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***Committee Policy Brief  
Assembly Committee on  
Judiciary***



***February 2003***

***Legislative Counsel Bureau***

ASSEMBLY JUDICIARY

DATE: 2/2/03 ROOM 3138 EXHIBIT F-106 23

SUBMITTED BY: ALISON COMBS

**COMMITTEE BRIEF**

**ASSEMBLY COMMITTEE ON JUDICIARY**

**2003 NEVADA LEGISLATURE**

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February 2003

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# COMMITTEE BRIEF

## ASSEMBLY COMMITTEE ON JUDICIARY

### 2003 NEVADA LEGISLATURE

Prepared by  
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February 2003

This committee brief provides general background information and summarizes selected issues pertaining to the Assembly Committee on Judiciary. This paper includes:

1. A listing of Titles and Chapters of *Nevada Revised Statutes* (NRS) that fall under the jurisdiction of the Judiciary Committee;
2. A summary and brief explanation of certain major topics addressed by the Assembly Committee on Judiciary during the 2001 Legislative Session;
3. An overview of issues likely to be considered by the Assembly Committee on Judiciary during the 2003 Legislative Session, including studies conducted during the 2001-2002 interim;
4. Deadlines for requesting, introducing and passing legislation during the 2003 Session; and
5. A list of key judiciary state agencies, public officials, and interest groups.

Additional information regarding the issues discussed in this paper is available upon request.

#### I. THE JURISDICTION OF THE COMMITTEE

The Assembly Committee on Judiciary has jurisdiction over measures affecting primarily the following Titles and Chapters of NRS, except measures affecting state and local revenue, which are referred to the Assembly Committee on Taxation.

- Title 1—State Judicial Department, with the exception of Judicial Retirement (Chapter 1A), which is under the jurisdiction of the Committee on Ways and Means.

- Title 2–Civil Practice
- Title 3–Remedies; Special Actions and Proceedings
- Title 4–Witnesses and Evidence
- Title 5–Procedure in Juvenile Cases
- Title 6–Justices’ Courts and Civil Procedure Therein
- Title 7–Business Associations; Securities; Commodities
- Part of Title 8–Commercial Instruments and Transactions. The Committee has jurisdiction over the following chapters of Title 8:
  - ✧ Chapter 101–Joint Obligations (Uniform Act)
  - ✧ Chapter 102–Interparty Agreements (Uniform Act)
  - ✧ Chapter 104–Uniform Commercial Code – Original Articles
  - ✧ Chapter 104A–Uniform Commercial Code – Additional Articles
- Title 9–Security Instruments of Public Utilities; Mortgages; Deeds of Trust; Other Liens
- Part of Title 10–Property Rights and Transactions. The Committee has jurisdiction over the following chapters of Title 10:
  - ✧ Chapter 111–Estates in Property; Conveyancing and Recording
  - ✧ Chapter 112–Fraudulent Transfers
  - ✧ Chapter 113–Sales of Real Property
  - ✧ Chapter 115–Homesteads
  - ✧ Chapter 116–Common-Interest Ownership (Uniform Act)
  - ✧ Chapter 120–Disclaimer of Interests in Property
  - ✧ Chapter 120A–Disposition of Unclaimed Property (Uniform Act)

- Title 11–Domestic Relations
- Title 12–Wills and Estates of Deceased Persons
- Title 13–Guardianships; Conservatorships; Trusts
- Title 14–Procedure in Criminal Cases
- Title 15–Crimes and Punishments
- Title 16–Correctional Institutions; Aid to Victims of Crime
- Part of Title 20–Counties and Townships; Formation, Government and Officers. The Committee has jurisdiction over one chapter in Title 20:
  - ✧ Chapter 253–Public Administrators and Guardians
- Title 41–Gaming; Horse Racing; Sporting Events
- Part of Title 42–Protection from Fire; Explosives. The Committee has jurisdiction over one chapter in Title 42:
  - ✧ Chapter 475–Crimes and Responsibilities Concerning Fires
- Part of Title 43–Public Safety; Vehicles; Watercraft. The Committee has jurisdiction over the following chapters and sections of Title 43:
  - ✧ Chapter 480–Administration of Laws Relating to Public Safety
  - ✧ Certain sections of Chapter 484–Traffic Laws: NRS 484.377 through 484.3947, inclusive, “Reckless Driving; Driving Under the Influence of Intoxicating Liquor or Controlled or Prohibited Substance; and Evaluation and Treatment for Alcohol or Drug Abuse”; and NRS 484.791 through 484.817, inclusive, “Procedure Upon Arrest.”
- Part of Title 46–Mines and Minerals. The Committee has jurisdiction over one chapter in Title 46:
  - ✧ Chapter 520–Mining Corporations and Partnerships

## II. THE 2001 LEGISLATIVE SESSION

During the 2001 Legislative Session, the Assembly Committee on Judiciary received more bills and resolutions than any other Assembly committee, with the exception of the Committee on Ways and Means. Out of 189 measures referred to the Assembly Judiciary Committee, the Committee approved or reported out 140 bills, of which the Governor signed 101. This means that 72 percent of the total bills approved by the Committee became law.

The following is a brief discussion of the primary issues addressed by the Assembly Committee on Judiciary during the 2001 Session, including the criminal justice system, civil law and liability, the courts, domestic relations, gaming, and driving under the influence (DUI).

### A. 2001 Legislative Measures on the Criminal Justice System

One of the primary topics for which the Assembly Committee on Judiciary is responsible, is the operation of the criminal justice system. In 2001, the Committee considered numerous bills in this topic area, and an overview of some of the major bills follows.

#### Crimes and Penalties

Each year, the Legislature reexamines the penalties for crimes in Nevada. In 2001, the Legislature increased the penalties for many crimes, including: (1) domestic violence; (2) aggravated stalking; (3) assault and battery on an officer; (4) sexual conduct between pupils and persons of authority at schools; and (5) the abuse or neglect of children.

In addition, the Legislature enacted bills to close certain "loopholes" in the criminal law. This legislation included crimes involving the use of explosive or incendiary devices, revising the definition of manufacturing of a controlled substance, tightening the definition of assault with a deadly weapon, and acts relating to theft of auto parts and repairs.

The Legislature also established penalties for certain actions that were not crimes in Nevada prior to 2001. Much of this legislation related to crimes committed through the use of new technology via computers and the Internet. Senate Bill 48 provides that a person who: (1) knowingly, willfully, and without authorization uses or gains access to a computer, system, network telecommunications device or service, or information service; and (2) causes an interruption or impairment of a public service, is guilty of a Category C felony. In addition, Senate Bill 551 provides that a person who commits the crime of stalking through the Internet or the use of electronic mail is guilty of a Category C felony if the person publishes, displays, or distributes the information in a manner that substantially increases the risk of harm or violence to the victim. Lastly, S.B. 551 prohibits luring a child, who is less than 16 years of age and who is at least five years younger than the person luring, through the use of a computer system or network and provides penalties based upon the intent of the violator.



## Criminal History Repository

In past sessions, the Legislature has increased the responsibilities of the criminal history repository for receiving and maintaining a variety of records generated by the criminal justice system. In 2001, the Legislature considered many substantive changes pertaining to the criminal repository. Two bills that failed to pass, and may be reconsidered in 2003, included: (1) Assembly Bill 146, which sought to establish a criminal statistical analysis center at the University of Nevada, Las Vegas; and (2) Assembly Bill 331, which would have authorized the central repository to conduct investigations and disseminate certain information concerning applicants for employment in, and employees of, private schools. Assembly Bill 331 also would have allowed current employers to request a record of criminal history on current or prospective employees or volunteers.

## Registration, Community Notification, and Parole and Probation

In 1995 and 1997, the Legislature established and enhanced the system of registration and community notification for felons, sex offenders, and offenders who commit violent crimes against children. In 2001, lawmakers streamlined the process for registration of sex offenders by eliminating certain duplicative procedures.

Senate Bill 412 provides that the offender must register and provide updated information only with local law enforcement and eliminates the requirement that the offender also provide this information to the Division of Parole and Probation. Senate Bill 412 also clarifies that the mandatory conditions of parole and probation, which must be imposed on certain sex offenders, may be modified in various circumstances with the approval of the offender's parole and probation officer. These conditions are also expanded to impose additional requirements regarding the use of prescription medication, prohibitions on possession of sexually related materials and patronizing sexually related businesses, and limitations on access to the Internet.

In the area of offender supervision, Senate Bill 194 ratifies the Interstate Compact for Adult Offender Supervision and repeals Nevada's Uniform Act for out-of-state parolee supervision. The bill specifies that the compact is designed to provide the framework for the promotion of public safety and to protect the rights of victims through the control and regulation of the interstate movements of offenders. The compact creates the Interstate Commission for Adult Offender Supervision and sets forth its organization, operation, and rulemaking authority.

## Juveniles

In past legislative sessions, lawmakers have established and strengthened the penalties for crimes committed by juveniles. In 2001, the Legislature enacted bills to provide early intervention and possibly help prevent future criminal activity by juvenile offenders. Other legislation affecting juveniles that passed allows for a child adjudicated delinquent to waive his right to counsel, and authorizes juvenile courts to establish a coroner visitation program for youthful offenders.

In an effort to protect Nevada's youth, legislation was enacted in response to the tragedy in southern Nevada where six youths were killed along the interstate while performing community service. Assembly Bill 27 prohibits the placement of juveniles, for purposes of community service programs, on or near a highway or in any other dangerous situation, unless certain safety precautions are taken.

### Criminal Procedure

The Legislature enacted several bills to improve the procedural operation of the criminal justice system. The changes include: (1) allowing statements of victims at sentencing hearings; (2) admissibility of former hearsay statements of minor children; (3) allowing witnesses to testify by audiovisual methods at grand jury proceedings; (4) stays of court proceedings for legislators employed as attorneys during the legislative session; (5) arrest procedures; (6) competency findings of defendants; and (7) genetic marker analysis for persons convicted of certain offenses.

Further, several changes were made to the process of sealing criminal records. Assembly Bill 294 lowers the age requirement, from 24 to 21 years of age, when all records relating to a child must be automatically sealed. However, A.B. 294 provides that the records of children who are adjudicated delinquent for certain sexual acts, that if committed by an adult would be a crime, must not be sealed at 21 years of age, and may be sealed upon petition at age 30.

Assembly Bill 328 reduces the period of time when a petition for sealing criminal records may be brought. For Category C and D felonies, the period is reduced from 15 to 12 years; for Category E felonies from 15 to 10 years; for gross misdemeanors from 10 to 7 years; and for misdemeanors from 5 to 3 years. In addition, this bill reduces the waiting period for restoration of a person's civil rights.

### Prisons

A variety of measures regarding the operation of jails and the prison system were enacted during the 71<sup>st</sup> Session. Assembly Bill 55 eliminates the requirement that the county jail must be located at the county seat. With the growing Nevada population, it has become clear that jails need to be located where the majority of the population resides.

In an omnibus bill requested by the Department of Prisons, Senate Bill 193 (S.B. 4 of the 17<sup>th</sup> Special Session) changes the name of the Department from the "Department of Prisons" to the "Department of Corrections." Senate Bill 193 also authorizes the Director of the Department to establish a system for offender management in each institution and facility. Finally, the bill allows the Director to develop and implement, within each institution and facility, a program of facility training for the correctional staff.

## Concealed Weapons

Issues surrounding public safety and a citizen's right to carry a firearm are debated each session in Nevada. In 2001, the Legislature revisited, and subsequently acted on, issues that were previously considered during the 1999 Session.

**Senate Bill 20** allows for a non-Nevada resident to apply for a permit to carry a concealed weapon in Nevada. Also, **Senate Bill 172** removes the current limitation of two concealed firearms and allows a person to be issued a concealed weapon permit for an unlimited number of firearms.

## Domestic Violence

During the 2001 Legislative Session, the judiciary committees heard a number of bills specifically relating to domestic violence.

Some of the measures that passed were directed at streamlining procedures for obtaining protective orders and the admissibility of statements regarding abuse in evidence. In addition, safeguards were enacted to allow an employer or an authorized agent of an employer, who reasonably believes that harassment in the workplace has occurred, to file an order for protection against workplace harassment.

## Death Penalty

With a growing national focus on the fairness and effectiveness of the death penalty system, the issue was the source of much debate during the 2001 Legislative Session. There were several measures introduced relating to the death penalty, with topics including: (1) abolishing the death penalty; (2) abolishing the death penalty for the mentally retarded; (3) raising the minimum age for those who could be eligible for the death penalty; (4) providing for post-conviction genetic marker testing; and (5) revising the procedural process to ensure that the defendant argued last. While spirited debate on this topic occurred throughout the Session, and several of the bills were amended, all of the aforementioned measures failed to pass.

Ultimately, and in response to the number and complexity of the issues raised during the 2001 Session, **Assembly Concurrent Resolution No. 21 (A.C.R. 3 of the 17<sup>th</sup> Special Session)**, was introduced and adopted to create a comprehensive legislative interim study of the death penalty system in Nevada. A full discussion of the interim study follows in this report under Subsection III (Selected Issues for the 2003 Legislature).

## Other Significant Legislation

Over 275 measures were considered by both of the judiciary committees, and several measures warrant further and separate discussion.

One of the major bills of the 2001 Session pertained to medical marijuana. Assembly Bill 453 authorizes the use of marijuana for treatment of certain medical conditions, including AIDs, cancer, glaucoma, cachexia, persistent muscle spasm, seizures, severe nausea, severe pain, and any other medical condition that is classified as chronic or debilitating. The bill further establishes a procedure for distribution of medical marijuana through a registry identification card system maintained by the State Department of Agriculture. Lastly, A.B. 453 reduces the penalties for possession of one ounce or less of marijuana from a felony to a misdemeanor for a first or second offense.

Another issue that has received recent national media attention is that of racial profiling. Assembly Bill 500 amends the NRS to state that a peace officer shall not engage in racial profiling, which is defined as “reliance by a peace officer upon the race, ethnicity, or national origin of a person as a factor in initiating action.” This act further directs the Office of the Attorney General to conduct a study of traffic stops by the Nevada highway patrol and by local law enforcement agencies in counties whose population is 100,000 or more.

## **B. Civil Law and Liability**

The 2001 Legislature considered a variety of measures revising Nevada’s corporate and civil laws. Much of the focus of these bills was on updating Nevada’s business laws and keeping pace with the developing world of electronic commerce by authorizing new methods of conducting state, corporate, and personal business electronically. We also considered several bills to clarify and limit governmental, corporate, and individual liability.

### Updating Nevada’s Business Laws

Each session, the Committee considers omnibus bills to update Nevada’s business laws and maintain its image as the “Delaware of the West.” The Business Law Section of the State Bar of Nevada and the Office of the Secretary of State are often the primary sponsors of bills based upon their review of Nevada’s and other states’ laws during the interim. In 2001, the Legislature passed an extensive measure (Senate Bill 51), which created procedures to attract new business Nevada and facilitated existing business operations in Nevada, including the streamlining procedures for filing various documents with the Office of the Secretary of State.

The Legislature also enacted two measures to facilitate corporate and personal business conducted electronically, while including certain protections for consumers and individuals. Senate Bill 49 adopts the Uniform Electronic Transactions Act in Nevada and authorizes (but does not mandate) the use of electronic records and electronic signatures in transactions that are not subject to the *Uniform Commercial Code*. Further, S.B. 49 applies only to transactions in which each party has agreed to conduct them electronically. The second measure, Senate Bill 33, authorizes individuals to create wills and trusts electronically under certain circumstances.

### Limitations on Civil Liability

The Committee often considers legislation involving the civil liability of individuals, businesses and governmental entities. Measures enacted in 2001 include bills to clarify the liability of corporate officers and stockholders under certain circumstances (**Senate Bill 577**), and prohibit confidentiality provisions in agreements to settle a claim or action brought against the state or one of its political subdivisions (**Assembly Bill 277**).

### Common-Interest Communities

An issue of great concern to homeowners is how common-interest associations (or homeowners' associations) are managed. The Legislature has enacted several measures in recent sessions to ensure members receive due process and are allowed full participation in the operation of their association. However, the underlying issues remain contentious and lawmakers continue to receive many complaints.

Several bills were introduced in 2001 to address ongoing problems and a great deal of discussion and negotiation occurred in both houses. In the end, only one measure passed. **Assembly Bill 38** authorizes the notice of a homeowners' or executive board meeting to be sent by electronic mail to a member who requests electronic notification, if the association offers to send notice by electronic mail.

### Construction Defects

Construction defect issues are closely related to common-interest community matters because many of the largest and most complex defect cases are brought by homeowners' associations. Like the measures addressing common-interest association issues in 2001, the construction defect bills failed to pass or were enacted in a greatly attenuated format.

The major bill on this issue was **Assembly Bill 133 (A.B. 3 of the 2001 Special Session)**. The measure passed both houses in dramatically different forms but was ultimately limited to a single, narrow issue in conference committee. This measure requires that an affidavit accompany an action submitted by an attorney, on behalf of a complainant, concerning professional negligence by a design professional.

### **C. Medical Malpractice**

In 2002, the Legislature met in a special session to address the crisis of the rising cost and unavailability of medical malpractice liability insurance. In response, the Legislature passed **Assembly Bill 1 of the 2002 Special Session**, which provides new limits on the civil liability of health care providers, establishes a \$350,000 limit on noneconomic damages that may be awarded in a medical malpractice action, eliminates the use of pretrial screening panels, requires judicial training in such actions, and establishes new reporting requirements for actions or claims of medical malpractice.

This issue will continue into the 2003 Session, as numerous bill drafts have been requested on this topic, and an initiative petition to further revise Nevada's civil liability laws qualified for submission to the Legislature.

#### **D. Courts**

The 2001 Legislature considered many important measures relating to the court system. To address the continuing increase in caseloads of the state courts, the Legislature once again considered measures to increase the number of judges in certain courts and to create an appellate court between the district courts and the Supreme Court. Other legislation focused on the compensation of judges and the creation of an innovative type of program within the district court to address a growing problem within the criminal justice system: a program specifically for the treatment of mentally ill offenders.

##### District Court Program for the Treatment of Mentally Ill Offenders

To address the increasing number of offenders with serious mental illnesses, the Legislature considered and enacted Senate Bill 366 (S.B. 6 of the 2001 Special Session). The bill authorizes a district court to establish an appropriate program for the treatment of mental illness, and provides that a justice's court or a municipal court may transfer original jurisdiction to the district court if the case involves an eligible defendant. The district court may assign defendants to the program who suffer mental illness and who are found guilty or who tender a plea of guilty, guilty but mentally ill, or nolo contendere.

##### Increasing Judges and Changing Court Structure

The 2001 Legislature increased the number of district court judges in certain jurisdictions, and also restarted the 6-year process to amend the *Nevada Constitution* to establish an intermediate appellate court.

In response to the continuing increase in caseloads in the Second and Eighth Judicial Districts, the Legislature increased from 11 to 12 the number of district judges in the Second Judicial District in Washoe County, and also added a fourth Family Court Judge in that same district. Additionally, legislation was passed to increase from 30 to 33 the number of district judges in the Eighth Judicial District in Clark County, and to add a 12<sup>th</sup> family court judge in that same district.

It is relevant to note that the 2001 Legislature also approved a resolution to amend the *Nevada Constitution* to create an intermediate court of appeals between the district courts and Nevada's Supreme Court. In the Assembly, this measure was referred to the Committee on Constitutional Amendments. If Assembly Joint Resolution No. 12 is passed in identical form by the 2003 Session of the Nevada Legislature, it will be forwarded to Nevada's voters for final approval or disapproval at the 2004 General Election.

## **E. 2001 Legislative Measures on Domestic Relations**

In 2001, the Committee examined many difficult issues involving foster care and adoption, domestic violence, child abuse and neglect, and child support. Significant legislation passed to integrate the delivery of foster care and adoption services in Nevada's two largest counties and to provide more stability for children and families involved in these services. The Committee also reviewed and adjusted Nevada's child support formula to reflect the cost of raising a child today. And more protection was provided for victims of domestic violence, and the penalties for the abuse of a child were raised.

### **Adoption and Foster Care**

Following testimony on the inadequacies of Nevada's "bifurcated" child welfare system during the 1999 Session and an intense review by a legislative committee during the interim, the Committee considered and approved sweeping changes to integrate the child welfare system. **Assembly Bill 343 (which passed as Assembly Bill 1 of the 17th Special Session)** gradually transfers specified duties of the Division of Child and Family Services (DCFS) to Clark and Washoe counties. These duties include case management functions for foster care and adoptions; emergency shelter care; family foster care; and other related child welfare programs. The child welfare functions and responsibilities in Nevada's other counties remain with the state.

The Committee also passed other measures to improve adoption and foster care, including **Assembly Bill 535**, which requires a county clerk to reduce the total filing fee to not more than \$1 for a petition to adopt a child with special needs if the agencies involved consent to the adoption. All court costs of the proposed adoptive parents in such adoption proceedings must also be waived.

### **Child Custody and Visitation**

In the area of child custody and visitation, the issue of a grandparent's right or ability to seek visitation with a grandchild received extensive consideration. **Senate Bill 25** expands Nevada's existing law authorizing grandparents, great-grandparents, and other children of either parent of a child to seek visitation. Under the bill, these individuals may now petition for the right to visit a minor child if the parent has prohibited or unreasonably restricted visitation. Procedures are set forth to rebut a presumption that granting the right to visit is not in the best interest of the child.

### **Domestic Violence**

In recent sessions, the Committee has actively worked to protect victims of domestic violence, and focused in 2001 on fine-tuning the procedural aspects of these laws.

The procedures governing orders for protection against domestic violence were revised under Assembly Bill 377. Existing law required that courts in Clark County be available at all times to issue temporary and extended orders for protection against domestic violence, and this measure expands this requirement to Washoe County and Carson City. Additionally, A.B. 377 provides that persons arrested for violating a protective order will not be released on bail sooner than 12 hours after being arrested if the violation is accompanied by a direct or indirect threat of harm.

Other measures enacted include Assembly Bill 581, which clarifies the authority of a law enforcement officer in Nevada to enforce foreign domestic violence orders, and Senate Bill 87, which provides access to counseling and financial aid for children involved in domestic violence situations.

### Child Abuse and Neglect

Criminal and procedural measures to assist victims of child abuse and neglect were also passed in 2001. Pursuant to Assembly Bill 429, an attorney may represent a child at all stages of proceedings involving the protection of children from abuse and neglect. If an attorney represents the child, the attorney has the same authority and rights as an attorney representing a party to the proceedings. These same protections also apply in proceedings involving guardianships and the termination of parental rights.

In addition, Senate Bill 179 provides that the statement of a child under the age of ten describing any act of physical abuse of the child is admissible in a criminal proceeding under certain circumstances. Penalties for child abuse and neglect were raised under Senate Bill 546, and Assembly Bill 239 authorizes additional fees in district and justice courts to offset certain costs of providing pro bono programs and free legal services to abused or neglected children and victims of domestic violence.

### Child Support

As required by Nevada law prior to 2001, the State Bar of Nevada submitted recommendations to the 2001 Legislature for revisions of the state's child support formula. After lengthy deliberations, the Committee passed Assembly Bill 37, which increases, from the current \$500 per month, the presumptive maximum monthly amount of child support that a parent who meets certain monthly income levels may be required to pay.

The presumptive maximum increases by \$50 for each monthly income range, up to a maximum of \$800. The bill further provides that the cap may be adjusted annually, in an amount established by the consumer price index, as published by the United States Department of Labor. The bill is effective on April 1, 2002, to allow the Office of the Court Administrator to adjust the presumptive maximum amounts based on the Consumer Price Index.



## F. 2001 Legislative Measures on Gaming

*Nevada Revised Statutes* 463.0129 sets forth Nevada's policy concerning gaming. The Legislature has declared "the gaming industry is vitally important to the economy of the state and the general welfare of the inhabitants." The statute stresses strict regulation of the gaming industry by means of licensing, controlling, and assisting activities related to gaming. In response, the state has developed a system designed to regulate many of the aspects of gaming, including the taxation of gaming establishments.

The gaming industry is paramount to the vitality of Nevada's economy. During the 2001 Legislative Session, the Legislature considered and adopted significant legislation designed to keep Nevada at the forefront of the world gaming market. The bills enacted last session authorize new forms of gaming activity and clarify state policy regarding Internet gaming, gaming work permits, salon gaming, college sports wagering, and neighborhood gaming. In addition, numerous bills were introduced but failed to pass, including legislation seeking to: (1) raise the gross gaming tax; (2) authorize bingo for retirement communities; (3) restrict the location of casinos in Clark County; and (4) allow for a state lottery.

### Internet Gaming

With the rise of offshore Internet gaming sites, there has been an impetus to ensure that Nevada gaming remains a leader in the new economy. Assembly Bill 466, which was an omnibus gaming bill, provides for "interactive gaming." The act defines interactive gaming as "the conduct of gambling games through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality, to transmit to a computer information to assist in the placing of a bet or wager." This measure authorizes the Nevada Gaming Commission to adopt regulations governing the licensing and operation of interactive gaming, and makes it a Category B felony to operate such gaming activities without first obtaining all appropriate licenses as may be required by the Nevada Gaming Commission.

### Gaming Work Permits

During the interim, issues were raised as to the discrepancies between Nevada counties regarding gaming work permits (work cards). Current Nevada law specifies that all gaming employees must have a gaming work permit; however, the application process has been left to local law enforcement agencies. Problems identified include: (1) varying amounts charged for the issuance of a permit; (2) the length of validity of a permit; (3) required background checks; and (4) reciprocity with other counties. Assembly Bill 466 was introduced to remedy these problems.

Assembly Bill 466 provides for the issuance of uniform statewide work permits for gaming employees. Further, the measure states that the fee for such a permit may not exceed the amount needed to cover the actual investigative and administrative costs related to processing

the application. The bill further directs the Nevada Gaming Commission to adopt regulations to carry out the primary provisions of this act, and to transmit a copy of those regulations to each county and city licensing authority that issues gaming work permits by January 1, 2003.

### Salon Gaming

Testimony indicated that in an effort to attract more business to Nevada and to remain at the forefront of the gaming world, private gaming rooms were needed to attract high-limit patrons. In response, the 2001 Legislature passed legislation allowing for international gaming salons.

**Senate Bill 283** authorizes a resort hotel that holds a nonrestricted license to apply to the state Gaming Control Board for a license to operate an international gaming salon. The Board must prescribe the appropriate forms, and a nonrefundable fee of \$5,000 must accompany the application. The bill also requires the Nevada Gaming Commission to adopt regulations setting forth the policies and procedures for the approval of a license to operate an international gaming salon and the standards of operation for such a salon. These standards of operation must include surveillance and security systems, the games offered, and the minimum wager for any game offered.

### Sports Wagering

In response to a growing national movement in Congress to prohibit Nevada from allowing legal sports wagering on collegiate athletics, members of the Nevada Legislature passed **Assembly Joint Resolution No. 2** and **Assembly Bill 466**.

**Assembly Joint Resolution No. 2** urges Congress to refrain from enacting any measure to repeal the ability of Nevada to license and regulate sports wagering. Further, the resolution urges Congress to enact the National Collegiate and Amateur Athletic Protection Act of 2001, which would enable the nation to identify and address illegal sports wagering.

The concerns raised centered on whether prohibiting the regulation of legal sports wagering on college athletics would have an adverse effect on the economy of this state, and would deprive this country of a vital defense against illegal sports wagering and identifying point shaving schemes. In response, **Assembly Bill 466** also contains provisions strengthening the prohibitions on illegal activity associated with fixed sporting events.

### **G. 2001 Legislative Measures on Driving Under the Influence**

Drunk driving continues to be an important issue in Nevada and throughout the country. Over the past decade, drunk drivers have killed more than 1,000 Nevadans. Thousands more have been injured or suffered damage to their vehicles. Although driving under the influence of alcohol (DUI) has been illegal in Nevada for more than 70 years, and Nevada's laws are among the strictest in the nation, it continues to be a leading cause of accidents.

As it has done now for the past several sessions, the Legislature considered but did not pass proposed legislation to reduce, from 0.10 to 0.08, the concentration of alcohol that may be present in the blood or breath of a person while operating a vehicle or vessel. In October 2000, as part of the Fiscal Year (FY) 2001 Department of Transportation Appropriations Act, Congress passed, and the President signed into law, a provision making .08 blood alcohol concentration (BAC) the national standard for impaired driving. States that do not adopt .08 BAC laws by FY 2004 would have certain highway construction funds withheld. The .08 bill from the 2001 Session was Assembly Bill 166.

The 2001 Legislature passed two bills relating to treatment for DUI offenders—Assembly Bill 21 and Assembly Bill 315.

Assembly Bill 21 requires persons convicted of a second offense of driving under the influence of intoxicating liquor or a controlled substance within seven years to attend a mandatory alcohol and drug abuse treatment program. This measure also extends the maximum amount of time, from six months to one year, a person may be ordered to participate in a treatment program.

Assembly Bill 315 requires a person convicted of a first offense of driving under the influence of intoxicating liquor to attend a program of treatment when the offender's concentration of alcohol in the blood or breath is 0.18 or more.

### III. SELECTED ISSUES FOR THE 2003 LEGISLATURE

This section discusses selected issues that are likely to come before the Senate and Assembly Committees on Judiciary as a result of studies conducted during the 2001-2002 interim and federal laws affecting states.

#### A. Studies Conducted During the 2001-2002 Interim

The Judiciary Committees in the 2003 Session may consider bills or resolutions recommended by the following interim studies.

##### Death Penalty and Related DNA Testing

The 17<sup>th</sup> Special Session of the Nevada Legislature adopted Assembly Concurrent Resolution No. 3 (File No. 7, *Statutes of Nevada 2001 Special Session*), which directed the Legislative Commission to appoint a subcommittee to study the death penalty and related DNA testing. In response, a legislative subcommittee of eight members was appointed, with Assemblywoman Sheila Leslie serving as the Chairwoman.

The Subcommittee held six meetings, including a work session, over the course of the 2001-2002 Legislative Interim. Due to the extensive nature of the subject matter, each

Subcommittee meeting was scheduled to address specific agenda topics within the call of the resolution. The first meeting was largely informational and provided a topical overview and outline for the study. The second meeting focused on the impact of race, color, religion, national origin, gender, economic status, and the geographic location of defendants on decisions concerning charging, prosecuting, and sentencing in capital cases. In addition, the Subcommittee reviewed the statutory aggravating and mitigating circumstances for capital offenses, the competency and funding of counsel, and juror issues in capital cases.

The third meeting addressed the appeals process and error rates in capital cases. Other issues on that agenda included judicial functions, the use of three-judge panels, criminal trial procedure, the deterrent effect of the death penalty, and the perspective of victims of violent crime. Meeting four reviewed the potential uses, procedures, costs, and storage of DNA evidence. The fifth substantive meeting focused on the imposition of a death sentence on persons who are mentally retarded or under the age of 18 at the time of the offense. Additionally, the Subcommittee heard testimony on the discovery process and the costs of capital cases.

At the final work session meeting, the Subcommittee considered 32 recommendations and ultimately adopted 17 recommendations, including five bill draft requests (BDRs). The approved recommendations address the following major topics:

- Racial bias, gender, and economic discrimination, including statistical reporting in death penalty and homicide cases;
- Aggravating and mitigating circumstances;
- Competency and funding of counsel;
- Juries and jury instructions;
- Judicial functions and three-judge panels;
- Rules of procedure and argument;
- DNA evidence;
- Defendants diagnosed with mental retardation; and
- Costs of the capital punishment system.

### Misdemeanors

The 2001 Nevada Legislature adopted Assembly Concurrent Resolution No. 2 (File No. 6, *Statutes of Nevada 2001 Special Session*), which directed the Legislative Commission to conduct an interim study concerning misdemeanors. The study was ordered to determine if having categories of misdemeanors and penalties commensurate with Nevada's categories of felonies would provide more consistency in criminal statutory provisions. Assemblyman Mark Manendo chaired the subcommittee appointed to carry out this study.

The Subcommittee adopted six recommendations, including four bill draft requests (BDRs), for consideration by the 2003 Legislature. The recommendations address the following major topics:

- Crimes committed in prison;
- Domestic violence;
- Graffiti;
- Outdated laws; and
- Prosecutorial responsibility for state boards and commissions.

#### **B. Federal Issues Affecting the States**

Certain legislation enacted by the United States Congress requires action by the states to bring their statutes into compliance in order to continue to receive federal funding for various state programs. An overview of one major bill that contains issues that may be considered again by the Assembly Judiciary Committee follows.

##### **National .08 Standard for Impaired Driving**

In October 2000, as part of the Fiscal Year (FY) 2001 Department of Transportation Appropriations Act, Congress passed, and the President signed into law, a provision making .08 blood alcohol concentration (BAC) the national standard for impaired driving. States that do not adopt .08 BAC laws by FY 2004 would have certain highway construction funds withheld.

The Act requires that each state must have a law in effect that complies with the criteria established under Section 163 (Incentive Grant Program for 0.08 BAC), of Title 23 of the *United States Code*. Each state must enact and enforce a law providing that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the state shall be deemed to have committed the per se offense of driving while intoxicated or an equivalent per se offense.

States that do not adopt .08 BAC laws by FY 2004 would have 2 percent of certain highway construction funds withheld. The penalty increases, by 2 percent each year, to 8 percent in FY 2007 and thereafter. States adopting the standard by FY 2007 would have any withheld funds returned.

As noted earlier, the 2001 Legislature considered, but did not pass, a measure (Assembly Bill 166) to reduce the state's BAC.

#### IV. 120-DAY SESSION DEADLINES

This portion of the Committee Brief summarizes the schedule imposed by the *Constitution of the State of Nevada*, the *Nevada Revised Statutes*, and the joint rules, regarding the 120-day Legislative Session:

- **February 10:** Final BDRs for legislators due (limit of 2 per member of the Assembly).
- **February 24:** Final committee BDRs due (limit of 50 committee requests for each house, allocated by the leadership).
- **March 17:** Introduction of all bills requested by an individual legislator.
- **March 24:** Introduction of all bills requested by a standing committee.
- **April 11:** All bills to be passed (if at all) out of committee of reference in house of origin.
- **April 22:** All bills to be passed (if at all) out of house of origin.
- **May 16:** All bills to be passed (if at all) out of the committee of reference in the second house.
- **May 23:** All bills to be passed (if at all) out of the second house.

## V. LIST OF KEY JUDICIARY CONTACTS

### STATE AGENCIES AND PUBLIC OFFICIALS

#### Office of the Governor (775/684-5670)

Kenny C. Guinn, Governor  
Marybel Batjer, Chief of Staff  
Michael Hillerby, Deputy Chief of Staff  
Keith Munro, General Counsel  
Jerry Bussell, Special Advisor on  
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#### Office of the Attorney General (775/684-1100)

Brian Sandoval, Attorney General  
Ann Wilkinson, Assistant Attorney General  
Jonathan Andrews, Special Assistant  
Attorney General  
Jeff Parker, Solicitor General,  
Litigation Division  
Charlotte Matanane Bible, Chief Deputy  
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#### Office of the Secretary of State (775/684-5708)

Dean Heller, Secretary of State  
Renee Parker, Chief Deputy Secretary of State

#### Department of Business and Industry (775/687-4250)

Sydney H. Wickliffe, C.P.A., Director

#### Division of Insurance (775/687-4270)

Alice A. Molasky-Arman, Commissioner

#### Department of Corrections (775/887-3285)

Jackie Crawford, Director  
Glen Whorton, Assistant Director,  
Operations, Northern Nevada

#### Department of Human Resources (775/684-4000)

Michael J. Willden, Director

#### Division of Child and Family Services (775/684-4400)

Edward E. Cotton, Administrator

#### Bureau of Alcohol and Drug Abuse (775/684-4190)

Maria Canfield, Chief

#### Welfare Division (775/684-0500)

Nancy K. Ford, Administrator  
Leland Sullivan, Chief, Child Support  
Enforcement

#### Office of the State Public Defender (775/687-4880)

Steven G. McGuire, State Public Defender

#### Department of Motor Vehicles (775/684-4549)

Virginia (Ginny) Lewis, Director  
Dana Mathiesen, Deputy Director,  
Public Safety

#### Department of Public Safety (775/684-4808)

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David Kieckbusch, Deputy Director,  
Public Safety  
Jeff Artz, Acting Program Manager,  
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#### Division of Parole and Probation (775/687-5040)

Amy Wright, Chief

**STATE AGENCIES AND  
PUBLIC OFFICIALS (cont.)**

**State Board of Parole Commissioners**  
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Dorla M. Salling, Chairman  
Susan J. McCurdy, Executive Secretary

**State Board of Pardons Commissioners**  
**(775/687-5049)**

Kenny C. Guinn, Governor, Chairman  
Susan J. McCurdy, Executive Secretary

**State Gaming Control Board**  
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Dennis K. Neilander, Chairman  
Scott Scherer, Board Member  
Bobby L. Siller, Board Member

**Nevada Gaming Commission**  
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Peter C. Bernhard, Chairman

**Nevada Supreme Court**

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Supreme Court Law Library  
**(775/684-1640)**

**Administrative Office of the Courts**  
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Ron Titus, Director

**Commission on Judicial Discipline**  
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Frank Brusa, Chairman

**INTEREST GROUPS**

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