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**JUSTICE AND MUNICIPAL COURT OF CARSON TOWNSHIP**  
**CARSON CITY, NEVADA**

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**JUDGE JOHN TATRO**  
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**MEMORANDUM**

**DATE:** January 24, 2003

**TO:** Members of the Senate and Assembly Judiciary Committee

**FROM:** Robey B. Willis, Chairman *RBW*  
Mandatory Minimum Sentencing Review Commission

**SUBJECT:** BDR 43-606 Changes in DUI Sentencing and BDR 3-608 More Flexibility for Prosecutors and Judges in Cases Concerning Domestic Battery

The Supreme Court has authorized the formation of the Mandatory Minimum Sentencing Review Commission over the past several years. It consists of judges, prosecutors and defense attorneys. Its purpose is to review mandatory minimum sentencing at the misdemeanor level, identify areas of concern, and recommend changes to current law.

As directed by the Chairman of the Assembly Judiciary last session, the Commission requested separate bill draft requests be developed and introduced for the Driving Under the Influence (DUI) and domestic battery issues. It was felt each of these areas should be dealt with separately. Consequently, the Commission drafted language for two separate bill drafts and these amendments are reflected in BDR 43-606 (DUI) and BDR 3-608 (Domestic Battery). The following is a summarization of the major changes being requested in each of the two bill drafts.

The domestic battery bill draft (BDR 3-608) contains the following changes:

1. It provides prosecuting attorneys with more discretion concerning the filing of charges in domestic battery cases. The current law is extremely inflexible and stringent. As a result, it has forced prosecutors to file charges on most domestic battery cases, even those which should not be prosecuted.

2. The current law mandates specific penalties and does not allow judges discretion in sentencing domestic battery cases. This amendment would allow judges the ability to make judgments concerning the penalties to be imposed based on the facts and

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circumstances of each case. It allows discretion in imposing a jail sentence with a minimum of 2 days in jail and/or 48 to 120 hours community service on a first offense. This is the same discretion allowed a judge on a first DUI. The amendment would also provide the ability to order community service in lieu of a fine on a second offense.

3. Another amendment being requested is the deletion of language stating "a person with whom he is or was actually residing" from the domestic violence definition. This excludes people who are simply roommates with no family or dating relationship from being prosecuted under the domestic battery statute. Laws already exist to handle non-domestic battery cases; different remedies are in place for one type of crime versus another.

The DUI bill draft (BDR 43-6063-608) contains minor amendments which are as follows:

1. The Commission recommends the return to 24 hours of community service rather than the current 48 hours for first offenders who successfully complete a substance abuse treatment program. The purpose is to provide an incentive to complete the treatment program. Defendants not completing the program are given a greater penalty of 48 hours of community service. This change would be consistent with the original mandatory minimum sentencing DUI statute passed in the 1980's.

2. Another amendment, which reverts the language to the original version of the law, would allow judges the discretion to impose a fine or order community service for a second DUI rather than mandating the imposition of both. It is the Commission's belief it would result in greater compliance by the defendants. Currently, there are so many conditions imposed, they often become overwhelmed and fail to complete all the requirements.

The Commission believes domestic battery and driving under the influence offenses are extremely serious matters. However, the judicial system needs flexibility in adjudicating cases. Each comes to the court with its own set of circumstances, facts, and history. All offenses are not equal and judges must be given the discretion to evaluate each and make decisions within the confines of the law to ensure justice is served.

Thank you for your consideration of these matters. If you have any questions or need any additional information, please do not hesitate to contact me. We are looking forward to working with you during the upcoming session.

## Some room for discretion

**B**ecause of the emotion involved, domestic violence incidents have the greatest potential for escalating from a screaming match to homicide. They are among the most frequent and most difficult calls for police to handle, and prosecution of such cases can be as tricky as the messiest of divorce cases.

Nevada lawmakers tried to take the guesswork out of domestic battery cases by taking out any discretion in the law.

If there is any contact between the two people involved, one of them has to go to jail. It's impossible to say how many times this "cooling off period" has prevented a more serious injury, or even a death. We'd guess there have been many.

Similarly, prosecutors are not allowed to plea-bargain domestic battery cases. We know the difficulties in such cases, when the cold light of dawn often brings reconciliation between a husband and wife, when the temptation is to forgive and forget.

But we also understand the cycle of violence that too often leads the same couple back over the same battleground again and again.

Nevada legislators, through their get-tough laws, have sent the message domestic battery is a serious crime with serious consequences. But we agree with some lawmakers and justices of the peace who now say there needs to be room for discretion.

Laws that tie the hands of police, prosecutors and judges assume those people aren't capable of doing their jobs. If that were the case — and we don't think it is — then the answer would be to get somebody who can do the job.

In practice, we rely on police officers, lawyers and judges to be able to respond and react to every conceivable situation with their own best judgment. We trust they have the experience and common sense to do the right thing.

Will they be right every single time? No. But our system has checks and balances to see justice is done. Laws that are unable to distinguish between two brothers fighting and a potentially homicidal husband aren't right every single time, either.

Exactly because of the broad spectrum of domestic violence incidents, law enforcement needs some flexibility. Legislators who will be studying the issue can craft laws to support officers, prosecutors and judges, not attempt to replace them.