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May 6, 2003

Honorable Bernie Anderson
Chairman, Assembly Judiciary Committee
Nevada Legislature
401 S. Carson Street
Carson City, NV 89701-4747

Re: SB 316 – Pertaining to Issuance of Search Warrants

Dear Chairman Anderson:

My name is Gerald Gardner, Chief of the Attorney General's Criminal Justice Division. On behalf of Attorney General Brian Sandoval, I would like to thank you for the opportunity to testify in support of Senate Bill No. 316.

The Attorney General's Office prosecutes between 20 and 30 investigations or prosecutions per year in which we draft and execute search warrants, or assist other agencies in drafting and executing search warrants.

SB 316 is therefore very important to us in resolving any confusion that may currently exist in the execution of search warrants under NRS 179.045. Recently, the Nevada Supreme Court issued an opinion in the case of *State v. Allen*, 118 Nev. _____, 60 P.3d 475 (2002) that revealed some potential ambiguities in certain provisions of NRS 179.045. In particular, *Allen* opined that NRS 179.045 required the physical attachment of a search warrant affidavit to the warrant itself. This is an interpretation that Nevada prosecution and law enforcement agencies had never previously seen. Alternatively, *Allen* required that the search warrant contain a statement of probable cause within the four corners of the warrant itself. This is an interpretation that creates severe conflicts with other law enforcement objectives, such as the sealing of affidavits and the protection of confidential informants.

The effects of *Allen* have already been felt throughout the criminal justice system. Our office has found it necessary to abandon telephonic search warrant procedures due to concerns that we would be unable to satisfy the dictates of *Allen*. It

ASSEMBLY JUDICIARY

DATE: 5-07-03 ROOM 3138 EXHIBIT D

SUBMITTED BY: Gerald Gardner

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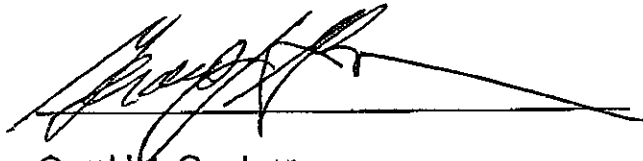
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is important to note that telephonic warrants serve to protect the interests of the public as well as the police agencies, because they minimize the delay in freezing of premises or detention of persons in vehicles while waiting for a written search warrant. Law enforcement agencies are also being forced to reconsider the use of sealed affidavits since, under the *Allen* interpretation, NRS 179.045 requires a police agency to essentially reveal the facts of the sealed affidavit in the warrant itself. This will compromise investigations, place police informants in danger, and deter witness cooperation in the prosecution of many crimes.

SB 316 goes to great lengths to guarantee the targets of a search warrant the protections they are entitled to, such as requiring that the affidavit or oral statement be filed with the court within 10 days of execution of the warrant – unless sealed by the court – and requiring specificity in describing the premises and property to be searched. SB 316 also acknowledges the concerns of the *Allen* court by providing new protections that were not – prior to *Allen* – required by NRS 179.045: that the person whose affidavit has been taken in support of the warrant be named in the warrant itself.

We are very optimistic that SB 316 will resolve any legal ambiguity in NRS 179.045 that the *Allen* decision may have been based upon, while providing the public with all of the protections of the Constitutions of the United States and Nevada.

Best Regards,



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