directing the Legislative Commission to conduct an interim study concerning the fees, fines, forfeitures and administrative assessments which are imposed and collected by the courts of the State of Nevada.

WHEREAS, The courts of this state, pursuant to authority set forth in the Nevada Revised Statutes, impose and collect a growing number of fees, fines, forfeitures and administrative assessments; and

WHEREAS, It has become apparent that differing interpretations of the terms "fee," "fine," "forfeiture" and "administrative assessment" may affect the lawfully permissible uses to which money obtained from each of those sources may be put following collection by a court of this state; and

WHEREAS, The residents of the State of Nevada have an interest in ensuring that money collected by the courts of this state in the form of fees, fines, forfeitures and administrative assessments is expended only in accordance with the constitution and laws of this state; now, therefore, be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Legislative Commission is hereby directed to conduct an interim study concerning the fees, fines, forfeitures and administrative assessments which are imposed and collected by the courts of the State of Nevada; and be it further

RESOLVED, That the Legislative Commission shall appoint a subcommittee to conduct the study which must include an analysis of:

1. The authority pursuant to which the courts of this state impose and collect fees, fines, forfeitures and administrative assessments and the differing purposes, if any, for the imposition and collection of each;

2. Whether the courts are collecting all the fees, fines, forfeitures and administrative assessments imposed and, if not, recommend procedures to ensure that all fees, fines, forfeitures and administrative assessments imposed are collected;

3. Statutory language, court decisions and other relevant authorities to determine how the courts and agencies of this state should properly characterize and use the terms "fee," "fine," "forfeiture" and "administrative assessment"; and

4. The permissible uses to which money collected in the form of fees, fines, forfeitures and administrative assessments imposed by the courts of this state may be put; and be it further

RESOLVED, That any recommended legislation proposed by the subcommittee must be approved by a majority of the members of the Senate and a majority of the members of the Assembly appointed to the subcommittee; and be it further

RESOLVED, That the Legislative Commission shall submit a report of its findings and any recommendations for legislation to the 70th session of the Nevada Legislature.

APPENDIX B

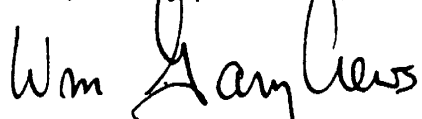
1995 Audit Report of the State of Nevada Judicial Branch of Government Administrative Oversight of the State Court System

Legislative Commission
Legislative Building
Carson City, Nevada

We have completed an audit of the Judicial Branch of Government. This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions. The results of our audit, including findings, conclusions, recommendations, and the Supreme Court's response, are presented in this report.

We wish to express our appreciation to the justices, judges, and staff of the Supreme Court, and the district, justice, and municipal courts for their assistance during the audit.

Respectfully presented,

A handwritten signature in black ink that reads "Wm Gary Crews". The signature is written in a cursive, flowing style.

Wm. Gary Crews, CPA
Legislative Auditor

Carson City, Nevada
January 23, 1995

STATE OF NEVADA
JUDICIAL BRANCH OF GOVERNMENT
ADMINISTRATIVE OVERSIGHT OF THE STATE COURT SYSTEM
AUDIT REPORT

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STATE OF NEVADA
JUDICIAL BRANCH OF GOVERNMENT
ADMINISTRATIVE OVERSIGHT OF THE STATE COURT SYSTEM
AUDIT REPORT

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EXECUTIVE SUMMARY JUDICIAL BRANCH OF GOVERNMENT ADMINISTRATIVE OVERSIGHT OF THE STATE COURT SYSTEM

Background

The Judicial Branch of Nevada State Government was created by Article 6 of the Nevada Constitution. The Judicial Branch includes a "court system" comprised of 85 courts: the Supreme Court, 9 judicial district courts, 56 justice courts, and 19 municipal courts. Nevada's court system collected over \$40 million in local and state fines, fees, and administrative assessments in fiscal year 1993. The court system remitted \$2.5 million in fines and \$6.8 million in administrative assessments to the state in fiscal year 1993. State fines are earmarked for educational purposes, while administrative assessments are used to fund various programs within the Supreme Court and several criminal justice programs.

The Supreme Court is the highest court of record in Nevada's court system. The Court reviews appeals of judgments or orders from the state's 9 judicial district courts, provides admittance and disciplinary oversight of the legal profession, and provides administrative oversight of Nevada's courts. The Supreme Court has 5 justices elected to 6-year terms and had 54 employees during fiscal year 1993. The Supreme Court includes the Office of the Court Clerk, Central Staff Attorneys, the Law Library, and the Administrative Office of the Courts (AOC). The Court's primary funding sources were \$6.8 million in state appropriations and \$3.5 million in administrative assessments in fiscal year 1993.

District courts have jurisdiction in all cases involving gross misdemeanor and felony violations of state penal laws. Justice courts have responsibility for misdemeanor cases involving violations of state penal laws and county ordinances. Municipal courts have responsibility for cases that involve violations of city ordinances.

**EXECUTIVE SUMMARY
JUDICIAL BRANCH OF GOVERNMENT
ADMINISTRATIVE OVERSIGHT OF
THE STATE COURT SYSTEM**

Scope and Objective

This audit included the activities of Nevada's courts related to processing, collecting, recording, and remitting state fines and administrative assessments imposed on Nevada Highway Patrol (NHP) citations issued during fiscal year 1993. The scope of our audit also included fines imposed and collected for various cases processed at 3 district courts during fiscal year 1993, and felony DUI convictions processed at 1 district court during fiscal years 1991 and 1992.

The objective of our audit was to determine if the state's court system has financial and administrative controls in place to ensure state fines and assessments are properly classified, collected, and recorded.

Results in Brief

Significant and widespread management control weaknesses exist within Nevada's court system. Because of poor financial and administrative practices at many of the courts, millions of dollars in state fines and assessments have gone uncollected, and millions more may have been improperly distributed to local governments instead of going to the State. In addition, many courts have not established adequate internal accounting controls to ensure money collected from fines is safeguarded against fraud and misuse.

The Administrative Office of the Courts, under the direction of the Supreme Court, has the authority to (1) establish internal controls for the state's court system, (2) periodically review those controls, and (3) make recommendations for improvements to financial and administrative procedures. This authority could be used to establish internal control standards and monitor the financial and administrative practices of the state's courts.

EXECUTIVE SUMMARY
JUDICIAL BRANCH OF GOVERNMENT
ADMINISTRATIVE OVERSIGHT OF
THE STATE COURT SYSTEM

Principal Findings

- The way courts account for fines directly affects the distribution of the money. We noted a number of different methods used to classify, record, and distribute payments received. As a result, of the \$6.7 million in fines collected from NHP citations during 1993, local governments received about \$5.5 million and only \$1.2 million went to the State. (page 10)
- We estimate about \$4.2 million received by justice courts from NHP citations in 1993 was classified as bail forfeitures and therefore went to the counties. In the opinion of the Legislative Counsel, these payments are more characteristic of a fine and should have gone to the State as required by the State Constitution and the laws of Nevada. (page 14)
- We estimate about \$1.3 million in fines collected from NHP citations was retained by local governments because the citations were changed from violations of state laws to violations of local ordinances. We noted a number of courts that amend all NHP citations to violations of local ordinances. Therefore, these courts remitted no fines to the State from NHP citations in 1993. According to the Legislative Counsel, certain requirements must be met when changing NHP citations from violations of NRS to local ordinances. However, based on available information, many amendments may not have met these requirements. (page 15)
- Improper accounting methods resulted in local governments receiving fines that should have gone to the State. We noted 3 justice courts that record fines from NRS violations as local fines despite legal requirements that the money go to the State. (page 17)

EXECUTIVE SUMMARY
JUDICIAL BRANCH OF GOVERNMENT
ADMINISTRATIVE OVERSIGHT OF
THE STATE COURT SYSTEM

- During 1993, justice and municipal courts collected only 60% of the fines imposed on NHP citations. We estimate about \$2.4 million more could have been collected if effective collection procedures were in place. Poor collection procedures have allowed over \$16 million in uncollected state fines, warrant fees, and assessments to accumulate in recent years. (page 18)
- Collection efforts at most district courts are not adequate. As a result, district courts collected only \$590,000 of the estimated \$4 million in fines imposed during 1993. Furthermore, almost none of the fines imposed for felony DUI convictions were collected at 1 court. (page 21)
- Many courts have not established adequate internal controls for collecting, recording, and depositing fine payments. Of the 49 courts responding to our survey, only 13 indicated they had developed written internal control procedures. Because of internal control weaknesses, instances of fraud and misuse of funds have occurred within the state's court system. (page 24)
- There is a need for guidance and oversight of the state's court system. Nearly $\frac{2}{3}$ of the courts responding to our survey indicated at least some improvement would be made if statewide accounting and administrative procedures were developed. Even basic accounting and administrative procedures will help ensure fines are properly classified, recorded, and safeguarded. In addition, these procedures should increase the amount of fines and administrative assessments collected for use by state and local governments. (page 26)

**EXECUTIVE SUMMARY
JUDICIAL BRANCH OF GOVERNMENT
ADMINISTRATIVE OVERSIGHT OF
THE STATE COURT SYSTEM**

Recommendations

This audit report contains 4 recommendations for improving financial and administrative controls in use by Nevada's courts. Specifically, the AOC should (1) establish minimum control standards, (2) develop uniform procedures to classify, record, and distribute fines and assessments, (3) develop collection procedures, and (4) perform periodic monitoring to ensure control objectives are achieved. (page 28)

Agency Response

The Chief Justice, in his response to our preliminary report, accepted all 4 recommendations. (page 72)

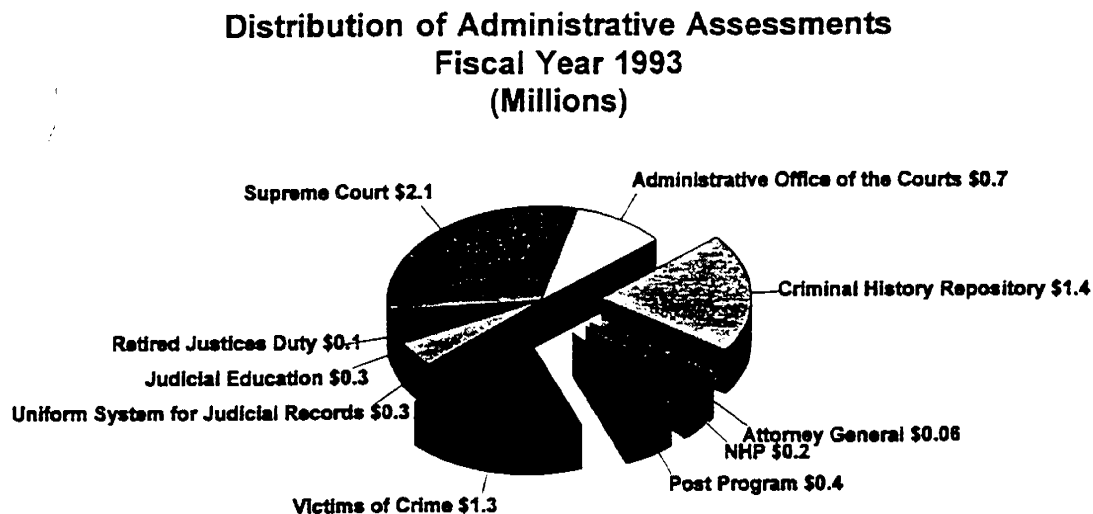
Introduction

Background

The Judicial Branch of Nevada was created by Article 6 of the Nevada Constitution. The Judicial Branch consists of a "court system" comprised of the Supreme Court, 9 judicial district courts, 56 justice courts, and 19 municipal courts. Courts are located throughout Nevada, in both large metropolitan areas and less populated rural areas.

Nevada's court system collected over \$40 million in local and state fines, fees, and administrative assessments during fiscal year 1993. Justice courts remitted \$1.9 million in fines to the State from violations of state laws, including citations issued by the NHP and the Division of Wildlife; district courts remitted about \$600,000 in state fines. In addition, administrative assessments totaling about \$6.8 million were remitted to the State. State fines are earmarked for educational purposes; administrative assessments are used to fund various programs within the Supreme Court and several criminal justice programs. Figure 1 shows the distribution of administrative assessments remitted to the State in fiscal year 1993.

Figure 1



Source: State Controller's Reports

The Supreme Court is the highest court of record in Nevada's court system. The Court reviews appeals of judgments or orders from the state's district courts, provides admittance and disciplinary oversight of the legal profession, and provides administrative oversight of Nevada's courts. The Supreme Court has 5 justices elected to 6-year terms and had 54 employees during fiscal year 1993.

The Supreme Court includes 4 components:

- The Office of the Court Clerk provides support for many of the Court functions and is responsible for managing the Court's caseload and docket.
- Central Staff Attorneys process cases for the Court from docketing until resolution.
- The Law Library provides legal research materials to the courts, other branches of government, the bar, and the public.
- The Administrative Office of the Courts (AOC) provides administrative support to the Supreme Court and the state court system. Under the direction of the Supreme Court, the AOC is responsible for providing administrative oversight of the Judicial Branch pursuant to NRS 1.360.

The Court's primary funding sources were \$6.8 million in state appropriations and \$3.5 million in court administrative assessments in fiscal year 1993.

District courts have jurisdiction in all cases that involve gross misdemeanor and felony violations of state penal laws. District court judge's salaries are funded by state appropriations. District court operations are funded by local sources and receive \$5.00 of each administrative assessment collected.

Justice courts have responsibility for misdemeanor cases that involve violations of state penal laws and county ordinances. They process the majority of NHP citations written for violations on state highways. Justice courts are funded by local sources and receive \$2.50 of each administrative assessment collected.

Municipal courts have responsibility for cases involving violations of city ordinances. Municipal courts are funded by local sources and receive \$2.50 of each administrative assessment collected.

Scope and Objective

This audit is part of the ongoing program of the Legislative Auditor as authorized by the Legislative Commission, and was made pursuant to the provisions of NRS 218.737 to 218.893. The Legislative Auditor conducts audits as part of the Legislature's oversight responsibility for public programs. The purpose of legislative audits is to improve state government by providing the Legislature, state officials, and Nevada citizens with independent and reliable information about the operations of state agencies, programs, activities, and functions.

This audit included the activities of Nevada's courts related to processing, collecting, recording, and remitting state fines and administrative assessments imposed on NHP citations issued during fiscal year 1993. The scope of our audit also included fines imposed and collected for various cases processed at 3 district courts during fiscal year 1993, and felony DUI convictions processed at 1 district court during fiscal years 1991 and 1992.

The objective of our audit was to determine if the state's court system has financial and administrative controls in place to ensure state fines and assessments are properly classified, collected, and recorded.

Methodology

To accomplish our objective, we interviewed AOC's staff and reviewed statutes, policies, financial reports, and budgets. We also surveyed district, justice, and municipal courts regarding accounting, collection, and internal control procedures; and we surveyed county and municipal treasurers regarding court fine money received and remitted to the State.

To determine if state fines and administrative assessments were properly recorded, collected, and remitted to the State, we selected and tested a random sample of traffic/misdemeanor citations and complaints (citations) issued by the NHP during fiscal year 1993. To ensure the sample results were representative of the population, our sample was based on statistical principles using random selection methods. From our statistical sample, we tested 751 NHP citations located at 53 courts throughout the

State. To ensure that a minimum of 25 citations were tested at each court, we randomly selected an additional 836 citations. The detailed sampling methodology is listed in Appendix A.

To evaluate collection rates and procedures at district courts, we randomly selected a total of 150 convictions at the 3 largest district courts. We also randomly selected 48 DUI convictions at 1 district court for fiscal years 1991 and 1992.

Our audit work was conducted from September 1993 to November 1994, in accordance with generally accepted government auditing standards.

In accordance with NRS 218.821, we furnished a copy of our preliminary report to the Chief Justice of the Supreme Court. On January 10, 1995, we met with the Chief Justice and Court management to discuss the results of the audit and requested a written response to the preliminary report. That response is contained in Appendix E which begins on page 72.

Contributors to this report include:

Rocky Cooper, CPA
Deputy Legislative Auditor

Jane Bailey
Deputy Legislative Auditor

Gene Walkama
Deputy Legislative Auditor

Timothy K. Brown, CPA
Principal Deputy Legislative Auditor

Stephen M. Wood, CPA
Chief Deputy Legislative Auditor

Findings and Recommendations

Significant and widespread management control weaknesses exist within Nevada's court system. Because of poor financial and administrative practices at many of the courts, millions of dollars in state fines and assessments have gone uncollected, and millions more may have been improperly distributed to local governments instead of going to the State. In addition, many courts have not established adequate internal accounting controls to ensure money collected from fines is safeguarded against fraud and misuse.

The Administrative Office of the Courts, under the direction of the Supreme Court, has the authority to (1) establish internal controls for the state's court system, (2) periodically review those controls, and (3) make recommendations for improvements to financial and administrative procedures. This authority could be used to establish internal control standards and monitor the financial and administrative practices of the state's courts.

Distribution of Fines from NHP Citations

The state's courts use a number of different methods to classify, record, and distribute fines collected from NHP citations. As a result, most of the money paid on the citations went to local governments, not the State. A number of factors affect how money collected from fines is distributed, including classifying payments as bail forfeitures rather than fines, convicting offenders of violating local ordinances instead of state laws, and inconsistent and improper recording of fines.

Based on the results of our sample, we estimate justice and municipal courts imposed fines totaling \$11.8 million on the NHP citations issued during 1993. Of this amount, courts collected about \$6.7 million, but only \$1.2 million went to the State. Table 1 shows the total fines collected by justice and municipal courts and how the fines were distributed. Amounts shown are based upon projections from our testing of NHP citations.

Table 1

**Distribution of Fines Collected From NHP
Citations Issued in Fiscal Year 1993
(Millions)**

	<u>Fines Collected</u>	<u>Remitted To Local Governments</u>	<u>Remitted To State</u>
Justice Courts	\$6.1	\$4.9	\$1.2
Municipal Courts	<u>.6</u>	<u>.6</u>	<u>—</u>
Total	<u>\$6.7</u>	<u>\$5.5</u>	<u>\$1.2</u>

The way courts classify fines paid on NHP citations directly affects the distribution of the money. For example, if the payment is considered a fine, it must go to the State, but if it is considered a forfeiture of bail, it must go to the counties. In addition, if the citation is considered a violation of a state traffic law, the fine must go to the State, but if it is considered a violation of a local traffic ordinance, it goes to the local government.

The amount of fines remitted to the State for NHP citations varied widely among the counties because of inconsistent classification and recording procedures. For instance, 4 counties remitted a total of only \$728 to the State for justice court fines collected on NHP citations issued in 1993. We estimate these courts collected about \$500,000 from the 12,400 NHP citations issued during that time.

Our test results indicate the average fine collected per NHP citation was \$39.27, but the average amount remitted to the State was only \$6.04. Average amounts remitted from the counties for fines imposed by justice courts ranged from \$.00 to \$16.36. Also, none of the municipal courts remitted fines from NHP citations to the State in 1993. The average fines collected and remitted to the State for the courts in our sample are shown in Table 2.

Table 2

**COURT FINES REMITTED TO THE STATE
PER NHP CITATION TESTED
By County
Fiscal Year 1993**

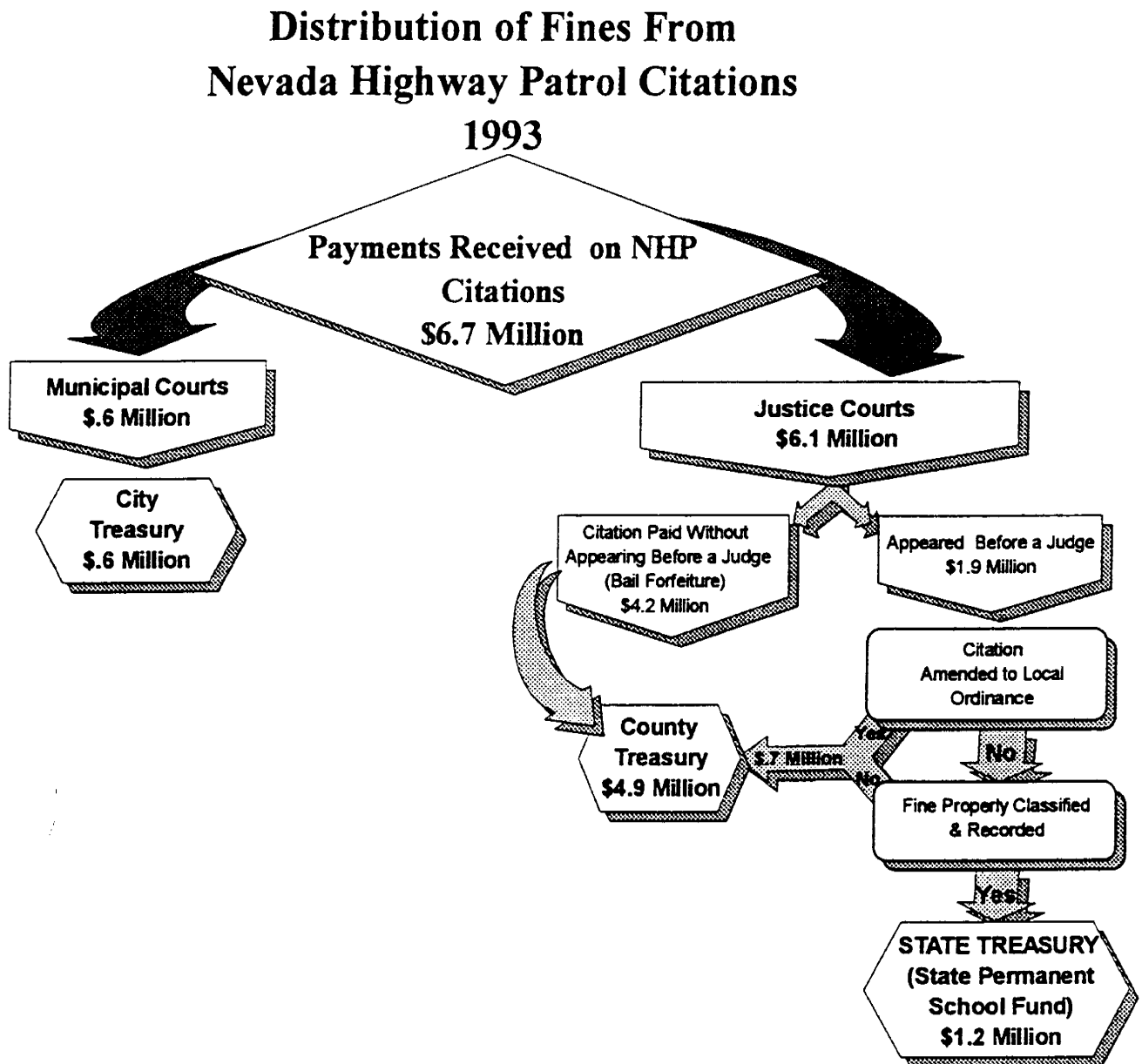
County	Fines Collected	Fines Remitted To the State	NHP Citations Tested	Average Fine Collected Per Citation	Average Fine Remitted to State Per Citation
Justice Courts					
Clark	\$16,876	\$6,300	385	\$43.83	\$16.36
Churchill	1,003	368	25	40.12	14.72
Nye	1,925	324	50	38.50	6.48
Eureka	2,007	300	50	40.14	6.00
Washoe	9,650	1,085	181	53.31	5.99
Lyon	2,805	548	100	28.05	5.48
Lincoln	1,796	170	50	35.92	3.40
Carson City	767	80	25	30.68	3.20
Lander	1,574	108	50	31.48	2.16
Pershing	895	40	25	35.80	1.60
Storey	1,935	20	25	77.40	.80
Douglas	2,056	15	50	41.12	.30
Elko	7,692	52	177	43.46	.29
White Pine	858	0	49	17.51	.00
Mineral	2,219	0	75	29.59	.00
Esmeralda	1,033	0	25	41.32	.00
Humboldt	1,189	0	25	47.56	.00
Total	\$56,280	\$9,410	1,367	\$41.17	\$6.88
Municipal Courts					
Clark	\$ 3,098	\$ 0	142	\$21.82	\$.00
Elko	1,023	0	22	46.50	.00
White Pine	741	0	26	28.50	.00
Total	\$ 4,862	\$ 0	190	\$25.59	\$.00
Statewide Total	\$61,142	\$9,410	1,557	\$39.27	\$6.04

Source: Random sample of NHP citations issued during fiscal year 1993.

Note: 30 citations were not included. These citations were issued for outstanding warrants (23), juvenile cases (1), or were not at the court identified by NHP (6).

Figure 2 demonstrates how NHP citations are processed by the courts and how the fines collected from these citations were distributed in 1993.

Figure 2



Bail Forfeitures

Upon receiving a traffic citation, the defendant can choose to appear in court at the time and place indicated on the citation and enter a plea to the offense charged, or simply pay the amount indicated on the citation. Many courts classify payments made in lieu of a court appearance as bail. When the defendant does not appear in court, the bail is considered forfeited and the payment is applied toward the fine. Other courts do not wait for the court date to elapse, but simply record these payments as bail forfeitures when the payment is received. The way these payments are classified determines whether the money goes to the State or whether it goes to the local government. If classified as fines, Nevada law and the Constitution require the money be deposited in the State Treasury for credit to the State Permanent School Fund. On the other hand, if considered forfeitures of bail, the law dictates the money go to the counties.

Since about $\frac{2}{3}$ of the money collected from NHP citations is paid without a court appearance, the classification of these payments has a significant impact on the amount of money remitted to the State. We estimate about \$4.2 million of the \$6.1 million collected by justice courts from NHP citations issued in 1993 was classified as bail forfeitures, and therefore went to the counties. Because the statutes do not make a clear distinction whether these payments should be classified as fines or bail forfeitures, we requested a legal opinion from the Legislative Counsel. We asked whether a traffic citation paid without a court appearance should be considered a forfeiture of bail, subject to the provisions of NRS 178.518, or a fine, subject to the provisions of NRS 176.265 and Article 11, § 3 of the Nevada Constitution.

In response, the Legislative Counsel stated:

In summary, for minor traffic offenses, a person's appearance in court is assured by his written promise to appear, not by cash deposited with the court. The payment of a citation is more characteristic of a pecuniary punishment imposed for being convicted of the offense charged than of a penalty for failing to appear in court. Therefore, the payment of a traffic citation without appearing before a judge is more characteristic of a "fine" and should not be characterized as a "forfeiture of bail" to avoid the applicable constitutional provision. Section 3 of Article 11 of the Constitution of the State of Nevada pledges all fines collected for the violation of the penal laws of this state for educational

purposes and prohibits the transfer or other use of that money. It is the opinion of this office that this provision applies to the payment of a traffic citation without appearing before a judge whether such payment is designated by the citing official as a forfeiture of bail or as the payment of a fine. (See Appendix C for the complete legal opinion.)

Since the current practice of accounting for NHP citation payments conflicts with the Legislative Counsel's opinion, the Legislature may wish to consider legislation to address this issue.

NHP Citations Amended to Local Ordinances

Many jurisdictions have adopted local ordinances which incorporate NRS traffic laws as part of the city charter or county code. In addition, many local ordinances have been adopted which make any misdemeanor violation of NRS a violation of the local ordinance. Therefore, even though NHP traffic citations indicate NRS violations, many courts change the charges to violations of local ordinances. Since offenders are then convicted of violating local ordinances, the fines collected go to the local governments instead of the State. Based on the responses to our survey, 40 out of 41 justice and municipal courts indicated NRS had been adopted as part of their local ordinances.

We estimate about \$1.3 million of the fines collected from NHP citations issued in 1993 was retained by local governments because offenders were convicted of violating local ordinances rather than NRS. We noted 3 justice courts that amended all NRS violations to local ordinances when the defendants appeared in court. In addition, municipal courts consider all NRS misdemeanor traffic violations to be violations of city ordinances. As a result, these courts remit no fines to the State from NHP citations.

Because of the different methods used to amend NHP citations, we requested a legal opinion from the Legislative Counsel. We asked a series of questions related to the validity of local ordinances regulating traffic on state and federal highways and the legal requirements for changing NRS violations as listed on NHP citations to local ordinances.

In response, the Legislative Counsel stated:

1. *...pursuant to the provisions of NRS 244.357, a county may enact ordinances regulating parking and vehicular, pedestrian and other traffic within the unincorporated area of the county, but a county is expressly forbidden from enacting an ordinance fixing a speed limit upon a federal or state highway. A city may regulate all vehicular, pedestrian and other traffic within the city, including traffic upon the portion of a federal or state highway which is within the limits of the city. See NRS 266.677. An unincorporated town may regulate traffic upon the streets and alleys within the town, including traffic upon the portion of a federal or state highway which is within the unincorporated town, and may regulate the speed, parking, stopping, turning and operation of all motor vehicles. See NRS 269.185. However, pursuant to the provisions of subsection 3 of NRS 484.779, a local ordinance is not effective with respect to federal or state highways until the ordinance has been approved by the Board of Directors of the Department of Transportation.*
2. *...it is the opinion of this office that a judge may change a misdemeanor or traffic citation to reflect a violation of a municipal or county ordinance which duplicates a state law when a peace officer issues a citation for a violation of the state law, provided that the person appears before the judge, is advised of the different charge and enters a plea to the different charge. A prosecutor may only recommend that a misdemeanor or traffic citation be changed, while a clerk of a court may change a citation only at the direction of a judge. (See Appendix C for complete legal opinion.)*

To determine if any local ordinances regulating traffic on state or federal highways had been approved pursuant to NRS 484.779, we requested the Nevada Department of Transportation (NDOT) provide us with copies of all local ordinances approved by the Board of Directors. In response, NDOT officials notified us they had reviewed Board minutes dating back to 1969 and could only locate 3 references to Board consideration of local ordinances. However, based on the information provided by NDOT, 2 of the 3 requests were rejected.

In one case, the Board rejected a county's request of a proposed ordinance which would adopt by reference state traffic laws. In rejecting the request, the Board cited the same concerns it expressed in 1974 when it rejected a city's proposal to keep all fines

from violations on state highways. The Governor, who served as the Board Chairman, indicated that, if approval was given to one city, other cities would desire the same consideration. He further stated the approval of such a proposal would result in a loss of revenue to Nevada's schools. The request was rejected by the Board in a unanimous vote.

The only time the Board approved any ordinances was in April 1982. This approval included a local government's ordinances prohibiting unauthorized racing of vehicles and adjusting penalties for driving under the influence. Therefore, based on information provided by NDOT, the validity of local ordinances regulating traffic on state and federal highways is uncertain.

In addition, we noted some NHP citations were changed from NRS to local ordinance violations without evidence that the offender had been advised of the different charge and allowed to enter a plea to the new charge. As such, the requirements for changing traffic citations from NRS violations to local ordinances, as stated by the Legislative Counsel, may not have been met. Due to the lack of uniformity among the various courts in procedures used to change NHP citations, and the impact this process has on the distribution of fines, the courts along with local and state officials may need to address this issue.

Inconsistent Court Procedures

We noted a number of different methods used by courts to record and account for payments received on NHP citations. These inconsistencies often affected the distribution of money between the State and local governments. In some cases, improper accounting methods resulted in fines going to local governments instead of the State. The lack of uniform financial and administrative control procedures has contributed to these inconsistencies. The following examples demonstrate some of the inconsistent practices we noted during our audit.

- 1 court recorded fines paid in cash as state money, while payments by check were recorded as county money.
- 1 court recorded payments as a local fine when the offender signed the back of the citation. When the offender did not sign the back of the citation, it was recorded as a state fine.
- 1 court required defendants to pay a \$25 non-refundable witness fee plus the full amount of the NHP citation if they requested a hearing before the judge.
- 1 court used the date of payment to determine whether the fine was state money or county money. Payments received before the court appearance date were recorded as county money. However, payments received after that date were recorded as state money even if the defendant did not appear in court.
- Counter clerks at 1 court have been authorized to accept half the amount listed on the citation as payment-in-full for the violation. This procedure was established to enhance collection rates.
- 23 of the 39 courts responding to our survey question indicated they do not collect administrative assessments on fines imposed for failure to appear violations.
- 3 justice courts recorded all fines collected from NRS violations as local fines. Therefore, this money was remitted to the counties, despite the constitutional and statutory requirements that it go to the State.

The state's court system has evolved with a long tradition of local court autonomy, creating an environment that promotes inconsistent procedures. Without established policies and procedures, financial and administrative practices have evolved based on interpretations by county officials, court personnel, prosecutors, and judges. Of the 43 justice and municipal courts responding to our survey, 35 indicated they had received little or no guidance in developing accounting and administrative procedures.

Collection Procedures Need Improvement

Justice and Municipal Courts

Justice and municipal courts collected only 60% of the fines and 74% of the administrative assessments imposed within 1 year of the NHP citation. Poor collection procedures have allowed millions of dollars in fines to go uncollected. We estimate these courts could have collected about \$2.4 million more in fines and administrative assessments during fiscal year 1993 with better collection procedures.

Justice and municipal courts imposed over \$15 million in fines and administrative assessments during fiscal year 1993; however, only about \$9.5 million had been collected within 1 year. We estimate nearly \$12 million would have been collected if the statewide average collection rate were increased to 80%. Table 3 shows the fines and administrative assessments imposed and collected from justice and municipal courts during 1993. Amounts shown are statistical projections based on our sample results.

Table 3

**Collection Rates at
Justice and Municipal Courts
Fiscal Year 1993**

	Amount Imposed	Amount Collected	Percent Collected
Fines	\$11,282,713	\$ 6,751,387	60%
Administrative Assessments	<u>3,747,185</u>	<u>2,774,783</u>	74%
Total	<u>\$15,029,898</u>	<u>\$9,526,170</u>	63%

Note: Amounts imposed and collected exclude non-monetary penalties such as community service.

A statewide collection rate of 80% should be attainable and is often exceeded by courts using effective collection procedures. Fifteen of the 53 courts we reviewed had collection rates over 90%. In addition, 5 courts in 1 county collected almost 87% of fines and administrative assessments imposed on 181 citations tested. This county used several collection techniques including: sending late notices and notices of intent to issue warrants, issuing bench warrants, notifying the county's collection office, notifying credit agencies, and sending failure to appear notices to the Department of Motor Vehicles and Public Safety (DMV).

Effective collection procedures are essential to ensure that courts collect the maximum amount of fines and assessments. The National Center for State Courts (NCSC) recommends that offenders be told what is expected, where and how to pay, and the consequences of non-payment. In addition, NCSC suggests prompt response

to non-payment through mail and telephone notification and warrants. Our testing identified 1 court with procedures similar to those suggested by NCSC. This court collected 100% of the fines and administrative assessments imposed even though 18 of the 25 citations examined were issued to drivers with out-of-state licenses.

Many courts use bench warrants and failure to appear notices to assist in collection of fines and administrative assessments. Forty of the 43 courts responding to our survey indicated they issue bench warrants, and 39 send failure to appear notices to the DMV. However, only half sent late notices to defendants, and only 20 notified a credit agency or used a private or government collection agency.

Relying on bench warrants has limited effectiveness in collecting delinquent fines, particularly for out-of-state residents. This collection procedure relies on the premise that if offenders are stopped by a Nevada police officer in the future, they will be required to pay the prior outstanding amounts. It does not actively pursue the collection of the debt, which is essential for any effective collection process. In addition, we found instances where defendants had been arrested several times for outstanding warrants for failure to pay and had still not paid their fines.

We reviewed 145 bench warrants and found 93 were issued to drivers with out-of-state or unknown licenses and 52 were issued to drivers with Nevada licenses. Of these warrants, over 60% of the out-of-state or unknown license offenders and 29% of the Nevada offenders had not appeared in court a year after the citation was issued.

According to the NHP, as of September 1994, there were 74,293 bench warrants outstanding on NHP citations. We estimate these warrants represent \$16 million in fines and administrative assessments: \$6.8 million in fines and \$2.1 million in administrative assessments for the original offense, and \$5.9 million in fines and \$1.2 million in administrative assessments on the warrants. Our estimate includes only warrants outstanding on NHP citations issued during recent years since bench warrants are removed at periodic intervals as established by each court. For example, the 2 largest justice courts remove warrants after 5 and 7 years, respectively. Therefore, offenders not stopped by a Nevada police officer during this time may avoid paying the fine.

Failure to appear notices are not completely effective as a collection method,

particularly for out-of-state residents. Failure to appear notices (FTA's) are sent to DMV and forwarded to the state which issued the driver's license. However, notices are not forwarded if the offender lives in a state which is not part of a compact of states, like California. In fiscal year 1993, 41,000 NHP citations were issued to California residents. Therefore, use of the FTA notice as a collection method for approximately one-quarter of the citations issued is not effective. In addition, only moving violations are covered by the compact, and FTA notices not sent within 6 months of the citation date will not be processed by the compact state.

Improved collection procedures will not only benefit the State, but others as well. As fine collection rates increase, so will the amount of administrative assessments collected. These assessments help fund a variety of criminal justice programs including law enforcement and continuing judicial education. Local governments will also benefit from more effective collection procedures. Since a majority of citations processed by justice and municipal courts are issued by local law enforcement, most of the fines they collect go to cities and counties. Therefore, better collection procedures at justice and municipal courts should increase funding for local governments.

District Courts

Collection efforts at most district courts are not adequate. Many district courts have not assumed responsibility for collecting fines and administrative assessments, but instead rely on others, such as parole and probation officers, to enforce collections. As a result, district courts collected only a small percentage of fines and administrative assessments in the cases we tested. Furthermore, almost none of the fines imposed for felony DUI convictions were collected at 1 court.

Although district courts remitted about \$590,000 in fines to the State in fiscal year 1993, this amount could increase significantly if the courts implemented effective collection procedures. Most district courts merely accept payments when offenders offer to pay, and little or no enforcement action is taken when offenders do not pay. Therefore, many offenders convicted in district courts are able to avoid paying the fine imposed. When fines go uncollected, the penalties imposed by the courts are not carried out.

Despite increases in caseloads and convictions, statewide collections of district court fines have declined in recent years. Fiscal year 1992 district court fines remitted to the State decreased by 13% from the previous year and, even though 1993 collections increased, they were still 5.3% below 1991.

Table 4 shows fines remitted to the State during fiscal years 1991 through 1993, and the percentage change from fiscal year 1991 to 1993.

Table 4

**District Court Fines Remitted
to the State
Fiscal Years 1991 - 1993**

County	Fiscal Year 1991	Fiscal Year 1992	Fiscal Year 1993	Percent Increase (Decrease)
Clark	\$337,752	\$313,107	\$288,452	(14.6%)
Washoe	167,433	140,840	190,750	13.9%
Other Counties	<u>119,167</u>	<u>86,409</u>	<u>111,891</u>	(6.1%)
Total	<u>\$624,352</u>	<u>\$540,356</u>	<u>\$591,093</u>	(5.3%)

Source: State Controller's Reports

To evaluate the effectiveness of collection procedures, we determined the collection rates at 3 district courts. We randomly selected and tested 50 convictions from each court. Based on our sample, these 3 district courts collected only 12% of the fines and 18% of the administrative assessments imposed. It is not reasonable to expect district courts to collect 100% of the fines imposed because many offenders may be indigent or sentenced to lengthy prison terms. However, in over half the cases in our testing, offenders did not serve prison time or had been released. Table 5 shows the fines and assessments imposed and collected for the 50 cases we examined at each court.

Table 5

**Collection Rates at Three District Courts
Fiscal Year 1993**

	Court A	Court B	Court C	Total
Fines Imposed	\$17,500	\$73,675	\$6,250	\$97,425
Fines Collected	\$2,570	\$8,530	\$900	\$12,000
Percent Collected	15%	12%	14%	12%
Assessments Imposed	\$1,175	\$1,250	\$1,225	\$3,650
Assessments Collected	\$300	\$225	\$125	\$650
Percent Collected	26%	18%	10%	18%

Source: Examination of 50 convictions from fiscal year 1993 at 3 district courts.

In addition, we randomly selected and tested collections from fines imposed on 48 felony DUI convictions from 1 court. This court collected only 2% of the mandatory fines imposed in cases with convictions occurring between July 1, 1990, and June 30, 1992. Of the 48 convictions examined, only \$1,834 of \$96,000 in mandatory DUI fines had been collected. Table 6 shows the results of our testing.

Table 6

**Collection of Mandatory DUI Fines
One District Court
Fiscal Years 1991 and 1992**

	Fiscal Year 1991	Fiscal Year 1992	Total
DUI Convictions Examined	19	29	48
Fines Imposed	\$38,000	\$58,000	\$96,000
Fines Collected	\$176	\$1,658	\$1,834
Percent of Fines Collected	0.5%	2.9%	1.9%
Assessments Imposed	\$405	\$725	\$1,130
Assessments Collected	\$0	\$95	\$95
Percent of Assessments Collected	0.0%	13.1%	8.4%

Source: Examination of 48 DUI convictions from fiscal years 1991 and 1992.

These low collection rates indicate district courts need to establish collection policies, assign responsibility for collections, or explore other options for increasing collections of fines. None of the 3 district courts we visited had formal collection procedures. Of the 6 district courts responding to our survey, 5 indicated they relied on the Division of Parole and Probation for collection assistance. Even though Parole and Probation may assist with collecting fines, it does not have the authority to enforce collections. In addition, some offenders do not receive probation as part of their sentence.

Even establishing simple collection procedures can increase collections. For example, 1 court we reviewed collected almost 98% of the fines imposed from 8 offenders who had been released or did not receive a prison term. Although this court had not adopted formal collection procedures, some collection efforts have proven successful. Some judges refer cases to the county's collection officer; 1 judge requires payment of the administrative assessment when the offender appears for sentencing; and some judges include due dates for payment of fines in the sentence. In all 6 cases examined where the sentence included a due date for fine payment, the offender paid the fine.

District courts may not pursue fine collection since they do not have a financial incentive to collect fines. District court fines are remitted to the State; however, except for judges, court employees are paid by counties. Counties do receive \$5 of each \$25 administrative assessment, but the remaining \$20 is distributed to the Attorney General's Office.

Based on collection rates and amounts remitted to the State, we estimate district courts imposed fines totaling \$4 million during 1993. Therefore, even a moderate increase in collection rates will result in substantial increases in the amount of fines and administrative assessments collected.

Internal Control Weaknesses

Many courts have not established adequate internal accounting controls for collecting, recording, and depositing fine payments. As a result, these courts may be

susceptible to fraud and misuse of funds. Internal controls are essential to ensure proper financial management of the courts. Controls include processes and systems to ensure fine payments are properly safeguarded, recorded, and deposited in accordance with legal requirements.

Only 13 of the 49 courts responding to our survey indicated they had developed written internal control procedures. Of the 53 courts we visited, 45 did not have adequate separation of duties among existing employees. Although some courts have few employees, separation of duties could be improved with the resources available. In addition, some courts lacked adequate documentation for receipts, deposits, and the amount due on fines.

For instance, one court did not use pre-numbered receipts or a receipt log. For payments received, the court listed the payments in the individual case files. Of the case files we tested at this court, 4 of 11 offenders making payments did not receive proper credit for payments. At another court, cash payments for 2 of 25 citations tested were not listed on the court's cash receipt log. Court clerks prepared customer receipts; however, records to support deposit of the monies were inadequate.

As a result of the poor internal accounting controls, instances of fraud and misuse of funds have occurred. These include:

- A court clerk allegedly embezzled \$18,066 over a 2-year period. The court had inadequate separation of duties; this allowed the clerk to receive payments, prepare receipts, process citations, prepare deposits, and void receipts without independent approval.
- A former Justice of the Peace failed to deposit more than \$17,000 over a 10-year period. He was subsequently convicted of filing false reports by a public officer.

The lack of adequate internal controls creates an opportunity for fraud and misuse of funds to occur and go undetected. Because millions of dollars are collected by the state court system each year, it is essential that minimum internal control standards be established and periodically reviewed.

Development of Uniform Court Procedures

Based on the financial and administrative control weaknesses found during our review of the courts, there is a need for guidance and oversight of the state's court system. This is further evidenced by the results of our court survey. Nearly $\frac{2}{3}$ of those responding indicated at least some improvement would be made if statewide accounting and administrative procedures were developed. Because court operations vary by size and the availability of resources, procedures need to allow flexibility while achieving desired outcomes. Even basic accounting and administrative procedures will help ensure fines are properly classified, recorded, and safeguarded. In addition, these procedures should increase the amount of fines and administrative assessments collected for use by state and local governments.

The Administrative Office of the Courts, under the direction of the Supreme Court, has the authority to (1) establish internal controls for the state's court system, (2) periodically review those controls, and (3) make recommendations for improvement of financial and administrative procedures. This authority is provided for in Chapter 1 of the Nevada Revised Statutes.

According to AOC officials, the oversight responsibilities of NRS 1.360 were enacted in anticipation of the state court system being unified under the direction of the Supreme Court and fully funded by the Legislature. The AOC has interpreted the statutes to apply only to the budgets approved by the Legislature since the Legislature has not funded all operations of the district, justice and municipal courts. Further, the AOC indicated that developing accounting and internal auditing procedures for district, justice, and municipal courts could be viewed as an intrusion into the operations of local governments.

To confirm our understanding of the responsibilities and authority granted to the AOC under NRS Chapter 1, we requested a legal opinion from the Legislative Counsel. In response, the Legislative Counsel stated:

Subsection 6 of NRS 1.360 provides that, "under the direction of the Supreme Court of Nevada," the Court Administrator shall "[d]evelop procedures for accounting, internal auditing, procurement and disbursement for the state court system." (Emphasis added.)

Subsection 6 does not expressly grant the Court Administrator authority to enforce compliance with a procedure developed pursuant to the subsection.... The authority to require a court to implement an administrative procedure rests with the Supreme Court of Nevada.

Subsection 1 of NRS 1.360 provides that the Court Administrator shall "[e]xamine the administrative procedures employed in the offices of the judges, clerks, court reporters and employees of all courts of this state and make recommendations, through the chief justice, for the improvement of those procedures."

In light of the fact that one or more of the duties of the Court Administrator, as set forth in NRS 1.360, might require him to inspect or review the records, policies and procedures for the accounting, collection and reduction of fines and administrative assessments in the district, justices' and municipal courts, it follows that the Court Administrator has the authority, pursuant to NRS 1.370, to inspect or review such records, policies and procedures. (See Appendix C for the complete legal opinion.)

The AOC could use this authority to improve the court system by providing guidance to the district, justice, and municipal courts. Minimum financial and administrative control standards could be established and uniform procedures could be developed to collect and account for fines. Furthermore, the AOC could periodically monitor the courts to ensure procedures are followed and control objectives are achieved. Additional resources necessary to develop and monitor statewide accounting and administrative procedures should be minimal since much of the framework for an oversight system is already in place. For example:

- AOC staff includes 3 management positions that should be able to assist in developing accounting and internal control procedures.
- The Supreme Court is a member of the National Center for State Courts. As a member, the AOC can use the Center for information regarding court operations and assistance in developing statewide procedures.
- The Supreme Court administers the continuing judicial education program. This program provides training seminars for judges and clerks and can be used for training and implementation of statewide procedures. For instance, 1 recent training program provided information on recordkeeping for justice and municipal court judges and staff.

- Supreme Court Rule 8 created a Regional Judicial Council in each region of the State. Regional councils meet periodically to assist in the improvement of the court system in that region. The Councils are required to coordinate the implementation of all administrative rules and orders of the Supreme Court or the Chief Justice, and define, develop, and coordinate programs for court improvement. Supreme Court Rule 9 created a Judicial Council of the State of Nevada. The Judicial Council meets semi-annually to assist the Chief Justice and the Supreme Court in the improvement of the courts. The Council is also responsible for the implementation of policies and procedures in the judicial regions. These councils provide the communication network to assist the Supreme Court in developing, implementing, and monitoring statewide procedures.
- The uniform system for judicial records, when completed, should be able to provide management information to monitor court operations. (The uniform system for judicial records is the subject of a legislative audit currently in progress.)

Recommendations

The Administrative Office of the Courts, under the direction of the Supreme Court, should:

1. Establish minimum financial and administrative control standards for use by the state's court system.
2. Develop uniform procedures to classify, record, and distribute fines and assessments collected.
3. Develop collection procedures for use by the district, justice, and municipal courts.
4. Perform periodic monitoring of the state's courts to ensure control objectives are achieved.

Appendices

Appendix A

Audit Sampling Methodology

We randomly selected and tested traffic/misdemeanor citations and complaints (citations) issued by the Nevada Highway Patrol (NHP) during the period July 1, 1992, to June 30, 1993. During this period, the NHP issued a total of 175,631 citations, excluding voids and citations assigned to juvenile courts. We selected fiscal year 1993 to ensure that the citations tested would have sufficient time to be processed, collected, and recorded by the judicial system. To ensure the sample results were representative of the population, our sample was based on statistical principles using random selection methods.

We used a 95% confidence level, with a precision of $\pm 1\%$ and an expected rate of occurrence of 1%. Based on statistical principles, these factors yielded a sample size of 751 citations located at 53 courts throughout the State.

Since our statistical sample was randomly drawn from NHP citations issued throughout the State, many courts had only a few items selected. To ensure these items were representative of the procedures used at each court, we randomly selected a minimum of 25 citations at each court we visited. This resulted in an additional 836 NHP citations selected for testing. The number of citations tested in our statistical sample and the number of additional items selected at each court are shown in the following table.

NHP Citations Selected for Testing

	<u>Statistical Sample</u>	<u>Additional Items Selected</u>
Argenta Justice Court (Battle Mountain)	9	16
Austin Justice Court	8	17
Beatty Justice Court	6	19
Beowawe Justice Court (Crescent Valley)	1	24
Boulder Justice Court	1	24
Bunkerville Justice Court	9	16
Canal Justice Court (Fernley)	15	10
Carlin Justice Court	5	20
Carson Justice Court	14	11
Dayton Justice Court	5	20
East Fork Justice Court (Minden)	19	6
East Line Justice Court (Wendover)	4	21
Elko Justice Court	20	5
Ely Justice Court	8	17
Esmeralda Justice Court	7	18
Eureka Justice Court	1	24
Goodsprings Justice Court (Jean)	37	0
Hawthorne Justice Court	4	21
Henderson Justice Court	17	8
Incline Village Justice Court	4	21
Jackpot Justice Court	7	18
Lake Justice Court (Lovelock)	13	12
Las Vegas Justice Court	153	0
Laughlin Justice Court	11	14
Lund Justice Court	1	24
Mason Valley Justice Court (Yerington)	7	18
Mina Justice Court	1	24
Moapa Justice Court	13	12
Moapa Valley Justice Court (Logandale)	1	24
Mountain City Justice Court	3	22
New River Justice Court (Fallon)	13	12
North Las Vegas Justice Court	4	21
Pahrnagat Valley Justice Court (Alamo)	11	14
Meadow Valley Justice Court (Pioche)	2	23
Reno Justice Court	82	0
Schurz Justice Court	3	22
Searchlight Justice Court	19	6
Smith Valley Justice Court	1	24
Sparks Justice Court	22	3
Tahoe Justice Court (Stateline)	7	18

NHP Citations Selected for Testing
(continued)

	<u>Statistical Sample</u>	<u>Additional Items Selected</u>
Tecoma Justice Court (Montello)	3	22
Tonopah Justice Court	2	23
Union Justice Court (Winnemucca)	23	2
Verdi Justice Court	11	14
Virginia City Justice Court	2	23
Wadsworth Justice Court	6	19
Wells Justice Court	14	11
Ely Municipal Court	2	23
Las Vegas Municipal Court	91	0
Mesquite Municipal Court	6	19
North Las Vegas Municipal Court	21	4
Sparks Municipal Court	1	24
West Wendover Municipal Court (1)	<u>1</u>	<u>23</u>
Total	<u>751</u>	<u>836</u>

(1) We examined 100% of NHP citations directed to this court.

Appendix B

Judicial Branch Survey

To collect information about the financial and administrative operations of the Judicial Branch, we sent questionnaires to the state's courts. We asked about specific accounting and administrative control procedures, as well as methods used to collect and account for fines and assessments.

Questionnaires were sent to each of the state's 56 justice courts and all 19 municipal courts. In addition, we sent questionnaires to district courts in each of the 9 judicial districts. In the 2 judicial districts that encompass more than 1 county and have more than 1 department, a questionnaire was sent to each department. The following table shows the number of questionnaires sent and returned.

	<u>District Courts</u>	<u>Justice Courts</u>	<u>Municipal Courts</u>
Questionnaires Sent	11	56	19
Questionnaires Returned	6	33	10
Response Rate	55%	59%	53%

Copies of the questionnaires and a summary of responses received is included in this appendix. Not all courts responded to each question, therefore, the number of responses to each question is shown as "N". In addition, summarized quantitative data has not been presented due to the nature of these responses.

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July 15, 1994

We are conducting an audit of the Judicial Branch of Nevada. As part of this audit, we are sending questionnaires to all justice, municipal and district courts in the State. Would you please assist us with our audit by completing the enclosed questionnaires.

The purpose of the questionnaires is to collect information on court operations, procedures, and automation. Two questionnaires are enclosed: General Operations of the Courts and Court Automation. You will find that most of the questions can be answered easily. A few questions may require obtaining requested information from your court records and, therefore, may require additional time to answer.

The questionnaires should be completed by the person(s) most knowledgeable in the general operations of the court and court automation. The person(s) completing the questionnaires should include additional comments where necessary. Please identify the person(s) completing the questionnaires so we may contact them if additional information or clarification is needed.

We consider all aspects of the questionnaires to be confidential in accordance with NRS 218.823.

If you have any questions, please call Rocky Cooper at 687-6815. Please return the completed questionnaires by August 3, 1994. We have enclosed a

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July 15, 1994
Page two

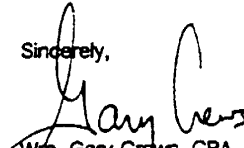
stamped self-addressed envelope for your convenience. In the event the return envelope is misplaced, please send your questionnaires to:

Rocky Cooper, CPA
Deputy Legislative Auditor
Legislative Counsel Bureau
Audit Division
Legislative Building
Capitol Complex
Carson City, Nevada 89710

We hope our survey results will help in the operations and automation of the courts. We will provide copies of our report to all interested courts.

Thank you for your cooperation.

Sincerely,



Wm. Gary Crews, CPA
Legislative Auditor

WGC:sw
Enclosures

LEGISLATIVE COUNSEL BUREAU
AUDIT DIVISION
Survey of the Judicial Branch of Nevada:
General Operations of Justice and Municipal Courts

(Note: The "N" for each question is the number of respondents who answered that question.)

COURT: _____

QUESTIONNAIRE COMPLETED BY: _____

TITLE: _____

PHONE NUMBER: _____ DATE: _____

1. Does your court have written policies and internal control procedures for collecting, recording, and depositing payments received from fines, forfeitures and administrative assessments? (N = 43)

Yes 12 No 31

If yes, please include a copy with your response to this questionnaire.

(Note: 5 Courts submitted a copy)

2. Does your court prepare periodic receivable reports for the total amount of fines and administrative assessments owed to your court? (N = 43)

Yes 27 No 16

If yes, is this report manually prepared or computer generated?

Manual 11 Computer generated 17

COMMENTS: (Note: 1 Court marked both manual and computer generated) _____

3. What methods does your court use to report traffic convictions to the Department of Motor Vehicles and Public Safety (DMV)? (N = 42)
(CHECK ALL THAT APPLY)

____ Traffic convictions are not reported.

20 Send a copy of the citation.

14 Send a computer generated report.

21 Complete the DMV's form for reporting traffic convictions.

____ Electronic transfer of information.

____ Other (please specify: _____)

4. How does your court report bench warrant information to law enforcement agencies for failures to appear for traffic violations? (CHECK ALL THAT APPLY) (N = 41)

2 Warrants for failure to appear are not reported.
31 Send a copy of the warrant.
3 Send a computer generated report.
5 Complete a standard form for reporting warrants.
3 Electronic transfer of information.
4 Other (please specify: _____)

5. Does your court keep statistics on the number of citations received from law enforcement agencies? (N = 42)

Yes 24 No 18

If yes, how many citations were submitted to your court from law enforcement agencies for fiscal years ending June 30, 1992, and June 30, 1993.

	FY 1992	FY 1993
Nevada Highway Patrol citations	_____	_____
Local police or sheriff's citations	_____	_____
Other (fish and game, etc.)	_____	_____
Total citations	_____	_____

6. Excluding parking violations, how much did your court collect during fiscal year 1993 in fines, forfeitures, and administrative assessments?

FY 1993 FINES		FY 1993 FORFEITURES		FY 1993 ADMINISTRATIVE ASSESSMENTS	
County	\$ _____	County	\$ _____	Juvenile	\$ _____
City/Town	\$ _____	City/Town	\$ _____	Court share	\$ _____
State	\$ _____	State	\$ _____	State	\$ _____
*Other	\$ _____	*Other	\$ _____	*Other	\$ _____
Total	\$ _____	Total	\$ _____	Total	\$ _____

*(ie: Fish and Game)

- 21 send late notice after ____ days.
33 send notice of intent to issue bench warrant after ____ days.
40 issue bench warrant after ____ days.
11 notify city/state collection officer after ____ days.
3 notify credit agency after ____ days.
39 notify DMV (failure to appear) after ____ days.
9 notify private collection agency after ____ days.
2 telephone call after ____ days.
3 other (please specify): _____

- 13 send late notice.
- 22 send notice of intent to issue bench warrant.
- 24 issue bench warrant.
- 2 notification to city/state collection officer.
- 1 notification to credit agency.
- 12 notification to DMV (failure to appear).
- 2 notification to private collection agency.
- 15 not automated.

- | | | | | |
|-----------------|------------------|------------------|------------------|-----------------|
| <u>22</u> \$ 0 | <u> </u> \$ 15 | <u> </u> \$ 30 | <u> </u> \$ 45 | |
| <u> </u> \$ 5 | <u>4</u> \$ 20 | <u> </u> \$ 35 | <u> </u> \$ 50 | 2 @ \$100 |
| <u>6</u> \$ 10 | <u>4</u> \$ 25 | <u> </u> \$ 40 | <u>4</u> Other | 2 @ 25% of bail |

- [illegible]

3

11. Does your court charge an administrative assessment on the bench warrant charge listed in question 10? (N = 39)

Yes 18 No 23 (Note: 2 Courts marked both yes and no.)

12. Does your court consider the charge for issuing a bench warrant listed in question 10, to be a: (N = 38)

5 State fine 10 Local fine 11 Local penalty
15 Other (please specify: 4-Court costs; 8-Same as original charge; 3-Other)

13. When does your court notify the DMV's Driver's License Division that an offender has failed to appear in court for a traffic violation? (N = 41)

1 Failures to appear are not reported to the DMV.
13 All failures to appear are reported to the DMV.
4 Failures to appear are only reported for offenders with Nevada driver's licenses.
22 Failures to appear are only reported if the offender is licensed by a state (including Nevada) that is a member of the non-resident violator compact.
1 Other (please specify: _____)

14. Has your court adopted Nevada Revised Statutes (NRS) misdemeanor violations as part of the local city, town, or county ordinances? (N = 41)

Yes 40 No 1

If yes, which chapters of NRS has your city, town or county adopted? (CHECK ALL THAT APPLY) (N = 40)

5 NRS Chapter 483
14 NRS Chapter 484
7 NRS Chapter 485
31 All misdemeanor violations of NRS (blanket adoptions)

15. How much assistance has the State Administrative Office of the Courts provided your court in developing accounting and administrative procedures? (CHECK ONE ONLY) (N = 41)

2 Much assistance provided.
1 Moderate assistance provided.
3 Some assistance provided.
1 Little assistance provided.
34 No assistance provided.

16. How much improvement would be made to the operations of your court or the judicial branch if uniform statewide accounting and administrative procedures were developed for the courts? (CHECK ONE ONLY) (N = 37)

9 Much improvement.
7 Moderate improvement.
8 Some improvement.
5 Little improvement.
8 No improvement.

17. Would you like a copy of our report? (N = 42)

Yes 38 No 4

Thank you for responding to this questionnaire.

LEGISLATIVE COUNSEL BUREAU
AUDIT DIVISION
Survey of the Judicial Branch of Nevada:
General Operations of District Courts

COURT: _____

QUESTIONNAIRE COMPLETED BY: _____

TITLE: _____

PHONE NUMBER: _____ DATE: _____

1. **Other than civil case load statistics**, does your court submit statistical or financial reports to the State Administrative Office of the Courts? (N = 6)

Yes 1 No 5

If yes, please attach a list of the type of reports and frequency submitted.

2. During fiscal year 1993 (7/1/92 to 6/30/93), how many convictions were made by your court for felonies and gross misdemeanors? Please include all convictions even if the case was filed prior to 7/1/92.

Felonies _____ Gross Misdemeanors _____

3. During fiscal year 1993 (7/1/92 to 6/30/93), how many civil cases were filed in your court? _____

Of the total civil cases filed during fiscal year 1993, how many cases were for:

Actions for divorce? _____

Proceedings for adoption? _____

Actions brought by your county? _____

Action brought by a city or town within your county? _____

Actions brought by a state agency? _____

4. Does your court keep track of civil case statistics manually or does your court have an automated system which generates civil case statistics? (N = 6)

_____ Manual 6 Automated

5. Does your court have written policies and internal control procedures for collecting, recording, and depositing payments received from fines and administrative assessments? (N = 6)

Yes 1 No 5

If yes, please include a copy with your response to this questionnaire.

6. Does your court prepare periodic receivable reports for the total amount of fines and administrative assessments owed to your court? (N = 6)

Yes 4 No 2

If yes, is this report manually prepared or computer generated? (N = 4)

Manual 1 Computer generated 3

COMMENTS: _____

7. How much did your court assess and collect in fines, administrative assessments, and civil action fees (NRS 19.030 only) during fiscal year 1993? If the amounts assessed are unknown, please write unknown in the space provided.

	<u>AMOUNT ASSESSED</u>	<u>AMOUNT COLLECTED</u>
Fines Imposed (excluding restitution)	\$ _____	\$ _____
Administrative Assessments	\$ _____	\$ _____
Civil Action Fees (NRS 19.030 only)	\$ _____	\$ _____

- 8.a Does your court report felony and gross misdemeanor convictions to DMV's Criminal History Repository? (N = 6)

4 Report felonies (Note: 2 courts report felonies only)
2 Report gross misdemeanors
2 Convictions are not reported

- b If convictions are reported, how does your court transfer the information to the DMV? (N = 4)

1 Report convictions to the district attorney or to other law enforcement agencies that transfer the information to the DMV.
3 Send a copy of the final judgement to DMV.
_____ Send a computer generated report to DMV.
_____ Send a manually generated report to DMV.
_____ Electronic transfer of information to DMV.
_____ Other (please specify).

COMMENTS: _____

9. When an offender fails to pay the fine or a portion of the fine, which of the following collection methods do you use? If all departments use the same methods, check all that apply. If different departments use different collection methods, please write the department numbers in the spaces provided. (N = 6)

☐ send billing statement or notice after _____ days for departments _____
☐ send warning letter after _____ days for departments _____
☐ issue warrant after _____ days for departments _____
☐ report to city/state collection officer after _____ days for departments _____
☐ report to credit agency after _____ days for departments _____
☐ report to private collection agency after _____ days for departments _____
☐ telephone call after _____ days for departments _____
☒ no collection methods are used for departments _____
☒ other (please specify) Parole and Probation

COMMENTS: (Note: 2 courts also refer cases to the District Attorney.)

10. For each method checked in question 9, please indicate if the method is automated. (CHECK ALL THAT APPLY) (N = 2)

☐ billing statement. ☐ report to credit agency.
☐ send warning letter. ☐ report to private collection agency.
☐ issue warrant. ☒ not automated.
☐ report to city/state collection officer.

11. When an individual is released from prison, house arrest, or a restitution center, etc., does your court have procedures to notify the individual to pay their fine and assessment if amounts are due? (N = 6)

Yes _____ No 6

If yes, please attach an explanation of the procedures used by your court.

12. To what extent has the State Administrative Office of the Courts assisted your court in the development of accounting and administrative procedures? (CHECK ONE ONLY) (N = 6)

☒ Much assistance provided.
☐ Moderate assistance provided.
☒ Some assistance provided.
☒ Little assistance provided.
☒ No assistance provided.

13. Would you like a copy of our report? (N = 6)

Yes 6 No _____

Thank you for responding to this questionnaire.

Appendix C

Legislative Counsel Legal Opinions

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710
Fax No.: (702) 687-5962

LEGISLATIVE COMMISSION (702) 687-6800
JOSEPH E. DINI, JR., *Assemblyman, Chairman*
Lorne J. Malkiewicz, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

LORNE J. MALKIEWICH, *Director*
(702) 687-6800



Wm. GARY CREWS, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
BRENDA J. ERDOES, *Legislative Counsel* (702) 687-6830

May 12, 1994

Wm. Gary Crews
Legislative Auditor
State of Nevada
Legislative Counsel Bureau
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Crews:

You have asked a series of questions concerning the disposition of traffic citations. Each of your questions will be addressed in turn.

1. When a person pays a traffic citation by mail or in person without appearing before a judge, should the payment be considered a forfeiture of bail, subject to the provisions of NRS 178.518, or a fine, subject to the provisions of NRS 176.265 and section 3 of Article 11 of the Constitution of the State of Nevada?

To characterize the payment of a traffic citation under such circumstances, it is necessary to examine first the nature of a forfeiture of bail and of a fine, as well as the forms for traffic citations used by the agencies of law enforcement in Nevada. The law concerning bail is set out in NRS 178.484 to 178.548, inclusive. Pursuant to subsection 1 of NRS 174.484, a person arrested for an offense other than murder of the first degree must be admitted to bail. A person's bail must be set in an amount which will reasonably assure his appearance and the safety of the community. NRS 178.498. Upon a showing of good cause, the court may release a person without bail if it appears to the court that the person will appear at all times and places ordered by the court. Subsection 1 of NRS 178.4851. Pursuant to NRS 178.502, a person required to give bail must execute a bond for his appearance or, upon the court's authorization, may instead deposit cash with the court. If a person fails to appear in court when lawfully required and not excused, the fact of his failure to appear is entered upon the court's minutes. NRS 178.508. The primary purpose of bail is to assure that a defendant will appear in court when required. Jacobson v. State, 89

ON-15780

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Nev. 197, 200, 510 P.2d 856 (1973); Ex Parte Wheeler, 81 Nev. 495, 501, 406 P.2d 713 (1965).

In contrast, a fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor. H. Black, Black's Law Dictionary, page 569 (5th Ed. 1979). "Convicted" means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere. Id. at 301.

In characterizing the nature of a payment of a traffic citation, an examination of the particular form of the citation is instructive. Because the form of traffic citations used by agencies of law enforcement in Nevada varies widely among agencies, persons issued citations by different agencies may have different options for the disposition of their citations. For example, for most offenses, a person issued a citation by the Sparks Police Department under the jurisdiction of the Sparks Municipal Court is not required to appear in court. Under such circumstances, the person may bring or mail payment to the court and sign the "Appearance, Plea and Waiver" printed on the bottom of the citation. This section of the citation reads:

* * *

APPEARANCE, PLEA AND WAIVER

I hereby waive my appearance in court on the offense(s) charged on the other side of this citation/complaint. I have been informed of my right to a trial, and to an attorney, and I knowingly, voluntarily and intelligently waive my rights. I understand that my signature to this plea(s) below will have the same force and effect as a judgment of the court and that this record will be sent to the Nevada Department of Motor Vehicles and Public Safety or to the state where I received my license to drive.

I agree to pay the fine(s) set by the court and plead (check one)
☐ Guilty ☐ No Contest

* * *

The form used in Sparks Municipal Court permits a person to enter a plea of guilty or no contest, but does not permit a person to request that his bail be forfeited. For all practical purposes, a plea of no contest, or *nolo contendere*, is equivalent to a plea of guilty and has the same legal effect. See 21 Am.Jur.2d, Criminal Law, Section 492 (1981 & Supp. 1994). Therefore, regardless of whether the person checks the box to plead guilty or the box to plead no contest, the payment of the citation has the characteristics of and should constitute payment of a fine because the payment is

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a pecuniary punishment imposed upon a person who has been convicted of the offense charged. Because a person must enter a plea and cannot request that his bail be forfeited, it is apparently not possible for a person to forfeit his bail on a traffic citation in Sparks Municipal Court, and the payment of a citation must be a fine. This conclusion is further supported by the fact that the form indicates the person is paying a fine.

However, the form for citations currently used by the Nevada Highway Patrol does not contain the same language or options as the form used by the Sparks Police Department. For this reason, the characterization of the payment of a traffic citation issued by the Nevada Highway Patrol without appearing before a judge is more difficult. The Nevada Highway Patrol's citation does not provide any boxes to check to enter a plea of guilty or no contest. Therefore, it is not possible to conclude that a person paying the citation is pleading guilty or no contest. However, the form does contain a section titled "BAIL FORFEITURE REQUEST" which provides:

* * *

BAIL FORFEITURE REQUEST

I, THE UNDERSIGNED, DO HEREBY WAIVE MY RIGHT TO APPEAR IN COURT AND REQUEST OF THE COURT THAT MY POSTED BAIL BE FORFEITED IN LIEU OF A FINE. I UNDERSTAND THAT SINCE IT IS NOT THE PAYMENT OF FINE, THE COURT RESERVES THE RIGHT TO ORDER MY APPEARANCE IN COURT IF CIRCUMSTANCES SO REQUIRE.

* * *

The form used by the Nevada Highway Patrol provides three options to a person who has been issued a traffic citation:

1. Personally appear in court at the time and place indicated on the citation and enter a plea to the offense charged;
2. Bring or mail the citation to the court, along with payment for the amount shown in the "Total Bail" space; or
3. Sign the "BAIL FORFEITURE REQUEST" and bring or mail the citation to the court along with payment for the amount shown in the "Total Bail" space.

A person choosing the second option listed on the form does not have the ability to check a box or to enter otherwise a plea of guilty or no contest, and the person is not required to sign the "BAIL FORFEITURE REQUEST." A person choosing the third option makes payment for the amount shown in the "Total Bail" space. Under either circumstance, it is difficult to characterize the nature of the

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payment because a plea of guilty or no contest has not been entered. However, for the reasons discussed below, payment of the total bail does not seem to fit within the concept of forfeiture of bail as set forth in NRS 178.484 to 178.548, inclusive, but instead appears more characteristic of a fine.

As stated above, the primary purpose of bail is to assure that a defendant will appear in court when required. Under the system set forth in NRS 178.484 to 178.548, inclusive, a person may be released upon his own recognizance upon the court's ruling that a showing of good cause has been made. However, this procedure is not followed with most traffic offenses.

When a person is cited for a minor traffic offense, a judge does not rule upon a person's suitability for release after a hearing to show good cause. Instead, the person is detained on the street and issued a citation pursuant to NRS 484.795, which provides that a peace officer may, in his discretion, give a person a traffic citation rather than taking the person before a magistrate. A person issued a citation is actually never taken into physical custody and is therefore not required to post bail to be released. The person merely gives a written promise to appear in court by signing and accepting a copy of the citation. Subsection 4 of NRS 484.799. If a person violates a written promise to appear pursuant to a citation, the clerk of the court having jurisdiction over the charged offense must immediately notify the Department of Motor Vehicles and Public Safety of the failure to appear. Subsection 1 of NRS 483.465. The Department of Motor Vehicles and Public Safety then notifies the person that his privilege to drive is subject to suspension if he does not appear in court to obtain a dismissal of the citation, make payment arrangements or make a written request to the Department of Motor Vehicles and Public Safety for a hearing. Subsection 2 of NRS 483.465. Additionally, pursuant to subsection 1 of NRS 484.807, it is unlawful for a person to violate his written promise to appear given to a peace officer upon the issuance of a traffic citation, and a warrant may be issued pursuant to subsection 2 of NRS 484.807.

Thus, for minor traffic offenses, a person's appearance in court is assured by his written promise to appear, not by cash deposited with the court. The person is punished for a violation of his promise to appear by threatened suspension of his privilege to drive and the issuance of a warrant for his arrest. Before the person is scheduled to appear in court, the person charged with the traffic offense has not deposited any money with the court.

Based upon the above reasoning, when a person mails or brings the payment of a citation to the court without appearing before the judge, the person is not willfully failing to appear in court or willfully violating a written promise to appear. Instead, as in entering a plea of no contest, the person seems to be agreeing not to contest the citation and allowing himself to be subjected to the same consequences as if

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convicted of the offense charged without making an admission of guilt. The payment of the citation, therefore, does not have the characteristics of a forfeiture of money paid in advance to assure a person's appearance in court, but instead, appears to be a pecuniary punishment imposed as the result of a conviction based upon a plea of no contest. Additionally, for the purposes of the Uniform Motor Vehicle Drivers' License Act, NRS 483.010 to 483.630, inclusive, a forfeiture of bail deposited to secure a defendant's appearance in court is equivalent to a conviction. Paragraph (b) of subsection 4 of NRS 483.450. Therefore, the payment seems like a pecuniary punishment imposed for being convicted of the offense charged, not a penalty for failing to appear in court. For these reasons, the payment of a traffic citation without appearing before a judge appears more characteristic of a fine than a forfeiture of bail.

The practice of considering the payment of a citation without appearing before a judge a forfeiture of bail was reviewed by the Supreme Court of Nevada in Mendez v. Brinkerhoff, 105 Nev. 157, 771 P.2d 163 (1989), where the court held that, for the purposes of establishing liability in a civil action, evidence that a person forfeited bail under a traffic citation is not admissible against the forfeiting party as an admission that he or she committed the traffic offense charged in the citation. The court stated:

When a person forfeits bail under a traffic citation, there is no recorded interchange between a court and an alleged traffic offender to ascertain why he or she chose not to contest the charges. The evidence, standing alone, is equivocal, supporting both an admission of guilt and an inference that the party forfeited bail as a matter of convenience or sound economics.

Id. at 159.

In making its ruling in the Mendez case, the Supreme Court of Nevada acknowledges that for the purpose of the admissibility of such evidence, the practice of allowing a person to pay a traffic citation without appearing before a judge amounts to a forfeiture and is equivocal in terms of evidentiary value because a forfeiture supports both an admission of guilt and an inference that the person forfeited bail as a matter of convenience or sound economics. However, the court in Mendez was only considering the nature of a payment of a traffic citation without appearing before a judge to determine its evidentiary value and admissibility in a civil action, not for the purpose of determining whether such payment constituted a forfeiture of bail, subject to NRS 178.518, or a fine, subject to NRS 176.265 and section 3 of Article 11 of Nevada's constitution.

The practice of forfeiting bail under a traffic citation is also referred to in several provisions of NRS, such as paragraph (b) of subsection 4 of NRS 483.450,

Wm. Gary Crews, Legislative Auditor
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discussed above, which provides that a forfeiture of bail is equivalent to a conviction for the purposes of the Uniform Motor Vehicles Drivers' License Act. Subsection 2 of NRS 484.813 provides that a traffic citation may be disposed of only by trial in a court having jurisdiction over the offense charged or by other official action by a judge of such a court, including forfeiture of the bail, or by the deposit of sufficient bail with, or payment of a fine to the traffic violations bureau of the court. The above statutory provisions do not discuss the nature of a forfeiture of bail or address the characterization of a payment of a traffic citation without appearing before a judge, but such provisions do recognize the practice of forfeiting bail under a traffic citation.

However, in determining whether the payment of a traffic citation without appearing before a judge is a fine, subject to the provisions of NRS 176.265 and section 3 of Article 11 of the Constitution of the State of Nevada, or a forfeiture of bail, subject to the provisions of NRS 178.518, a court will examine the nature and characteristics of the payment, and not merely what the payment is called. See, e.g., Southern Nevada Life Underwriters Ass'n. v. City of Las Vegas, 74 Nev. 163, 325 P.2d 757 (1958) (Although City of Las Vegas identified payment as "license fee," the payment was actually a revenue tax); State v. Koontz, 69 Nev. 25, 240 P.2d 525 (1952) ("Entrance fee" charged to foreign corporations already admitted to do business in state upon amending articles of incorporation was actually an impermissible tax on interstate commerce). Thus, because the payment of a traffic citation without appearing before a judge has the characteristics of a fine, rather than a forfeiture of bail, a court should treat the payment as a fine under the constitutional and statutory provisions regarding the disposition of fines, regardless of whether the payment is called a fine or a forfeiture of bail.

In summary, for minor traffic offenses, a person's appearance in court is assured by his written promise to appear, not by cash deposited with the court. The payment of a citation is more characteristic of a pecuniary punishment imposed for being convicted of the offense charged than of a penalty for failing to appear in court. Therefore, the payment of a traffic citation without appearing before a judge is more characteristic of a "fine" and should not be characterized as a "forfeiture of bail" to avoid the applicable constitutional provision. Section 3 of Article 11 of the Constitution of the State of Nevada pledges all fines collected for the violation of the penal laws of this state for educational purposes and prohibits the transfer or other use of that money. It is the opinion of this office that this provision applies to the payment of a traffic citation without appearing before a judge whether such payment is designated by the citing official as a forfeiture of bail or as the payment of a fine.

2. If a person pays a traffic citation by mail or in person without appearing before a judge, and the payment is characterized by a court as a

Wm. Gary Crews, Legislative Auditor
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forfeiture of bail instead of a fine, may a court collect an administrative assessment pursuant to NRS 176.059?

Assuming the payment of a traffic citation by mail or in person without appearing before a judge is characterized by a court as a forfeiture of bail, it is the opinion of this office that a court may still collect an administrative assessment pursuant to NRS 176.059.

NRS 176.059 provides, in pertinent part:

1. Except as otherwise provided in subsection 2, when a defendant pleads or is found guilty of a misdemeanor, including the violation of any municipal ordinance, the justice or judge shall include in the sentence the sum prescribed by the following schedule as an administrative assessment and render a judgment against the defendant for the assessment:

* * *

(Emphasis added.) NRS 176.059 also contains a table with the heading "Fine" in the left column and the corresponding "Administrative Assessment" in the right column.

Although the table in section 1 of NRS 176.059 contains the heading "Fine", this heading should not be determinative of when an administrative assessment must be included in a sentence and judgment. The text emphasized above, i.e., "when a defendant pleads or is found guilty," is the appropriate standard for determining when the assessment must be included. Because it is clear that a person who forfeits his bail is not pleading guilty, the assessment cannot be collected on that basis. The issue then becomes whether a person who forfeits his bail is "found guilty" of a misdemeanor so as to require the imposition of the assessment.

NRS 483.450 provides that a forfeiture of bail is equivalent to a conviction. Paragraph (b) of subsection 4 of NRS 483.450. A conviction is a "final judgment on a verdict or finding of guilty." H. Black, Black's Law Dictionary, page 301 (5th Ed. 1979), *supra*. It follows from NRS 483.450 that a forfeiture of bail, although not a plea of guilty or an admission of guilt, should be considered a finding of guilt. Consequently, if the payment of a traffic citation without appearing before a judge is characterized as a forfeiture of bail, it is the opinion of this office that an administrative assessment may be collected pursuant to NRS 176.059.

3. If the payment of a traffic citation without appearing before a judge is characterized by a court as a forfeiture of bail, does the forfeiture of bail relieve a person's obligation to appear before a judge and pay a fine if

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convicted, and if it does not, must the person be arrested pursuant to NRS 178.532?

Subsection 1 of NRS 178.532 provides that the court may direct the arrest of the defendant when, by reason of his failure to appear, the defendant has incurred a forfeiture of his bail, or of money deposited instead thereof, as provided in NRS 178.506. Because most traffic offenses do not require that a person appear in court, forfeiture of bail does not result from a failure to appear, and NRS 178.532 does not require the arrest of the defendant. Furthermore, as a routine practice, courts accept payments as forfeited bail in full satisfaction of the judgment entered upon conviction. Because a forfeiture of bail is considered a conviction pursuant to paragraph (b) of subsection 4 of NRS 483.450, there is no need for any further adjudication of the matter.

Also, subsection 2 of NRS 484.813 provides that a traffic citation "may be disposed of only by trial [in a court having jurisdiction over the offense charged or its traffic violations bureau] or other official action by a judge of that court, including forfeiture of the bail, or by the deposit of sufficient bail with, or payment of a fine to, the traffic violations bureau by the person to whom the traffic citation has been issued by the peace officer." (Emphasis added.) Subsection 2 of NRS 484.813 indicates that forfeiture of bail is a permissible means of disposing of a traffic citation. Thus, NRS 178.532 does not require the arrest of a person who disposed of a traffic citation by forfeiture of bail.

However, if the court believes that it is proceeding under the provisions of NRS 178.484 to 178.548, inclusive, and that the person's payment of the citation is a forfeiture of bail because the person has failed to appear as described in NRS 178.508, then it appears that the court may direct that the person be arrested pursuant to NRS 178.532. As emphasized above, the arrest of the person is not required, but is within the court's discretion. As a practical matter, courts do not order the arrest of a person who has forfeited his bail under a traffic citation.

Finally, there may be instances where a person may not be able simply to forfeit his bail and must appear in court, despite the fact that an appearance is not required under the offense charged. If, before the citation is disposed of pursuant to the provisions of NRS 484.813 by trial, by other official action, including forfeiture of the bail, or by deposit of bail with, or payment of a fine to the traffic violations bureau, the prosecutor wishes to amend the original charge or to bring additional charges, then an appearance before the judge may be mandatory under the amended or new charges or it may be necessary for the judge to determine or adjust the amount of bail. Under such circumstances, the judge may require a person to appear in court.

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4. If a person forfeits bail under a traffic citation, must the disposition of the citation be reported to the Department of Motor Vehicles and Public Safety and entered on the person's driving record?

It is the opinion of this office that when a person forfeits bail under a traffic citation, the disposition of the citation must be reported to the Department of Motor Vehicles and Public Safety and entered on the person's driving record.

A forfeiture of bail under a traffic citation is equivalent to a conviction. Paragraph (b) of subsection 4 of NRS 483.450. Every court, other than a juvenile court, having jurisdiction over violations of any law of this state or municipal ordinance regulating the operation of motor vehicles on highways must forward to the Department of Motor Vehicles and Public Safety a record of the conviction of any person in that court for a violation of any such laws other than regulations governing standing and parking. Subsection 3 of NRS 483.450. Therefore, it follows that when a person forfeits bail under a traffic citation for a violation of a law other than a regulation governing standing and parking, the resulting conviction must be reported to the Department of Motor Vehicles and Public Safety and entered upon the person's driving record.

If we can be of any further assistance, please contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By Bradley A. Wilkinson
Bradley A. Wilkinson
Deputy Legislative Counsel

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July 18, 1994

Wm. Gary Crews
Legislative Auditor
Legislative Counsel Bureau
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Crews:

You have asked a number of questions about the distribution of fines and the interrelationship of county ordinances and state laws regulating traffic. Each of your questions will be addressed in turn.

1. Is a county ordinance which incorporates by reference all offenses listed in NRS that are punishable as misdemeanors, making each such offense constitute a misdemeanor under the county ordinance, a valid and enforceable ordinance?

The Supreme Court of Nevada has not addressed the issue of the extent to which such a county ordinance is valid and enforceable. It is the opinion of this office that a court would probably find such an ordinance to be valid and enforceable, but only to the extent that the county has the authority to regulate the matter involved.

It is well established that a county, acting through its board of county commissioners, may only exercise powers which have been expressly granted by the Nevada Legislature or which are necessarily implied to carry out the powers expressly granted. State ex rel. King v. Lothrop, 55 Nev. 405, 36 P.2d 355 (1934); State ex rel. Beck v. Bd. of Comm'rs. of Washoe County, 22 Nev. 15, 34 P. 1057 (1894); Waitz v. Ormsby County, 1 Nev. 370 (1865). Because it is a "creature of statute," a board of county commissioners can exercise only the special powers conferred upon it in NRS in the manner specified in NRS. Beck, supra, 22 Nev. at 18. There are numerous provisions in NRS by which the Nevada Legislature has granted a county the authority to enact and enforce ordinances regulating a particular subject.

NRS 244.357 defines generally the type of ordinances a county may enact and enforce through its board of county commissioners. NRS 244.357 provides that a county may enact and enforce (1) local police and sanitary ordinances and regulations, provided they do not conflict with the general laws and regulations of the state, (2) ordinances regarding loitering and prowling and (3) ordinances regulating

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parking and vehicular, pedestrian and other traffic in the unincorporated area of the county, except ordinances fixing speed limits upon federal or state highways or roads. NRS 484.777 allows a county to enact ordinances regulating traffic which cover the same subject matter as chapter 484 of NRS if the provisions of the ordinance are not in conflict with chapter 484 of NRS, but provides that a county may not enact an ordinance governing the registration of vehicles, the licensing of drivers or the duties or obligations of persons involved in accidents, other than the duties to stop, render aid and provide necessary information. Subsection 1 of NRS 484.779 governs a county's authority to enact ordinances regulating traffic which apply to highways under the county's jurisdiction.

A county may also regulate dense smoke and air pollution (NRS 244.361); excessive noise (NRS 244.363); the unsafe discharge of firearms (NRS 244.364); the waste of water (NRS 244.3665); the sale, use, storage and possession of fireworks (NRS 244.367); the investigation of suspicious fires or fires causing death (NRS 244.3673); the construction, maintenance and safety of buildings, structures and property within the county (NRS 244.3675); and many other areas in which the Nevada Legislature has expressly granted a county the authority to regulate.

As a review of the statutes mentioned above indicates, the Nevada Legislature has expressly granted a county the authority to enact ordinances regulating a wide variety of subjects. However, a county's enactment of an ordinance which incorporates all offenses listed in NRS that are punishable as misdemeanors, making each such offense constitute a misdemeanor under the ordinance, would result in a county regulating not only matters which a county has been expressly granted the authority to regulate, but also matters which a county lacks the authority to regulate. For this reason, such an ordinance would be unconstitutional to the extent that it exceeded the county's authority, and unless the constitutional parts of the ordinance were severable from the unconstitutional parts, the ordinance would be wholly void and unenforceable.

The Supreme Court of Nevada has not addressed the issue of the extent to which such an ordinance is valid and enforceable. However, courts in other jurisdictions have examined these issues in the context of reviewing municipal ordinances. The decisions of these courts, although not binding upon a court in Nevada, provide some guidance as to how a court might rule upon the validity and enforceability of such an ordinance.

In Kreulhaus v. City of Birmingham, 51 So. 297 (Ala. 1909), the Supreme Court of Alabama held that a municipal ordinance incorporating offenses punished as misdemeanors under the statutory and common law of the state was void. The ordinance provided:

All offenses that are misdemeanors under the laws of the state of Alabama, as defined by statutes or by the common law in force in the state of Alabama, are hereby declared to be offenses and misdemeanors under the laws and ordinances of the city of Birmingham * * *.

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Id. In finding the ordinance void, the court observed that "[t]here are scores of offenses denounced by the laws of the state as misdemeanors which touch upon no municipal function whatever." *Id.* The court then set forth the basis for its conclusion that the ordinance was void:

True, the ordinance prohibits only those acts now prohibited by statute or common law; but this does not narrow the field of inquiry, because it still remains to be determined whether any particular statute or common-law principle has relation to any purpose which may be enforced by municipal ordinance. * * * Such an ordinance is void.

Id. at 298.

However, in Sloss-Scheffield Steel & Iron Co. v. Smith, 57 So. 29 (Ala. 1911), the Supreme Court of Alabama evaluated the ordinance held void in Kreulhaus after the City of Birmingham amended the ordinance by eliminating the reference incorporating the common law of the state. In Sloss-Scheffield Steel, the court pointed out that the practice of incorporating a body of laws by reference has been accepted in many jurisdictions and there is no reason why a local authority should be prevented from adopting a "reference statute," provided the local authority has the power to regulate the matters sought to be regulated by the ordinance. *Id.* at 30. The court recognized that the ordinance in question exceeded the city's authority to regulate some matters, but held that the ordinance was enforceable as to those matters within the city's authority:

If it be assumed that there were or are state misdemeanor statutes inapplicable or inappropriate to the exercise of municipal authority, this condition would not lead to the *invalidity* of this ordinance. 'The fact that an ordinance covers matters which the city has no power to control is no reason why it should not be enforced as to those it may control.' (Citations omitted.)

Id. at 30-31. (Emphasis original).

The court also rejected the argument that the ordinance was void for uncertainty because the ordinance failed to provide adequate notice of what offenses were included in the ordinance. The court reasoned that because a person has presumed knowledge of the statutory law defining offenses punishable as misdemeanors, and the ordinance merely incorporates those offenses, the person must therefore have presumed knowledge of the offenses prescribed by the ordinance and cannot claim ignorance of the substance of the ordinance under a claim of uncertainty. *Id.* at 30.

However, when the Supreme Court of South Carolina reviewed a town's ordinance 35 years after the decision in Sloss-Scheffield Steel, the court relied upon Kreulhaus in holding that the ordinance, which provided that all acts constituting

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crimes under the statutory or common law of the state should also constitute offenses against the town, was void because of uncertainty. Town of Conway v. Lee, 38 S.E.2d 914 (1946). The court based its decision upon the belief that the ordinance did not adequately advise a person about the nature of the charges against him. The court reasoned:

Criminal ordinances are, of course, to be strictly construed and a defendant has a right to know just wherein he is charged with the commission of a crime and not be faced with a blanket ordinance which, in effect, says that everything which is a violation of the law within this State, both by statute and common law, is a violation of the city ordinance, no adequate reference being made to any specific Statute this Court is of the opinion that the ordinance is void because of uncertainty.

Id. at 918.

The Supreme Court of South Carolina in Town of Conway distinguished the decision in Sloss-Scheffield Steel by observing that the City of Birmingham, whose ordinance was reviewed in Sloss-Scheffield Steel, had "extraordinary powers through its charter," making the case inapplicable to the facts in Town of Conway. Id. Because the court in Town of Conway found that the ordinance was void because of uncertainty, the court did not consider the possibility of severing any part of the ordinance to make the ordinance valid.

After reviewing Kreulhaus, Sloss-Scheffield Steel and Town of Conway, it appears that there is some dispute as to whether a county may enact an ordinance of the type in question. However, a closer review of the particular ordinances involved in those cases, coupled with the decisions of the Supreme Court of Nevada regarding severability, suggests that a county ordinance which incorporates by reference all offenses listed in NRS that are punishable as misdemeanors, making such offenses constitute misdemeanors under the ordinance, would probably be found to be valid and enforceable, but only to the extent that the county has the authority to regulate the matter involved.

The decisions in Kreulhaus and Town of Conway, which held that the ordinances reviewed in those cases were invalid, can be distinguished from the ordinances in Sloss-Scheffield Steel and the ordinance addressed in your question in one important respect. The ordinances reviewed in Kreulhaus and Town of Conway made an offense under the common law of the state constitute an offense under the ordinance, while the ordinances in Sloss-Scheffield Steel and the type involved here only incorporate the statutory law of the state. If a provision incorporating the common law is not included in an ordinance, the argument that the ordinance is uncertain is greatly weakened, because, as the court in Sloss-Scheffield Steel pointed out, every person has presumed knowledge of the statutory law of his state. In contrast, it seems unreasonable to presume a person knows the common law of his state, especially when courts often disagree over the status of the law. Therefore, while an ordinance which incorporates both the statutory and common law of the

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state by reference might be held to be void for uncertainty, an ordinance which incorporates only the statutory law of the state probably cannot be successfully challenged on this basis.

Also, the courts in Kreulhaus and Town of Conway, unlike the court in Sloss-Scheffield Steel, did not consider the possibility of severing the invalid provisions of the ordinance to preserve the ordinance. The Supreme Court of Nevada has spoken on numerous occasions about the severability of the provisions of a law and concluded that if a law is constitutional in part, but unconstitutional in some of its provisions, the part which is constitutional is severable and will be sustained, unless the whole scope and object of the law is defeated by rejecting the objectionable features. Spears v. Spears, 95 Nev. 416, 419, 596 P.2d 210 (1979), citing Jones v. State, 85 Nev. at 415, 456 P.2d at 431 and State v. Westerfield, 23 Nev. 468, 49 P. 119 (1897). It does not appear that severing the unconstitutional provisions from an ordinance incorporating the statutory law of the state would defeat the whole scope and object of the ordinance.

Thus, an ordinance which incorporates by reference only those offenses listed in NRS that are punishable as misdemeanors, making each such offense constitute a misdemeanor under the ordinance, can probably overcome a challenge based upon an argument that the ordinance is uncertain, and those offenses included in the ordinance which fall outside the county's authority to regulate can be severed from the ordinance, sustaining the remainder of the ordinance. However, because the Supreme Court of Nevada has not addressed this issue, it cannot be concluded that a court would definitely find such an ordinance to be valid and enforceable to the extent of the county's authority. Additionally, assuming that such an ordinance was found to be valid and enforceable, there is another issue which could arise in the process of enforcing the ordinance.

A traffic citation is deemed to be a lawful complaint for the purposes of prosecution when filed with a court of competent jurisdiction. NRS 484.817. Pursuant to NRS 484.799, a traffic citation must contain information about "the offense charged, including a brief description of the offense and the NRS citation" Subsection 1 of NRS 484.799. Therefore, a traffic citation issued for the violation of a county ordinance which incorporates by reference those offenses listed in NRS that are punishable as misdemeanors, making each such offense constitute a misdemeanor under the ordinance, must identify both the statute in NRS which the person allegedly violated and the county ordinance which incorporates that statutory provision, to be deemed a lawful complaint for the purposes of prosecution.

2. May a local authority keep a fine for the violation of a local ordinance regulating traffic if the violation occurred on a federal or state highway?

As mentioned in the response to Question 1 of this opinion, pursuant to the provisions of NRS 244.357, a county may enact ordinances regulating parking and vehicular, pedestrian and other traffic within the unincorporated area of the county, but a county is expressly forbidden from enacting an ordinance fixing a speed limit

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upon a federal or state highway. A city may regulate all vehicular, pedestrian and other traffic within the city, including traffic upon the portion of a federal or state highway which is within the limits of the city. See NRS 266.677. An unincorporated town may regulate traffic upon the streets and alleys within the town, including traffic upon the portion of a federal or state highway which is within the unincorporated town, and may regulate the speed, parking, stopping, turning and operation of all motor vehicles. See NRS 269.185. However, pursuant to the provisions of subsection 3 of NRS 484.779, a local ordinance is not effective with respect to federal or state highways until the ordinance has been approved by the Board of Directors of the Department of Transportation. Therefore, the response to this question assumes that the fine in question has been collected for a violation of a local ordinance which is valid and effective upon a federal or state highway, not for an alleged violation of a county ordinance fixing a speed limit upon a federal or state highway or other local ordinance which has not been duly approved by the Board of Directors of the Department of Transportation and is not effective with respect to federal or state highways, as such ordinances would not be enforceable on federal or state highways.

The issue presented by this question is whether a local authority may keep a fine collected for the violation of a local ordinance, which violation occurred on state or federal highway, or must pay the money collected into the state treasury pursuant to NRS 176.265. NRS 176.265 provides: "The full amount of all fines imposed and collected under and for violation of any penal law of the state shall be paid into the state treasury." (Emphasis added.) Thus, for a fine to be subject to the provisions of NRS 176.265, the fine must be imposed and collected under and for violation of any "penal law of the state."

In regard to a fine collected for the violation of an ordinance enacted by an unincorporated town, NRS 269.165 provides that all fines collected for the violation of town ordinances must be deposited in the county's treasury to be distributed to the proper fund of the town. Subsection 2 of NRS 269.165; AGO 333 (December 9, 1957); AGO 150 (February 28, 1952). Similarly, NRS 266.620 provides that a fine collected for the violation of a municipal ordinance is to be paid into the city's treasury as prescribed by ordinance. The Supreme Court of Nevada has also held that a fine collected for the violation of a municipal ordinance is not collected under the penal laws of the state because that term includes only those fines collected under penal laws prescribed by the Nevada Legislature. State of Nevada v. Rosenstock, 11 Nev. 128, 141 (1876), cited in State ex rel. Fletcher v. Ruhe, 24 Nev. 251, 263, 52 P. 274 (1898). Following the reasoning of the Supreme Court of Nevada in Rosenstock, a fine collected for the violation of a county ordinance would also not be considered a fine collected under a penal law of the state because county ordinances, like municipal ordinances, are not penal laws prescribed by the Nevada Legislature. Courts in other jurisdictions have also concluded that a fine collected for the violation of a local ordinance is not collected under a penal law of the state. See Delta County v. City of Gladstone, 8 N.W.2d 980 (Mich. 1943) and Village of Platteville v. Bell, 43 Wis. 488 (1878).

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Based upon the provisions of NRS 266.620 and 269.165 and the decision of the Supreme Court of Nevada in Rosenstock, a fine collected by a local authority for the violation of a local ordinance is not subject to the provisions of NRS 176.265. For these reasons, it is the opinion of this office that a local authority, whether a county, city or unincorporated town, may keep a fine for the violation of a local ordinance regulating traffic, assuming the ordinance is valid and effective with respect to federal and state highways, if the violation occurred on a portion of a federal or state highway which is within the local authority's jurisdiction.

3. May a county keep a fine for a violation of a county ordinance regulating traffic if the violation occurred:

- (a) Inside the limits of a city;
- (b) Inside the limits of an unincorporated town;
- (c) Outside the limits of a city; or
- (d) Outside the limits of an unincorporated town?

(a) Inside the Limits of a City

Paragraph (a) of subsection 4 of NRS 244.357 provides that a county may, by ordinance, regulate:

* * *

All vehicular, pedestrian and other traffic within the unincorporated area of the county and provide generally for the public safety on public streets, publicly owned parking lots, parking areas to which the public is invited and the public rights of way.

* * *

(Emphasis added.)

As the emphasized language in paragraph (a) of subsection 4 of NRS 244.357 indicates, a county may only regulate vehicular, pedestrian and other traffic within the unincorporated area of the county. Therefore, a person cannot be issued a citation or fined for the violation of a county ordinance regulating traffic within the incorporated area of the county.

(b) Inside the Limits of an Unincorporated Town

Before considering this question, it is important to clarify that for the purposes of this question, this opinion assumes that the person has been issued a citation and fined for the violation of a county ordinance regulating traffic, not a violation of an ordinance regulating traffic which was adopted by a town's board, or board of county commissioners acting as the town's board, and which applies only to the unincorporated town. If a person is fined for the violation of an ordinance regulating traffic which applies only to an unincorporated town, the fine must be deposited in the county's treasury to be distributed to the proper fund of the town. Subsection 2 of NRS 269.165; AGO 333 (December 9, 1957); AGO 150 (February 28, 1952).

If a person is fined for a violation of a county ordinance regulating traffic while within an unincorporated town, the issue then becomes whether the county may keep the fine collected for the violation or must pay the money into the state treasury pursuant to NRS 176.265. As the discussion of this issue in Question 2 of this opinion indicates, a fine collected for the violation of a county ordinance is not collected under the penal laws of the state and is therefore not subject to the provisions of NRS 176.265. For this reason, a county may keep a fine for a violation of a county ordinance regulating traffic if the violation occurred within an unincorporated town.

(c) Outside the Limits of a City

A violation of a county ordinance regulating traffic, which violation occurs outside the limits of a city, falls within the unincorporated area of the county, which the county may regulate pursuant to the provisions of paragraph (b) of subsection 4 of NRS 244.357. Therefore, the analysis of this question is identical to the analysis pertaining to Question 2 of this opinion, and a county may keep a fine for a violation of a county ordinance regulating traffic if the violation occurred outside the limits of a city.

(d) Outside the Limits of an Unincorporated Town

A violation of a county ordinance regulating traffic which occurs outside the limits of an unincorporated town, but not within the limits of a city, falls within the unincorporated area of the county, which the county may regulate pursuant to the provisions of paragraph (b) of subsection 4 of NRS 244.357. Therefore, the analysis of this question is identical to the analysis pertaining to Question 2 of this opinion, and a county may keep a fine for a violation of a county ordinance regulating traffic if the violation occurred outside the limits of an unincorporated town.

4. May a local authority keep a fine for the violation of a law in NRS regulating traffic?

A local authority may not keep a fine collected for the violation of a law in NRS regulating traffic. NRS 176.265 provides: "The full amount of all fines imposed and collected under and for violation of any penal law of this state shall be paid into the state treasury." The laws in NRS regulating traffic which impose penalties for violations are penal laws of the state. Because NRS 176.265 provides that all fines imposed and collected for violation of penal laws are paid into the state treasury, it follows that a fine imposed and collected for a violation of a law in NRS regulating traffic must be paid into the state treasury. Furthermore, section 3 of Article 11 of the Constitution of the State of Nevada provides that "... all fines collected under the penal laws of the state are hereby pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses." Thus, pursuant to the provisions of NRS 176.265 and section 3 of Article 11 of Nevada's constitution, a fine imposed and collected for a violation of a law in NRS regulating traffic must be paid into the state treasury to be pledged for educational purposes, and a local authority may not keep such a fine.

5. If a municipal or county ordinance duplicates a state law, and a peace officer issues a citation to a person for a violation of the state law, may a judge, prosecutor or clerk of the court change the citation to reflect a violation of the municipal or county ordinance?

A judge may, under certain circumstances, change a citation to reflect a violation of a municipal or county ordinance which duplicates a state law when a peace officer issues a citation for a violation of the state law. Although a prosecutor may recommend that a different violation be charged, the prosecutor may not change the citation himself. A clerk of a court also may not change a citation, except upon the direction of a judge.

NRS contains similar provisions addressing the disposition of misdemeanor citations and traffic citations.

Misdemeanor Citations

Subsection 2 of NRS 171.1776 provides that a misdemeanor citation may be disposed of only by trial in a court having jurisdiction over the offense or by other official action by a judge of the court. It is unlawful and official misconduct for any peace officer or other officer or public employee to dispose of a misdemeanor citation, a copy of the citation or the record of the citation other than as required by NRS 171.1776. Subsection 3 of NRS 171.1776. Thus, the decision of whether to dismiss or change a citation rests with the court only.

Subsection 2 of NRS 171.1776 does provide that a misdemeanor citation may be disposed of by "other official action" by a judge. If changing a charged offense under a misdemeanor citation to reflect a violation of a municipal or county ordinance can be construed as "official action" by a judge, then the practice of so changing a citation would be permissible. Still, pursuant to the provisions of NRS 174.035, a judge cannot accept a forfeiture of bail or plea from a person who does not realize to what charge he is entering a plea or forfeiting his bail and who does not understand the nature of the charge and consequences of the plea. See NRS 174.035. Even assuming that a judge's act of changing a charged offense to reflect a violation of a municipal or county ordinance rather than a violation of NRS is considered official action by the judge, the person charged with the offense would have to appear before the judge, be informed of the different charge and enter a plea to the different charge for the judge to change the citation and accept the plea.

However, pursuant to NRS 175.341, if it appears at any time before verdict or judgment that a mistake has been made in charging a person with the proper offense, the court must either commit the person to custody or require that the person post bail to insure his appearance in court. Thus, if the judge becomes aware of the fact that a person should have been charged with a violation of a municipal or county ordinance instead of a violation of NRS, the judge may change the person's bail to correspond with the violation which should have been charged. However, the fact that a person should have been charged with a violation of a municipal or county

ordinance ordinance must be apparent to a judge before verdict or judgment. If a person is permitted to forfeit his bail or to enter a plea of no contest or guilty without making an appearance before a judge, it would be difficult for a judge to become aware of the fact that a peace officer issued a citation for a violation of NRS instead of a violation of the appropriate municipal or county ordinance. Moreover, as stated above, it is unlawful for a judge to accept a forfeiture of bail or plea from a person who does not realize to what charge he is entering a plea or forfeiting his bail and who does not understand the nature of the charge and consequences of the plea or forfeiture. Therefore, if a person is issued a misdemeanor citation for a violation of NRS when the peace officer should have cited the person for a violation of a duplicative municipal or county ordinance, a judge may change the citation to reflect a violation of the duplicative ordinance only if the person appears before the judge, is informed of the different charge and enters a plea to the different charge.

Traffic Citations

As with a misdemeanor citation, a traffic citation may be disposed of by trial in a court having jurisdiction over the offense or by other official action by the judge of that court. Subsection 2 of NRS 484.813. A traffic citation may also be disposed of by forfeiture of the bail, or by deposit of sufficient bail with, or payment of a fine to, the traffic violations bureau. Id. It is unlawful and official misconduct for a peace officer or other officer or public employee to dispose of a traffic citation, a copy of the citation or the record of the citation other than as required by NRS 484.813. Subsection 3 of NRS 484.813.

Unlike the statutory provisions regarding misdemeanor citations discussed above, chapter 484 of NRS does not contain a statutory provision similar to NRS 175.341 which would authorize a judge to change a charged offense under NRS to a violation of a municipal or county ordinance if it appears that a mistake has been made in charging a person with an offense. However, subsection 2 of NRS 484.813, like subsection 2 of NRS 171.1776, provides that a citation may be disposed of by "other official action" by a judge. As discussed above, if changing a charged offense under a citation to reflect a violation of a municipal or county ordinance can be construed as "official action" by a judge, then the practice of so changing a citation would be permissible. However, because NRS 174.035 provides that a judge cannot accept a forfeiture of bail or plea from a person who does not realize to what charge he is entering a plea or forfeiting his bail and who does not understand the nature of the charge and consequences of the plea, the person charged with the offense would have to appear before the judge, be informed of the different charge and enter a plea to the different charge for the judge to change the citation and accept the plea.

For the reasons discussed above, it is the opinion of this office that a judge may change a misdemeanor or traffic citation to reflect a violation of a municipal or county ordinance which duplicates a state law when a peace officer issues a citation for a violation of the state law, provided that the person appears before the judge, is advised of the different charge and enters a plea to the different charge. A prosecutor may only recommend that a misdemeanor or traffic citation be changed, while a clerk of a court may change a citation only at the direction of a judge.

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6. May an officer of the Nevada Highway Patrol issue a citation for a violation of a local ordinance?

The duties of the personnel of the Nevada Highway Patrol are set forth in NRS 481.180. Subsection 1 of NRS 481.180 provides that it is the duty of the personnel of the Nevada Highway Patrol:

1. To police the public highways of this state, to enforce and to aid in enforcing thereon all the traffic laws of the State of Nevada and to enforce all other laws of this state when:
 - (a) In the apprehension or pursuit of an offender or suspected offender;
 - (b) Making arrests for crimes committed in their presence or upon or adjacent to the highways of this state; or
 - (c) Making arrests pursuant to a warrant in the officer's possession or communicated to him.

(Emphasis added.)

As the emphasized language in subsection 1 of NRS 481.180 indicates, it is the duty of the Nevada Highway Patrol to enforce the traffic laws "of the State of Nevada" and all other "laws of this state" under certain circumstances. Thus, subsection 1 of NRS 481.180 appears to provide that the personnel of the Nevada Highway Patrol have the statutory authority to enforce the traffic laws of the state, as set forth in NRS, as well as other offenses under state law, but not the statutory authority to enforce local ordinances. Furthermore, the reasoning in the discussion in Question 2 of this opinion, wherein it is stated that fines collected for the violation of local ordinances may be kept by local authorities because the fines are not collected for violations of the penal laws of the state, also suggests that because local ordinances are not laws of the State of Nevada, officers of the Nevada Highway Patrol do not have the statutory authority to issue citations for the violation of local ordinances. Although the Supreme Court of Nevada has not addressed the issue of whether an officer of the Nevada Highway Patrol has the authority to issue a citation for the violation of a local ordinance, the Court of Appeals of Ohio has interpreted a statutory provision in Ohio which is similar to NRS 481.180.

In State v. Steele, 1987 WL 15903 (Ohio Ct. App. 1987), the Court of Appeals of Ohio concluded that § 5503.02 of the Revised Code of Ohio, which resembles the language in subsection 1 of NRS 481.180 and which sets forth the duty of the Ohio Highway Patrol to enforce the "laws of the state," does not authorize officers of the Ohio Highway Patrol to enforce violations of local ordinances regulating traffic because local ordinances are not "laws of the state." In reaching this conclusion, the court relied upon an opinion of the Attorney General of Ohio which addressed the same issue and opined that because local ordinances are not laws of the state, prescribed by the Ohio Legislature, the Ohio Highway Patrol lacks the authority to enforce such ordinances. See Ohio AGO 1557 (1939).

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Based upon the language of subsection 1 of NRS 481.180 and the reasoning set forth in the response to Question 2 of this opinion and in Steele, it is the opinion of this office that an officer of the Nevada Highway Patrol does not have the statutory authority to issue a citation for a violation of a local ordinance.

If you have any questions, please contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By Bradley A. Wilkinson
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June 16, 1994

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Dear Mr. Crews:

You have asked a number of questions about the authority of the Supreme Court of Nevada and the Court Administrator as it relates to the administrative functions of the district, justices' and municipal courts. Each of your questions will be addressed in turn.

1. Does the Chief Justice of the Supreme Court of Nevada have authority over the administrative functions of the district, justices' and municipal courts, and if so, is this authority restricted or limited in any manner?

Subsection 1 of section 19 of Article 6 of the Constitution of the State of Nevada and subsection 4 of Supreme Court Rule 7 both provide that the Chief Justice of the Supreme Court of Nevada is the administrative head of the court system. As the administrative head of the court system, the Chief Justice has authority over the administrative functions of the district, justices' and municipal courts. Subsection 4 of Supreme Court Rule 7 states that the Chief Justice " ... has authority to perform administrative activities not inconsistent with this and other Court rules or any recognized norm or any decision or order of the majority." (Emphasis added.) Subsection 9 of Supreme Court Rule 7 specifically provides that "[a]ny administrative order entered by the Chief Justice ... is also subject to modification or revision subsequent to its entry, through an order entered by a majority of the Court." Thus, the Chief Justice of the Supreme Court of Nevada has authority over the administrative functions of the district, justices' and municipal courts, and the Chief Justice's authority to perform administrative activities is restricted only by the requirement that his activities be consistent with the Supreme

68-1778D

Court Rules, with any recognized norm of the Supreme Court of Nevada and with any decision or order of the majority of the Supreme Court of Nevada.

2. Is the Court Administrator, under the direction of the Supreme Court of Nevada, required to perform the duties described in NRS 1.360 for the district, justices' and municipal courts?

The duties that the Court Administrator is required to perform, under the direction of the Supreme Court of Nevada, are set forth in the provisions of the various subsections of NRS 1.360. Pursuant to the provisions of NRS 1.360, the Court Administrator is required to perform certain tasks for all courts in the state, while other tasks are required for only the district courts. For example, subsection 1 of NRS 1.360 provides that the Court Administrator shall "[e]xamine the administrative procedures employed in the offices of the judges, clerks, court reporters and employees of all courts of this state and make recommendations, through the chief justice, for the improvement of those procedures." (Emphasis added.) Subsections 2, 4, 5, 6, 7 and 9 of NRS 1.360 also refer to duties of the Court Administrator pertaining to all courts in the state.

However, the provisions of subsection 3 of NRS 1.360, which concern assigning judges to district courts in need of assistance, set forth a duty of the Court Administrator involving only the district courts, not the justices' or municipal courts. Subsection 8 of NRS 1.360, concerning the compilation of statistics obtained from information maintained by the clerks of the district courts and the making of reports based upon this information, also has no application to the justices' and municipal courts. Therefore, the Court Administrator, under the direction of the Supreme Court of Nevada, is required to perform the duties described in subsections 1, 2, 4, 5, 6, 7 and 9 of NRS 1.360 for the district, justices' and municipal courts, and the duties set forth in subsections 3 and 8 of NRS 1.360 for only the district courts.

3. Does the Court Administrator have statutory authority to require the district, justices' and municipal courts to implement a recommendation made pursuant to subsection 6 of NRS 1.360?

Subsection 6 of NRS 1.360 provides that, "under the direction of the Supreme Court of Nevada," the Court Administrator shall "[d]evelop procedures for accounting, internal auditing, procurement and disbursement for the state court system." (Emphasis added.) Subsection 6 does not expressly grant the Court Administrator authority to enforce compliance with a procedure developed pursuant to the subsection. Furthermore, as the emphasized language indicates, the Court

Wm. Gary Crews, Legislative Auditor
June 16, 1994
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Administrator performs all duties under the direction of the Supreme Court of Nevada.

Because the Court Administrator has not been expressly granted the power to enforce the provisions of NRS 1.360 and must act under the direction of the Supreme Court of Nevada at all times, the Court Administrator does not have express statutory authority to require the district, justices' and municipal courts to implement a recommendation made pursuant to subsection 6 of NRS 1.360. The authority to require a court to implement an administrative procedure rests with the Supreme Court of Nevada.

However, subsection 10 of NRS 1.360 provides that the Court Administrator shall "[a]ttend to such other matters as may be assigned by the supreme court" Pursuant to subsection 10 of NRS 1.360, the Supreme Court of Nevada may delegate or assign to the Court Administrator the authority to ensure compliance with recommendations or procedures developed by the Court Administrator. The Chief Justice, acting as the administrative head of the court system, also may confer such authority upon the Court Administrator.

For the reasons discussed above, it is the opinion of this office that the Court Administrator does not have express statutory authority to require the district, justices' and municipal courts to implement a recommendation made pursuant to subsection 6 of NRS 1.360. However, the Supreme Court of Nevada or the Chief Justice of the Supreme Court may confer upon the Court Administrator the authority necessary to require those courts to implement a recommendation.

4. Does the Chief Justice of the Supreme Court of Nevada have authority to require the district, justices' and municipal courts to implement a recommendation made pursuant to subsection 1 of NRS 1.360?

Subsection 1 of NRS 1.360 states that the Court Administrator shall, under the direction of the Supreme Court of Nevada, "[e]xamine the administrative procedures employed in the offices of the judges, clerks, court reporters and employees of all courts of this state and make recommendations, through the chief justice, for the improvement of those procedures." As the administrative head of the court system, the Chief Justice of the Supreme Court of Nevada has authority to perform administrative activities not inconsistent with the Supreme Court Rules, with any recognized norm of the Supreme Court of Nevada and with any decision or order of the Supreme Court of Nevada. Subsection 4 of Supreme Court Rule 7. Under this authority, the Chief Justice may require the district, justices' and municipal courts to implement a recommendation made pursuant to subsection 1 of NRS 1.360, provided

Wm. Gary Crews, Legislative Auditor
June 16, 1994
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the Chief Justice's actions are not inconsistent with the Supreme Court Rules, with any recognized norm of the Supreme Court of Nevada and with any decision or order of the majority of the Supreme Court of Nevada.

5. Does the Court Administrator have authority to require the district, justices' and municipal courts to comply with the requirements developed for a uniform system for collecting and compiling statistics and other data regarding the operation of the state court system pursuant to subsection 4 of NRS 1.360?

Subsection 4 of NRS 1.360 provides that, "under the direction of the Supreme Court of Nevada," the Court Administrator shall "[d]evelop a uniform system for collecting and compiling statistics and other data regarding the operation of the state court system and transmit that information to the supreme court so that proper action may be taken in respect thereto." (Emphasis added.) Subsection 4 of NRS 1.360 does not expressly grant the Court Administrator statutory authority to require any court to comply with procedures developed pursuant to that subsection. Thus, as explained in the response to question 3 of this opinion, the Court Administrator lacks express statutory authority to require the courts of the state to implement or comply with an administrative procedure because that authority is vested in the Supreme Court of Nevada. However, pursuant to subsection 10 of NRS 1.360, the Supreme Court may delegate to the Court Administrator the authority to ensure the district, justices' and municipal courts comply with the requirements developed for a uniform system for collecting and compiling statistics and other data regarding the operation of the state court system. The Chief Justice of the Supreme Court may also delegate such authority to the Court Administrator.

6. Does the Office of the Court Administrator have authority to require the district, justices' and municipal courts to comply with the criteria established regarding specifications, controls and documentation when purchasing automated systems with money distributed pursuant to subparagraph (2) of paragraph (a) of subsection 8 of NRS 176.059 or with money from a fund of a city or county?

In regard to money distributed pursuant to subparagraph (2) of paragraph (a) of subsection 8 of NRS 176.059, subsection 8 of NRS 176.059 requires the Office of the Court Administrator to allocate nine percent of the money distributed to it, pursuant to the provisions of the section, for the development of a uniform system for judicial records. Subsection 8 does not specify in what manner the Court Administrator may spend the money allocated to his office to develop the uniform system, and it is therefore within the Court Administrator's discretion to determine how the money is

Wm. Gary Crews, Legislative Auditor
June 16, 1994
Page 5

to be spent, who, if anyone, is to receive the money and whether there are to be any conditions that must be met before receiving the money. The Court Administrator may decide that the most efficient way to develop a uniform system for judicial records is to distribute the money directly to the district, justices' and municipal courts to purchase automated systems that will ensure uniformity. Therefore, the Court Administrator has the authority to establish the requirement that if a district, justice's or municipal court wishes to receive money to purchase automated systems, the court must comply with the criteria established regarding specifications, controls and documentation.

However, as discussed in the responses to the previous questions, the Court Administrator acts only under the direction of the Supreme Court of Nevada. The Court Administrator has the authority to require that the district, justices' and municipal courts follow established criteria as a condition for receiving money to purchase automated systems, but the Supreme Court still holds the authority to direct the Court Administrator to follow a different procedure to distribute money to those courts or to take other action to develop a uniform system for judicial records.

In regard to the purchase of automated systems with money from a fund of a city or county, neither the provisions of subsection 8 of NRS 176.059, nor the provisions of NRS 1.360, expressly grant the Court Administrator statutory authority to require the district, justices' or municipal courts to comply with established criteria when purchasing automated systems. However, the Supreme Court of Nevada, or the Chief Justice of the Supreme Court, does have the authority to regulate the purchase of equipment to be used in the state's courts. The Supreme Court of Nevada, or the Chief Justice of the Supreme Court, may delegate to the Court Administrator, pursuant to subsection 10 of NRS 1.360, the authority to ensure the district, justices' and municipal courts comply with established criteria regarding specifications, controls and documentation when purchasing automated systems with money from a fund of a city or county.

7. Is the Court Administrator authorized, pursuant to NRS 1.370, to inspect or review the records, policies and procedures for the accounting, collection and reduction of fines and administrative assessments of the district, justices' and municipal courts?

Subsection 1 of NRS 1.370 states:

1. All judges, clerks and employees of the district courts, justices' courts and municipal courts shall provide the court administrator with any records, papers or other information that he may require and shall

Wm. Gary Crews, Legislative Auditor
June 16, 1994
Page 6

cooperate with him in every possible manner in order to effectuate the purposes of NRS 1.320 to 1.370, inclusive.

(Emphasis added.) As the emphasized language in subsection 1 of NRS 1.370 indicates, all judges, clerks and employees of the district, justices' and municipal courts have a duty to produce information and documents and to cooperate with the Court Administrator in order to effectuate the purposes of NRS 1.320 to 1.370, inclusive. Therefore, if the accounting for, collection and reduction of fines and administrative assessments of the district, justices' and municipal courts is an issue upon which the Court Administrator must act to effectuate the purposes of NRS 1.320 to 1.370, inclusive, then the Court Administrator can require the judges, clerks or employees of the district, justices' and municipal courts to produce for inspection and review their records, policies and procedures for the accounting, collection and reduction of fines and administrative assessments.

A review of some of the Court Administrator's duties, as set forth in NRS 1.370, shows that the procedures employed in the accounting for, collection and reduction of fines and administrative assessments in the district, justices' and municipal courts are the type of administrative procedures which the Court Administrator is required to examine in order to effectuate the purposes of these subsections of NRS 1.360. Subsection 1 of NRS 1.360 provides that the Court Administrator shall "[e]xamine the administrative procedures employed in the offices of the judges, clerks, court reporters and employees of all courts of this state and make recommendations, through the chief justice, for the improvement of those procedures." Subsection 5 requires that the Court Administrator "[p]repare and submit a budget of state appropriations necessary for the maintenance and operation of the state court system and make recommendations in respect thereto." Subsection 6 provides that the Court Administrator shall "[d]evelop procedures for accounting, internal auditing, procurement and disbursement for the state court system." Finally, subsection 7 requires the Court Administrator to "[c]ollect statistical and other data and make reports relating to the expenditure of all public money for the maintenance and operation of the state court system and the offices connected therewith."

In light of the fact that one or more of the duties of the Court Administrator, as set forth in NRS 1.360, might require him to inspect or review the records, policies and procedures for the accounting, collection and reduction of fines and administrative assessments in the district, justices' and municipal courts, it follows that the Court Administrator has the authority, pursuant to NRS 1.370, to inspect or review such records, policies and procedures.

Wm. Gary Crews, Legislative Auditor
June 16, 1994
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If we can be of any further assistance, please contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By Bradley A. Wilkinson
Bradley A. Wilkinson
Deputy Legislative Counsel

Appendix D

Prior Audit Recommendations

As part of our audit, we requested the Supreme Court determine the status of the 21 recommendations made during our last audit of the Supreme Court. The Supreme Court indicated 15 recommendations were fully implemented, 3 recommendations were partially implemented, and no action was taken on 3 recommendations. None of these recommendations related to the administrative oversight of the court system, and therefore were not within the scope of our current audit.

Appendix E

Response from the Supreme Court

SUPREME COURT OF NEVADA
THOMAS L. STEFFEN, CHIEF JUSTICE
CAPITOL COMPLEX
CARSON CITY, NEVADA 89710



January 18, 1995

Wm. Gary Crews, CPA
Legislative Auditor
Legislative Counsel Bureau
Capitol Complex
Carson City, NV 89710

Dear Mr. Crews:

The court very appreciatively accepts the results of your audit of the processing, collecting, recording and remittance of state fines and administrative assessments in Nevada's courts, and will take necessary measures to work toward the correction of the deficiencies noted therein.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Thomas L. Steffen", is written over a horizontal line.

THOMAS L. STEFFEN

Attachment

**Agency Response
to Audit Recommendations**

<u>Recommendation Number</u>		<u>Accepted</u>	<u>Rejected</u>
1	Establish minimum financial and administrative control standards for use by the state's court system.....	<u> X </u>	<u> </u>
2	Develop uniform procedures to classify, record, and distribute fines and assessments collected.....	<u> X </u>	<u> </u>
3	Develop collection procedures for use by the district, justice and municipal courts.....	<u> X </u>	<u> </u>
4	Perform periodic monitoring of the state's courts to ensure control objectives are achieved.....	<u> X </u>	<u> </u>
	TOTALS	<u> 4 </u>	<u> 0 </u>

APPENDIX C

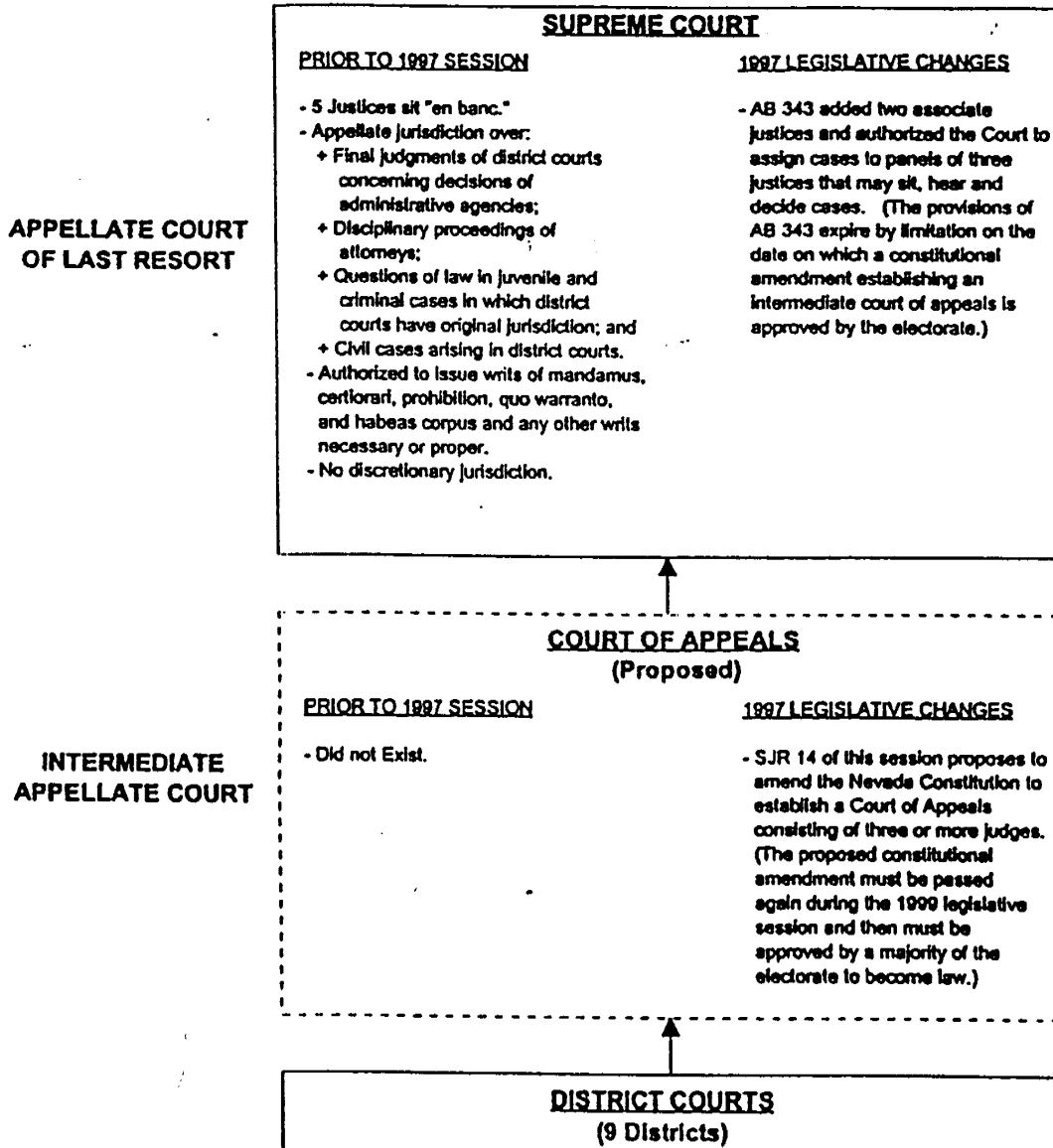
Flow Chart of the Structure of the Nevada Court System

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Structure of the Nevada Court System



Continued on next page

DISTRICT COURTS

(9 Districts)

PRIOR TO 1997 SESSION

- 48 Judges
- Types of cases court may hear:
 - + Original jurisdiction in all cases for which the Justices' Courts do not have original jurisdiction. (E.g. Civil claims for more than \$7,500, felonies and gross misdemeanors.)
 - + Original jurisdiction in juvenile cases.
 - + Final appellate jurisdiction in cases arising in Justices' and Municipal Courts.
- Authorized to issue writs of mandamus, prohibition, injunction, quo-warranto, certiorari, habeas corpus and all other writs proper and necessary.
- Jury trials.

1997 LEGISLATIVE CHANGES

- AB 35 added one judge to the third judicial district.
- AB 104 added three judges to the eighth judicial district.
- SB 215 gave the first judicial district jurisdiction over campaign violations.
- Current Total: 52 Judges.

COURT OF GENERAL JURISDICTION

JUSTICES' COURTS

(56 Towns)*

PRIOR TO 1997 SESSION

- 65 Justices of the Peace*
- Types of cases court may hear:
 - + Civil Claims of \$7,500 or less.
 - + Misdemeanors.
 - + Protection orders against domestic violence.
 - + Protection orders against stalking, aggravated stalking or harassment.
 - + Fines for violating weight limits of vehicles.
 - + Small claims actions.
 - + Actions to contest liens on mobile homes or manufactured homes.
 - + Preliminary hearings in felony criminal cases.
- Jury trials (except in civil claims and parking cases).

1997 LEGISLATIVE CHANGES

- AB 628 provides for one Justice of the Peace for each 34,000 people, or fraction thereof, in counties whose population is less than 100,000.

* Based on information published in BNA's Directory of State and Federal Courts, Judges, and Clerks, 1997 ed.

COURTS OF LIMITED JURISDICTION

MUNICIPAL COURTS

(19 Incorporated Cities/Towns)*

PRIOR TO 1997 SESSION

- 28 Judges (11 also serve as Justices of the Peace)*
- Types of cases court may hear:
 - + Certain actions against a person in the name of the city involving \$2,500 or less.
 - + Violations of city ordinances.
 - + Prevention or abatement of a nuisance within the city limits.
- No jury trials.

1997 LEGISLATIVE CHANGES

- AB 69, SB 136 and SB 249 amended the city charters of Las Vegas, Sparks and Carson City, respectively, to authorize additional municipal judges.

* Based on information published in BNA's Directory of State and Federal Courts, Judges, and Clerks, 1997 ed.

Prepared by Legal Division, LCB, Oct. 23, 1997.

APPENDIX D

Recommendations submitted by Mary Walker,
Director of Finance and Redevelopment for Carson City



CARSON CITY, NEVADA

CONSOLIDATED MUNICIPALITY AND STATE CAPITAL

May 4, 1998

Assemblyman Bernie Anderson
Chairman, SCR 10 Committee
Nevada State Legislature
Carson City, Nevada

Dear Mr. Chairman:

Please accept the attached "Recommendation to the SCR 10 Legislative Committee for Improving the Collection Process in the Nevada Court System" as a submittal by Nevada's local governments in cooperation with the Administrative Office of the Courts. This recommendation is meant to provide to you our sincere desire to work towards improving the state's court collection process. It has been approved by the League of Cities and the Nevada Association of Counties.

If you have any questions regarding this submittal, please do not hesitate to contact me.

Sincerely,

Mary C Walker

Mary C. Walker
Director of Finance
And Redevelopment

cc: Tom Grady, League of Cities
Bob Hadfield, Nevada Association of Counties

**Recommendation to the SCR10 Legislative Subcommittee
for
Improving the Collection Process
in the
Nevada Statewide Court System
April 1998**

The purpose of this recommendation is to facilitate standardization and consistency in collections throughout Nevada's statewide court system and to optimize the process.

Nevada's courts and justice organizations, along with the Administrative Office of the Courts (AOC), offer this plan for improving the fines, fees, forfeitures and assessments process, from initial recording through collection and to distribution and reporting.

Collections are the purview of each individual court. The court currently assigns, classifies, processes, distributes and reports its collections according to its own policies and procedures. While there are many courts in Nevada that have implemented robust and successful collection processes, they are not consistent from court to court. This results in confusing data and sometimes less-than-optimal collections.

The proposed improved collections program consists of five components, the first two of which are already underway:

1. Minimum Technology (hardware, software, communications) in Every Court

Manual data collection and reporting leads to inconsistencies and errors. Through its uniform system of judicial records program, the AOC has recently assessed technology resources, abilities and needs in each Nevada court. The effort to establish a minimum standard of technology to facilitate the consistent, timely accurate exchange of information between the courts, justice (law enforcement) organizations, and the AOC is now underway. The standard will support the four other components listed below.

2. Standardized Accounting within the Courts

As a result of a 1995 legislative audit of the judicial branch of government, and consistent with the uniform system of judicial records, the AOC has implemented minimum accounting standards for the statewide court system. The AOC is continuing to assess accounting system needs and will pursue appropriate solutions on the courts' behalf. This initiative includes the standardization of terms, definitions, process and policies and procedures pertinent to general accounting, including collections. Therefore, the SCR10 objectives for consistent, timely and accurate collections and collection reporting can be facilitated as part of this initiative.

3. Standardized Collection Systems

The AOC can immediately establish a Collections Advisory Task Force consisting of judges and court personnel, along with representatives from the AOC. The Task Force should:

- Identify collections best practices within and external to Nevada's courts
- Determine the best collection policies and processes for Nevada's courts
- Document and distribute standardized data elements, definitions, policies and procedures to be used by the statewide court system; IE, the *standardized collections system*
- Gather consensus among the courts to implement the standardized collections system
- On an on-going basis, review collection policies and procedures for improvement purposes

It should be noted that the standardized collection system will take into account all aspects of the process, including "failures to appear" and legislative tracking/reporting requirements.

4. Education

Along with actively participating on the Task Force, it is proposed that the AOC provide additional support in the establishment and support of continued use of standard collection policies and procedures statewide. First, through on-going education of judges and court personnel and, later, by providing quality assurance in the individual courts.

A course could be added to the AOC's Judicial Education program to ensure each judge and court administrator/representative understands how to implement and successfully maintain the standardized collections system.

5. Quality Assurance

Quality assurance (QA) should not be confused with an audit in that when an audit is performed, it is typically too late to improve the situation and probably creates negative responses from decision-makers and stakeholders. QA provides

for on-going oversight and improvement. The proposal is for the AOC to hire additional staff whose sole responsibility it is to periodically visit each Nevada court and observe the collections process. Beyond observing, in the event the court is not following the statewide collections policies and procedures for whatever reason, the AOC's QA staff would quickly identify the non-compliance for the court and make recommendations for improvement. The court then has the opportunity to implement changes to alleviate the problem(s) before the situation is reported outside the specific court. Should the court refuse to make the appropriate changes, the QA staff would report to the court administrator (also known as the Director of the Administrative Office of the Courts) who would be responsible, pursuant to NRS 1.360, for bringing it to the attention of the Chief Justice.

FISCAL NOTE:

- Travel for Task Force to meet at least once a month until standards are established, then quarterly, beginning 7/1/99.
- Accounting software and training for those courts in need (the AOC has already identified and documented technology needs for each court)
- Minimum level of technology for the courts in need (the AOC has already identified and documented technology needs for each court)
- Judicial Education (not to begin until Task Force has finalized the standards)
- Three or four staff in AOC, along with normal start-up furniture, fixture, equipment and technology (not to begin until after the collections system is in operation)

Executive Board Members:

Walter Sanders, President
Stan Wallis, First Vice President
Ron Hardy, Second Vice President
Ron Kruse, Third Vice President
Willis Swan, Secretary/Treasurer
Cindy Henderson, Immediate Past President
Thomas J. Grady, Executive Director



Member - National League of Cities

206 N. Carson Street
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Carson City, Nevada 89702-2307


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Web Site: www.state.nv.us/nvleague/
E-Mail: nvleague@govmail.state.nv.us

MEMBER CITIES: Boulder City • Caliente • Carlin • Elko • Ely • Fallon • Oabbs • Henderson • Las Vegas • Lovelock • Mesquite
North Las Vegas • Reno • Sparks • Wells • West Wendover • Winnemucca • Yerington
AFFILIATE MEMBERS: Fernley • Gardnerville Ranchos, OID • Indian Hills, OID • Pahrump • Round Mountain • Spring Creek

TO: Mary Walker

VIA FAX

FROM: T.J. Grady 

DATE: May 4, 1998

RE: SCR 10

MEMORANDUM

We have sent out your draft proposal to all of our members. To date, we have heard from the following cities:

Elko
Fallon
Lovelock (comments attached)
Mesquite
North Las Vegas
West Wendover
Yerington

All the above have agreed with the draft process. In discussions, I mentioned that our proposal should include a yearly report by the A.O.C. The above cities also agreed with this suggestion. My recommendation would be along the these lines:

"An annual report will be prepared by the A.O.C. to be delivered to the Chair of the Senate Judiciary and Assembly Judiciary Committees. A copy will also be delivered to the Nevada League of Cities and Municipalities and NACO on the progress of the Nevada State Wide Court System."

Please let me know if I can assist you further.

Enclosure

APPENDIX E

Letter from Legislative Counsel to Chairman Anderson,
dated March 18, 1998

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (702) 687-5962



LEGISLATIVE COMMISSION (702) 687-6800
RICHARD D. PERKINS, *Assemblyman, Chairman*
Lorne J. Malkiewich, *Director, Secretary*

INTERIM FINANCE COMMITTEE (702) 687-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Daniel G. Miles, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

LORNE J. MALKIEWICH, *Director*
(702) 687-6800

Wm. GARY CREWS, *Legislative Auditor* (702) 687-6815
ROBERT E. ERICKSON, *Research Director* (702) 687-6825
BRENDA J. ERDOES, *Legislative Counsel* (702) 687-6830

March 18, 1998

Assemblyman Bernie Anderson
747 Glen Meadow Drive
Sparks, NV 89434-1536

Dear Assemblyman Anderson:

As Chairman of the Legislative Commission's Subcommittee on Fees, Fines, Forfeitures and Administrative Assessments Imposed and Collected by Courts ("Subcommittee"), you have asked me to summarize the issues presented during the second meeting of the Subcommittee held on February 6, 1998. You have also asked me to summarize the various positions that have been presented concerning those issues as well as the opinion of this office with respect to the various issues. Each issue, the positions presented on that issue, and considerations for the Subcommittee are summarized below.

I. Accounting Procedures Used by State Courts

A. **Issue:** The 1995 Audit Report of the State of Nevada Judicial Branch of Government and Administrative Oversight of the State Court System ("Audit Report") that was conducted by the Legislative Auditor of the Legislative Counsel Bureau ("LCB") found that the state courts in Nevada "use a number of different methods to classify, record, and distribute fines collected from NHP citations." Audit Report at 10. It also stated that many courts have not established adequate internal accounting controls for collecting, recording and depositing fines. *Id.* at 24. In addition, Debbra King, Program Analyst for the Fiscal Analysis Division of the LCB, presented documentation at the meeting of the Subcommittee indicating that there are substantial differences in the manner in which courts classify and report money collected. There are also significant differences in the classification of expenses related to the judicial function. As a result, she concluded that it is very difficult to determine and evaluate how the courts are using and distributing money collected by the courts. In addition, she stated that the financial information presented in the independently audited annual financial reports of the local governments could not be reconciled with the information provided to the Administrative Office of the Courts.

B. Positions Presented:

Ms. Karen Kavanau, Director of the Administrative Office of the Courts, also testified before the Subcommittee on February 6, 1998. She stated that:

A Supreme Court Order establishing Minimum Accounting Standards in Nevada's justice and municipal courts was entered on February 19, 1997. The purpose of the MAS is to standardize accounting practices, consistent with Generally Accepted Accounting Principles. The Order further requires each court to review its accounting practices on an annual basis and to have them audited every three years. The AOC has provided the courts with standardized checklists to be used in each instance. The checklists are supposed to be sent to the AOC once completed.

Letter from Karen Kavanau, dated February 4, 1998. Judge Robey Willis, Justice of the Peace and Municipal Court Judge for Carson City, also presented a resolution passed by the Nevada Judges Association which acknowledged the efforts of the Administrative Office of the Courts and stated that:

[T]he Nevada Judges Association is committed to meeting or exceeding the 1997 accounting standards as established by the Administrative Office of the Courts, including independent audits of court internal control procedures.

Michael Havemann, Administrator of the Las Vegas Municipal Court, testified about his role as court administrator. He stated that the manner in which the municipal court collects and accounts for money is determined by state statute and local ordinance. Letter from Michael Havemann, dated February 5, 1998, at 2. He explained the procedures used in the Las Vegas Municipal Court concerning internal controls, the amount of discretion of the court administrator and other related matters. He also noted the recent implementation of the minimum accounting guidelines by the Administrative Office of the Courts and stated that the auditing requirement of the guidelines may help to develop statewide uniformity. Id. at 3. Mr. Havemann suggested funding and creating an internal audit unit in the Administrative Office of the Courts to improve accounting procedures. Id.

C. Considerations for the Subcommittee: The testimony summarized above indicates that some measures have been taken to ensure consistency in accounting procedures by the courts. Thus, the Subcommittee may wish to consider whether legislative action is necessary to provide additional requirements and controls to ensure

the establishment of uniformity in accounting procedures and to provide accountability and consistency among the courts.

II. Treating Nevada Highway Patrol Citations that are Written as NRS Violations as Violations of Local Laws

A. Issue: The 1995 Audit Report found that many courts in this state change Nevada Highway Patrol traffic citations from violations of the Nevada Revised Statutes ("NRS") to violations of local ordinances. Audit Report at 15. In considering this matter, the Subcommittee also considered the jurisdiction of the Municipal Courts and the duplication of state laws in local ordinances. The effect of courts changing citations to violations of local ordinances instead of NRS violations is that fines which would otherwise go to the State Permanent School Fund are retained by the local governments. The following positions have been presented with respect to this issue.

B. Positions Presented:

1) Judge Dahl, Municipal Court Judge for North Las Vegas, presented testimony at the January 12, 1998, meeting of the Subcommittee indicating that when a Nevada Highway Patrol citation for an NRS violation is submitted to his court, he must change the citation to a municipal code violation because municipal courts are not authorized to hear NRS violations. Therefore, he submitted that his court routinely changes NRS violations to corresponding violations of local ordinances.

2) Ben Graham testified on behalf of the Clark County District Attorney's Office and the District Attorneys' Association. He noted that a municipal court cannot adjudicate any matters other than municipal code violations. Therefore, he stated that if a Nevada Highway Patrol citation is sent to a municipal court, the court cannot proceed unless it can change the citation to reflect a municipal code violation. The citation would have to be forwarded to another court or dismissed. He further testified that fines and bail forfeitures (discussed below) are not being treated consistently among the counties and cities. He asked the Subcommittee to consider the research of Noel Waters which he believes provides a defensible position for the manner in which some of the counties and cities are handling these citations.

3) Noel Waters, Carson City District Attorney, submitted a written document at the February 6, 1998, meeting of the Subcommittee defending the courts' practice of changing Nevada Highway Patrol citations from violations of NRS to violations of local ordinances. Letter from Noel Waters, dated January 13, 1998. First, he stated that the Legislature has given broad authority to local governments to enact local traffic ordinances. Id. at 4. He asserted that the Department of Transportation is not required to approve a local ordinance regulating traffic, unless specifically required by statute.

Id. at 6. Further, he stated that changing a citation from an NRS violation to reflect a corresponding local ordinance violation does not violate the basic requirements set forth in statute. Id. at 8. He asserted that the provisions in NRS governing the legal requirements which must be satisfied when a defendant enters a plea do not apply to bail forfeitures. Id. at 9. Finally, he asserted that “an NHP officer is supposed to charge a violation under local municipal ordinances in the first place” because subsection 1 of NRS 484.803 provides that if an “offense is alleged to have been committed within an incorporated municipality wherein there is an established court having jurisdiction of the offense, the person must be taken without unnecessary delay before that court.” Id. at 10. Mr. Waters further testified that although he believed that current practices of the courts are lawful, he was aware that the Legislature has the power to change the law so that all such money would go to the State Permanent School Fund. However, his concern was to address the inference that local governments were not quite acting “on the up-and-up” and were “stretching the rights they have” by changing citations from violations of NRS to reflect violations of local ordinances.

4) Tom Grady, Director of the Nevada League of Cities, presented the Subcommittee with a compilation of letters addressed to him from various city officials throughout the state. Those letters indicated that 1) the authors agreed with the opinions of Noel Waters; 2) the burden of enforcing state laws often falls upon local governments; 3) such enforcement is very costly; and 4) any money that is diverted away from the cities will provide a hardship on the cities.

5) Major Daniel Hammack, Deputy Chief, Nevada Highway Patrol, testified that the Nevada Highway Patrol “historically has issued citations only for violations of NRS for a variety of legal and procedural reasons.”

6) Brian Hutchins, Chief Deputy Attorney General, testified before the Subcommittee and provided written documentation of his testimony. He testified that in his opinion the Department of Transportation is not required to approve traffic regulations passed by local governments which affect state highways, except in the specific situations set forth in statute. He stated that although paragraph (e) of subsection 1 of NRS 484.779 provides that the Department of Transportation is required to approve traffic regulations related to specific highways, it was his opinion that paragraph (e) is not often used by local governments and applies only when the traffic regulation names a particular highway rather than applying to highways generally. He further testified that he believed “that there is a lack of uniformity in the approach, and what that can do is cause some confusion among the enforcing agencies.” He provided the Subcommittee with the following recommendations:

a) Amend NRS to clarify that cities and unincorporated towns may not regulate the speed of traffic on state highways. Although such a statute exists

for counties (NRS 244.357), a similar prohibition does not exist for cities and unincorporated towns. Mr. Hutchins indicated that although the prohibition is not in statute, cities and towns follow the same procedures as counties.

b) Amend NRS to clarify that the Nevada Highway Patrol may not cite persons for violations of local ordinances. He stated that it would be too difficult to train Nevada Highway Patrol officers regarding all of the different local ordinances throughout the state.

7) Chief Dave Mullin, President of the Nevada Sheriffs and Chiefs Association, testified that local law enforcement officers issue citations for violations of local codes and ordinances on all roads within their jurisdiction, including state and federal highways. Generally, he stated that both a state statute and a city or county ordinance is cited to maintain consistency in the traffic laws throughout the state. He acknowledged that on a state highway, the Department of Transportation performs all of the maintenance work, installs stop signs and traffic lights and establishes the speed limits. However, in his opinion, if the city has to patrol the highways, then the money from the citations issued on the highways should remain with the city.

8) Judge Robey Willis, Justice of the Peace and Municipal Court Judge for Carson City testified before the Subcommittee on February 6, 1998, with Judge Victor Trujillo, President of the Nevada Judges Association. Judge Willis provided the Subcommittee with a resolution that was unanimously passed by the members of the Nevada Judges Association. The resolution stated that the judges support the findings of Noel Waters as presented in his letter and further stated that "local governments bear the overwhelming financial burden to provide quality public safety and judicial services in misdemeanor matters, and it is fitting and proper that such governments benefit proportionately from limited fine and forfeiture revenues which result thereby." The resolution further stated "that the Nevada Judges Association opposes efforts to reduce or restrict the share which local governments receive from fines, fees, forfeitures and administrative assessments." Judge Willis also indicated that the enforcement of citations issued by the Nevada Highway Patrol creates a significant financial burden on local governments.

9) During public testimony, the Subcommittee also heard from Judge Max Bunch, Justice of the Peace for Battle Mountain, who stated that many rural jurisdictions do not change Nevada Highway Patrol tickets to reflect county ordinance violations.

10) Sheriff Rod Bannister of the Carson City Sheriff's Department testified during the public testimony portion of the meeting of the Subcommittee. He testified that the local sheriff's office incurs a large cost for housing persons arrested by the

Nevada Highway Patrol. In addition, he stated that the local law enforcement agencies often patrol state highways. He noted that the Nevada Highway Patrol is the only agency in this state that is not charged a fee for keeping their prisoners. He stated that if none of the money for citations will remain with the local government, then the Sheriff's Department may need to consider charging the Nevada Highway Patrol for housing their prisoners.

11) The Legislative Counsel provided several opinions to the Legislative Auditor during his audit of the courts. See Audit Report at 43-70. Two specific issues concerning changing Nevada Highway Patrol citations from NRS violations to local ordinance violations were addressed by the Legislative Counsel. Id. at 52-63.

a) Duplication of State Laws in Local Ordinances: First, the Legislative Counsel addressed the duplication of state laws in local ordinances. The opinion stated that a county ordinance may duplicate state statute, but only to the extent that the county has the authority to regulate the matter involved. Audit Report at 55. In determining the matters related to state highways that local governments may regulate, the Legislative Counsel considered the authority provided in NRS 484.777 and 484.779. The Legislative Counsel interpreted paragraph (e) of subsection 1 of NRS 484.779, which provides that a local government may adopt "traffic regulations related to specific highways as are expressly authorized by this chapter," as applying to any traffic regulation affecting a state highway. Subsection 3 of NRS 484.779 then states that with respect to state highways constructed and maintained by the Department of Transportation, a traffic ordinance adopted by a local government is not effective until approved by the Board of Directors of the Department of Transportation. In addition, NRS 484.777 only authorizes duplication of a state statute in a local ordinance with respect to state highways if the ordinance does not conflict with state statute. Because a traffic regulation on a state highway which is not approved by the Board of Directors of the Department of Transportation would conflict with the requirements of NRS 484.779 according to this interpretation, the Legislative Counsel concluded that a traffic regulation affecting a state highway must be approved by the Board of Directors of the Department of Transportation. Under this interpretation, the only situation in which it would be appropriate for local law enforcement officers to cite a local ordinance on a state highway is if the ordinance has been approved by the Board of Directors of the Department of Transportation.

b) Amending Citations: Another question addressed to the Legislative Counsel by the Legislative Auditor was whether a citation issued for the violation of state law may be amended to reflect a corresponding violation of a local ordinance. Audit Report at 60. According to the testimony presented to the Subcommittee, the practice of amending citations appears to occur in part so that local governments may keep the fine imposed rather than transferring it to the state to be placed in the State Permanent

School Fund. In addition, as noted in the summaries above, municipal courts have limited jurisdiction and are not authorized to hear matters related to violations of NRS. Therefore, some municipal courts assert that they must change the citation so that they may properly assert jurisdiction. The Legislative Counsel determined that official action of the judge is necessary to change a citation. In addition, the Legislative Counsel stated that pursuant to NRS 174.035 the person charged would have to appear before the judge, be informed of the different charge and enter a plea to the different charge. Audit Report at 60. In contrast, Noel Waters stated in his letter that NRS 174.035 does not apply to bail forfeitures because a forfeiture is not a finding of guilt. He asserted that the protections of that statute were not intended to apply unless there is an actual finding of guilt. In the case of a bail forfeiture he stated that the charges are essentially the same. He noted in his testimony that the most significant distinction is which entity receives the money and that the average person probably does not know or care where the money goes. He further asserted that the courts are not trying to "shortchange the education fund, but the local governments need the money to operate."

The second question raised with respect to this issue was whether an officer of the Nevada Highway Patrol may issue citations for violations of city ordinances when he is within a municipality. See Letter from Noel Waters, dated January 13, 1998, at 10. The Legislative Counsel has opined that the Nevada Highway Patrol only has the authority to enforce state laws, not to enforce local ordinances. Audit Report at 62. The issue then is whether NRS 484.803 requires certain violations of traffic regulations to be heard in municipal court. Subsection 1 of NRS 484.803 states "that when the offense is alleged to have been committed within an incorporated municipality wherein there is an established court having jurisdiction of the offense, the person must be taken without unnecessary delay before that court." (Emphasis added.) As previously mentioned, municipal courts have limited jurisdiction and do not have jurisdiction over violations of NRS. NRS 5.050. Therefore, it is the opinion of this office that because a Nevada Highway Patrol officer may only enforce violations of state law, the municipal court would not have jurisdiction over the matter. Thus, it is further the opinion of this office that NRS 484.803 does not require a citation written by the Nevada Highway Patrol to be brought before a municipal court which does not have jurisdiction.

C) Considerations for the Subcommittee:

1) With respect to the first part of the issue concerning duplication of state law in local ordinances, the Subcommittee may wish to consider:

a) Whether clarification is necessary in the state statutes concerning whether a local ordinance is valid on a state or federal highway. According to

the testimony of Brian Hutchins, although historically speed limits on state highways have been approved by the Department of Transportation, such approval is not specifically required with respect to cities and unincorporated towns. In addition, varying opinions exist regarding whether a local ordinance must be approved by the Board of Directors of the Department of Transportation.

b) Whether clarification is necessary in the state statutes concerning whether local law enforcement agencies and the Nevada Highway Patrol are authorized or required to cite a person for an NRS violation or a local ordinance violation on state highways.

2) With respect to the second part of the issue concerning courts changing citations with NRS violations to local ordinance violations, the Subcommittee may wish to consider:

a) Whether legislative action is necessary to ensure consistency among the courts concerning changing citations that reflect violations of NRS to reflect corresponding local ordinance violations. Currently, that practice is not specifically authorized and not all courts are changing citations.

b) Whether legislative action is necessary to clarify the jurisdiction of the municipal courts. Such action may include proposing the expansion of the jurisdiction of municipal courts to include violations of state traffic laws. In contrast, such action may include directing municipal courts to send such citations to the proper court having jurisdiction over the matter or may include prohibiting the Nevada Highway Patrol from sending citations to municipal courts.

III. Courts Treating Money Paid in Advance for a Traffic Citation as Bail Forfeiture

A) **Issue:** The Audit Report also identified that many state courts classify money mailed in with a traffic citation in lieu of appearing in person as bail forfeiture rather than as a fine. Audit Report at 14. However, if the person appears in court and pays the amount cited, the court will classify the payment as a fine. As a result of the classification of money paid in advance for a traffic citation as a bail forfeiture, the local government retains the money. When the amount paid is classified as a fine, Nevada law and the Nevada Constitution require the fine to be remitted to the State Treasurer for credit to the State Permanent School Fund. See NRS 176.265; Nev. Const. art. 11, § 3. The Audit Report estimated that about two-thirds of the money collected from Nevada Highway Patrol citations is paid without a court appearance and thereby classified as bail forfeiture and retained by local governments. Thus, the

classification of the money has a significant impact on the amount of money remitted to the state. Audit Report at 14.

B) Positions Presented:

1) In the written documentation provided to the Subcommittee by Brian Hutchins, Chief Deputy Attorney General, he pointed out “that the form citations and complaints utilized by the Nevada Highway Patrol provide instructions for the defendant on the back which waive the defendant’s right to appear in court and also request the court to forfeit the posted bail in lieu of a fine.” He further stated that the signatures on those form citations “may legitimize the practice of seeing money paid as a bail forfeiture.” He did not present any additional information concerning this issue.

2) Noel Waters, Carson City District Attorney, also addressed this issue in his written statement to the Subcommittee. He stated that the practice of paying the bail for a traffic ticket in lieu of appearing in court is a forfeiture of bail and “properly characterized as such.” Letter from Noel Waters, dated January 13, 1998, at 10. He cited to the common definition of a “forfeiture” as well as the definition of “bail” provided in NRS 697.030 to support his opinion. NRS 697.030 defines “bail” as “a deposit made with a court or other governmental agency to secure or continue the release from custody and to guarantee the appearance of the defendant in a criminal proceeding. . . .” Id. at 11. He also stated that the “judge, the motorist and Nevada laws recognize that this will officially dispose of the ticket.” He further asserted that the bail provisions set forth in NRS 178.484 to 178.548, inclusive, are concerned with bail upon arrest, rather than bail forfeited to dispose of a traffic citation. Id. Finally, he cited to a Nevada case wherein the Nevada Supreme Court did not allow a bail forfeiture to stand as admissible evidence against the person who forfeited bail. Id. at 12 (citing Mendez v. Brinkerhoff, 105 Nev. 157, 159 (1989)). Thus, Mr. Waters concluded that Justices’ and Municipal Courts are “entitled, under NRS 178.518, NRS 266.620 and NRS 269.165(2), to deposit those monies in their local general funds.” Id. at 12.

3) The resolution of the Nevada Judges Association provided to the Subcommittee by Judge Robey Willis stated that the Nevada Judges Association agreed with the findings of the Carson City District Attorney and it further states that the Audit Report “defined ‘forfeiture of bail’ in a manner which is inconsistent with proper law enforcement and judicial practices throughout the State of Nevada.”

4) The first legal opinion of the Legislative Counsel included in the Audit Report addressed this issue. See Audit Report at 43-51. That opinion stated that the payment of a citation for a minor traffic offense is more characteristic of a fine subject to the requirements of section 3 of article 11 of the Nevada Constitution. First, the

opinion noted that an examination of the nature of a forfeiture of bail and of a fine indicates that the primary purpose of bail is to assure that a defendant will appear in court when required. Id. at 43 (citing Jacobson v. State, 89 Nev. 197 (1973)). In contrast, the opinion stated that a fine is a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime. Audit Report at 44.

Second, the opinion states that an examination of the traffic citations issued by law enforcement agencies in this state indicates that the agencies vary in the manner in which they characterize the payment of money to a court for a violation of a traffic law without appearing in court. Id. at 44-46. For example, citations issued by the Sparks Police Department under the jurisdiction of the Sparks Municipal Court indicate that a person who receives a citation has the option of pleading guilty or no contest and paying a fine. Id. at 44. In contrast, the citations issued by the Nevada Highway Patrol contain a section entitled "Bail Forfeiture Request" which authorizes a person who has received the citation to comply with the citation by paying the amount shown in the "Total Bail" space on the citation. Id. at 45. However, as discussed below, it is the opinion of this office that the payment of the total amount of bail does not fit within the concept of forfeiture of bail, but instead appears more characteristic of a fine.

For the following reasons it is the opinion of the Legislative Counsel that the payment of a traffic citation without appearing before a judge is more characteristic of a fine than a forfeiture of bail:

1. When a person mails or brings the payment of a citation to the court without appearing before the judge, the person is not willfully failing to appear in court or willfully violating a written promise to appear. Instead, the person seems to be agreeing not to contest the citation and allowing himself to be subjected to the same consequences of the offense charged without making an admission of guilt. Therefore, the payment of the citation does not have the characteristics of a forfeiture of money paid in advance to assure a person's appearance in court, but instead appears to be a pecuniary punishment imposed as the result of a conviction based upon a plea of no contest.

2. For the purposes of the Uniform Motor Vehicle Drivers' License Act, a forfeiture of bail deposited to secure a defendant's appearance in court is equivalent to a conviction. Therefore, the payment of a traffic citation without appearing before a judge appears more like a pecuniary punishment imposed for being convicted of the offense than a penalty for failing to appear in court.

In conclusion, it is the opinion of the Legislative Counsel that the payment of a traffic citation without appearing before a judge has the characteristics of a fine, rather

than a forfeiture of bail. Thus, it is further the opinion of the Legislative Counsel that a court should treat such payment as a fine, regardless of whether the payment is called a fine or a forfeiture of bail.

C) Considerations for the Subcommittee: As noted above, there are several opinions concerning how the courts should characterize the payment for a minor traffic violation without appearing in court. In addition, it appears that although the citations issued by the Nevada Highway Patrol characterize such a payment as "forfeiture of bail," the citations issued by some local law enforcement agencies characterize the payment as a "fine." Therefore, the Subcommittee may wish to consider whether legislation is necessary to specify whether such a payment should be treated as a forfeiture of bail or as a fine to ensure that courts characterize these payments in the same manner.

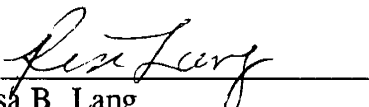
IV. Conclusion

In conclusion, several opinions have been presented concerning each of the issues discussed at the meeting of the Subcommittee held on February 6, 1998. I hope you find this summary helpful as you assess the possible actions of the Subcommittee.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By 
Risa B. Lang
Principal Deputy Legislative Counsel

APPENDIX F

Memorandum from Jeanne Botts, Senior Program Analyst,
Fiscal Analysis Division, Legislative Counsel Bureau

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MEMORANDUM

DATE: January 26, 1998
TO: Risa Lang *for Jeanne Botts*
Legal Division
FROM: Jeanne L. Botts, Senior Program Analyst
Fiscal Analysis Division

RECEIVED

JAN 27 1998

BY LCB - LEGAL

SUBJECT: **Impact of Collection of Penal Fines upon School Funding**

You have asked what the effect would be if penal fines were no longer deposited into the Permanent School Fund. First, to redirect the deposit of penal fines to any other fund, a constitutional amendment would be required, which would take four to six years.

Article 11, Section 3, of the Nevada Constitution requires that all fines collected under the penal laws of the state must be deposited to the Permanent School Fund. All property given to the state for educational purposes, all lands granted by Congress to the state for educational purposes, all estates that escheat to the state and any proceeds from these sources must also be deposited to the fund. Because the Permanent School Fund was created as a non-expendable trust fund, the corpus of the fund must be preserved. Only the interest earned on the Permanent School Fund may be expended, and it must be spent for educational purposes.

Each quarter, interest earned on the Permanent School Fund is transferred to the Distributive School Account in the State General Fund to be apportioned among the local school districts, as required by NRS 387.030. Interest earned on the Permanent School Fund and transferred to the Distributive School Account amounts to approximately \$3.5 million each year, which is less than 0.8 percent of the annual expenditures of the Distributive School Account and less than 0.2 percent of school districts' general fund revenues. At the current time, the Permanent School Fund contains approximately \$65 million dollars, and annual income for the fund averaged \$6.7 million over the each of the last ten years, with \$3.2 million coming from interest earnings and about \$3 million from justice and district court fines.

The procedure for amending the state's constitution would allow the Legislature five to six years to get ready for a change in school funding; however, it should be understood that a shortfall in fines

Risa Lang
January 27, 1998
Page 2

deposited to the Permanent School Fund would result in a shortfall in interest earnings transferred over to the Distributive School Account, and it is the State General Fund that would make up the difference between money available in the Distributive School Account and the amount of state aid needed by local school districts. A loss of \$3 million per year of fines for the Permanent School Fund, at interest rates of 5 percent, might mean a loss of \$150,000 each year in interest earnings to be transferred to the Distributive School Account for allocation among the school districts. The State General Fund would have to make up the shortfall, and legislators' discretion in the use of those funds would be limited. While this loss may not appear to be significant in view of the \$1 billion per year of combined state and local revenues spent on public education in Nevada, remember that the loss would compound over the years and not all of the penal fines are being properly remitted to the state.

An audit conducted by the Legislative Counsel Bureau's Audit Division, which was released in January of 1995, estimated that, based upon fines collected from citations issued by the Nevada Highway Patrol in 1993, the Permanent School Fund was losing approximately \$5 million a year in court fines that were erroneously being deposited to local government coffers instead of being remitted to the state. If this situation were corrected, deposits into the Permanent School Fund and, consequently, interest earned on those fines that is transferred to the Distributive School Account to directly assist schools, would more than double and result in savings to the State's General Fund. A historical comparison of the amount of fines deposited to Permanent School Fund does not show a dramatic turnaround in collections of fines at the state level after the release of the audit, however.

I have attached copies of pertinent sections of the Nevada Constitution and Nevada Revised Statutes and a history of the amounts of district and justice court fines deposited to the Permanent School Fund. I have also included a copy of the State Controller's most recent quarterly report on the Permanent School Fund. Detail on the fines collected during the quarter ended September 30, 1997, from justice and district courts are found on pages 7 and 8, respectively, of the Controller's report. If you need additional information, please let me know.

cc: Dan Miles
Mark Stevens
Debbra King
Jim Rodriquez

I:\ONGOING\LCB\LEGAL\PSFRISA.JLB/dn

Art. 11, § 3 CONSTITUTION OF THE STATE OF NEVADA

School board without authority to permit use of facilities by religious groups for sectarian purposes. Governing boards of public schools, being governmental agencies of State of Nevada, do not have authority to allow use of public school buildings or facilities by religious groups for sectarian purposes. AGO 316 (2-19-1954), cited, AGO 14 (2-23-1955), reversed, AGO 93-2 (3-16-1993)

School board may rent auditorium to religious group not attempting to disseminate religious teachings. Constitutional restrictions do not prevent school board from discretionary rental of school auditorium or gymnasium to religious group for purpose of presenting exhibition or show, open to general public, which in no way attempts to impart, promulgate or disseminate religious teachings or doctrines. AGO 14 (2-23-1955), cited, AGO 93-2 (3-16-1993)

Requiring school district receiving federal grant for aid to educationally deprived children to make aid available to private school pupils not unconstitutional if federal money kept

separate. Requirement of federal statute that school district which receives grant for special aid to educationally deprived children make such aid available to pupils of private schools does not violate Nev. Art. 11, § 2 or § 10, or NRS 387.045, which provide for uniform system of common schools and forbid use of school funds for sectarian purposes, if federal moneys are kept separate. AGO 276 (11-5-1965)

Nevada constitution does not prohibit use of school facilities by sectarian groups for occasional worship services outside of normal school hours under certain circumstances. Nevada constitution (see Nev. Art. 11, §§ 2, 9 and 10) does not prohibit use of school facilities by sectarian groups for occasional worship services outside of normal school hours if board of trustees of school district has created limited public forum and cost associated with use is reimbursed to school district. However, board of trustees is not required to create limited public forum or permit sectarian activity. (See also NRS 393.071.) AGO 93-2 (3-16-1993)

Sec. 3. Pledge of certain property and money, escheated estates and fines collected under penal laws for educational purposes; apportionment and use of interest. All lands granted by Congress to this state for educational purposes, all estates that escheat to the state, all property given or bequeathed to the state for educational purposes, and the proceeds derived from these sources, together with that percentage of the proceeds from the sale of federal lands which has been granted by Congress to this state without restriction or for educational purposes and all fines collected under the penal laws of the state are hereby pledged for educational purposes and the money therefrom must not be transferred to other funds for other uses. The interest only earned on the money derived from these sources must be apportioned by the legislature among the several counties for educational purposes, and, if necessary, a portion of that interest may be appropriated for the support of the state university, but any of that interest which is unexpended at the end of any year must be added to the principal sum pledged for educational purposes.

[Amended in 1886, 1889, 1912, 1916, 1980, and 1988. The first amendment was approved and ratified by the people at the 1886 general election, but no entry of the proposed amendment had been made upon the journal of either house of the legislature, and such omission was fatal to the adoption of the amendment. See: *State ex rel. Stevenson v. Tuffy*, 19 Nev. 391 (1887). The second amendment was proposed and passed by the 1885 legislature; agreed to and passed by the 1887 legislature; and approved and ratified by the people at a special election held February 11, 1889. See: *Statutes of Nevada 1885*, p. 160; *Statutes of Nevada 1887*, p. 168. The third amendment was proposed and passed by the 1909 legislature; agreed to and passed by the 1911 legislature; and approved and ratified by the people at the 1912 general election. See: *Statutes of Nevada 1909*, p. 340; *Statutes of Nevada 1911*, p. 453. The fourth amendment was proposed and passed by the 1913 legislature; agreed to and passed by the 1915 legislature; and approved and ratified by the people at the 1916 general election. See: *Statutes of Nevada 1913*, p. 591; *Statutes of Nevada 1915*, p. 513. The fifth amendment was proposed and passed by the 1977 legislature; agreed to and passed by the 1979 legislature; and approved and ratified by the people at the 1980 general election. See: *Statutes of Nevada 1977*, p. 1716; *Statutes of Nevada 1979*, p. 1953. The sixth amendment was proposed and passed by the 1985 legislature; agreed to and passed by the 1987 legislature; and approved and ratified by the people at the 1988 general election. See: *Statutes of Nevada 1985*, p. 2361; *Statutes of Nevada 1987*, p. 2355.]

ATTORNEY GENERAL'S OPINIONS.

Boards of county commissioners and school districts have no authority over investment of or interest derived from permanent school fund. Under NRS 355.050 et seq., which govern investment of permanent school fund, responsibility for such investment is vested in state board of

finance and interest earned thereunder is given to state treasurer pursuant to NRS 387.015 for distribution as provided by NRS ch. 387, and boards of county commissioners or school districts have no authority over such investments or interest derived therefrom. AGO 493 (2-27-1968)

STATE MONEY

NRS 387.013 State permanent school fund: Quarterly financial reports by state controller. The state controller shall, each quarter, prepare a complete financial report of the state permanent school fund. A copy of this report must be submitted to the state treasurer and to the fiscal analysis division of the legislative counsel bureau.

(Added to NRS by 1969, 823; A 1973, 1668; 1977, 349; 1981, 362)

WEST PUBLISHING CO.

Schools ⇌ 18.

WESTLAW Topic No. 345.

C.J.S. Schools and School Districts §§ 19, 20, 22, 334.

NRS 387.015 State treasurer custodian of securities; liability on bond. The state treasurer shall be the legal custodian of all securities in which the moneys of the state permanent school fund are or may hereafter be invested. He shall be liable on his official bond for their safekeeping.

[88:32:1956]

WEST PUBLISHING CO.

Schools ⇌ 18.

WESTLAW Topic No. 345.

C.J.S. Schools and School Districts §§ 19, 20, 22, 334.

constitutional provision, and securities must remain in possession of state treasurer. AGO 112 (1-21-1924)

ATTORNEY GENERAL'S OPINIONS.

Statute not in conflict with constitution; securities must remain in possession of state treasurer instead of board of regents. While Nev. Art. 11, § 8, authorizes board of regents to invest money derived from grant of public lands by c. 130, 12 Stat. 503, there is no provision contained therein which authorizes board of regents to have custody of the securities. Therefore RL § 3384, repealed by Stats. 1947, p. 91 (cf. NRS 387.015), cannot be said to conflict with

Boards of county commissioners and school districts have no authority over investment of or interest derived from permanent school fund. Under NRS 355.050 et seq., which govern investment of permanent school fund, responsibility for such investment is vested in state board of finance and interest earned thereunder is given to state treasurer pursuant to NRS 387.015 for distribution as provided by NRS ch. 387, and boards of county commissioners or school districts have no authority over such investments or interest derived therefrom. AGO 493 (2-27-1968)

NRS 387.030 State distributive school account: Creation; sources; distribution. All money derived from interest on the state permanent school fund,^{*} together with all money derived from other sources provided by law, must:

1. Be placed in the state distributive school account which is hereby created in the state general fund; and

2. Except as otherwise provided in NRS 387.528, be apportioned among the several school districts and charter schools of this state at the times and in the manner provided by law.

[91:32:1956]—(NRS A 1977, 231; 1987, 420; 1997, 1857, 2709)

History of District and Justice Court Fines Deposited to PERMANENT SCHOOL FUND

<u>Fiscal Year</u>	<u>Justice Court Fines</u>	<u>District Court Fines</u>	<u>Total from Court Fines</u>	<u>Percent Change</u>
1987-88	\$1,245,902	\$523,945	\$1,769,847	
1988-89	\$1,469,784	\$491,548	\$1,961,332	10.82%
1989-90	\$1,705,762	\$567,346	\$2,273,108	15.90%
1990-91	\$1,827,592	\$624,352	\$2,451,944	7.87%
1991-92	\$1,951,787	\$540,356	\$2,492,143	1.64%
1992-93	\$1,945,510	\$591,093	\$2,536,603	1.78%
1993-94	\$2,408,874	\$626,186	\$3,035,060	19.65%
1994-95	\$2,429,601	\$481,691	\$2,911,291	-4.08%
1995-96	\$2,518,886	\$535,716	\$3,054,603	4.92%
1996-97	\$3,126,885	\$528,690	\$3,655,575	19.67%
1997-98 Year-to-date	\$1,189,686	\$235,618	\$1,425,304	

LCB Fiscal: G:psfines

26-Jan-98

STATE OF NEVADA

**PERMANENT SCHOOL FUND
INTERIM FINANCIAL STATEMENTS
FOR THE
FIRST QUARTER ENDED SEPTEMBER 30, 1997**



**DARREL R. DAINES
STATE CONTROLLER
CARSON CITY, NEVADA**

STATE OF NEVADA
PERMANENT SCHOOL FUND

FINANCIAL STATEMENTS
FOR THE QUARTER ENDED SEPTEMBER 30, 1997

DARREL R. DAINES
STATE CONTROLLER
CARSON CITY, NEVADA



STATE OF NEVADA

OFFICE OF

STATE CONTROLLER

CARSON CITY, NEVADA 89710

(702) 687-4330

Fax (702) 687-6748

DARREL DAINES
State Controller

KEN WEST
Chief Deputy Controller

November 10, 1997

The Honorable Bob Miller, Governor
Chairman of the State Board of Finance
Executive Chambers
101 N. Carson Street, Suite 1
Carson City, Nevada 89701-4786

Dear Governor Miller:

Pursuant to NRS 387.013, I am pleased to provide you with the financial statements of the Permanent School Fund as of September 30, 1997 and for the quarter then ended.

Very truly yours,

DARREL R. DAINES
STATE CONTROLLER

DRD:BL

Legislative Counsel Bureau (2)
State Board of Education (2)
Department of Administration (2)
Department of Conservation (2)
Office of the State Treasurer (1)
State Board of Finance (1)
Nevada Tax Commission (1)
Secretary of State (1)

STATE OF NEVADA
PERMANENT SCHOOL FUND

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STATE OF NEVADA.
PERMANENT SCHOOL FUND

BALANCE SHEETS
September 30, 1997 and 1996

	<u>Exhibit A</u>	
	<u>9/30/97</u>	<u>9/30/96</u>
Assets		
Cash held by Treasurer	\$ 11,226,309	\$ 8,514,427
Accrued interest		
Investments	1,141,740	1,086,427
Treasurer	175,745	49,849
Total accrued interest	1,317,485	1,136,276
Receivables		
Escheated estates	347,836	316,753
Fines and penalties	324,850	355,566
Total receivables	672,686	672,319
Investments		
Equity securities	2,448	2,578
Land contracts	120	120
U.S. Government securities	51,295,662	48,754,262
Total investments	51,298,230	48,756,960
Land held by State Land Office	2,977	2,977
Total Assets	<u><u>\$ 64,517,687</u></u>	<u><u>\$ 59,082,959</u></u>
Liabilities		
Due the Distributive School Account	\$ 2,063,498	\$ 998,638
Fund balances	62,454,189	58,084,321
Total Liabilities and Fund Balances	<u><u>\$ 64,517,687</u></u>	<u><u>\$ 59,082,959</u></u>

The notes to the financial statements and schedules are an integral part of this statement.

STATE OF NEVADA

PERMANENT SCHOOL FUND

STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN FUND BALANCES

For the Quarters Ended September 30, 1997 and 1996

	<u>Exhibit B</u>	
	<u>Quarter Ended 9/30/97</u>	<u>Quarter Ended 9/30/96</u>
Operating Revenues		
Fines - State Penal Laws		
Justice Courts	\$ 745,447	\$ 777,369
District Courts	125,164	121,082
Water pollution	-	12,500
Total fines	870,611	910,951
Interest and dividends	1,055,284	998,638
Land sales	346,559	184,625
Miscellaneous	751	733
Total operating revenues/income	2,273,205	2,094,947
Operating Transfers		
Transfer from Escheated Estates Fund	22,499	57,226
Transfer to Distributive School Account	(1,055,284)	(998,638)
Net operating transfers	(1,032,785)	(941,412)
Net income	1,240,420	1,153,535
Fund balances, beginning of period	61,213,769	56,930,786
Fund balances, September 30	\$ 62,454,189	\$ 58,084,321

The notes to the financial statements and schedules are an integral part of this statement.

STATE OF NEVADA

PERMANENT SCHOOL FUND

STATEMENTS OF CASH FLOWS

For the Quarters Ended September 30, 1997 and 1996

	Exhibit C	
	Quarter Ended 9/30/97	Quarter Ended 9/30/96
Cash flows from operating activities:		
Justice Court fines	\$ 750,437	\$ 670,660
District Court fines	125,223	119,349
Water pollution fines	-	12,500
Public land sales	346,559	184,625
Miscellaneous income	751	733
Net cash provided by operating activities	<u>1,222,970</u>	<u>987,867</u>
Cash flows from noncapital financing activities:		
Operating transfer in	50,488	10,016
Operating transfer out	-	(940,744)
Net cash provided by (used for) noncapital financing activities	<u>50,488</u>	<u>(930,728)</u>
Cash flows from investing activities:		
Sales of investments	-	5,000,000
Treasurer's interest distribution	116,685	88,444
Investment interest	418,882	576,326
Purchased interest	-	48,806
Dividends	109	91
Net cash provided by investing activities	<u>535,676</u>	<u>5,713,667</u>
Net increase in cash	1,809,134	5,770,806
Cash at beginning of period	<u>9,417,175</u>	<u>2,743,621</u>
Cash at end of period	<u>\$ 11,226,309</u>	<u>\$ 8,514,427</u>
Reconciliation of net operating income to cash provided by operating activities:		
Total operating income	\$ 2,273,205	\$ 2,094,947
Adjustments to reconcile operating income to net cash provided by operating activities:		
(Increase) decrease in accrued receivables	5,049	(108,442)
Interest and dividends reported as operating income	<u>(1,055,284)</u>	<u>(998,638)</u>
Net cash provided by operating activities	<u>\$ 1,222,970</u>	<u>\$ 987,867</u>

The notes to the financial statements and schedules are an integral part of this statement.

STATE OF NEVADA
PERMANENT SCHOOL FUND

**SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES
AND NOTES TO FINANCIAL STATEMENTS**

Basis of Accounting:

Transactions are recorded on the accrual basis of accounting in accordance with generally accepted accounting principles.

Treasurer's Interest Accrual:

For the quarter ended September 30, 1997 the Permanent School Fund's average balance in the State Treasurer's investment pool was \$10,340,106. Accrued earnings from the investment pool are transferred quarterly to the Permanent School Fund based on its proratable share of average weekly cash balances.

For the quarter ended September 30, 1997 funds held by the State Treasurer earned interest at an effective rate of 6.232 percent.

Investments:

U.S. Government securities, as presented on the balance sheet at September 30, 1997, reflect a face value of \$51,450,000 less net unamortized discounts and premiums of \$154,338.

Land, as presented on the balance sheet, is valued at \$1 per acre. This land is in the care of the State Lands Office.

STATE OF NEVADA

PERMANENT SCHOOL FUND

GENERAL

Article 11, Section 3 of the Constitution of the State of Nevada provides that all estates that escheat to the state; proceeds from the sale of lands given or bequeathed under this section; and fines collected under the penal laws of the state shall be pledged for educational purposes only, and shall not be transferred to any other funds for other uses. The 1956 special session of the Legislature enacted Chapter 32, which provided for the creation of the State Permanent School Fund to account for the money accruing to the State of Nevada under Article 11, Section 3 of the State Constitution.

The Permanent School Fund was created as a nonexpendable trust fund. This designation ensures that the corpus of the Fund will be preserved. All earnings on the Fund's assets are transferred to the Distributive School Account of the General Fund which apportions it among the several school districts of the state, in accordance with State Statutes.

REVENUE SOURCES

The following schedule illustrates some of the potential revenue sources of the Permanent School Fund:

- Surplus on sale of unclaimed freight after charges of common carriers and warehousemen (NRS 108.430)
- Surplus on sale of property after charges of bailees for hire (NRS 108.460)
- Escheated estates (NRS 154.115)
- Fees of the State Land Registrar (NRS 321.065)
- All moneys accruing to the State of Nevada from sale of lands heretofore given or bequeathed, or that may hereafter be given or bequeathed, for public school purposes (Art. 11, Sec. 3)
- All fines collected under the penal laws of the state (Art. 11, Sec. 3)
- Fines imposed by courts-martial (NRS 412.086)
- Fines resulting from suits on excavations (NRS 455.050)
- All fines and penalties for violations of the criminal provisions of the Unemployment Compensation Act (NRS 612.585)
- Penalties imposed on banks for failure to make certain reports (NRS 665.115)

STATE OF NEVADA
PERMANENT SCHOOL FUND

SCHEDULE OF INVESTMENTS

September 30, 1997

Schedule 1

	<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Face Amount</u>	<u>Cost</u>	<u>Book Value</u>
Fixed Income Securities					
U.S. Treasury Note	7.125	10/15/98	\$ 2,000,000	\$ 1,993,125	\$ 1,998,978
U.S. Treasury Note	6.375	1/15/99	2,000,000	1,998,880	1,999,793
U.S. Treasury Note	7.000	4/15/99	1,000,000	1,003,125	1,000,702
U.S. Treasury Note	7.000	4/15/99	2,950,000	2,959,219	2,952,072
U.S. Treasury Note	6.375	7/15/99	5,000,000	4,975,000	4,993,613
U.S. Treasury Note	5.500	4/15/00	2,000,000	1,998,750	1,999,542
U.S. Treasury Note	5.500	4/15/00	5,000,000	4,999,609	4,999,857
U.S. Treasury Note	7.500	11/15/01	5,000,000	5,001,750	5,000,722
Fed. Nat'l. Mortgage Assoc.	6.850	9/12/05	4,500,000	4,324,230	4,350,444
Fed. Nat'l. Mortgage Assoc.	8.000	5/17/06	4,000,000	4,000,000	4,000,000
Fed. Home Loan Bank Note	5.550	9/07/00	1,500,000	1,506,562	1,502,760
Fed. Home Loan Bank Note	7.000	11/21/05	5,000,000	4,975,500	4,980,054
Fed. Home Loan Bank Note	7.250	11/01/06	5,000,000	5,018,750	5,017,125
Fed. Home Loan Bank Note	6.875	11/22/06	6,500,000	6,500,000	6,500,000
Total Fixed Income Securities			<u>\$ 51,450,000</u>	<u>\$ 51,254,500</u>	<u>51,295,662</u>
Fixed Income Contracts					
Land Contract	6.000	7/18/99			<u>120</u>
Equity Securities					
132.0000 Shares Airtouch Communications - Common					-
43.0000 Shares AT&T - Common					1,287
13.0000 Shares Lucent Technologies Inc. - Common					-
2.6875 Shares NCR Corporation - Common					-
72.0000 Shares PG&E - Common					869
96.0000 Shares SBC Communications Inc. - Common					<u>292</u>
Total Equity Securities					<u>2,448</u>
Total Book Value of Investments					<u>\$ 51,298,230</u>

STATE OF NEVADA .

PERMANENT SCHOOL FUND

SCHEDULE OF JUSTICE COURT FINES BY COUNTY

For the Quarters Ended September 30, 1997 and 1996

County	<u>Schedule 2</u>	
	Quarter Ended 9/30/97	Quarter Ended 9/30/96
Carson City	\$ 7,199	\$ 8,833
Churchill	19,064	16,630
Clark	385,349	452,398
Douglas	7,621	16,464
Elko	34,746	30,225
Esmeralda	-	122
Eureka	15,739	9,757
Humboldt	-	-
Lander	1,771	660
Lincoln	3,640	3,152
Lyon	29,406	26,713
Mineral	171	9,819
Nye	77,389	50,712
Pershing	1,726	1,689
Storey	25	-
Washoe	160,984	146,343
White Pine	617	3,852
Total	\$ 745,447	\$ 777,369

STATE OF NEVADA .

PERMANENT SCHOOL FUND

SCHEDULE OF DISTRICT COURT FINES BY COUNTY

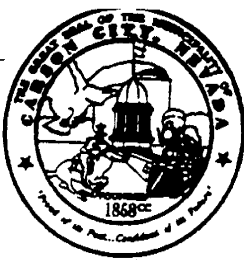
For the Quarters Ended September 30, 1997 and 1996

Schedule 3

County	Quarter Ended 9/30/97	Quarter Ended 9/30/96
Carson City	\$ 310	\$ 1,280
Churchill	2,082	3,183
Clark	68,572	62,963
Douglas	4,610	3,370
Elko	12,913	11,035
Esmeralda	575	-
Eureka	-	167
Humboldt	6,475	295
Lander	1,012	1,220
Lincoln	2,470	5,015
Lyon	1,235	900
Mineral	485	652
Nye	4,103	974
Pershing	535	-
Storey	-	(8)
Washoe	18,811	28,356
White Pine	976	1,680
Total	\$ 125,164	\$ 121,082

APPENDIX G

Letter from Noel S. Waters, Carson City District Attorney



CARSON CITY, NEVADA

CONSOLIDATED MUNICIPALITY AND STATE CAPITAL

FINES, FEES, FORFEITURES AND ADMINISTRATIVE ASSESSMENTS IMPOSED AND COLLECTED BY THE COURTS -- A CITY/COUNTY PERSPECTIVE

(By Noel S. Waters, Carson City District Attorney)

Summary

Changing NRS citations to reflect local ordinance violations: When justices' and municipal courts amend NRS violations in a traffic citation to equivalent charges under local ordinance, they are authorized to do so under their powers to enforce traffic and police ordinances and to amend citations and complaints. A change merely in the statutory reference to a charged offense does not change the essential factual allegations which are required for a lawful complaint. Such a change does not create an unfair surprise or prejudice to the person cited. Therefore, a personal appearance and plea to the amended citation is not required before the amended citation is effective. Further, a deposit and forfeiture of bail to the amended citation is valid where there is no change to the essential factual allegations which constitute the offenses charged. (Pages 4-10).

Forfeiture of bail: When a person simultaneously deposits in court the amount set as bail in a traffic citation and surrenders that deposit in satisfaction of the obligation to formally appear to answer the charges, a "forfeiture of bail" has occurred. While this practice does not constitute a "conviction" because there has been no finding or plea of guilty or nolo contendere, it nevertheless constitutes a lawful and official disposition of the citation, which has the same effect as a conviction for DMV reporting purposes under NRS 483.450(4). Under the law, bail forfeitures are payable to the general fund of the local jurisdiction. By contrast, a "fine" collected upon a conviction by trial or formal plea is payable to the State for violations of NRS, to be used for educational purposes. (Nev. Const. Art 11,§3). (Pages 10-13).

Policy matters: In addition to being lawful, the practices of amending citations and forfeiting bail deposits are also justified for policy reasons. Local governments pay the great majority of the costs of staffing and operating the criminal justice system, particularly at the misdemeanor level. It is not unreasonable to suggest local governments ought to receive a concomitant share of the limited resources obtained through fines and forfeitures. In addition, there is general agreement that we need to improve fine and fee collection practices, and reducing the local share of the amounts collected operates as a disincentive to improve collections. (Pages 13-14).

Introduction

Senate Concurrent Resolution No. 10 authorized the Legislative Commission to appoint a subcommittee to conduct an interim study of the fees, fines, forfeitures and administrative assessments which are imposed and collected by the courts of the State of Nevada. (S.C.R.10, File No. 141, Statutes of Nevada 1997 at p. 3718)

This document is written in defense of certain common practices of the justices' and municipal courts—practices which were criticized in the 1995 Legislative Auditor's Report, "Judicial Branch of Government, Administrative Oversight of the State Court System" dated January 23, 1995.

The Audit Report criticized the practice of local courts in amending Nevada Highway Patrol citations from violations of state law to violations of local ordinances. The Report also criticized the classification of NHP citation payments as "bail forfeitures" rather than "fines," resulting in these payments going to local government treasuries. (Audit Report, Executive Summary, p.3)

These criticisms are unwarranted, both as a matter of existing law and political policy.

Background

The 65 justices' courts in Nevada have the jurisdictional responsibilities specified in NRS 4.370. This includes jurisdiction over misdemeanor offenses (NRS 4.370(3)) and preliminary examinations for felony and gross misdemeanor cases. (NRS 171.196). The salaries of the justices of the peace and court staff are paid by the county (NRS 4.040, 4.350). The justices' courts also receive \$7 of any administrative assessment collected (NRS 176.059(6)(b)).

Justices' courts adjudicate misdemeanors arising under Nevada Revised Statutes or county ordinances (NRS 244.357). "Fines" collected in justices' courts for violation of state law are paid to the state treasury (NRS 176.265). Under Article 11, §3 of the Nevada Constitution these monies must be earmarked for educational

purposes (State Permanent School Fund). "Fines" collected for violations of county ordinance are paid to the general fund of the county. "Bail forfeited" by a person charged with a misdemeanor is paid to the county general fund (NRS 178.518; AGO 16 (3-20-1963)).

Municipal courts are authorized in each incorporated city or town (NRS 5.010). With the exception of the \$7 administrative assessment collected for municipal code violations (NRS 176.059(5)(b)), salaries of judges and court operations are paid by the municipal government (NRS 5.030). Of the 28 municipal judges, 11 also serve as justices of the peace. Municipal courts' jurisdiction includes "all misdemeanors committed in violation of the ordinances of their respective cities" (NRS 5.050(2)). Cities and towns have authority to enact police power and traffic ordinances within their borders (NRS 266.277, 266.321 (cities); NRS 269.185 (towns)).

"Fines" collected for violations of municipal ordinances are payable to the city (NRS 266.620; State of Nevada v. Rosenstock, 11 Nev. 128, 141 (1876)) or to the town (NRS 269.165(2)).

"Bail forfeited" by persons charged with municipal violations also are paid to the municipal treasury (NRS 266.620, 269.165). This discussion excludes the district courts' operations because felonies and gross misdemeanors are exclusively state law matters. All fines collected for felony or gross misdemeanor violations must necessarily derive from NRS violations (payable to the State).

Thus, by long established law, the following rules apply:

1. Fines collected for NRS violations are paid to the State, for educational purposes.
2. Fines collected for local ordinance violations are paid to the local town, city or county treasury—depending upon the ordinance violated.
3. Bail forfeitures for misdemeanors are paid to the respective county (justices' courts) or municipal government (municipal courts).

Practice of changing NHP citations

If a misdemeanor citation alleging violations of Nevada Revised Statutes is amended to charge the same offenses under local ordinance, the net effect is that any fines or forfeitures resulting from the citation will be paid to the local general fund. This is a frequent practice of justices' and municipal courts which was criticized in the Audit Report.

It appears the Audit Report relied on two grounds for questioning the authority of local courts to amend NHP citations:

1. A local ordinance would not be legally effective for federal or state highways until it was approved by the Board of Directors of the State Department of Transportation. Audit Report, pp. 15-16, citing NRS 484.779(3).
2. A judge could change a citation to reflect a local ordinance violation only if the person cited appears before the court, is advised of the "different" charge and enters a plea to it. Thus, cases resolved by deposit and forfeiture of bail usually could not be amended because there is no personal appearance. (Audit Report, pp. 16-17 citing Legislative Counsel Opinion, 7/18/94, pp. 9-10)

The first ground is simply incorrect. The Legislature has given broad authority for local governments to enact local traffic ordinances, providing they do not conflict with state laws. For example, NRS 244.357 allows ordinances regulating parking and vehicular, pedestrian and other traffic in the unincorporated area of the county, except ordinances fixing speed limits upon federal or state highways or roads. NRS 266.677 allows a city to regulate all vehicular, pedestrian and other traffic within the city, including on state or federal highways within city limits. NRS 269.185 allows an unincorporated town to regulate traffic upon the streets and alleys within the town, including state and federal highways, and to regulate the speed, parking, stopping, turning and operation of all motor vehicles. NRS 484.778 authorizes cities to adopt ordinances providing first and second offense DUI penalties.

Further, NRS 484.777 states:

"1. The provisions of this chapter are applicable and uniform throughout this state on all highways to which the public has a right of access or to which persons have access as invitees or licensees.

2. Unless otherwise provided by specific statute, any local authority may enact by ordinance traffic regulations which cover the same subject matter as the various sections of this chapter if the provisions of the ordinance are not in conflict with this chapter. It may also enact by ordinance regulations requiring the registration and licensing of bicycles.

3. A local authority shall not enact an ordinance:

(a) Governing the registration of vehicles and the licensing of drivers;

(b) Governing the duties and obligations of persons involved in traffic accidents, other than the duties to stop, render aid and provide necessary information, or

(c) Providing a penalty for an offense for which the penalty prescribed by this chapter is greater than that imposed for a misdemeanor.

4. No person convicted or adjudged guilty of a violation of a traffic ordinance may be charged or tried in any other court in this state for the same offense." (emphasis added).

The language of the particular statute cited by the Audit Report, NRS 484.779, places limits only upon local ordinances to control traffic. It states:

"1. Except as otherwise provided in subsection 3, a local authority may adopt, by ordinance, regulations with respect to highways under its jurisdiction within the reasonable exercise of the police power:

(a) Regulating or prohibiting processions or assemblages on the highways.

(b) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

- (c) Designating any highways as a through highway, requiring that all vehicles stop before entering or crossing the highway, or designating any intersection as a stop or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to the intersection.
 - (d) Designating truck and bicycle routes.
 - (e) Adopting such other traffic regulations related to specific highways as are expressly authorized by this chapter.
2. An ordinance relating to traffic control enacted under this section is not effective until official devices for traffic control giving notice of those local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as is most appropriate.
3. An ordinance enacted under this section is not effective with respect to:
- (a) Highways constructed and maintained by the department of transportation under the authority granted by chapter 408 of NRS; or
 - (b) Alternative routes for the transport of radioactive, chemical or other hazardous materials which are governed by regulations of the United States Department of Transportation,
- until the ordinance has been approved by the board of directors of the department of transportation.
4. As used in this section, "hazardous material" has the meaning ascribed to it in NRS 459.7024."

Obviously, the State needs to be able to manage traffic on the streets and highways it maintains. Local attempts to enact different or additional controls are properly subject to DOT Board approval. However, a local ordinance prohibiting DUI on public streets or forbidding a rate of speed above the posted speed limit is not covered by NRS 484.779(3). By contrast, a local ordinance seeking to raise or lower the speed limit on a state highway would have to be approved by the NDOT Board of Directors pursuant to NRS 484.779. Most local ordinances only provide that violation of duly posted speed rules, signal devices, signage, etc., are prohibited by local ordinance under the local government's police powers. Neither Nevada law nor common sense compel a conclusion that a local ordinance which copies state law is authorized under NRS 484.777 yet invalid under the narrower scope of NRS 484.779.

The second basis for the Audit Report's criticism of amending NHP citations appears to be based upon the Legislative Counsel's rather creative interpretation of NRS 484.813 and NRS 171.1776, relating to accountability for issued citations, and NRS 174.035, the plea canvassing statute.

NRS 484.813 and NRS 171.1776, which are substantially similar, require that a ticket, once issued, be disposed of by court action and in no other fashion. Citations, once written, must be tracked and audited at least semiannually (NRS 484.815; NRS 171.1777). These quite sensible record-keeping and accountability rules do not limit the ability of the court or a prosecuting agency from amending the charges or the statutory reference in a citation. As public prosecutors, this is the essence of the responsibilities of district and city attorneys to screen cases and charge crimes. See, for example, NRS 252.080; NRS 250.090; NRS 269.145; NRS 178.554 and NRS 174.085(5) (dismissal authority); Cairns v. Sheriff, Clark County, 89 Nev. 113, 115 508 P.2d 1015 (1973) ("The matter of the prosecution of any criminal case is within the entire control of the district attorney..."); NRS 173.085(1); Parsons v. Fifth Judicial Dist. Court, 110 Nev. 1239, 885 P.2d 1316 (1994) (amendment of complaints and criminal informations).

Both NRS 484.817 and NRS 171.1778 provide:

"If the form of citation includes information whose truthfulness is attested as required for a complaint charging commission of the offense alleged in the citation to have been committed, then the citation when filed with a court of competent jurisdiction shall be deemed to be a lawful complaint for the purpose of prosecution..."

What "information" is required for a "complaint?" According to NRS 171.102:

"The complaint is a written statement of the essential facts constituting the public offense charged. It must be made upon:

1. Oath before a magistrate or a notary public; or
2. Declaration which is made subject to the penalty for perjury." (emphasis added).

The purpose of a complaint, whether a formal document drafted by a prosecutor or a citation issued by a police officer, is to invoke the jurisdiction of the court through an attested written document and to provide the defendant notice of the factual allegations against which he

must defend. Sanders v. Sheriff, Washoe County, 85 Nev. 179, 451 P.2d 718 (1969). Complaints and other charging documents are not immune to subsequent changes or amendments. See, NRS 173.095(1) ("The court may permit an indictment or information to be amended at any time before verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.")

Does amending a citation which charges a basic speed rule violation under NRS 484.321 to a basic speed rule violation under a city ordinance charge a "different" offense? There is certainly no change in the "essential facts constituting the public offense charged." There is absolutely no prejudice or surprise to the defendant. The amended citation will still "be a plain, concise and definite written statement of the essential facts constituting the offense charged" which is essentially all the law requires in charging felonies in district court under NRS 173.075. See NRS 175.075(3) ("Error in the [statutory] citation or its omission is not a ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice."). See also, NRS 484.3792(8): "...'offense' means a violation of NRS 484.379 or 484.3795 or ...the violation of a law of any other jurisdiction which prohibits the same or similar conduct."

The Legislative Counsel's opinion stated that:

"Subsection 2 of NRS 171.1776 does provide that a misdemeanor citation may be disposed of by 'other official action' by a judge. If changing a charged offense under a misdemeanor citation to reflect a violation of a municipal or county ordinance can be construed as 'official action' by a judge, then the practice of so changing a citation would be permissible. Still, pursuant to the provisions of NRS 174.035, a judge cannot accept a forfeiture of bail or plea from a person who does not realize to what charge he is entering a plea or forfeiting his bail and who does not understand the nature of the charge and consequences of the plea. See, NRS 174.035. Even assuming that a judge's act of changing a charged offense to reflect a violation of a municipal or county ordinance rather than a violation of NRS is considered official action by the judge, the person charged with the offense would have to appear before the judge, be informed of the different charge and enter a plea to the different charge for the judge to change the citation and accept the plea." (Opinion, 7/18/94, p. 9; Audit Report, Appendix C, p. 60, emphasis added.)

The Legislative Counsel's opinion is correct regarding the legal requirements which must be fulfilled before a defendant enters a plea of guilty, guilty but mentally ill or nolo contendere. NRS 174.035(2) states in relevant part:

"...If a plea of guilty or guilty but mentally ill is made orally, the court shall not accept such a plea or a plea of nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and consequences of the plea. . . ."

However, NRS 174.035 says nothing whatsoever about bail forfeitures deposited in lieu of plea or trial, and it is misleading to say that it applies to bail forfeitures. Guilty pleas or nolo contendere pleas result in entry of a judicial finding of guilt and a judgment of conviction recorded against a defendant (NRS 176.105 and 176.125). A criminal conviction is admissible against a person in related civil suits (NRS 41.133). The purpose of the plea canvassing statute is to insure that a defendant who pleads guilty receives the procedural safeguards designed to facilitate determinations of voluntariness and to provide a complete record of those factors. Stocks v. Warden, 86 Nev. 758, 476 P.2d 469 (1970) There have been hundreds of appellate and post-conviction cases filed in Nevada, brought by defendants attempting to attack their guilty pleas after being sentenced. As a consequence, NRS 174.035 and a host of additional court-created rules about plea canvassing were developed. These reliability concerns simply do not exist in the minor misdemeanor case involving a voluntary deposit and forfeiture of bail, because:

1. The defendant knows the nature of the charges from the written citation;
2. He or she knows (and agrees to pay) the consequence or penalty for the violation (the bail and administrative assessment amounts specified on the ticket); and
3. A "bail forfeiture" does not bear the same consequences and legal liabilities as does a judgment of conviction. Mendez v. Brinkerhoff, 105 Nev. 157, 159 771 P.2d 163 (1989) (discussed more fully below).

For all the above reasons, this writer respectfully disagrees with the Audit Report's findings that "the requirements for changing traffic citations from NRS violations to local ordinances, as stated by the Legislative Counsel, may not have been met." (Audit Report, p. 17) Under existing law, it is neither improper nor illegal to amend NRS charges in citations to their local ordinance counterparts.

In addition, for the Consolidated Municipality of Carson City and all other cities with municipal courts, there is an additional compelling reason for disagreement: an NHP officer is supposed to charge the violations under local municipal ordinances in the first place. The Audit Report essentially ignored the directive of NRS 484.803(1), which states:

“1. Whenever any person is taken before a magistrate or is given a written traffic citation containing a notice to appear before a magistrate as provided for in NRS 484.799, the magistrate must be a justice of the peace or municipal judge who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the alleged violation occurred, except that when the offense is alleged to have been committed within an incorporated municipality wherein there is an established court having jurisdiction of the offense, the person must be taken without unnecessary delay before that court.” (emphasis added).

The plain meaning of this provision is inescapable: since 1967 when the section was enacted, the Legislature has intended that persons violating the state traffic code be cited into municipal court if the offense occurred within municipal boundaries. To do so, the officer must charge the offenses under the applicable municipal code provision. NRS 5.050(2).

Bail Forfeitures

The Audit Report also criticized justices' courts for considering monies paid to courts in lieu of appearance as “bail forfeitures”, which are payable to the local government general fund. In reliance upon Legislative Counsel's opinion, the Audit Report stated “the payment of a traffic citation is more characteristic of a ‘fine’ and should not be characterized as a ‘forfeiture of bail’.” (Audit Report, p.14, citing Legislative Counsel's Opinion, 5/12/94, p.6; Appendix C, p. 48).

The practice of paying the bail for a traffic ticket in lieu of appearing in court to answer or contest the charge is a very common one. The Audit Report estimated that 2/3 of all NHP citations were resolved without a court appearance (p.14). I submit this practice is a “forfeiture of bail” and properly characterized as such.

The usual case is as follows:

1. The motorist is cited for a minor traffic offense. After signing the “promise to appear” on the ticket, he or she is released from further detention.
2. The motorist is informed of the customary bail amount because it is written on the ticket. The motorist also knows he or she is subject to a warrant for failure to appear if the citation is simply ignored.

3. At some point the person cited decides not to contest the ticket. He or she pays the bail amount stated on the ticket, either by mailing it in or by appearing at the payments window at the court.
4. Both the motorist and the judge understand that no further appearance is expected and no one will be subject to arrest for failure to appear.
5. As far as the Department of Motor Vehicles is concerned, this has the same effect as a conviction upon a trial or plea of guilty or nolo contendere. (NRS 485.450(4)(b)).

Black's Law Dictionary states that a "forfeiture" is:

"Something to which the right is lost by the commission of a crime or fault, or the losing of something by way of penalty. Ridgeway v. City of Akron, Ohio App., 42 N.E.2d 724, 726. A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. Connellan v. Federal Life Casualty Co., 134 Me. 104, 182 A. 13,14.

* * *

8. The incurring a liability to pay a definite sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law. State v. Marion County Com'rs, 85 Ind.493 " (Black's, 6th Ed., p. 778).

Chapter 697 of NRS, which regulates bail bondsmen, defines "bail" as:

"'Bail' means a deposit made with a court or other governmental agency to secure or continue the release from custody and to guarantee the appearance of the defendant in a criminal proceeding..." (NRS 697.030) (emphasis added).

In the example given above, the motorist is depositing the customary bail with a court to continue the release from custody (and avoid an FTA warrant) and at the same time forfeiting that amount as a consequence or penalty for not making a formal appearance in answer to the charge. The judge, the motorist and Nevada laws recognize that this will officially dispose of the ticket. See, e.g. NRS 484.813(2): ("...the traffic citation may be disposed of only by trial in that court or other official action by a judge of that court, including forfeiture of the bail, or by deposit of sufficient bail with, or payment of a fine to, the traffic violations bureau by the person to whom the traffic citation has been issued by the peace officer." (emphasis added).

As noted in the Audit Report, the customary language printed on NHP citations also support the conclusion that the motorist is forfeiting bail. A "Bail Forfeiture Request" provision states:

"I, THE UNDERSIGNED, DO HEREBY WAIVE MY RIGHT TO APPEAR IN COURT AND REQUEST OF THE COURT THAT MY POSTED BAIL BE FORFEITED IN LIEU OF A FINE. I UNDERSTAND THAT SINCE IT IS NOT THE PAYMENT OF A FINE, THE COURT RESERVES THE RIGHT TO ORDER MY APPEARANCE IN COURT IF CIRCUMSTANCES SO REQUIRE."

I submit that there has in fact been very little confusion about whether this common way of resolving traffic citations is a "bail forfeiture." Clearly it is. Such forfeiture procedures are not as formalized and elaborate as the provisions specified in NRS 178.484 - 178.548, but those sections by their terms are concerned with bail upon arrest (NRS 178.484). And everyone agrees that this is not a "fine," which the Legislative Counsel aptly defined as "a pecuniary punishment imposed by a lawful tribunal upon a person convicted of a crime or misdemeanor." (Opinion, 5/12/94, p. 2, citing Black's Law Dictionary, p.569 (5th Ed. 1979)) When a person forfeits bail in a traffic citation, there is no "conviction" (NRS 176.105). In the Mendez v. Brinkerhoff case cited earlier, the Nevada Supreme Court said:

"When a person forfeits bail under a traffic citation, there is no recorded interchange between a court and an alleged traffic offender to ascertain why he or she chose not to contest the charges. The evidence, standing alone, is equivocal, supporting both an admission of guilt and an inference that the party forfeited bail as a matter of convenience or sound economics. Because the evidence is so ambivalent, we conclude that it is not admissible against the forfeiting party as an admission that he or she committed the traffic offense charged in the citation. [citations omitted]" (Id., 105 Nev. at p. 159).

For the above-stated reasons, I submit that the deposit and forfeiture of bail in traffic citations in lieu of formal appearance and plea is a "bail forfeiture," and the justices' and municipal courts are entitled, under NRS 178.518, NRS 266.620 and NRS 269.165(2), to deposit those monies in their local general funds.

Considerations of policy

The Legislature certainly has the power to enact legislation providing that all monetary proceeds derived from the disposition of a criminal case shall be paid to the State. My purpose herein has been to provide legal support for some of the present practices of our justices' and municipal courts, in answer to the Audit Report's implicit suggestion that "the Locals are pulling a fast one on the State." In my opinion, these practices are lawful and proper. In addition, the following are offered as policy reasons which support local governments benefiting from fines and forfeitures:

1. Local governments absorb the great majority of the costs of the misdemeanor level justice system. The expenditures for judges, court clerks, prosecutors, public defenders and court-appointed counsel, interpreters, court reporters, witness fees, community service and alternative sentencing programs, jails and holding facilities, juvenile probation and detention facilities and staff, and local police and sheriff's officers are a major component of local budgets. Cities, towns and counties deserve a commensurate share of the limited revenues available to offset these costs.
2. It is no doubt ironic that the traffic cases which generate the most revenue (the 2/3 of the cases which forfeit bail) also generate the least amount of costs in time and manpower for courts, police, prosecutors and public defenders. But the corollary to this is that contested NRS cases heavily burden local governments in trials, appeals, collection costs and jail expenses, with very little return.
3. I believe there is general agreement that we can, and should, improve our efforts in collecting the fines, fees and administrative assessments. We should do this to hold offenders accountable and instill respect for the courts' orders as much as for revenue purposes. Recent bills authorizing credit card payments and collection fees will be helpful in this area. It would seem self-evident that reducing the local share of crime revenues does not provide great incentive to improve collections.
4. The State enjoys offsetting financial benefits from administrative assessments. On the administrative assessment side, the State of Nevada's revenue share greatly outweighs the local portion. On a minimum administrative assessment of \$15, the local courts and juvenile programs get \$9. The State gets \$6. However, on a \$500 fine in a DUI case (which is usually more costly for local governments to bring to judgment), the administrative assessment is \$105. The local court and juvenile court still get \$9. The State gets \$96 (NRS 176.059), and the local governments do the collections work!

In conclusion, I appreciate this opportunity to offer a contrasting legal perspective to some of the findings and recommendations of the Audit Report. I will be happy to assist the legislative subcommittee in any fashion you deem useful as you continue your important work. Please contact me if you require more information or explanation about anything stated herein.

Respectfully,



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APPENDIX H

“Current Practices in Collecting Fines and Fees in State Courts:
A Handbook of Collection of Issues and Solutions,”
John Matthias, National Center for State Courts, Court Services Division

**COLLECTION OF
FINES AND FEES --
APPROACHES IN
VARIOUS STATES**

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“A fine is a punishment
only if it’s collected.”

AGENDA

1. Possible approaches to collections
 - A. Statewide programs
 - B. Local programs
 - C. Outsourced programs
2. Legislated collection tools
3. Organizational change issues

1. POSSIBLE APPROACHES TO COLLECTION OF FINES & FEES

- A. Statewide programs
- B. Local court programs
- C. Outsourced programs

1A. TYPES OF STATEWIDE APPROACHES

- (1) Central traffic violations bureau (Maine & Connecticut))
- (2) Hearing officers -- Comprehensive Enforcement Program (New Jersey)
- (3) Fund local staff from statewide seed money (Arizona Judicial Collection Enhancement Fund, Colorado)

(1) OVERVIEW OF MAINE CENTRAL VIOLATIONS BUREAU (CVB)

- 1. If the driver admits to the traffic violation cited, the driver sends payment to the CVB in Lewiston
 - Use bank for "lockbox" function
- 2. If the driver pleads 'not guilty' the CVB docket the matter for trial at the court closest to the driver's residence (32 courts of limited jurisdiction)
 - Sends notice to court, prosecutor, officer

OVERVIEW OF MAINE CVB (2)

3. Trial is held in that local court
4. 'Guilty' cases to CVB for payment
5. Menu of sanctions used by CVB
 - Letter giving notice
 - Late fee
 - Suspend drivers license

INTERESTING FEATURES OF MAINE CVB

- Achieve 98% payment rate
- 18% of cases are contested
- 24% of people scheduled for trial change plea to guilty & pay
- 15 staff at CVB
- Get verified address of driver from DMV
- Statute requires disclosure of Social Security number if found guilty

(2) HEARING OFFICERS IN NEW JERSEY

NJ's three branches of government supported passage of the act creating the **Comprehensive Enforcement Program (CEP) Fund**.

Fines and fees collected go into the CEP Fund, earmarked for certain purposes: operating the program, funding a new statewide computer system and enforce community service programs

OVERVIEW OF NEW JERSEY CEP (1)

1. Defendants who have not paid are summoned to court
2. A hearing officer, in a mass admonition, tells defendants that
 - Since they appeared, they will not be going to jail,
 - The court will work with them, and
 - As long as they keep paying, they will never have to come back

OVERVIEW OF NEW JERSEY CEP (2)

3. Defendants are allowed to set their own payment schedule
4. Hearing officer recommendations are subject to approval by a superior court judge
5. Payments are subject to \$2 transaction fee
6. Drivers license is suspended for default in payment without good cause

OVERVIEW OF NEW JERSEY CEP (3)

7. Defendants who are unable to pay are assigned to enforced community service
 - Every county sheriff runs a SLAP program (Sheriff's Labor Assistance Program)
 - \$15 enrollment fee, \$2 daily participation fee
 - Defendants are instructed to meet on Sunday at the jail to begin their labor
 - The labor is largely litter pickup
 - Defendants who do not show up are picked up and jailed

OVERVIEW OF NEW JERSEY CEP (4)

8. Service does not discharge the fine, which is docketed as civil judgment, but may eventually be written off
9. 25% of all collections are deposited in the Enforcement Program fund (to make it self-sustaining)
10. Municipal courts may transfer cases to the Enforcement Program

(3) FUNDING SEED MONEY IN ARIZONA

Judicial Collection

Enhancement Fund (JCEF)

has 3 revenue sources

- 15% surcharge on all fees collected by all AZ courts
- \$5 surcharge on all persons attending defensive driving school diversion programs
- \$9 of a \$12 fee paid by defendants who pay fine in installments (time payments)
- Other \$3 (of \$12) stays local

USE OF JUDICIAL COLLECTION ENHANCEMENT FUND (JCEF)

1. Local courts apply for seed money to fund a local judicial enforcement position
2. Grant from JCEF funds a judicial enforcement position for one year to establish a collection program in the court
3. After one year the local funding unit either continues funding the position or eliminates it

1. POSSIBLE APPROACHES TO COLLECTION OF FINES & FEES

- A. Statewide programs
- B. Local court programs
- C. Outsourced programs

1B. TYPES OF LOCAL COURT COLLECTION PROGRAMS

HOW DOES A LOCAL COURT USE ITS RESOURCES?

- (1) Judge-based programs
- (2) Staff-based programs
(including screeners)
- (3) Outsourced programs

(1) JUDGE-BASED PROGRAMS

- Judge orders immediate payment or deferred payments after colloquy
- Clerk redockets case for 2 or 4 weeks - pay or appear
- For defendants who appear, judge demands explanation, defers payment again
- For failures to appear, judge issues warrant, handles contempt hearing

VARIATION OF JUDGE-BASED PROGRAMS

- In place of judge, special master or hearing officer
 - Sit on bench like judge
 - Maybe wear robe, or not

EVALUATION OF JUDGE-BASED PROGRAMS

- Requires leadership of judges
 - If done well, positive force in community
 - If done badly, undermines system
- Requires time of judges to hear collection dockets
- Performance of judges increases with training

**JUDGE-BASED PROGRAMS
ARE USED IN ALL STATES
WITH VARYING SUCCESS**

(2) STAFF-BASED PROGRAMS

- Judge orders deferred or installment payments
- Staff may screen defendants and/or obtain contact information
- Staff monitors payments
- Staff notifies defendant by mail or phone when no payment received

IN-HOUSE COLLECTIONS STAFF

- Clerk's office
- Enforcement unit reporting to court administrator or chief judge
- Probation department
 - Supervised probation
 - Unsupervised probation

HISTORY OF COLORADO COLLECTIONS INVESTIGATOR (CI) PROGRAM

- Pilot program began in 1983 in 3 counties
- It cost \$54,000 for a net collection gain of \$328,000
- Expanded by legislature to all judicial districts, and by local funding units to many county and municipal courts

OVERVIEW OF COLORADO CI PROGRAM (1)

1. Defendants unable to pay fine immediately are sent by the judge to the CI's office
2. CI interviews defendant to determine if capable of paying now (and verifies information)
 - Not everyone is allowed to make installment payments
3. A large percentage (40%) pay now rather than complete financial disclosure form

OVERVIEW OF COLORADO CI PROGRAM (2)

4. Defendants are charged a fee to be allowed to make installment (time) payments
 - Helps make program self-sustaining
5. If payments are not made as agreed:
 - Reminder phone call
 - Phone references to locate defendant
 - Reminder collection letters
 - Voluntary payroll deduction
 - Garnishment
 - Bench warrant

STATEWIDE EFFORTS TO FUND AND/OR TRAIN LOCAL STAFF

- Colorado
- Arizona
- New Hampshire
- Oklahoma
- Michigan

In many other states there
are local initiatives

EVALUATION OF STAFF-BASED PROGRAMS

- Allows lower-paid staff to perform administrative collection work
- Frees judges to perform strictly judicial tasks, and supervise performance of staff
- Not all courts think they can afford a staff-based program
 - What incentive for the local funding body?

1. POSSIBLE APPROACHES TO COLLECTION OF FINES & FEES

- A. Statewide programs
- B. Local court programs
- C. Outsourced programs

OUTSOURCED PROGRAMS

- Court sends account to collection agency after brief or extensive attempt to collect
- Collection agency performs staff function of monitoring, notifying, and receiving payments
- Collection agency collects additional fee or retains fee from amount collected, as permitted by law

CONTRACTING PARTY WITH COLLECTION AGENCY (1)

1. Local court -- the predominant approach nationally

Pros -- court selects agency

Cons -- lack of bargaining power, need ability to issue RFP and evaluate proposals

2. State -- pilot program with collection agency in Maryland with 3 courts. Senate Bill 459, 1997 Regular Session. Currently being evaluated and implemented.

CONTRACTING PARTY WITH COLLECTION AGENCY (2)

3. State negotiates master contract with collection agencies, local courts can opt in. Through Kansas Attorney General 1997. Too early to evaluate.

STATE CENTRALIZED COLLECTIONS PROGRAM

- For courts without resources to create an internal collections unit
- Supplements collection existing resources
- Located in Department of Revenue in some states (Colorado, Michigan, Maryland)
- Centralized collections function could be outsourced

EVALUATION OF OUTSOURCED PROGRAMS

- Usual benefits of outsourcing
 - Save personnel and space
 - Specialized functions -- skip-tracing, credit reporting, legal processes
 - Professionalism and technological capabilities of agencies
- Costs and possible pitfalls
 - Is cost of collection added on or deducted from receipts?
 - Issues of control depend on how relationship is structured

COMPARISON OF APPROACHES

- Statewide programs
- Local court programs
- Outsourced programs
- Some combination of the above

2. LEGISLATED COLLECTION TOOLS

1. Time payment fee. Arizona
A.R.S. 12-116
2. Non-renewal of motor vehicle
registration, if registered owner
delinquent in paying fine
(combined amount > \$200), or
if registered owner fails to
appear in criminal traffic case.
Arizona A.R.S. 28-331

LEGISLATED COLLECTION TOOLS (2)

3. Incentives to pay: suspend
drivers license for failure to
pay; allow amnesty followed by
increased enforcement. Arizona
A.R.S. 28-1080
4. Pass credit card service fee on
to defendant using credit card.
Oklahoma 28-151, Virginia
19.2-353.3

LEGISLATED COLLECTION TOOLS (3)

5. Immunity from liability for court-ordered community service work. Missouri 559.021
6. Income tax refund intercept. Michigan 205-30a
7. Lottery prize setoff for prizes > \$600. Arizona 5-523
8. Authorize use of Social Security number for collection purposes. Maine 36 M.R.S.A. § 5276-A

FINES AND REVENUE PRODUCTION

“Fines and costs should not be imposed for revenue production purposes. Tribunals should be financed by appropriations, rather than by anticipated revenues.”

“Commentary: Some jurisdictions use fines and costs as a means of taxation unrelated to the proper goals of traffic adjudication - efficient and safe flow of traffic, and justice.”

ABA Standards for Traffic Justice,
1975

3. ORGANIZATIONAL CHANGE (1)

1. Court systems, at state level and local trial court level, acknowledge the importance of improving enforcement of court-ordered fines and fees
2. There is some resistance to improving enforcement in every court system
3. Nevada has a relatively new state court administrator

ORGANIZATIONAL CHANGE (2)

4. It will take one or two years to establish and implement policies and procedures
 - It doesn't happen overnight, or even in a few months
5. Some courts in Nevada have applied principles of good collection and increased their collections, using judge-based and staff-based approaches
 - Give successful courts a leadership role in setting policies and procedures

ORGANIZATIONAL CHANGE (3)

6. Reward success with recognition
7. Local trial courts and the state court system need sufficient resources and tools to enforce judgments
 - Must spend money to make money
 - Give the courts the tools and resources they need

APPENDIX I

Suggested Legislation

- BDR 43-175: Makes various changes concerning manner of handling money paid on certain traffic citations.
- BDR R-176: Encourages Administrative Office of the Courts to improve use of technology judicial system and to develop consistent accounting procedures for courts in this state.
- BDR 14-177: Provides for nonrenewal of registration of motor vehicle or driver's license of defendant who is delinquent in payment of fine, administrative assessment, fee or restitution.
- BDR 1-178: Authorizes courts to contract for acceptance of credit cards and debit cards for payment of fees, fines and other charges owed to court.

SUMMARY—Makes various changes concerning manner of handling money paid on certain traffic citations. (BDR 43-175)

FISCAL NOTE: Effect on Local Government: Yes.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to motor vehicles; providing that money paid on a traffic citation without appearing in court must include any administrative assessment that would be imposed if paid in court; requiring money paid on certain traffic citations to be treated as a fine; providing that certain traffic citations must not designate payment of the citation as a forfeiture of bail; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 483.460 is hereby amended to read as follows:

483.460 1. Except as otherwise provided by statute, the department shall revoke the license, permit or privilege of any driver upon receiving a record of his conviction of

any of the following offenses, when that conviction has become final, and the driver is not eligible for a license, permit or privilege to drive for the period indicated:

(a) For a period of 3 years if the offense is:

(1) A violation of subsection 2 of NRS 484.377.

(2) A third or subsequent violation within 7 years of NRS 484.379.

(3) A violation of NRS 484.3795 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

FLUSH The period during which such a driver is not eligible for a license, permit or privilege to drive must be set aside during any period of imprisonment and the period of revocation must resume upon completion of the period of imprisonment or when the person is placed on residential confinement.

(b) For a period of 1 year if the offense is:

(1) Any other manslaughter resulting from the driving of a motor vehicle or felony in the commission of which a motor vehicle is used, including the unlawful taking of a motor vehicle.

(2) Failure to stop and render aid as required pursuant to the laws of this state in the event of a motor vehicle accident resulting in the death or bodily injury of another.

(3) Perjury or the making of a false affidavit or statement under oath to the department pursuant to NRS 483.010 to 483.630, inclusive, or pursuant to any other law relating to the ownership or driving of motor vehicles.

(4) Conviction ~~[, or forfeiture of bail not vacated,]~~ upon three charges of reckless driving committed within a period of 12 months.

(5) A second violation within 7 years of NRS 484.379 and, except as otherwise provided in subsection 2 of NRS 483.490, the driver is not eligible for a restricted license during any of that period.

(6) A violation of NRS 484.348.

(c) For a period of 90 days, if the offense is a first violation within 7 years of NRS 484.379.

2. The department shall revoke the license, permit or privilege of a driver convicted of violating NRS 484.379 who fails to complete the educational course on the use of alcohol and controlled substances within the time ordered by the court and shall add a period of 90 days during which the driver is not eligible for a license, permit or privilege to drive.

3. " When the department is notified by a court that a person who has been convicted of violating NRS 484.379 has been permitted to enter a program of treatment pursuant to NRS 484.37937 or 484.3794, the department shall reduce by one-half the period during which he is not eligible for a license, permit or privilege to drive, but shall restore that reduction in time if notified that he was not accepted for or failed to complete the treatment.

4. The department shall revoke the license, permit or privilege to drive of a person who is required to install a device pursuant to NRS 484.3943 but who operates a motor vehicle without such a device:

(a) For 3 years, if it is his first such offense during the period of required use of the device.

(b) For 5 years, if it is his second such offense during the period of required use of the device.

5. A driver whose license, permit or privilege is revoked pursuant to subsection 4 is not eligible for a restricted license during the period set forth in paragraph (a) or (b) of that subsection, whichever is applicable.

6. When the department is notified that a court has:

(a) Pursuant to paragraph (h) of subsection 1 of NRS 62.211, NRS 62.224, 62.2255, 62.226 or 62.228, ordered the suspension or delay in the issuance of a child's license;

(b) Pursuant to NRS 206.330, ordered the suspension or delay in the issuance of a person's license; or

(c) Pursuant to NRS 62.227, ordered the revocation of a child's license,

FLUSH the department shall take such actions as are necessary to carry out the court's order.

7. As used in this section, "device" has the meaning ascribed to it in NRS 484.3941.

Sec. 2. NRS 484.813 is hereby amended to read as follows:

484.813 1. Every peace officer upon issuing a traffic citation to an alleged violator of any provision of the motor vehicle laws of this state or of any traffic ordinance of any city or town shall deposit the original or a copy of the traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau.

2. Upon the deposit of the original or a copy of the traffic citation with a court having jurisdiction over the alleged offense or with its traffic violations bureau, the traffic citation may be disposed of only by trial in that court ~~[or]~~ , *by other official action by a judge of that court* ~~[, including forfeiture of the bail,]~~ or by the ~~[deposit of sufficient bail with, or]~~ *entry of a plea of guilty, guilty but mentally ill or nolo contendere and the payment of a fine to* ~~[,]~~ the traffic violations bureau by the person to whom the traffic citation ~~[has been issued by the peace officer.]~~ *was issued.*

3. *The amount of money required to be paid by a defendant for a traffic citation issued for a misdemeanor without appearing in court must include any administrative assessment the court is otherwise required to impose if the person appears in court.*

4. *Money paid by a defendant for a traffic citation issued for a misdemeanor, other than for any fee or administrative assessment, must be treated as a fine for the purposes of revenue, regardless of the manner in which the payment is characterized on the citation.*

5. A traffic citation issued for a misdemeanor must not include a statement designating the payment of the citation as a forfeiture of bail, regardless of whether the payment is mailed in or the defendant makes payment after he appears in court.

6. It is unlawful and official misconduct for any peace officer or other officer or public employee to dispose of a traffic citation or copies of it or of the record of the issuance of a traffic citation in a manner other than as required in this section.

~~{4-}~~ 7. The chief administrative officer of every traffic enforcement agency shall require the return to him of a copy of every traffic citation issued by an officer under his supervision to an alleged violator of any traffic law or ordinance and of all copies of every traffic citation which has been spoiled or upon which any entry has been made and not issued to an alleged violator.

~~{5-}~~ 8. The chief administrative officer shall also maintain or cause to be maintained a record of every traffic citation issued by officers under his supervision. The record must be retained for at least 2 years after issuance of the citation.

Sec. 3. NRS 485.3099 is hereby amended to read as follows:

485.3099 1. The division shall upon request consent to the immediate cancellation of any certificate of financial responsibility, or the division shall waive the requirement of filing proof of financial responsibility, in any of the following events:

(a) At any time after 3 years from the date the proof of financial responsibility was required when, during the 3-year period preceding the request, the division has not received a record of a conviction ~~for a forfeiture of bail~~ which would require or permit

the suspension or revocation of the license, registration or nonresident's operating privilege of the person by or for whom the proof of financial responsibility was furnished;

(b) In the event of the death of the person on whose behalf the proof of financial responsibility was filed or the permanent incapacity of the person to operate a motor vehicle; or

(c) If the person who is required to file proof of financial responsibility surrenders his license and registration to the division.

2. If a person who surrenders his license and registration pursuant to paragraph (c) of subsection 1 applies for a license or registration within a period of 3 years after the date proof of financial responsibility was originally required, the application must be refused unless the applicant reestablishes proof of financial responsibility for the remainder of the 3-year period.

Sec. 4. A forfeiture of bail not vacated by a court which occurred before January 1, 2000, shall be deemed a conviction for the purposes of NRS 483.460 as amended by section 1 of this act and NRS 485.3099 as amended by section 3 of this act.

Sec. 5. This act becomes effective on July 1, 2000.

SUMMARY—Encourages Administrative Office of the Courts to improve use of technology in judicial system and to develop consistent accounting procedures for courts in this state. (BDR R-176)

_____ CONCURRENT RESOLUTION—Encouraging the Administrative Office of the Courts to improve the use of technology in the judicial system and to develop consistent accounting procedures for the courts in this state.

WHEREAS, The Legislative Auditor of the Legislative Counsel Bureau submitted a report of the judicial branch of government in 1995 entitled “1995 Audit Report of the State of Nevada Judicial Branch of Government and Administrative Oversight of the State Court System”; and

WHEREAS, The 1995 Audit Report found that the various courts in the State of Nevada use different methods to classify, record and distribute fines collected from citations issued by the Nevada Highway Patrol; and

WHEREAS, The 1995 Audit Report further found that many courts in this state had not established adequate internal accounting controls for collecting, recording and depositing fines; and

WHEREAS, Courts using different methods to classify, record and distribute fines and employing inadequate internal accounting controls result in inaccurate audits and difficulty in accessing court information; and

WHEREAS, Improving the technology used by courts in the State of Nevada, including, without limitation, establishing a minimum standard of technology in every court in this state, and establishing standardization of and consistency in accounting procedures used by courts in the State of Nevada will improve judicial administration, improve the rate of collections, facilitate accurate audits, ensure timely and equal access to accurate court information and maintain the integrity and credibility of the judiciary; and

WHEREAS, The Administrative Office of the Courts has the duty, under the direction of the Supreme Court, to develop procedures for accounting and internal auditing for the various courts in the State of Nevada, and to make recommendations for the improvement of the administrative procedures used by the various courts in this state; and

WHEREAS, The Administrative Office of the Courts recently assessed the technological resources, abilities and needs in each court in the State of Nevada; and

WHEREAS, The Administrative Office of the Courts has established minimum accounting standards for the Justices' and Municipal Courts in the State of Nevada to standardize accounting practices used by the courts in this state; now, therefore, be it

RESOLVED BY THE _____ OF THE STATE OF NEVADA, THE _____
CONCURRING, That the Nevada Legislature hereby encourages the Administrative Office of the Courts to identify and carry out in a timely manner specific projects designed to

improve the use of technology in the judicial system, including, without limitation, the development of minimum standards of technology, and the development of uniform collection policies, procedures and support systems, and to continue to explore new ways to improve the technology used by the various courts in this state; and be it further

RESOLVED, That the Administrative Office of the Courts is hereby encouraged to assist and encourage all courts in this state to use consistent accounting procedures, including, without limitation, using the minimum accounting standards that were established by the Administrative Office of the Courts, assisting courts in the State of Nevada to develop uniform procedures for classifying, recording and distributing fines and fees collected, and continuing to assess other means for improving the accounting procedures used by the courts in this state; and be it further

RESOLVED, That the _____ of the _____ prepare and transmit a copy of this resolution to the Director of the Administrative Office of the Courts.

SUMMARY—Provides for nonrenewal of registration of motor vehicle or driver's license of defendant who is delinquent in payment of fine, administrative assessment, fee or restitution. (BDR 14-177)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to collections; authorizing a court to file a notice of nonpayment with the department of motor vehicles and public safety if a defendant is delinquent in the payment of a fine, administrative assessment, fee or restitution; prohibiting the department from renewing the registration of a motor vehicle of a person for whom it has received a notice of nonpayment from a court; prohibiting the department from renewing the driver's license of a person for whom it has received a notice of nonpayment from a court or local authority; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN

SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 176 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *In addition to any other action authorized pursuant to NRS 176.064, if a fine, administrative assessment, fee, restitution or other charge is imposed upon a defendant for a violation of a law, a regulation or an ordinance in this state and the defendant is the registered owner of a motor vehicle or has a driver's license issued by the State of Nevada, whether or not the fine, administrative assessment, fee, restitution or other charge is in addition to any other punishment, and the fine, administrative assessment, fee, restitution or other charge or any part of it remains unpaid after the time established by the court for its payment, the court may, on its own motion or at the request of a state or local entity that is responsible for collecting the delinquent fine, administrative assessment, fee, restitution or other charge, file a notice of nonpayment with the department of motor vehicles and public safety.*

2. *The notice of nonpayment must include:*

(a) *The time, place and date of each violation;*

(b) *If the defendant is a registered owner of a motor vehicle, the number of the license plate of the motor vehicle of the defendant and the make and model year of the motor vehicle of the defendant;*

(c) *If the defendant has a driver's license issued by the State of Nevada, the number of the driver's license of the defendant;*

(d) The total amount of a delinquent fine, administrative assessment, fee, restitution or other charge owed by the defendant; and

(e) Any other information the department of motor vehicles and public safety may require.

3. The department of motor vehicles and public safety shall prescribe the form for the notice of nonpayment and may adopt such regulations as are necessary to carry out the provisions of this section.

Sec. 3. If a court files with the department of motor vehicles and public safety a notice of nonpayment pursuant to section 2 of this act and the registered owner of the motor vehicle for which the department received the notice pays the fine, administrative assessment, fee, restitution or other charge imposed against him, the court shall issue to the registered owner a receipt which indicates that the fine, administrative assessment, fee, restitution or other charge has been paid.

Sec. 4. NRS 176.064 is hereby amended to read as follows:

*176.064 1. If a fine, administrative assessment, fee , ~~{or}~~ restitution **or other charge** is imposed upon a defendant , ~~{pursuant to this chapter,}~~ whether or not the fine, administrative assessment, fee , ~~{or}~~ restitution **or other charge** is in addition to any other punishment, and the fine, administrative assessment, fee , ~~{or}~~ restitution **or other charge** or any part of it remains unpaid after the time established by the court for its payment, the defendant is liable for a collection fee, to be imposed by the court at the time it finds*

that the fine, administrative assessment, fee , ~~{or}~~ restitution *or other charge* is delinquent, of:

(a) Not more than \$100, if the amount of the delinquency is less than \$2,000.

(b) Not more than \$500, if the amount of the delinquency is \$2,000 or greater, but is less than \$5,000.

(c) Ten percent of the amount of the delinquency, if the amount of the delinquency is \$5,000 or greater.

2. A state or local entity that is responsible for collecting a delinquent fine, administrative assessment, fee , ~~{or}~~ restitution *or other charge* may, in addition to attempting to collect the fine, administrative assessment, fee , ~~{or}~~ restitution *or other charge* through any other lawful means, take any or all of the following actions:

(a) Report the delinquency to reporting agencies that assemble or evaluate information concerning credit.

(b) Request that the court take appropriate action pursuant to subsection 3 ~~{-}~~ *or section 2 of this act.*

(c) Contract with a collection agency licensed pursuant to NRS 649.075 to collect the delinquent amount and the collection fee. The collection agency must be paid as compensation for its services an amount not greater than the amount of the collection fee imposed pursuant to subsection 1, in accordance with the provisions of the contract.

3. The court may, on its own motion or at the request of a state or local entity that is responsible for collecting the delinquent fine, administrative assessment, fee ~~{or}~~

~~restitution,~~ *restitution or other charge*, take any or all of the following actions, in the following order of priority if practicable:

(a) Request that a prosecuting attorney undertake collection of the delinquency, including, without limitation, the original amount and the collection fee, by attachment or garnishment of the defendant's property, wages or other money receivable.

(b) Order the suspension of the driver's license of the defendant. If the defendant does not possess a driver's license, the court may prohibit the defendant from applying for a driver's license for a specified period. If the defendant is already the subject of a court order suspending or delaying the issuance of his driver's license, the court may order the additional suspension or delay, as appropriate, to apply consecutively with the previous order. At the time the court issues an order suspending the driver's license of a defendant pursuant to this paragraph, the court shall require the defendant to surrender to the court all driver's licenses then held by the defendant. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses, together with a copy of the order. At the time the court issues an order pursuant to this paragraph delaying the ability of a defendant to apply for a driver's license, the court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety a copy of the order. The department of motor vehicles and public safety shall report a suspension pursuant to this paragraph to an insurance company or its agent inquiring about the defendant's driving record, but such a suspension must not be considered for the purpose of rating or underwriting.

(c) For a delinquent fine or administrative assessment, order the confinement of the person in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075.

4. Money collected from a collection fee imposed pursuant to subsection 1 must be distributed in the following manner:

(a) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a municipal court, the money must be deposited in a special fund in the appropriate city treasury. The city may use the money in the fund only to develop and implement a program for the collection of fines, administrative assessments, fees ~~and restitution.~~ , *restitution and other charges imposed upon a defendant.*

(b) Except as otherwise provided in paragraph (d), if the money is collected by or on behalf of a justice's court or district court, the money must be deposited in a special fund in the appropriate county treasury. The county may use the money in the special fund only to develop and implement a program for the collection of fines, administrative assessments, fees ~~and restitution.~~ , *restitution and other charges imposed upon a defendant.*

(c) Except as otherwise provided in paragraph (d), if the money is collected by a state entity, the money must be deposited in an account, which is hereby created in the state treasury. The court administrator may use the money in the account only to develop and implement a program for the collection of fines, administrative assessments, fees , ~~and~~ restitution *and other charges imposed upon a defendant* in this state.

(d) If the money is collected by a collection agency, after the collection agency has been paid its fee pursuant to the terms of the contract, any remaining money must be deposited in the state, city or county treasury, whichever is appropriate, to be used only for the purposes set forth in paragraph (a), (b) or (c) of this subsection.

Sec. 5. NRS 482.280 is hereby amended to read as follows:

482.280 1. The registration of every vehicle expires at midnight on the day specified on the receipt of registration, unless the day specified falls on a Saturday, Sunday or legal holiday. If the day specified on the receipt of registration is a Saturday, Sunday or legal holiday, the registration of the vehicle expires at midnight on the next judicial day. The department shall mail to each holder of a certificate of registration an application for renewal of registration for the following period of registration. The applications must be mailed by the department in sufficient time to allow all applicants to mail the applications to the department and to receive new certificates of registration and license plates, stickers, tabs or other suitable devices by mail before the expiration of their registrations. An applicant may present the application to any agent or office of the department.

2. An application mailed or presented to the department or to a county assessor pursuant to the provisions of this section, or presented to an authorized inspection station or authorized station pursuant to the provisions of NRS 482.281 must include, if required, evidence of compliance with standards for control of emissions.

3. The department shall insert in each application mailed pursuant to subsection 1:

(a) The amount of privilege tax to be collected for the county pursuant to the provisions of NRS 482.260.

(b) The amount set forth in a notice of nonpayment filed with the department by a *court pursuant to section 2 of this act or by a local authority* pursuant to NRS 484.444.

(c) A statement which informs the applicant that, pursuant to NRS 485.185, he is legally required to maintain insurance during the period in which the motor vehicle is registered.

4. An owner who has made proper application for renewal of registration before the expiration of the current registration but who has not received the license plate or plates or card of registration for the ensuing period of registration is entitled to operate or permit the operation of that vehicle upon the highways upon displaying thereon the license plate or plates issued for the preceding period of registration for such a time as may be prescribed by the department as it may find necessary for the issuance of the new plate or plates or card of registration.

Sec. 6. NRS 482.2805 is hereby amended to read as follows:

482.2805 1. Except as otherwise provided in subsection 3, the department shall not renew the registration of a motor vehicle if a *court has filed with the department a notice of nonpayment pursuant to section 2 of this act or a local authority* has filed with the department a notice of nonpayment pursuant to NRS 484.444 unless, at the time for renewal of the registration, the registered owner of the motor vehicle provides to the

department a receipt issued by the *court pursuant to section 3 of this act or by the* local authority pursuant to NRS 482.2807.

2. If the registered owner provides a receipt to the department pursuant to subsection 1 and complies with the other requirements of this chapter, the department shall renew the registration of the motor vehicle.

3. The department shall renew the registration of a motor vehicle owned by a short-term lessor for which the department has received a notice of nonpayment pursuant to NRS 484.444 *or section 2 of this act for a violation of the provisions of NRS 484.395 to 484.443, inclusive, or a violation of an ordinance of a local authority authorized by chapter 484 of NRS that prohibits the same conduct as the provisions of NRS 484.395 to 484.443, inclusive,* without requiring the short-term lessor to provide a receipt pursuant to subsection 1 if the short-term lessor submits to the department a certificate issued by a *court or* local authority pursuant to subsection 4.

4. A *court or* local authority shall, upon request, issue to a short-term lessor *for which the department has received a notice of nonpayment pursuant to NRS 484.444 or section 2 of this act for a violation of the provisions of NRS 484.395 to 484.443, inclusive, or a violation of an ordinance of a local authority authorized by chapter 484 of NRS that prohibits the same conduct as the provisions of NRS 484.395 to 484.443, inclusive,* a certificate which requires the department to renew the registration of a motor vehicle owned by the short-term lessor without requiring the short-term lessor to provide a receipt pursuant to subsection 1 if the short-term lessor provides the *court or* local

authority with the name, address and number of the driver's license of the short-term lessee who was leasing the vehicle at the time of the violation.

5. Upon the request of the registered owner of a motor vehicle, the department shall provide a copy of the notice of nonpayment filed with the department by ~~the local agency~~ *a court pursuant to section 2 of this act or by a local authority* pursuant to NRS 484.444.

6. If the registration of a motor vehicle that is identified in a notice of nonpayment filed with the department ~~by a local authority~~ pursuant to NRS 484.444 *or section 2 of this act* is not renewed for two consecutive periods of registration, the department shall delete any records maintained by the department concerning that notice.

7. The department may require a *court or* local authority to pay a fee for the creation, maintenance or revision of a record of the department concerning a notice of nonpayment filed with the department *by the court pursuant to section 2 of this act or* by the local authority pursuant to NRS 484.444. The department shall, by regulation, establish any fee required by this subsection. Any fees collected by the department pursuant to this subsection must be:

- (a) Deposited with the state treasurer for credit to the motor vehicle fund; and
- (b) Allocated to the department to defray the cost of carrying out the provisions of this section.

Sec. 7. Chapter 483 of NRS is hereby amended by adding thereto the provisions set forth as sections 8 and 9 of this act.

Sec. 8. 1. The department shall not renew the driver's license of a licensee if a court has filed a notice of nonpayment with the department pursuant to section 2 of this act or a local authority has filed a notice of nonpayment with the department pursuant to NRS 484.444 unless, at the time for renewal of the license, the licensee provides to the department a receipt issued by the court pursuant to section 3 of this act or by the local authority pursuant to section 9 of this act.

2. If the licensee provides a receipt to the department pursuant to subsection 1 and complies with the other requirements of this chapter, the department shall renew the driver's license of the licensee.

3. Upon the request of the licensee, the department shall provide a copy of the notice of nonpayment filed with the department by a court pursuant to section 2 of this act or by a local authority pursuant to NRS 484.444.

4. If the driver's license that is identified in a notice of nonpayment filed with the department pursuant to NRS 484.444 or section 2 of this act is not renewed for 2 years after the expiration of the license, the department shall delete any records maintained by the department concerning that notice.

5. The department may require a court or local authority to pay a fee for the creation, maintenance or revision of a record of the department concerning a notice of nonpayment filed with the department by the court pursuant to section 2 of this act or by the local authority pursuant to NRS 484.444. The department shall, by regulation,

establish any fee required by this subsection. Any fees collected by the department pursuant to this subsection must be:

- (a) Deposited with the state treasurer for credit to the motor vehicle fund; and*
- (b) Allocated to the department to defray the cost of carrying out the provisions of this section.*

Sec. 9. If a local authority files with the department a notice of nonpayment pursuant to NRS 484.444 of this act and the licensee for which the department received the notice pays to the local authority each civil penalty or other charge imposed by the local authority against the licensee for a violation of:

- 1. The provisions of NRS 484.395 to 484.443, inclusive; or*
- 2. An ordinance of the local authority authorized by chapter 484 of NRS that prohibits the same conduct as the provisions of NRS 484.395 to 484.443, inclusive,*
the local authority shall issue to the licensee a receipt which indicates that the penalty or charge has been paid.

Sec. 10. NRS 483.010 is hereby amended to read as follows:

483.010 NRS 483.010 to 483.630, inclusive, and sections 8 and 9 of this act may be cited as the Uniform Motor Vehicle Drivers' License Act.

Sec. 11. NRS 483.380 is hereby amended to read as follows:

483.380 1. Except as otherwise provided in NRS 483.247, every driver's license expires on the fourth anniversary of the licensee's birthday, measured in the case of an original license, a renewal license and a renewal of an expired license, from the birthday

nearest the date of issuance or renewal. Any applicant whose date of birth was on February 29 in a leap year is, for the purposes of NRS 483.010 to 483.630, inclusive, *and sections 8 and 9 of this act*, considered to have the anniversary of his birth fall on February 28.

2. ~~{Every}~~ *Except as otherwise provided in section 8 of this act*, every license is renewable at any time before its expiration upon application, submission of the statement required pursuant to NRS 483.293 and payment of the required fee.

3. The department may, by regulation, defer the expiration of the driver's license of a person who is on active duty in the Armed Forces upon such terms and conditions as it may prescribe. The department may similarly defer the expiration of the license of the spouse or dependent son or daughter of that person if the spouse or child is residing with the person.

Sec. 12. NRS 483.380 is hereby amended to read as follows:

483.380 1. Except as otherwise provided in NRS 483.247, every driver's license expires on the fourth anniversary of the licensee's birthday, measured in the case of an original license, a renewal license and a renewal of an expired license, from the birthday nearest the date of issuance or renewal. Any applicant whose date of birth was on February 29 in a leap year is, for the purposes of NRS 483.010 to 483.630, inclusive, *and sections 8 and 9 of this act*, considered to have the anniversary of his birth fall on February 28.

2. ~~{Every}~~ *Except as otherwise provided in section 8 of this act, every* license is renewable at any time before its expiration upon application and payment of the required fee.

3. The department may, by regulation, defer the expiration of the driver's license of a person who is on active duty in the Armed Forces upon such terms and conditions as it may prescribe. The department may similarly defer the expiration of the license of the spouse or dependent son or daughter of that person if the spouse or child is residing with the person.

Sec. 13. NRS 483.382 is hereby amended to read as follows:

483.382 1. No later than 30 days before the expiration of his license, the drivers' license division of the department shall mail to each licensee who has not already renewed his license an expiration notice.

2. *The expiration notice must include, without limitation, the amount set forth in a notice of nonpayment filed with the department by a court pursuant to section 2 of this act or by a local authority pursuant to NRS 484.444.*

3. The department may require an applicant for a renewal license successfully to pass such additional test as the department finds reasonably necessary to determine his qualification according to the type or class of license applied for.

Sec. 14. NRS 483.530 is hereby amended to read as follows:

483.530 It is a misdemeanor for any person:

1. To display or cause or permit to be displayed or have in his possession any canceled, revoked, suspended, fictitious, fraudulently altered or fraudulently obtained driver's license;
2. To alter, forge, substitute, counterfeit or use an unvalidated driver's license;
3. To lend his driver's license to any other person or knowingly permit the use thereof by another;
4. To display or represent as one's own any driver's license not issued to him;
5. To fail or refuse to surrender to the department, a peace officer or a court upon lawful demand any driver's license which has been suspended, revoked or canceled;
6. To use a false or fictitious name in any application for a driver's license or knowingly to make a false statement or knowingly to conceal a material fact or otherwise commit a fraud in any such application;
7. To permit any unlawful use of a driver's license issued to him;
8. To do any act forbidden, or fail to perform any act required, by NRS 483.010 to 483.630, inclusive [;], *and sections 8 and 9 of this act*; or
9. To photograph, photostat, duplicate, or in any way reproduce any driver's license or facsimile thereof in such a manner that it could be mistaken for a valid license, or to display or have in his possession any such photograph, photostat, duplicate, reproduction or facsimile unless authorized by this chapter.

Sec. 15. NRS 484.444 is hereby amended to read as follows:

484.444 1. If the registered owner of a motor vehicle *or a driver's license issued by the State of Nevada* fails to pay any civil ~~fine~~ or any other charge imposed against him for a violation of:

(a) The provisions of NRS 484.395 to 484.443, inclusive; or

(b) An ordinance of a local authority authorized by this chapter which ~~covers~~ *prohibits* the same ~~subject-matter~~ *conduct* as the provisions of NRS 484.395 to 484.443, inclusive,

FLUSH

the local authority which imposed that penalty, fine or charge may file a notice of nonpayment with the department.

2. The notice *of nonpayment* must include:

(a) The time, place and date of each violation;

(b) ~~The~~ *If the person is the registered owner of a motor vehicle, the* number of the license plate of the *motor* vehicle and the make and model year of the *motor* vehicle;

(c) *If the person has a driver's license issued by the State of Nevada, the number of the driver's license of the person;*

(d) The amount of the fine and any other charge imposed for each violation;

~~(d)~~ (e) The total amount of money owed to the local authority *by the defendant* for those violations; and

~~(e)~~ (f) Any other information the department may require.

3. The department shall ~~[adopt regulations which]~~ prescribe the form for the notice of nonpayment and ~~[any information which must be included in that notice.]~~ *may adopt such regulations as are necessary to carry out the provisions of this section.*

Sec. 16. 1. This section and sections 1 to 11, inclusive, 13, 14 and 15 of this act become effective on July 1, 1999, for the purpose of adopting regulations and on January 1, 2000, for all other purposes.

2. Section 12 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) " Are in arrears in the payment for the support of one or more children,
are repealed by the Congress of the United States.

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SUMMARY—Authorizes courts to contract for acceptance of credit cards and debit cards for payment of fees, fines and other charges owed to court. (BDR 1-178)

FISCAL NOTE: Effect on Local Government: No.

Effect on the State or on Industrial Insurance: No.

AN ACT relating to courts; authorizing courts to contract for the acceptance of credit cards and debit cards for the payment of fees, fines and other charges owed to the court; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 1 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A court in this state may enter into a contract with an issuer of credit cards or debit cards to provide for the acceptance of credit cards or debit cards by the court for the payment of money owed to the court for a fee, fine, administrative assessment, restitution or any other charge owed to the court.

2. *If the issuer charges the court a fee for each use of a credit card or debit card, the court may require the cardholder to pay a fee. The fee charged by the court must not exceed the amount charged by the issuer for the use of the card or 4 percent of the total amount paid to the court by the cardholder through the use of the credit card or debit card, whichever is less.*

3. *As used in this section:*

(a) *“Cardholder” means the person or organization named on the face of a credit card or debit card to whom or for whose benefit the credit card or debit card is issued by an issuer.*

(b) *“Credit card” means any instrument or device, whether known as a credit card or credit plate, or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, property, goods, services or anything else of value on credit.*

(c) *“Debit card” means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.*

(d) *“Issuer” means a business organization, financial institution or authorized agent of a business organization or financial institution that issues a credit card or debit card.*

Sec. 2. NRS 354.770 is hereby amended to read as follows:

354.770 1. A local government may enter into contracts with issuers of credit cards or debit cards to provide for the acceptance of credit cards or debit cards by the local government:

(a) For the payment of money owed to the local government for taxes, interest, penalties or any other obligation; or

(b) In payment for goods or services.

2. If the issuer charges the local government a fee for each use of a credit card or debit card, a contract entered into pursuant to subsection 1 must include a provision that requires the local government to pay the fee charged by the issuer for the use of the credit card or debit card.

3. The payment of fees charged by the issuer for each use of a credit card or debit card must be treated in the same manner as any other administrative cost of the local government.

4. As used in this section:

(a) "Cardholder" means the person or organization named on the face of a credit card or debit card to whom or for whose benefit the credit card or debit card is issued by an issuer.

(b) "Credit card" means any instrument or device, whether known as a credit card or credit plate, or by any other name, issued with or without a fee by an issuer for the use of

the cardholder in obtaining money, property, goods, services or anything else of value on credit.

(c) "Debit card" means any instrument or device, whether known as a debit card or by any other name, issued with or without a fee by an issuer for the use of the cardholder in depositing, obtaining or transferring funds.

(d) "Issuer" means a business organization, financial institution or authorized agent of a business organization or financial institution that issues a credit card or debit card.

(e) "Local government" has the meaning ascribed to it in NRS 354.474 ~~[]~~ , *except that the term does not include a court that has entered into a contract pursuant to section 1 of this act.*

Sec. 3. This act becomes effective on July 1, 1999.