

SHUFFLING THE DECK: THE ROLE OF THE COURTS IN PROBLEM GAMBLING CASES

Judge Cheryl B. Moss

PREFACE

It is my pleasure and honor to introduce this article, written by Judge Cheryl Moss, a sitting family court judge for the Eighth Judicial District Court of Nevada. Judge Moss was first elected to the bench in 2000 and has extensive knowledge about problem gambling and the efforts of the judiciary to address problem gambling cases in Nevada. She was the first judge in Clark County to initiate a pilot program on problem gambling assessments for parents in child custody cases and has been recognized on multiple occasions for her advocacy and compassion for problem gamblers and their families. Problem gambling is particularly acute in a state like Nevada, with a long history of legalized gambling, and Judge Moss has been at the forefront of efforts to develop and modernize the state's approach to individuals with gambling disorders who become involved in the legal system.

Legal gambling has a long history in the United States and approximately 125 million American adults engage in some type of gambling behavior each year.¹ Of those, most do not experience any negative consequences as a result of their gambling.² But for some, gambling can have negative effects on behavior and functioning and if those effects become severe and persistent, that individual can be said to have a gambling disorder.³ Of the 125 million adults

¹ NAT'L GAMBLING IMPACT STUDY COMM'N, NAT'L GAMBLING IMPACT STUDY COMM'N FINAL REPORT 4-1 (1999) <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>. "86 percent of Americans report having gambled at least once during their lives. Sixty-eight percent of Americans report having gambled at least once in the past year." *Id.* at 1-1.

² *Id.*

³ See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF METAL DISORDERS, 5TH EDITION § 312.31 (2013). The DSM-5's diagnostic criteria for problem gambling includes "[p]ersistent and recurrent problematic gambling behavior leading to clinically significant impairment or distress, as indicated by the individual exhibiting four (or more) of the following in a 12-month period:

- a. Needs to gamble with increasing amounts of money in order to achieve the desired excitement.

who gamble each year in this country, approximately 1.5% of those individuals—or about 3 million people—will meet the diagnostic criteria for problem gambling at some point in their lifetime.⁴

A gambling disorder can have a profound impact on an individual's quality of life, level of functioning, and interpersonal relationships.⁵ Moreover, and perhaps unsurprisingly, many individuals who suffer from problem gambling will ultimately become involved in the legal system. "As access to money becomes more limited, gamblers often resort to crime in order to pay debts, appease bookies, maintain appearances, and garner more money to gamble."⁶

Problem solving courts, which are meant to "accommodate offenders with specific needs and problems that were not or could not be adequately addressed in traditional courts,"⁷ have proliferated throughout the United States over the last several decades. In 1989, the first drug court was established in Miami-Dade County, Florida.⁸ This special court was conceived of as a way to provide

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- b. Is restless or irritable when attempting to cut down or stop gambling.
 - c. Has made repeated unsuccessful efforts to control, cut back, or stop gambling.
 - d. Is often preoccupied with gambling (e.g., having persistent thoughts of reliving past gambling experiences, handicapping or planning the next venture, thinking of ways to get money with which to gamble).
 - e. Often gambles when feeling distressed (e.g., helpless, guilty, anxious, depressed).
 - f. After losing money gambling, often returns another day to get even ("chasing" one's losses).
 - g. Lies to conceal the extent of involvement with gambling.
 - h. Has jeopardized or lost a significant relationship, job, or educational or career opportunity because of gambling.
 - i. Relies on others to provide money to relieve desperate financial situations caused by gambling." *Id.*

⁴ NAT'L GAMBLING IMPACT STUDY COMM'N, *supra* note 1, at 4-1, 4-5.

⁵ NAT'L RES. COUNCIL: COMM. ON BEHAV. & SOC. SCIENCES & EDUC.: COMM. ON THE SOC. & ECON. IMPACT OF PATHOLOGICAL GAMBLING [&] COMM. ON LAW & JUSTICE, *PATHOLOGICAL GAMBLING: A CRITICAL REVIEW 2* (1999) (noting that "pathological gamblers engage in destructive behaviors: they commit crimes, they run up large debts, they damage relationships with family and friends, and they kill themselves").

⁶ *Id.* at 160 (citations omitted).

⁷ U.S. Dep't of Justice: Bureau of Justice Assistance—Office of Justice Programs, *What Are Problem Solving Courts*, BJA, <https://web.archive.org/web/20150910195439/https://www.bja.gov/evaluation/program-adjudication/problem-solvingcourts.htm> (last visited Dec. 12, 2015) (accessed by searching for <https://www.bja.gov/evaluation/program-adjudication/problem-solving-courts.htm> in the Internet Archive index).

⁸ RYAN S. KING & JILL PASQUARELLA, *THE SENTENCING PROJECT, DRUG COURTS: A REVIEW OF THE EVIDENCE 1* (2009).

addiction treatment to individuals whose involvement with the criminal justice system was likely due to an underlying addiction.⁹ Although drug courts are not without their critics,¹⁰ they have proved popular and by 2008, more than 55,000 people entered drug court each year.¹¹

Due to the popularity of the drug court model, many jurisdictions began creating other problem solving courts. Jurisdictions across the country have expanded the drug court model to include other specialty courts, including mental health courts, tribal courts, reentry courts, DWI courts, juvenile drug courts, domestic violence courts, and many others.¹² Today, jurisdictions in the United States run almost 3,000 drug treatment courts and more than 1,000 other problem solving courts, most of which are based on the original drug court model.¹³ As Judge Moss will discuss, however, while a few states have experimented with pretrial gambling diversion programs, dedicated gambling specialty courts are notably missing from the many and varied specialty courts that exist in every state in the country.

In this article, Judge Moss provides a series of reflections and extensive research on the history and development of gambling diversion programs throughout the United States, with a particular emphasis on Nevada. The article provides an overview of various states approaches to gambling diversion programs, as well as a close review of Nevada Assembly Bill 102, which created a gambling diversion statute in the state of Nevada. Next, the article considers problem gambling issues in family court from Judge Moss's perspective as a sitting family court judge. Finally, Judge Moss highlights public policy issues related to gambling diversion statutes, as well as the ways in which casinos have been involved in efforts to create and implement responsible gambling practices.

The Boyd School of Law and the *Gaming Law Journal* are very pleased to publish this unique perspective on the many challenges to the legal system that

⁹ *See id.*

¹⁰ *See* Morris B. Hoffman, *The Drug Court Scandal*, 78 N.C. L. Rev. 1437, 1477 (2000) ("By simultaneously treating drug use as a crime and as a disease without coming to grips with the inherent contradictions of those two approaches, drug courts are not satisfying either the legitimate and compassionate interests of the treatment community or the legitimate and rational interests of the law enforcement community.").

¹¹ AVINASH SINGH BHATI ET AL., JUSTICE POLICY CTR., THE URBAN INST. J.K. ROMAN, AND A. CHALFIN, TO TREAT OR NOT TO TREAT: EVIDENCE ON THE PROSPECTS OF EXPANDING TREATMENT TO DRUG-INVOLVED OFFENDERS xi-xii (2008).

¹² *Addicted to Courts: How a Growing Dependence on Drug Courts Impacts People and Communities*, JUST. POL'Y INST.18-20 (Mar. 2011), http://www.justicepolicy.org/uploads/justicepolicy/documents/addicted_to_courts_final.pdf [hereinafter *Addicted to Courts*]. Other problem-solving courts include truancy court, prostitution court, homelessness court, and many others. *Id.*

¹³ *See id.* at 2.

are presented by problem gambling, as well as the many insights Judge Moss has gleaned throughout her many years of service to Nevada.

-Sara Gordon, Associate Professor, UNLV/William S. Boyd School of Law

I. PROBLEM GAMBLING AND THE LEGAL SYSTEM

Gambling has existed throughout recorded history and will likely always exist in the United States.¹⁴ The courts and the community should engage in dialogue and develop best practices on how to address problem gambling cases. With the growth and expansion of gaming—from building more casinos to the legalization of online gambling in the various states—it is worthwhile to look at problem gambling and its impact on the courts.

One sign of severe problem gambling is preoccupation with gambling (“reliving past gambling experiences” or “planning the next venture” or thinking of ways in which to gamble).¹⁵ Another indicator is the “[n]eed[] to gamble with increasing amounts of money in order to achieve the desired excitement.”¹⁶ This is known as “chasing losses.”¹⁷ A problem gambler also has difficulty trying to control, cut down or stop gambling. He or she feels “restless or irritable when attempting to cut down or stop gambling.”¹⁸ Other problem gamblers use gambling as a way to escape problems or bad moods (helplessness, guilt, anxiety, and depression).¹⁹

The gambler also resorts to lying “to conceal the extent of involvement [with his or her] gambling.”²⁰ Prior to the changes in the DSM-V, one assessment factor was the commission of illegal acts, such as forgery, fraud, theft or embezzlement to finance gambling.²¹ However, this is no longer a diagnostic criteria.²² A problem gambler will also risk [jeopardiz[ing] or los[ing] a significant relationship, job, educational or career opportunity

¹⁴ See generally, DAVID G. SCHWARTZ, *ROLL THE BONES: THE HISTORY OF GAMBLING* (2006) (discussing gambling activity from ancient times to the modern day).

¹⁵ AM. PSYCHIATRIC ASS’N, *supra* note 3.

¹⁶ *Id.*

¹⁷ NAT’L ENDOWMENT FOR FIN. EDUC. & NAT’L COUNCIL ON PROBLEM GAMBLING, *PROBLEM GAMBLERS AND THEIR FINANCES: A GUIDE FOR TREATMENT PROFESSIONALS* 42 (2000), http://www.ncpgambling.org/wp-content/uploads/2014/08/problem_gamblers_finances-a-guide-for-treatment-profs.pdf [hereinafter *PROBLEM GAMBLING TREATMENT MANUAL*].

¹⁸ AM. PSYCHIATRIC ASS’N, *supra* note 3.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Pathological Gambling Changes in the DSM-5*, RESPONSIBLE GAMBLING COUNCIL (June 1, 2012, 3:49 PM), <http://www.responsiblegambling.org/rg-news-research/newscan/newscan-item/2012/06/01/pathological-gambling-changes-in-the-dsm-5>.

²² *Id.*

because of gambling.”²³ He or she relies on others to get out of debt, otherwise known as “bailouts”, particularly from family members.²⁴

One response to address problem gambling has been through the use of specialty court programs. When individuals find themselves in criminal court due to drugs, alcohol, problem gambling, or any combination thereof, pretrial diversion statutes give judges the discretion to place the defendant in a diversion program in lieu of incarceration.²⁵ Although the requirements vary from state to state, all statutes require the defendant to meet certain criteria and agree to treatment and counseling.²⁶ Many statutes exclude defendants charged with certain crimes, including crimes against children or other violent crimes, and many exclude defendants with prior convictions that involve violence.²⁷

The idea of pretrial diversion was conceived in the 1960’s.²⁸ In 1967, the President’s Commission on Law Enforcement and Administration of Justice issued its groundbreaking report, “The Challenge of Crime in a Free Society.”²⁹ Diversion programs evolved based on the Commission’s ideas and recommendations on fighting crime.³⁰ Therapeutic or specialty courts were established to handle these types of cases, but any trial court or trial judge can develop their own procedures and practices, singly or as an entire court, if state statutes provide for such mechanisms. The goal of a court diversion program is that the individual is less likely to be arrested on new charges due to relapse or other triggering circumstances.³¹ With that goal, jails would be less crowded, less crimes committed, and individuals avoid going back to a life of crime and, in some instances, reunify with their families and become productive citizens.

²³ AM. PSYCHIATRIC ASS’N, *supra* note 3.

²⁴ PROBLEM GAMBLING TREATMENT MANUAL, *supra* note 17, at 9.

²⁵ *See generally* NEV. REV. STAT. §§ 453A.200–260 (2015) (codifying Nevada’s problem gambling diversion program).

²⁶ *See Addicted to Courts*, *supra* note 12, at 3; *see also What is Gambling Court: What is the Screening Process?*, GAMBLINGCOURT, <http://www.gamblingcourt.org/> (last visited Oct. 23, 2015) (describing the screening process for New York’s problem gambling court).

²⁷ *See* NEV. REV. STAT. § 453A.210(1) (2015) (codifying the exceptions to an individuals qualification for Nevada’s problem gambling diversion program).

²⁸ *See Pretrial Diversion*, NAT’L ASS’N OF PRETRIAL DIVERSION SERVICES AGENCIES, <https://napsa.org/eweb/DynamicPage.aspx?Site=napsa&WebCode=Diversion> (last visited Oct. 23, 2015).

²⁹ Thomas E. Feucht & Edwin Zedlewski, *The 40th Anniversary of the Crime Report*, NAT’L INST. JUST. J. (2007), <http://www.nij.gov/journals/257/Pages/40th-crime-report.aspx>.

³⁰ JOHN CLARK, PRETRIAL JUSTICE INST., *THE ROLE OF TRADITIONAL PRETRIAL DIVERSION IN THE AGE OF SPECIALTY TREATMENT COURTS: EXPANDING THE RANGE OF PROBLEM-SOLVING OPTIONS AT THE PRETRIAL STAGE 4–5* (2007), [http://www.pretrial.org/download/pjireports/PJI%20The%20Role%20of%20Traditional%20Pretrial%20Diversion%20in%20the%20Age%20of%20Specialty%20Treatment%20Courts%20\(2007\).pdf](http://www.pretrial.org/download/pjireports/PJI%20The%20Role%20of%20Traditional%20Pretrial%20Diversion%20in%20the%20Age%20of%20Specialty%20Treatment%20Courts%20(2007).pdf).

³¹ *See* NAT’L ASS’N OF PRETRIAL DIVERSION SERVICES AGENCIES, *supra* note 28.

II. PRETRIAL GAMBLING DIVERSION COURT PROGRAMS IN THE UNITED STATES

The U.S. federal government does not have a nationwide policy addressing problem gambling.³² Instead, the issue of problem gambling has been primarily left to individual states and agencies.³³ Those states and agencies should examine the pilot program successes of states with successful gambling diversion programs. They should initiate contact with the personnel who run the diversion programs or who are affiliated with such programs. They should discuss with state legislators and attorney generals the cost saving nature of diversion programs.

Problem gambling diversion programs work. As noted in this section, many states have formal and informal diversion programs that address problem gambling in their courts.³⁴ These states provide the tools and concepts necessary to the successful creation and implementation of programs in other states.

A. *State of New York*

Although many states have informal gambling diversion programs, New York is the only state with a formal gambling specialty court recognized by statute.³⁵ Retired Judge Mark Farrell created and implemented a Gambling Treatment Court in 2001.³⁶ Defendants were referred to the Gambling Court by the criminal judges, and Judge Farrell presided over these cases.³⁷ The program

³² Keith Whyte, Exec. Dir., Nat'l Council on Problem Gambling & Tim Christensen, President, Ass'n of Problem Gambling Serv. Adm'rs, State of the States: Problem Gambling Services in the United States—Report to the 24th National Conference on Problem Gambling 5 (June 2010), <http://apgsa.org/wp-content/uploads/2015/06/State-of-the-States-2010-final.pdf> (“Not a single cent of the \$3.55 trillion Federal budget is dedicated to problem gambling. Not a single person in the entire Federal government has problem gambling in their job responsibility or description. As a result, what programs we have been able to get are generally ad-hoc, one-time and use extremely scarce discretionary funds.”).

³³ *See id.* and accompanying parenthetical.

³⁴ *See infra* Parts III.A–I.

³⁵ Washington State established a diversion program as recent as 2012 addressing problem gambling through its Drug Court Program. *See* Press Release, Puyallup Tribe of Indians & Evergreen Council on Problem Gambling, Puyallup Tribal Donation Launches First Problem Gambling Treatment Program in Washington's Drug Court System (Oct. 2, 2012), http://www.evergreencpg.org/media/news/Press_release_Puyallup_donation_100212.pdf.

³⁶ Ken Belson, *New York Gambling Treatment Court Stresses Help*, N.Y. TIMES (May 1, 2007), http://www.nytimes.com/2007/05/01/nyregion/01gamble.html?pagewanted=all&_r=0.

³⁷ *Alternate Sentencing: How a NY Gambling Treatment Court is Shaking Up the System in 2006*, AM. GAMING ASS'N (May 9, 2011), <https://web.archive.org/web/20121600380600/http://www.americangaming.org/newsroom/newsletters/responsible-gaming-quarterly/alternative-sentencing-how-ny-gambling-treatment> (accessed

is well-organized and has worked with much success.³⁸

The judges in Amherst's traditional courts are aware of Farrell's program and recommend candidates for gambling treatment court if they think a defendant would be a good fit. After passing an initial screening process to qualify for the program, a gambling treatment court defendant must sign a contract with the court and its treatment agencies agreeing to participate in the program and abide by its rules, including pleading guilty and waiving all their constitutional rights. They then begin a multi-faceted treatment program that incorporates a broad range of services, including individual and group therapy, debt counseling and more. The Amherst court partners with two local organizations, Jewish Family Services and Horizon Health Services, to provide treatment and counseling services to the defendants. The program, which initially took a participant about eight to nine months to complete, now takes a little over a year, Farrell said.³⁹

It took one judge to come up with an idea and bring together community resources with the courts to provide a service. The policies and goals were first established. Then specific procedures and criteria for eligibility were developed:

Upon entering the program, participants must return to the court room weekly to report their treatment progress to Farrell, with visits becoming less frequent as they progress through the program. Like drug courts, the gambling treatment court relies on a system of sanctions and rewards to keep participants on track. When participants fail to comply with program regulations, Farrell imposes sanctions ranging from more frequent court appearances to jail time, and repeated non-compliance earns harsher sanctions. Alternatively, progress is rewarded by recognition from the bench during regular court visits, reduced supervision and less frequent court appearances.

A participant who successfully completes the gambling court program often is met with reduced or suspended jail time and reduced fines or fees. According to Farrell, the court has graduated 24 individuals since its inception in 2001, with 35 participants currently enrolled in the program. To date, there have

by searching for <http://www.americangaming.org/newsroom/newsletters/responsible-gaming-quarterly/alternative-sentencing-how-ny-gambling-treatment> in the Internet Archive index) [hereinafter *AGA Gambling Court Article*].

³⁸ NEV. COUNCIL ON PROBLEM GAMBLING, *PROBLEM GAMBLING AND THE LAW: AN INFORMATION AND RESOURCE GUIDE* 15 (2010), <http://www.nevadacouncil.org/wp-content/uploads/2014/08/Legal-Guide-Small-file-APPROVED-6.2010.pdf> [hereinafter *PROBLEM GAMBLING RESOURCE GUIDE*] (“Over 350 defendants have been screened for the treatment program so far, approximately 100 were deemed appropriate for treatment and 27 have graduated, and only three have been arrested again — on offenses not connected to gambling.”). In speaking with Judge Farrell, I inquired how many problem gambling cases he presided over each year compared to the number of problem gambling cases I presided over in family court. Judge Farrell expressed that he oversaw approximately one dozen gambling cases annually. Interestingly, I also had about one dozen family court cases yearly that involved problem gambling by a spouse or a parent.

³⁹ *AGA Gambling Court Article*, *supra* note 37.

been no reports of gambling relapses or new arrests among past graduates.⁴⁰

The State of Kentucky's Legislative Research Commission, in looking at various forms of problem gambling treatment for its report on compulsive gambling in the state, elaborated on Judge Farrell's program:

In his gambling court, defendants are arraigned on formal charges, credit reports are prepared, assessments provided, and plea negotiations are made. He prefers post-plea negotiation so that incarceration can be immediately imposed if the defendant does not comply with the contractual, individualized treatment program. The program includes screening, assessment, and treatment for mental health, substance abuse, domestic and family violence, consumer debt, individual and family counseling, and participation in Gamblers Anonymous. The average time to complete the program has been approximately 10 months.

Farrell reported that, to date, the results have been positive, and many participants have reported abstinence from gambling and improvements in their personal lives. He noted that judicial supervision of participation is a key element for success of most participants. There was no information provided, however, on the cost of establishing or maintaining a gambling court.⁴¹

B. State of Louisiana

In November 2004, the State of Louisiana launched a pilot program in the 26th Judicial District.⁴² The diversion program was known as the "Gambling Treatment Referral Program."

The Louisiana District Attorney voluntarily [conducted the Gambling Treatment Referral Program] in conjunction with the Louisiana Association on Compulsive Gambling, the Office of Addictive Disorders, and the Office of the Attorney General. Prominent names such as Attorney General Charles Foti, former Assistant Attorney General Sue McNabb, District Attorney Schuyler Marvin, and Reece Middleton, (Executive Director of the Louisiana Association on Compulsive Gambling), were involved [in the creation and implementation of] this program.⁴³

The goals and policies were identified and delineated:

⁴⁰ *Id.*

⁴¹ LEGISLATIVE RESEARCH COMM'N: FRANKFORT, KY., COMPULSIVE GAMBLING IN KY., Leg. 2003-316, Reg. Sess., at 65-66 (2003), <http://www.e-archives.ky.gov/pubs/LRC/RR316.pdf>.

⁴² *Louisiana Launches Pilot Program to Encourage Treatment Instead of Incarceration*, AM. GAMING ASS'N (Feb. 1, 2005), <https://web.archive.org/web/20121600451700/http://www.americangaming.org/newsroom/newsletters/responsible-gaming-quarterly/louisiana-launches-pilot-program-encourage> (accessed by searching for <http://www.americangaming.org/newsroom/newsletters/responsible-gaming-quarterly/louisiana-launches-pilot-program-encourage> in the Internet Archive index) [hereinafter *Louisiana Pilot Program*].

⁴³ Cheryl Moss, Judge, Dep't I, Eighth Judicial Dist. Court of Nev., PowerPoint Presentation on Gambling Addiction Pretrial Diversion, at slide 9 (on file with author).

Criminal activities such as theft, forgery, fraud, embezzlement and failure to pay child support are typical of felonies or misdemeanors related to gambling disorders. Almost without exception, pathological gamblers are incarcerated or otherwise punished without being given either an option or an opportunity to solve their problems through treatment. Consequently, any increase in criminal activity resulting from problem gambling leads to additional concerns about recidivism, docket crowding and overcrowding of jails.

The primary goals of this pioneering program are restitution, decreased recidivism, relief of crowded dockets, reduction in number of persons incarcerated and cost efficiency.

“With the cost of incarceration averaging about \$36,000 per person per year and with treatment usually costing one-tenth this figure, it’s easy to see how this program can be very cost efficient,” Foti said.

Another goal of the program is to reduce the effects of crime related to pathological gambling on the entire “victim” group. This “victim” group includes not only the direct victims of the crimes but the families of the pathological gambler who often face overwhelming debt or bankruptcy. The group also includes employers and co-workers, who often suffer because the pathological gambler spends time on the job engaging in his gambling habit or steals from his employer.⁴⁴

Louisiana determined how screening and treatment were to be implemented:

Initial screening for participation in the treatment program begins with the district attorney and his staff. If the district attorney determines the person’s crime is directly related to a gambling disorder, he or she will make a referral to the Gambling Treatment Referral Program. A counselor from the Louisiana Association on Compulsive Gambling or the Office for Addictive Disorders will review the case and evaluate the offender for participation in the program, combining professional diagnostic assessment techniques with the South Oaks Gambling Screen, DSM IV guidelines, and Gamblers Anonymous 20 Questions.

If it is determined the offender is eligible for the program, he or she must sign the district attorney’s Gambling Treatment Referral Program agreement and make arrangements to sign the Louisiana Gambling Control Board’s self-exclusion form. The program agreement also includes a payment schedule for restitution and a community service schedule. Offenders are advised that if they do not successfully complete the conditions enumerated in the diversion program, they will be returned to the judicial system for further proceedings.⁴⁵

The Louisiana diversion program was also described in a later report prepared for the State of California. The purpose of inclusion demonstrated the efficacy of the Louisiana model:

In Louisiana, the Attorney General has introduced a pilot project to divert individuals charged with non-violent crimes directly related to gambling problems to treatment rather than jail. In contrast to the Gambling Treatment

⁴⁴ *Id.*

⁴⁵ *Id.*

Court, this project diverts individuals prior to adjudication of their cases. The project is a collaboration between the Attorney General and the District Attorneys of Louisiana, the Louisiana Association on Compulsive Gambling and the Louisiana Office for Addictive Disorders. . . . With the cost of incarceration averaging approximately \$36,000 per year per person in Louisiana and with treatment costing less than \$100 per day per referral, the project promises to be a highly cost-effective approach to minimizing the impacts of problem gambling.⁴⁶

Unfortunately, the program was halted. Sue McNabb, former Louisiana Assistant Attorney General and currently Executive Director of International Masters of Gaming Law, provided insight on the history of the Gambling Treatment Referral Program:

While at the Office of the Louisiana Attorney General, I spearheaded the referral program, signing up many district attorneys to participate and send first and second non-violent offenders into treatment. We used CORE, Reece Middleton's treatment center in Louisiana. We also worked with the Louisiana Department of Health and Hospitals for regional outpatient treatment. Louisiana was divided into regions, each of which had licensed gambling treatment professionals who could screen offenders and also provide outpatient treatment. The program was successful until state budget funds were diverted to other areas.

After the Gambling Treatment Referral Program was discontinued, I transitioned from the Attorney General's Office to continue working in the field of gaming and law. Louisiana was the first state to have a problem gambling court referral program, and Judge Farrell's Gambling Court in New York was a perfect fit. I always envisioned having gambling courts, diversion programs, and also probation and parole programs working together to put offenders into treatment. Although never used, I also developed a probation and parole program that paralleled the Gambling Treatment Referral Program. The original program did not necessarily demand treatment in lieu of incarceration if the crime was heinous, but it did recognize that gambling addicts need treatment, not incarceration. Problem and addictive gamblers, like drug addicts, need treatment not merely incarceration. However, most people with a serious gambling addiction would not appreciate the comparison as they see themselves as "different" from drug addicts.⁴⁷

C. State of Washington

In 2012, the Pierce County Superior Court launched its first Drug Court problem gambling treatment program.⁴⁸ The Puyallup Tribe of Indians donated

⁴⁶ RACHEL A. VOLBERG ET AL., SITUATIONAL ASSESSMENT OF PROBLEM GAMBLING SERVICES IN CALIFORNIA 49 (2005), <http://www.calpg.org/wp-content/uploads/2012/06/2005-California-Situational-Assessment.pdf>.

⁴⁷ E-mail correspondence between Sue McNabb, Exec. Dir., Int'l Masters of Gaming Law, to Cheryl Moss, Judge, Dep't I, Eighth Judicial Dist. Court of Nev. (Sept. 2015) (on file with author).

⁴⁸ Press Release, Puyallup Tribe of Indians & Evergreen Council on Problem Gambling, *supra* note 35.

\$125,000.00 to fund the program along with a U.S. Department of Justice grant.⁴⁹ Washington State's Evergreen Council on Problem Gambling issued a press release on October 2, 2012:

The Puyallup Tribe recognizes the need for help for people who are affected by problem gambling," said a spokesperson for the Puyallup Tribal Council. "The Tribe also recognizes that a Therapeutic Justice program for Problem Gambling can be beneficial for individuals in recovery as well as for helping to reduce the social costs associated with problem gambling.

The program will provide treatment for gambling addiction to Pierce County Adult Drug Court participants who are already receiving drug and alcohol counseling but also have screened for problem gambling. A recent screening revealed that nearly 20 percent of adult Drug Court participants had gambling behaviors warranting treatment.

"We've long realized that gambling is a component of addiction for many people in Drug Court," said Terree Schmidt-Whelan, executive director of Pierce County Alliance, which provides chemical dependency treatment to Drug Court participants. "It's good that there is a more full recognition to help people in this arena. I think this will open the door to more thoughtful analysis of the issues that people face with gambling and will add a new dimension to chemical dependency and mental health work."

Dave Malone, ECPG's board president, said ECPG is honored to partner on this project with the Puyallup Tribe of Indians, Pierce County Superior Court, and the Lakewood Police Department.

"Funding this project is an excellent example of tribal gaming revenues benefiting the people of Washington State," Malone said. "We look forward to establishing a program that will serve as the model for problem gambling treatment in the criminal justice system throughout the State of Washington."

Nationally and statewide, therapeutic justice courts have proven to help reduce the social costs associated with the negative consequences of addiction.

"Efforts such as this being taken by the Evergreen Council will help us break the cycle of gambling and crime to improve the safety of the people of Pierce County and improve the lives of those affected by problem gambling," said Judge Bryan Chushcoff, who presides over Pierce County Superior Court. "It's our hope that this program will prove successful and become a model for other courts and communities."

"We will continue to hold offenders accountable for their crimes," said Pierce County Prosecutor Mark Lindquist, "while the program will help them break the cycle of addiction so that former offenders can become productive members of our community."

Research indicates that 2 to 4 percent of adults suffer from problem gambling. The figure is much higher for people who are addicted to drugs and/or alcohol. In Washington State, an estimated 100,000 or more adults suffer from this disease."⁵⁰

⁴⁹ *Id.*

⁵⁰ *Id.*

In 2013, I attended the National Council on Problem Gambling (NCPG) Annual Conference in Seattle, Washington.⁵¹ A special meeting was convened between judges, district attorneys, public defenders, problem gambling counselors, other health care providers, and community leaders to discuss the creation and implementation of problem gambling diversion programs in courts.

The Evergreen Council on Problem Gambling hosted this special meeting. The dialogue was productive and enthusiastic. Judge Farrell from New York talked about the Amherst Gambling Court and shared his experiences and vision of how problem gambling cases are managed through his court. I shared my experiences in dealing with problem gambling cases in family court. After the meeting was over, the Evergreen Council resolved to continue to collaborate with the Washington State courts in establishing a pretrial diversion program.

In 2014, a follow up report on the pretrial diversion program was issued in the Washington State Gambling Commission's Newsletter:

In late 2012, the first Drug Court Problem Gambling Therapeutic Justice program in Washington launched and to date, more 34 people have participated in the program from both the Drug and Family courts. This important effort was made possible by a community partnership between the Puyallup Tribe of Indians, Evergreen Council on Problem Gambling, Lakewood Police, Department of Justice, Pierce County Superior Court, and Pierce County Alliance.

People don't look at gambling as a disease-based approach; they see it as a character flaw. However, the whole cycle that causes cravings with drugs and alcohol is the same for problem gambling. The difference is that you don't have a substance to ingest. But the neuroscience is real, and the fallout is worse. A diversionary program in the justice system to help problem gamblers get treatment addresses the underlying cause of their offense - gambling addiction.

"Keeping people out of jail and in productive lives has far -reaching benefits for our communities, as well as significant cost savings for the state," said Maureen Greeley, executive director of the Evergreen Council on Problem Gambling. "It's not about shirking responsibilities or neglecting to make restitution. It's about limiting the possibility that this person will repeat the offense or spiral down to extreme consequences for themselves, their families, and communities. And, it works."⁵²

⁵¹ *2013 National Council on Problem Gambling Annual Conference*, N.Y. COUNCIL ON PROBLEM GAMBLING, <https://training.nyproblemgambling.org/2012/10/19/2013-national-council-on-problem-gambling-annual-conference-2/> (last visited Oct. 27, 2015).

⁵² *March is Problem Gambling Awareness Month*, FOCUS ON GAMBLING (Wash. State Gambling Comm'n), Jan.-Mar. 2014, at 3.

D. State of Rhode Island

The State of Rhode Island established The Adult Diversion Unit in 1976.⁵³ According to the Rhode Island Attorney General's website on criminal diversion, it acknowledged accepting cases for treatment of gambling addictions.⁵⁴

The Adult Diversion Unit was established in 1976 as an alternative to prosecution for first-time nonviolent felony offenders. It enables qualifying offenders to accept responsibility and be held accountable for their actions while avoiding the stigma of a criminal record. The program offers the opportunity for the offender to earn the dismissal of criminal charge(s) by participating in drug treatment and mental health programs, providing community service at nonprofit agencies, and paying restitution to the victims of these crimes.

In 2014, the Unit handled 438 referrals, accepted 249 cases, and completed 223 cases. A significant accomplishment last year included \$150,528 in restitution ordered to be distributed to victims. The Adult Diversion Unit arranged 4,265 hours of community service at statewide non-profit agencies for a total value of more than \$34,120, and also arranged 176 counseling programs for participants with substance abuse problems, mental health issues, and gambling addiction.

According to a recidivism report, 93 percent of the individuals who successfully complete the Adult Diversion program go on to lead arrest-free lifestyles, confirming the necessity of the program and its impact it has on first-time felony offenders by the development of participant-specific programs geared toward the root cause of the offense, thereby avoiding recidivism on the part of the participant.

The Adult Diversion program is participant-specific, and may also address educational needs on behalf of the participant. Depending on a participant's need, they are referred to community agencies who can offer specific services at little or no cost, giving them the tools they need to succeed.⁵⁵

E. State of Michigan

The State of Michigan conducted a pilot program in 2011 known as The Problem Gambling Diversion Program.⁵⁶ It was operated out of the 36th

⁵³ *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives*, CTR. FOR HEALTH & JUST. AT TASC 66 (Dec. 2013), <http://www2.centerforhealthandjustice.org/sites/www2.centerforhealthandjustice.org/files/publications/CHJ%20Diversion%20Report%20Appendices.pdf>.

⁵⁴ *State of Rhode Island Office of Attorney General 2014 Annual Report*, RHODE ISLAND OFF. OF THE ATT'Y GEN. 58, <http://www.riag.ri.gov/documents/2014OAGAnnualReport.pdf> (last visited Oct. 28, 2015).

⁵⁵ *Id.* at 57–58.

⁵⁶ Mich. Dep't of Cmty. Health, Behavioral Health & Developmental Disabilities: Bureau of Substance Abuse & Addiction Services, *Annual Report for Fiscal Year 2011: Problem Gambling Services*, MICHIGAN.GOV (Mar. 2012), <https://www>.

District Court.⁵⁷ Forty-nine persons received services that year.⁵⁸ The following year, in 2012, sixty-two individuals were referred to the program by the courts.⁵⁹ By the end of 2013, the number of participants that had participated in problem gambling diversion criminal cases was 319.⁶⁰ The operations of Michigan's diversion program is described as follows:

In January 2011, the Problem Gambling Diversion Program (Diversion Program) was created to provide an alternative to criminal prosecution for individuals who violate the terms of the DPL program for the first offense. The Diversion Program allows first time offenders the opportunity to enroll in a treatment program with a MDCH provider. In 2013, two additional providers were added to the Diversion Program provider list, increasing the number of providers participating in the program to six. Successful completion of the treatment program will result in dismissal of the criminal trespassing charges. First time offenders who fail to enroll in and complete the treatment program will be charged with criminal trespassing. In 2013, 105 first time DPL offenders were offered the Diversion Program. As of December 31, 2013, the cumulative number of DPL offenders offered the Diversion Program was 319. To assist in this process, in November 2013, a new Assistant Attorney General was assigned to assume responsibilities of the Diversion Program.⁶¹

As shown above, the cumulative number of defendants increased from 49 to 319 in a span of two years since Michigan started its Problem Gambling Diversion Program.⁶² Of the 319, the number of those who completed the program successfully and received discharge summaries was 186, more than half of those who were enrolled.⁶³

F. State of California

There is no gambling court in the State of California. On August 9, 2003, the California Governor signed into law Assembly Bill 673.⁶⁴ Section 2 of

michigan.gov/documents/mdch/Prbl_Gmbl_Rprt_fy11_383403_7.pdf.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Mich. Dep't of Cmty. Health, Behavioral Health & Developmental Disabilities: Bureau of Substance Abuse & Addiction Services, *Annual Report for Fiscal Year 2012: Problem Gambling Services*, MICHIGAN.GOV (Feb. 2013), https://www.michigan.gov/documents/mdch/Prbl_Gmbl_Rprt_fy12_414988_7.pdf.

⁶⁰ Mich. Gaming Control Bd., *Annual Report to the Governor: Calendar Year 2013*, MICHIGAN.GOV, http://www.michigan.gov/documents/mgcb/annrep13_9-24-14_469589_7.pdf 12 (last visited Oct. 28, 2015).

⁶¹ *Id.*

⁶² See *Annual Report for Fiscal Year 2011: Problem Gambling Services*, *supra* note 56; *Annual Report to the Governor: Calendar Year 2013*, *supra* note 60.

⁶³ See *Annual Report to the Governor: Calendar Year 2013*, *supra* note 60, at 12–13.

⁶⁴ *Complete Bill History: A.B. No. 673*, CALIFORNIA ST. LEGISLATURE (Aug. 8, 2003), http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0651-0700/ab_673_bill_20030811_history.html. See generally Assemb. B. 673, 2003-2004 Leg. Sess. (Cal.

Assembly Bill 673 renamed the agency in charge of developing and implementing treatment services for problem gamblers.⁶⁵

(2) Existing law establishes the Office of Compulsive Gambling in the State Department of Mental Health. The office is responsible for developing a compulsive gambling prevention program within the state that consists of designated components.

This bill instead would rename that office as the Office of Problem and Pathological Gambling and would establish the office in the Department of Alcohol and Drug Programs. The bill would revise designated components of the gambling prevention program, would require the office to develop a program to support treatment services for described gamblers, and would require that implementation of these programs be based upon allocation priorities established by the Department of Alcohol and Drug Programs and be subject to funding being appropriated for that purpose.

This bill would modify other provisions relating to the problem gambling prevention program established under these provisions, including revising the definition of various terms and revising the list of state agencies expressly required to coordinate on specified issues under these provisions. This bill would also give the problem gambling prevention program first priority for funding appropriated to the Office of Problem and Pathological Gambling.⁶⁶

In May 2005, the Office of Problem Gambling contracted with the California Council on Problem Gambling and the California Department of Alcohol and Drug Programs to do a research study and assessment of problem gambling services within the state.⁶⁷

The purpose of this report is to assist the Office of Problem Gambling in implementing the provisions of Assembly Bill 673 (Chapter 210, 2003 Statutes) which authorized the establishment of problem gambling services in California. The report identifies the current status of problem gambling research, programs and services in California and internationally and is the first step in California's problem gambling strategic planning.⁶⁸

On May 20, 2011, a gathering was held in Los Angeles sponsored by a residential treatment and prevention center, Beit T'Shuvah.⁶⁹ Judge Mark Farrell (now retired), Judge Michael Tynan (who presides over LA County's Drug and Alcohol Court), Dr. Tim Fong, and Terri Sue Canale (Deputy Director of the California Department of Alcohol and Drug Programs) were among the foremost experts in attendance.⁷⁰

2003), http://www.leginfo.ca.gov/pub/03-04/bill/asm/ab_0651-0700/ab_673_bill_20030811_chaptered.pdf.

⁶⁵ Assemb. B. 673 (Cal. 2003).

⁶⁶ *Id.*

⁶⁷ VOLBERG ET AL., *supra* note 46, at "Acknowledgements".

⁶⁸ *Id.* at i.

⁶⁹ Joleen Deatherage, *Wanted: A State of California Gambling Court*, EXAMINER.COM (June 6, 2011, 2:40 PM), <http://www.examiner.com/article/wanted-a-state-of-california-gambling-court>.

⁷⁰ *See id.*

“The carnage is tremendous, but not always understood,” Judge Farrell said. “A therapeutic approach works with gamblers. Monitoring and education is much more challenging, but gamblers need intervention and they need treatment. There has to be a motivational base and that’s what a Gambling Court provides.”

Joining the panel was Dr. Timothy Fong - an Associate Professor of Psychiatry at UCLA who is also Director of the university’s Addiction Medicine Clinic and Co-Director of the Gambling Studies Program. Dr. Fong pointed to four forms of gambling in California: the lottery, horse track, car clubs and tribal casinos - all of which generate 10 billion annually in state revenue, and that figure doesn’t include online gambling.

“Pathological gambling is a major addiction,” said Dr. Fong. “We have to treat the root cause which is an *untreated* gambling addiction.”

The event attracted a wide range of supporters and advocates including a representative from the State of California’s Office of Problem Gambling - Terri Sue Canale, Deputy Director of the Department of Alcohol and Drug Programs. A brand new program was launched in January 2011 to address gambling addiction. Canale’s office provides training and technical assistance to organizations, and ironically, their funding comes from Indian gaming.⁷¹

It is interesting to note that in the State of California, the courts do not enforce collection of a problem gambler’s gambling debts.⁷²

G. State of Georgia

In January 2008, Jim Emshoff, Ph.D. and a team of researchers published a study entitled “Gambling and offending: An examination of the literature.”⁷³ The researchers expressed the need to examine problem gambling by criminal defendants and how their needs could be assessed.⁷⁴ The paper is a comprehensive overview of problem gambling prevalence in Georgia, crimes involving problem gambling within the state, and discussion of various treatment programs throughout the U.S.⁷⁵ The authors desired to conduct a study of offenders who have problem gambling issues and how the information gathered can help develop policies and programs in Georgia to address problem gambling.⁷⁶

⁷¹ *Id.*

⁷² ROGER DUNSTAN, CAL. RESEARCH BUREAU—CAL. STATE LIBRARY, PUB. NO. CRB-97-003 GAMBLING IN CALIFORNIA VII-13 (1997), <https://www.library.ca.gov/CRB/97/03/97003c.pdf>.

⁷³ GA. STATE UNIV.: DEP’T OF PSYCHOLOGY, GAMBLING AND OFFENDING: AN EXAMINATION OF THE LITERATURE (2008).

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *See id.* at 11–12.

H. State of Kentucky

In November 2003, a research study was released by the Kentucky Legislative Research Commission. While there was no gambling court in existence during that time, the report discussed the notion of applying drug court models to problem gambling cases. “Drug courts appear to be continuing to expand in Kentucky and the nation. It is possible that the concepts of therapeutic justice, rehabilitation, restitution, and accountability that are applied to drug-related crimes may be useful for gambling-related crimes.”⁷⁷

One relevant case discussed violation of pretrial diversion. In *Gray v. Commonwealth*, the defendant received pretrial diversion and later violated the terms of diversion.⁷⁸

The [lower] court entered an order voiding the diversion agreement. [It] found that, based upon the affidavit filed by Gray’s probation officer, Gray had “violated the terms of his Pretrial Diversion Agreement by traveling out of state without the permission of his parole officer and by failing to report an arrest to his probation officer within 72 hours.” Thus, the court voided Gray’s diversion agreement.⁷⁹

Accordingly, the trial court entered judgment against the defendant, imposed a prison sentence, and ordered restitution.⁸⁰

I. State of New Jersey

New Jersey does not have a gambling court. However, the New Jersey Courts has a Pre-Trial Intervention Program (PTI).⁸¹ It is described as follows:

The Pretrial Intervention Program (PTI) provides defendants, generally first-time offenders, with opportunities for alternatives to the traditional criminal justice process of ordinary prosecution. PTI seeks to render early rehabilitative services, when such services can reasonably be expected to deter future criminal behavior. The PTI program is based on a rehabilitative model that recognizes that there may be an apparent causal connection between the offense charged and the rehabilitative needs of a defendant. Further, the rehabilitative model emphasizes that social, cultural, and economic conditions often result in a defendant’s decision to commit crime.

Simply stated, PTI strives to solve personal problems which tend to result from the conditions that appear to cause crime, and ultimately, to deter future

⁷⁷ KY. LEGISLATIVE RESEARCH COMM’N, *COMPULSIVE GAMBLING IN KENTUCKY*, GEN. ASSEMB. 2003-316, at 66 (2003), <http://www.lrc.state.ky.us/lrcpubs/RR316.pdf>.

⁷⁸ No. 2013–CA–001154–MR, 2014 WL 7206046, at *1 (Ky. Ct. App. Dec. 19, 2014).

⁷⁹ *Id.* at *2.

⁸⁰ *Id.*

⁸¹ *Pre Trial Intervention Program (PTI)*, NEW JERSEY CTS., <http://www.judiciary.state.nj.us/criminal/crpti.htm> (last visited Oct. 31, 2015).

criminal or disorderly behavior by a defendant.⁸²

One case referenced treatment counseling and self-exclusion from casinos. In an unpublished opinion, *State v. Kaviani*,⁸³ by the Superior Court of New Jersey, Appellate Division, a defendant's request to be placed in the PTI Program had been denied.⁸³ The appellate court upheld the denial of Mr. Kaviani's application for PTI.⁸⁴ The Court affirmed the defendant's sentence to two concurrent terms of 5 years' probation, 270 days incarceration, 100 hours of community service, \$15,683.89 restitution to eighteen victims.⁸⁵ The defendant claimed he had a gambling addiction.⁸⁶ He was ordered to counseling for problem gambling and avoid Atlantic City casinos among other conditions of his probation.⁸⁷

J. State of Tennessee

There is no formal diversion program in Tennessee. Relevant cases in this state include the following:

- In *State of Tennessee v. Fisher*, the defendant was denied pretrial diversion.⁸⁸ Upon appeal, the Court of Criminal Appeals affirmed finding no abuse of discretion by the district attorney general.⁸⁹ The trial court noted that defendant's gambling activities were not impulsive acts but rather planned long-term.⁹⁰
- In *State of Tennessee v. Brooks*, the defendant, a formerly licensed attorney, claimed he became obsessed with gambling and had false hopes he could recoup monies he took from client trust accounts and from misusing credit cards.⁹¹ The court rejected his appeal in which he claimed the district attorney general abused his discretion in denying pretrial diversion.⁹² The Court of Criminal Appeals of Tennessee affirmed the decision of the trial court reasoning that the defendant held a position of trust with his clients and therefore, this weighed against assessing his fitness for pretrial division.⁹³

⁸² *Id.*

⁸³ *State v. Kaviani*, No. 04-08-1750, 2006 WL 1506942, at *1 (N.J. Super. Ct. App. Div. June 2, 2006).

⁸⁴ *Id.* at *2.

⁸⁵ *Id.* at *1.

⁸⁶ *See id.* at *2.

⁸⁷ *Id.* at *1.

⁸⁸ *State of Tennessee v. Fisher*, No. 01-C-019009CR00233, 1991 WL 8524, at *1 (Tenn. Crim. App. Jan. 31, 1991).

⁸⁹ *Id.* at *1-2.

⁹⁰ *Id.* at *2.

⁹¹ *State of Tennessee v. Brooks*, 228 S.W.3d. 640, 641-42, 642 n.2, 645 (Tenn. Crim. App. Dec. 6, 2006).

⁹² *Id.* at 642-43.

⁹³ *Id.* at 645-47.

III. PROBLEM GAMBLING IN NEVADA

In light of my 15 years judicial experience on the Nevada bench,⁹⁴ I will use Nevada as an example of how a state may wish to develop a pretrial gambling diversion program. I will also discuss my experience as a family court judge and ways in which I made it a priority to develop a program where Nevada family judges could refer litigants for problem gambling assessments in custody and property/debt cases.

A. Enactment of Problem Gambling Diversion Legislation in Nevada

As with the State of New York, funding and grants are critical to the creation of a successful program. In Nevada, funding to treat problem gamblers comes from a \$2 tax on every slot machine placed on casinos floors throughout the state.⁹⁵ In 2007, the Nevada Advisory Committee on Problem Gambling, responsible for distributing grants to problem gambling treatment providers, had \$2.24 million in funds.⁹⁶

Nevada has an “almost formal” problem gambling diversion program, meaning that the statutes were amended to give judges the authority to place individuals in diversion treatment programs.⁹⁷ Implementation of the Nevada statutes has been a slow process. Since the statute was amended in 2009, trial court judges faced with problem gambling cases are still familiarizing themselves with having to interpret, enforce and implement Nevada Revised Statute Chapter 458A. Only recently has the defense bar become aware of the gambling diversion statute, and they have filed motions on behalf of their clients who are problem gamblers realizing the availability under Chapter 458A to request problem gambling diversion in lieu of incarceration and potential dismissal of charges.

Assembly Bill 102, which created Nevada’s gambling diversion program,⁹⁸ was conceived during the first meeting of the Nevada Advisory Committee on Problem Gambling’s Subcommittee on Legal Issues chaired by Dr. Rena M. Nora.⁹⁹ I was also a member of the committee joined by gaming and criminal

⁹⁴ *Cheryl B. Moss*, CLARK COUNTY CTS., <http://clarkcountycourts.us/ejdc/courts-and-judges/biographies/Cheryl%20B%20Moss.pdf> (last visited Nov. 14, 2015) (“Judge Cheryl Moss was elected to the District Court, Family Division in November 2000”).

⁹⁵ See Tami Luhby, *Nevada Gambling Addiction Programs Face Cuts*, CNN MONEY (May 24, 2011, 3:51 PM), http://money.cnn.com/2011/05/24/news/economy/nevada_gambling/index.htm.

⁹⁶ See Jeff German, *Columnist Jeff German: A Big Step to Help Gambling Addicts*, L.V. SUN (Jan. 24, 2006, 8:04 AM), <http://lasvegassun.com/news/2006/jan/24/columnist-jeff-german-a-big-step-to-help-gambling/>.

⁹⁷ See generally NEV. REV. STAT. § 458A (2015) (codifying state law on the “Prevention and Treatment of Problem Gambling”).

⁹⁸ Assemb. B. 102, 2009 Leg., 75th Reg. Sess. (Nev. 2009).

⁹⁹ Nev. Advisory Comm. for Problem Gambling: Legal Issues Subcomm.,

attorneys who also served or offered support,¹⁰⁰ including Anthony Cabot, Esq. and Jennifer Roberts, Esq.¹⁰¹, the Executive Director of the Nevada Council on Problem Gambling (NCPG), Carol O'Hare,¹⁰² certified problem gambling counselors such as Denise Quirk, MA, MFT, LADC, CPGC-S,¹⁰³ the late Professor William R. Eadington, a well-renowned academic in the field of gambling studies from the University of Nevada, Reno,¹⁰⁴ and Professor Bo Bernhard, Ph.D., Executive Director of the UNLV International Gaming Institute.¹⁰⁵ The Sub-Committee was supported with legislative staff and drafters.

The drafters began with Nevada Revised Statute Chapter 458A¹⁰⁶ and wrote proposed amended revisions to the statutes. Thereafter, the Subcommittee discussed the potential impact of the proposed revisions in criminal problem gambling cases. Feedback was received from the District Attorney's Office, the Department of Parole and Probation, and Nevada statewide groups such as psychologists and counselors. In turn, the Subcommittee further deliberated to come up with practical solutions to address the concerns of these agencies and groups.

Once the final version of the bill draft was completed, several members of the Subcommittee testified at the legislative hearings.¹⁰⁷ The bill was successfully passed into law generally provides that: If the trial judge holds a hearing to determine a defendant's eligibility for problem gambling diversion, the District Attorney may place an objection on the record,¹⁰⁸ but it is ultimately the judge's discretion to determine whether the defendant is eligible

Summary Meeting Minutes for February 29, 2008 (Feb. 29, 2008) (on file with author). In addition to her role as chair of this subcommittee, Dr. Rena M. Nora also happens to be my mother.

¹⁰⁰ *Id.*; see PROBLEM GAMBLING RESOURCE GUIDE, *supra* note 38, at 21.

¹⁰¹ *Jennifer Roberts*, DUANE MORRIS, <http://www.duanemorris.com/attorneys/jenniferroberts.html> (last visited Nov. 27, 2015).

¹⁰² *Staff and Volunteers*, NEV. COUNCIL ON PROBLEM GAMBLING, <http://www.nevadacouncil.org/who-we-are/staff-volunteers/> (last visited Nov. 27, 2015).

¹⁰³ *Meet our Speakers*, NEV. COUNCIL ON PROBLEM GAMBLING, <http://www.nevadacouncil.org/programs-resources/speakers-bureau/speakers/> (last visited Nov. 27, 2015).

¹⁰⁴ *The Gaming Hall of Fame: 2011 Inductee – William R. Eadington*, UNLV CENT. FOR GAMING RES.: U. LIBR., http://gaming.unlv.edu/hof/2011_eadington.html (last updated Feb. 15, 2013, 4:24 PM).

¹⁰⁵ *Bo Bernhard, Ph.D.*, UNLV, <https://www.unlv.edu/people/bo-bernhard> (last visited Nov. 27, 2015).

¹⁰⁶ See generally NEV. REV. STAT. § 458A (2015) (codifying state law on the "Prevention and Treatment of Problem Gambling").

¹⁰⁷ See *A.B. 102*, NEV. LEGIS., <http://www.leg.state.nv.us/75th2009/Reports/history.cfm?ID=217> (last visited Nov. 14, 2015) (providing hyperlinks to minutes for the legislative hearings on Assembly Bill 102).

¹⁰⁸ See NEV. REV. STAT. § 458A.220(1)(b) (2015).

for diversion.¹⁰⁹ The defendant may be in a treatment program for up to three years with an approved Certified Problem Gambling Counselor (CPGC)¹¹⁰ who reports to the judge on the defendant's participation and progress.¹¹¹ Upon successful completion, the person's conviction may be set aside and his or her records may be ordered sealed.¹¹²

There have been a few Nevada cases involving problem gambling, and they serve as benchmarks in assessing the interpretation and implementation of Nevada Revised Statute Chapter 458A. As soon as Assembly Bill 102 went into effect, a Washoe County Deputy Public Defender, Carl Hylin, argued for gambling diversion to a state court judge.¹¹³ The law was so new at the time, but the Reno, Nevada trial court judge was aware of the statute.¹¹⁴ Judge Janet Berry understood, listened, and was willing to allow the defendant, who committed a \$5,000.00 burglary related to a "desperate gambling situation," to undergo treatment under a diversion program.¹¹⁵ The judge set forth her own court protocol in monitoring the defendant, initially checking in on his progress every two weeks, then on a monthly basis for the duration of his 18-36 month diversion sentence.¹¹⁶

Nevada has also had a landmark case where an attorney who had a severe gambling addiction received diversion in a state court case in lieu of incarceration.¹¹⁷ His law license was reinstated with the goal that he will make

¹⁰⁹ See NEV. REV. STAT. § 458A.230(1)–(3) (2015). It was anticipated during the Subcommittee's working sessions that potentially the District Attorney's Office would object and argue that the District Court had not established a formal "program" for problem gambling diversion. See Nev. Advisory Comm. for Problem Gambling: Legal Issues Subcomm., *supra* note 99. Defense counsel would submit that the new statute, as amended, includes defendants being placed in the Drug Court Program, and therefore a formal program already exists. Moreover, there already existed a formal network of providers listed on the Nevada Council on Problem Gambling's website. See *Treatment Providers*, NEV. COUNCIL ON PROBLEM GAMBLING (Nov. 9, 2015, 7:56 PM), <http://www.nevadacouncil.org/wp-content/uploads/2015/11/Treatment-ALL-NV-11.09.15.pdf>. The Probation Division also had concerns about the added costs in monitoring defendants with problem gambling addictions. The Sub-Committee's response was that the anticipated number of referrals would be approximately one dozen cases per year, which was not an alarming number.

¹¹⁰ See NEV. REV. STAT. § 458A.230(3)(c).

¹¹¹ See NEV. REV. STAT. § 458A.240 (2015).

¹¹² NEV. REV. STAT. § 458A.250(2) (2015).

¹¹³ E-mail from Denise Quirk, Member, Nev. Advisory Comm. for Problem Gambling: Legal Issues Subcomm., to Members of the Nev. Advisory Comm. for Problem Gambling: Legal Issues Subcomm. (Nov. 2, 2009, 2:50 PM) (on file with author).

¹¹⁴ See *id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ David Ferrara, *Treatment for Problem Gamblers a Long Shot in Las Vegas Courts*, L.V. REV.-J. (Aug. 1, 2015, 1:07 PM), <http://www.reviewjournal.com/news>

restitution to his victims.¹¹⁸ His salary was capped at \$25,000.00 per year plus 5% added for each subsequent year until restitution was fully paid.¹¹⁹ He received probation and agreed to be supervised by a senior attorney for three years.¹²⁰ He was to work in an established law office for the first two years of supervision.¹²¹ Thereafter, he could elect to go into solo practice but still be supervised until his probation period expired.¹²²

In Nevada, a year after Assembly Bill 102 went into effect, the Nevada Council on Problem Gambling published a Problem Gambling and the Law: An Information and Resource Guide¹²³ The Guide was posted and made available for downloading from the internet.¹²⁴ Subsequently, the National Center for Responsible Gaming (NCRG) issued its own publication, "Gambling and Health in the Justice System."¹²⁵

The success and implementation of a diversion program may be a rough and bumpy road, but understandably all pilot programs almost always go through such phases. It is also important to train and educate the judges who will preside over problem gambling cases so they are prepared to understand and participate in the process.

With regard to criminal cases, we must learn from existing model programs, work with them to create and expand programs in other jurisdictions, and then communicate and collaborate to continuously improve such programs. The best source for sharing information are annual conferences on problem gambling, particularly headlined by the National Council on Problem Gambling and the National Center for Responsible Gaming.¹²⁶

B. Problem Gambling in Nevada Family Court

I have been a Family Court Judge in Clark County, Nevada since January 2001.¹²⁷ During my first year on the bench, I made it a priority to develop a

/crime-courts/treatment-problem-gamblers-long-shot-las-vegas-courts.

¹¹⁸ *In re* Reinstatement of Crawford, No. 65284, 2015 WL 3827645, at *1 (Nev. Jun. 18, 2015); *see also* Ferrara, *supra* note 117.

¹¹⁹ *See In re Reinstatement of Crawford*, 2015 WL 3827645, at *1.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *See* PROBLEM GAMBLING RESOURCE GUIDE, *supra* note 38, at copyright page (dating the work as "2010" the year after Assembly Bill 102 was passed).

¹²⁴ *See generally id.*

¹²⁵ *Gambling and Health in the Justice System*, NAT'L CENTER FOR RESPONSIBLE GAMING, http://www.ncrg.org/sites/default/files/uploads/docs/ncrgguide_judicial_2015final.pdf (last visited Nov. 14, 2015).

¹²⁶ For more information on these organizations, as well as upcoming conferences, *see* NAT'L COUNCIL ON PROBLEM GAMBLING, <http://www.ncpgambling.org/> (last visited Nov. 18, 2015); NAT'L CTR. FOR RESPONSIBLE GAMBLING, <http://www.ncrg.org/> (last visited Nov. 18, 2015).

¹²⁷ *Cheryl B. Moss*, *supra* note 94.

program where Nevada family judges could refer litigants for problem gambling assessments in custody and property/debt cases. With the help of Carol O'Hare, Executive Director of the Nevada Council on Problem Gambling and my late mother, Dr. Rena M. Nora,¹²⁸ the committee reviewed and formalized a referral network of professionals who are certified to conduct problem gambling assessments for treatment purposes, and specifically for the courts.¹²⁹ The referral program was up and running in a matter of months within the Clark County Family Court.

A family lawyer does not need to be an expert when he or she encounters a problem gambling issue. The lawyer just needs to know where to go for information. There are three websites: The National Center for Responsible Gaming,¹³⁰ The National Council on Problem Gambling,¹³¹ and The Nevada Council on Problem Gambling.¹³² Both the NCRG and the Nevada Council have published booklets on Problem Gambling and the Law.¹³³

In Clark County Family Court, each judge has the ability to refer a litigant for a problem gambling assessment.¹³⁴ The list of people qualified to do such assessments can be located on the Nevada Council on Problem Gambling's website.¹³⁵ They should have a "CPGC" after their name which stands for "Certified Problem Gambling Counselor."¹³⁶

Statistically, a Clark County family court judge would see about a dozen cases per year whereby litigants allege problem gambling as it relates to child custody, marital waste of community property and the incurring of significant debts. Judges do not usually know if there's a problem gambling issue unless it is raised in a motion or in oral argument. Perhaps a good number of cases that

¹²⁸ Dr. Nora's credentials have included, but are not limited to, Clinical Professor of Psychiatry at the University of Nevada School of Medicine, Medical Director at the Outpatient Problem Gambling Program, and chief of psychiatry for the Veteran Affairs Southern Nevada Healthcare System. Liz Benston, *VA Offers Gambling Addicts Treatment*, L.V. SUN (Sept. 24, 2003, 11:06 AM), <http://lasvegassun.com/news/2003/sep/24/va-offers-gambling-addicts-treatment/>; Rena M. Nora, *Overview on Cultural Competence*, NAT'L NEWS: AN INFO. RESOURCE FOR MEMBERS OF THE NAT'L COUNCIL ON PROBLEM GAMBLING, Summer 2007, at 5, 5, <http://www.ncpgambling.org/files/public/NCPG-newsVol10%232.pdf>.

¹²⁹ See, e.g., *Treatment Providers*, *supra* note 109.

¹³⁰ NAT'L CTR. FOR RESPONSIBLE GAMBLING, *supra* note 126.

¹³¹ NAT'L COUNCIL ON PROBLEM GAMBLING, *supra* note 126.

¹³² *Id.*

¹³³ See *Material Distribution*, NEV. COUNCIL ON PROBLEM GAMBLING, <http://www.nevadacouncil.org/programs-resources/material-distribution/> (last visited Nov. 18, 2015); *Publications*, NAT'L CTR. FOR RESPONSIBLE GAMBLING, <http://www.ncrg.org/resources/publications/other-publications> (last visited Nov. 18, 2015).

¹³⁴ See NEV. REV. STAT. § 458A.200(1) (2015).

¹³⁵ *Treatment Providers*, *supra* note 109; see also *Resource Locator*, NEV. COUNCIL ON PROBLEM GAMBLING, <http://www.nevadacouncil.org/wp-content/uploads/2015/11/Treatment-ALL-NV-11.09.15.pdf> (last visited Nov. 18, 2015).

¹³⁶ See *Treatment Providers*, *supra* note 109.

come to court involve problem gamblers in the family, but unless the issue is brought up in the courtroom, it usually goes undetected during litigation. In domestic relations cases, problem gambling can arise in two areas: marital waste and child custody.

1. Nevada Cases Involving Property and Debt Waste Issues

Proving a gambling problem is relevant in cases involving marital waste or community waste. It must be done by showing that a gambling problem constitutes a “compelling reason” for the Court to make an “unequal disposition” of community property due to “financial misconduct” of one party.¹³⁷ Evidence of ATM withdrawals, player card activity, huge dissipation of money, as well as gambling assessments and/or expert testimony on a gambling disorder would be what the court would consider in these types of cases.¹³⁸ Two Nevada cases speak to marital waste:

- In *Lofgren v. Lofgren*, the Nevada Supreme Court held that “if community property is lost, expended or destroyed through the intentional misconduct of one spouse, the court may consider such misconduct as a compelling reason for making an unequal disposition of community property and may appropriately augment the other spouse’s share of the remaining community property.”¹³⁹ The court found the husband, Mr. Lofgren, had diverted funds to his father and used the funds for his own personal use in violation of the court’s preliminary injunction.¹⁴⁰
- In *Putterman v. Putterman*, the Supreme Court distinguished financial misconduct from the kind of spending that spouses ordinarily do in marriage.¹⁴¹ As the court noted:

It should be kept in mind that the secreting or wasting of community assets while divorce proceedings are pending is to be distinguished from undercontributing or overconsuming of community assets during the marriage. Obviously, when one party to a marriage contributes less to the community property than the other, this cannot, especially in an equal division state, entitle the other party to a retrospective accounting of expenditures made during the marriage or to entitlement to more than an equal share of the community property. Almost all marriages involve some disproportion in contribution or consumption of community property.

¹³⁷ See *Putterman v. Putterman*, 939 P.2d 1047, 1047 (Nev. 1997).

¹³⁸ Cheryl B. Moss, *Family Court: Problem Gambling Issues & Impact*, in PROBLEM GAMBLING AND THE LAW: AN INFORMATION AND RESOURCE GUIDE 6, 7 (2010), <http://www.nevadacouncil.org/wp-content/uploads/2014/08/Legal-Guide-Small-file-APPROVED-6.2010.pdf>.

¹³⁹ See *Lofgren v. Lofgren*, 926 P.2d 296, 297 (Nev. 1996).

¹⁴⁰ *Id.*

¹⁴¹ *Putterman*, 939 P.2d at 1047.

Such retrospective considerations are not and should not be relevant to community property allocation and do not present “compelling reasons” for an unequal disposition; whereas, hiding or wasting of community assets or misappropriating community assets for personal gain may indeed provide compelling reasons for unequal disposition of community property.¹⁴²

Putterman and *Lofgren* could be used to argue that the gambling spouse wasted community assets and that this waste should be a compelling reason for an unequal distribution of community assets. On the other hand, *Putterman* could be cited as a defense that gambling was recreational and constituted the type of normal spending that spouses engage in during a marriage; in other words, it was not excessive, and not demonstrative of intentional financial misconduct.¹⁴³ Moreover, if a gambler is consumed by his/her addiction and cannot control it, an expert could testify that the spouse’s gambling and corresponding loss of community property does not rise to the level of intentional misconduct required by *Lofgren* if one cannot control the behavior because of loss of control due to gambling addiction.¹⁴⁴

A problem gambler will usually lie about their gambling and bet more money than they can afford.¹⁴⁵ The three C’s rule is as follows: Craving the gambling, Continuing to gamble despite negative consequences, and the inability to Control one’s gambling.¹⁴⁶ I have regularly lectured on problem gambling to family law attorneys at continuing legal education seminars. I discuss with attorneys what problem gambling is, how it can impact child custody cases and marital waste in divorce cases, and how an attorney can seek out information to determine whether problem gambling exists within a family or the marital community. “For example, one can subpoena player’s card records from a casino to show how much was played on a given day, what time [they were gambling,] and for how long a gambler was using a particular gaming machine.”¹⁴⁷

¹⁴² *Id.* at 1048–49.

¹⁴³ *See id.* at 1047.

¹⁴⁴ *See Lofgren*, 926 P.2d at 297; *see also Putterman*, 939 P.2d at 1047.

¹⁴⁵ *See* AM. PSYCHIATRIC ASS’N, *supra* note 3.

¹⁴⁶ *Gambling and Health in the Workplace*, NAT’L CTR. FOR RESPONSIBLE GAMING, http://www.ncrg.org/sites/default/files/uploads/docs/publiceducation_outreach/hrfl_yer_final.pdf (last visited Nov. 18, 2015).

¹⁴⁷ Cheryl Moss, *Problem Gambling and Family Court in Nevada: A View from the Bench*, NAT’L NEWS: AN INFO. RESOURCE FOR MEMBERS OF THE NAT’L COUNCIL ON PROBLEM GAMBLING, Fall 2008, at 5, 5, http://www.ncpgambling.org/files/members/NCPG_Fall08-newsVol11_I3_.pdf. “In divorce cases, the problem lies with spouses sharing the same player’s card or using the other spouse’s cards” and inserting them in the gaming machines. Moss, *supra* note 138, at 6. “Consequently, one cannot tell who was actually using the player’s card at any given time (unless the other spouse can prove he or she was at work” or not inside a casino) during the time period in question. *Id.*

As I have discussed elsewhere, “Another possible sign of a gambling problem is daily ATM withdrawals, particularly if the withdrawals are actually at a casino or bar” that has gaming machines.¹⁴⁸ “[T]here would be a proof problem if the accused spouse alleges that the other spouse or someone else was using the ATM card. The judge might evaluate the regularity of the withdrawals, the actual amount withdrawn, and how large each withdrawal was.”¹⁴⁹

Bank statements would [show] ATM withdrawals. Credit card statements can also serve as evidence of cash advances. Receipts of payday loans as well as pawn shop tickets, are additional evidence. Sworn testimony from family members constantly loaning out money (“bailouts”) to the gambler is another form of evidence.¹⁵⁰

2. Nevada Cases Involving Child Custody and Problem Gambling

As I have discussed in other articles, I have “encountered frightening stories of parents leaving their very young children unattended in a casino for several hours until hotel security pick[ed] them up.”¹⁵¹ I have “heard cases where minor children were left home alone completely unsupervised and left to fend for themselves while one parent worked and the other parent was out gambling.”¹⁵² I have handled cases where parents who actually worked as casino dealers openly admitted in court to already having a gambling problem, and these problem gamblers were already in counseling and treatment.¹⁵³ I have “had cases where a parent with no history of a criminal record received a felony conviction for a ‘first offense’ because of problem gambling.”¹⁵⁴ I have even seen attorneys lose their law license because of a gambling addiction, and some had co-occurring problems with substance abuse.¹⁵⁵

Notable U.S. cases relating to custody, visitation, and problem gambling are as follows:

- In *In re Marriage of Kramer*, a mother’s lack of emotional stability and witness testimony outweighed the father’s gambling activities and justified award of custody to the dad.¹⁵⁶

¹⁴⁸ Moss, *supra* note 147.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *See id.*

¹⁵⁶ *In re Marriage of Kramer*, 297 N.W.2d 359, 362–63 (Iowa 1980). Although the court never addressed a gambling addiction, it did find issues with the father’s gambling to the extent that it was irresponsible for him to gamble due to lack of finances. *Id.* at 362. The court cited to an instance where “[i]n a single weekend . . . [the father] lost approximately \$3000 betting on football games” which “included

- In *Steward v. Steward*, the grandparents of a divorced couple's child were denied visitation, based in part on the court's consideration of the grandmother's gambling problem.¹⁵⁷
- In *Roberson v. Roberson*, a father was awarded custody of the child because the mother's "gambling problem would offer a less stable home environment."¹⁵⁸
- In *O'Connor v. O'Connor*, a father's illicit drug use and compulsive gambling issues led the court to modify custody of his child, granting the mother "sole legal and primary physical custody" with supervised visits for the father.¹⁵⁹

3. *Judicial Orders in Problem Gambling Cases*

A family court judge should examine how to manage the payment of household bills through a neutral party if a family is in financial ruin as a result of the problem gambler's conduct. After a gambling assessment has been completed, the judge should be made aware of recommendations from the certified problem gambling counselor, such as attending Gamblers Anonymous (GA) meetings, GA meetings for the family members, referrals to non-faith-based or faith-based recovery groups, and individual and group counseling, among others.

The judge should also inquire about pending cases in criminal or civil court. A judge can also order the problem gambler to request self-exclusion from casinos. Finally, the judge should monitor the problem gambler's treatment and recovery. Once a week counseling sessions are considered intensive and should taper off as the gambler's recovery improves. During the pendency of custody litigation, the judge can order supervised visitation until the problem gambler is no longer a risk or danger to the minor children.

4. *Evidence of Problem Gambling in Family Court Cases*

In family court cases, evidentiary issues arise. As I have heard at problem gambling conferences, "There is No Pee Test for Compulsive Gambling." However, evidence can include:

- ATM withdrawals
- Large cash outs of retirement funds or savings

\$2000 . . . the parties had saved toward a downpayment [sic] on a house." *Id.* The court further found issue with the fact that "[e]ven at the time of trial, he seemed to see nothing wrong with losing \$20 a weekend in gambling." *Id.* The Court "would have [had] more confidence in [the father's] ability to care for the children if he recognized he [could not] afford to gamble." *Id.*

¹⁵⁷ See *Steward v. Steward*, 890 P.2d 777, 777, 779, 783 (Nev. 1995).

¹⁵⁸ See *Roberson v. Roberson*, 814 So. 2d 183, 183, 184 (Miss. Ct. App. 2002).

¹⁵⁹ See *O'Connor v. O'Connor*, No. 173024, 2003 WL 1563438, at *6, *8-9 (Va. Cir. Ct. Mar. 10, 2003).

- Recent credit or loan applications
- Player's card activities – (caution: the same player's card can be used by both spouses)
- Credit reports
- Thefts, embezzlement
- Pawn shop receipts
- Time spent away from job or from home
- Failure to supervise children, failure to pick up at school or take to activities
- Co-morbidity with other disorders or addictions such as alcohol, substance abuse
- LYING (emphasis), excuses for not coming home, denial of having a gambling problem¹⁶⁰

IV. PUBLIC POLICY AND RESPONSIBLE GAMING

The public policy issues behind problem gambling comprise of the fact that this disorder will never go away so long as gambling exists, legally or illegally, in any jurisdiction. The Nevada Gaming Commission has enacted Regulation 5.170, which, in part, mandates problem gambling-related training for all employees who “interact with gaming patrons.”¹⁶¹

Casinos, such as Caesars and the MGM, to list a few, have implemented their own responsible gaming programs.¹⁶² For example, at Caesars Entertainment properties, it is mandatory for all casino employees in Nevada to receive training on problem gambling.¹⁶³ Training includes looking for signs of problem gambling, ensuring that minor children are not left unattended, screening underage gamblers, looking for persons who appear to be under the age of thirty, and providing resources for help with problem gambling.¹⁶⁴

Casinos have also partnered with nonprofit groups to publicly display signs indicating help lines or 1-800 numbers and brochures such as “When the Fun Stops” published by the Nevada Council on Problem Gambling.¹⁶⁵ Ms. Connie

¹⁶⁰ See Moss, *supra* note 138 at 6–7; PROBLEM GAMBLING RESOURCE GUIDE, *supra* note 38, at 1; Denise F. Quirk, *Treatment Approaches & Financial Accountability*, in PROBLEM GAMBLING AND THE LAW: AN INFORMATION AND RESOURCE GUIDE 4, 4 (2010).

¹⁶¹ Nev. Gaming Reg. 5.170(3) (2015).

¹⁶² See *Responsible Gaming*, CAESARS ENTERTAINMENT, <http://caesarscorporate.com/about-caesars/responsible-gaming/> (last visited Nov. 27, 2015) [hereinafter *Caesars Responsible Gaming*]; MGM Resorts Int'l, *Responsible Gaming*, MGM GRAND, <https://www.mgmgrand.com/en/casino/responsible-gaming.html> (last visited Nov. 27, 2015).

¹⁶³ See *Caesars Responsible Gaming*, *supra* note 162.

¹⁶⁴ *Id.*

¹⁶⁵ *Material Distribution*, *supra* note 133. Such materials are required of the Nevada Gaming Regulations. Reg. 5.170(2) (“Each licensee shall post or provide in

Jones, Director of Responsible Gaming for American Gaming Equipment Manufacturers (AGEM),¹⁶⁶ gave a highly informative presentation on harm reduction in gaming discussing the various methods. According to Ms. Jones, there have been ideas suggested in the responsible gaming industry to put time limits on slot machine play or to display clocks on gaming machines or inside casinos.¹⁶⁷ Another suggestion was to close down casinos for four hours daily. Playing warnings and advertisements on the dangers of gambling before machine play begins was another idea.¹⁶⁸ Casinos have also displayed signage on patron age requirements (21 and higher in Nevada)¹⁶⁹ and promote responsible gaming in hotel directories and public locations within casinos.¹⁷⁰

At some casinos, such as Caesars Entertainment properties, patrons can request “self-restrictions” to avoid receiving direct marketing or advertisements from the casino, and to restrict credit or check cashing privileges.¹⁷¹ Caesars also provides for “self-exclusion” that allows patrons to be denied play privileges.¹⁷² “Unfortunately, Nevada does not have a state sponsored self-exclusion program. However, the state requires that each casino (maybe other gaming licensees) have the option to self-limit mail, casino credit, or check-cashing privileges. Caesars has an in-house self-exclusion program that individuals may voluntarily request, which offers a 1-year, 5-year, or permanent exclusion period from all Caesars gaming facilities.”¹⁷³

conspicuous places in or near gaming and cage areas and cash dispensing machines located in gaming areas written materials concerning the nature and symptoms of problem gambling and the toll-free telephone number of the National Council on Problem Gambling or a similar entity approved by the chairman of the board that provides information and referral services for problem gamblers.”)

¹⁶⁶ *AGEM Appoints Connie Jones as Director of Responsible Gaming*, INNOVATIVE GAMING (Jan. 14, 2014), <http://www.innovategaming.com/c39785>.

¹⁶⁷ For an overview of some of the ideas expressed by Ms. Jones discussed in the presentation, see Marian Green, *Responsible Gaming on the Slot Floor*, SLOT MANAGER, May/June 2009, at 12, 12, <http://www.casinojournal.com/articles/87867-responsible-gaming-on-the-slot-floor> (“Some previous efforts to institute clocks on slot machines, messages on the device, time limits or other measures haven’t shown much success and sometimes have had unintended consequences, such as causing problem gamblers to gamble faster or for higher stakes, Jones said during the panel discussion.”).

¹⁶⁸ *See id.*

¹⁶⁹ *See, e.g., Las Vegas Facts*, L.V. TRAVEL GUIDE, <http://www.lasvegas-how-to.com/lasvegas-facts.php> (last visited Dec. 4, 2015) (presenting an example of signage one might find in a casino information patrons of state laws regarding the age requirements in gaming areas).

¹⁷⁰ *See Nev. Gaming Reg. 5.170(2)* (2015) (requiring gaming licensees to “post or provide in conspicuous places in or near gaming and cage areas and cash dispensing machines” information and literature on problem gambling resources).

¹⁷¹ *Caesars Responsible Gaming*, *supra* note 162.

¹⁷² *Id.*

¹⁷³ Email from Carolene Layugan, Responsible Gaming Program Manager, Caesars Entm’t, to Cheryl Moss, Judge, Dep’t I, Eighth Judicial Dist. Court of Nev. (on file with author); *see also Nev. Gaming Reg. 5.170(4)* (2015).

Detecting problem gambling is not merely restricted to the physical realm. With the proliferation of online a new software program has been developed that can track gambling habits and effectively warn the gambler of signs and risks of addiction with an 87% accuracy.¹⁷⁴

Finally, Chapman University School of Law Professor Kurt Eggert gives a good overview of the overlap and differences between “harm reduction” and “consumer protection” in the context of gaming and responsible gaming. Some of the possible methods Eggert lists to reduce the potential harm from gaming activities include:

- “Use of slogans, ‘Bet with your head, not over it.’
- Removal of ATMs
- No alcohol sales or give-aways [sic]
- Reduce sound/music of slot machines
- Marketing and ad restrictions/bans
- Clocks and other reminders of how much time/money has been spent.
- Self-exclusion programs.
- Smart cards with time/money stop losses.
- Requirement that gambler purchase gambling tokens or smart card in advance.”¹⁷⁵

V. CONCLUSION

Hopefully, this article gives a good overview of how courts and agencies in the various states are addressing problem gambling within their jurisdiction. With a better understanding of existing problem gambling diversion programs nationwide, judges and community partners can improve upon such programs and/or learn how to create a program where none currently exists.

I believe that addressing problem gambling starts with awareness and educating the public. In my career as a family court judge, awareness and educating the public are not possible without substantive knowledge and actual courtroom experience.

Statewide conferences are also held annually, not just in Nevada but states such as Massachusetts, Florida, Maryland, California, Minnesota, Louisiana, Nebraska, Pennsylvania, New Jersey, and New York, to name a few. I encourage those who have attended these conferences to spread the word and

¹⁷⁴ Alice MacGregor, *Machine Learning to Help Predict Online Gambling Addiction*, THE STACK (Oct. 26, 2015, 8:55 AM), <https://thestack.com/cloud/2015/10/26/machine-learning-to-help-predict-online-gambling-addiction/>.

¹⁷⁵ Kurt Eggert, Professor, Chapman Univ. Sch. of Law, Which Should Come First, Harm Minimization or Consumer Protection for Gamblers?, Presentation at the Responsible Gambling Council’s Discovery 2009 Conference, at slides 9–10 (Apr. 19–22, 2009), <http://www.responsiblegambling.org/docs/discovery-2009/which-should-come-first-harm-minimization-or-consumer-protection-for-gamblers-.pdf?sfvrsn=8>.

tell their peers and colleagues who are interested in learning more about problem gambling.