

THE SHUFFLED DECK: NEVADA'S GAMBLING TREATMENT
DIVERSION COURT AND FUTURE EXPANSION OF GAMBLING COURTS IN
THE UNITED STATES

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I. INTRODUCTION

“Gambling” is most simply defined as engaging in conduct that involves a chance to win a prize where some consideration is required.¹ In its purest form, evidence of gambling dates back to ancient and biblical times with the “rolling of bones” and “casting of lots.”² Gambling has also long been a part of American

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** Honorable Cheryl Moss served for 20 years as a family court judge and was the first judge to establish and preside over Nevada's first Gambling Treatment Diversion Court. Many thanks to my co-author, Honorable Scott Frederick, for providing perspectives that complemented this article so well. I dedicate this article to those who have suffered from disordered gambling and are the reasons why gambling courts are much needed.

¹ Anthony N. Cabot, Glenn J. Light & Karl F. Rutledge, *Alex Rodriguez, a Monkey, and the Game of Scrabble: The Hazard of Using Illogic to Define Legality of Games of Mixed Skill and Chance*, 57 *DRAKE L. REV.* 383, 390 (2009).

² See *Matthew 27:35–37* (“After they had nailed him to the cross, the soldiers gambled for his clothes by throwing dice. Then they sat around and kept guard as he hung there. A sign was fastened above Jesus’[s] head, announcing the charge against him. It read: ‘This is Jesus, the King of the Jews.’”). According to the Bible, many people have cast lots for things that did not involve Jesus’s clothes. See *Leviticus 16:8*, *Proverbs 16:33*, *18:18*, *Acts 1:24–26*, etc. The main purpose of casting lots was to reach a decision that was not biased nor based on human choice by letting God

culture. Thousands of years before colonial times, Native Americans were known to engage in various types of social gambling.³ These games and contests, however, were not for amusement; rather, they served to build relations with nearby tribes and redistribute trade goods.⁴ During Colonial times and through the American Revolution, gambling was often frowned upon and forbidden. The Puritans felt that a person who gambled had idle time, which should be used instead for prayer and work.⁵ Nevertheless, throughout the seventeenth and eighteenth centuries, various forms of gambling thrived, including card games, shuffleboard, wagering on horseracing, and lotteries.⁶ During the American Revolutionary War era, gambling was often forbidden for everyone except individuals with certain financial stature or military rank.⁷ After gaining its independence from the Great Britain, America quickly began to expand in conjunction with gambling. From New Orleans to New York City, and eventually through Western expansion, various games of chance gained popularity.⁸

The expansion of both regulated and unregulated gaming gave rise to people who struggle to control their gambling behavior and also efforts to curb the negative effects of gaming. For centuries, societies have grappled with the implications of what we would today call “problem” or “disordered” gambling behavior. Societies have tried to curb risky gaming behavior and protect patrons and their families from financial ruin by imposing restrictions based on social class and refusing to legally enforce gaming debts.⁹ This article is not written as a commentary on whether gambling should be licensed or regulated by governments, nor is it about the psychology of gambling per se. Rather, this article is about how governments and society—namely, the criminal justice system—should handle defendants with gambling addiction disorders and how specialty courts can play a pivotal role. When states and their citizens allow regulated gaming within their jurisdictions, they assume a responsibility to address the reality that a known percentage of those who participate will become disordered gamblers. For the subset of disordered gamblers who engage in non-violent criminal activity related to their gambling addiction, specialty courts are best equipped to address the underlying addiction and mental health disorders, rehabilitate eligible defendants, and protect society as a whole.

decide the matter. *See Acts 1:24–26* (stating that a replacement for Judas was selected through casting lots).

³ DAVID G. SCHWARTZ, *ROLL THE BONES: THE HISTORY OF GAMBLING*, 110 (Winchester Books, Casino ed. 2013) (2006).

⁴ *Id.* at 112.

⁵ *Id.* at 114.

⁶ *Id.* at 115.

⁷ *Id.* at 118.

⁸ *Id.* at 128–80.

⁹ *Id.* at 2–6.

II. EXPANSION OF REGULATED GAMING AND RISK FACTORS

In the United States, state and local governments are seeking to grow their tax revenues through rapid expansion of regulated gaming. According to statistics compiled by the American Gaming Association, there are currently 987 casinos operating in the United States with gross gaming revenue of roughly \$58 billion and an overall economic impact of more than \$261 billion.¹⁰ Long gone are the days when Las Vegas and Atlantic City monopolized legal casino gaming in the United States, as brick-and-mortar casino expansion continues nationwide. Sanctioned gaming activity is now spread across forty-three states and includes both commercial and tribal casino operations. Regulated casino gaming generates more than \$41 billion in annual tax revenue for federal, state, and local governments.¹¹

However, these numbers could pale in comparison to the projected growth in revenues from the ongoing expansion of legal sports betting and internet gambling. The illegal sports betting market is a \$17 billion industry in the United States that garners as much as \$1.7 trillion in profits worldwide.¹² In an attempt to capture the perceived loss of unrealized tax revenues, states are legalizing sports betting at breakneck speed. These policy changes were spurred by a recent U.S. Supreme Court decision that voided a federal law prohibiting states from legalizing sports betting.¹³

By a six-to-three vote, the Court in *Murphy* struck down as unconstitutional the federal legislation known as the Professional and Amateur Sports Protection Act of 1992, (“PASPA”) and opened the floodgates for states to legalize sports betting and tax the revenue generated. Since the opinion was handed down just four years ago, thirty-three states and the District of Columbia have passed formal legislation to offer some form of legalized sports betting, and another five have pending legislation.¹⁴ In short, not only has the sports betting train left the station, it has gained speed and momentum that few could have predicted just a few years ago.

¹⁰ *State of Play*, AM. GAMING ASS’N (Dec. 31, 2020), <https://www.americangaming.org/state-of-play/>.

¹¹ *Skilled at Deception: How Unregulated Gaming Machines Endanger Consumers and Dilute Investments in Local Economies*, AM. GAMING ASS’N (2021), <https://www.americangaming.org/wp-content/uploads/2021/04/Unregulated-Gaming-Machines-White-Paper-Final.pdf>.

¹² Christopher Palmeri, *Integrity of Sports Put at Risk by \$1.7 Trillion in Illegal Bets, U.N. Says*, BLOOMBERG (Dec. 9, 2021), <https://www.bloomberg.com/newsarticles/2021-12-09/illegal-sports-betting-nears-1-7-trillion-annually-u-n-says>.

¹³ See *Murphy v. NCAA*, 138 S. Ct. 1461, 1485 (2018).

¹⁴ *Interactive Map: Sports Betting in the U.S.*, AM. GAMING ASS’N., <https://www.americangaming.org/research/state-gaming-map/> (last visited Apr. 24, 2022) [hereinafter *Sports Betting Map*].

The combination of online sports betting and the newest internet technology has created a new gateway to internet gambling, also known as “igaming.” No longer do patrons need to travel to a nearby land-based casino to play their favorite slot machine or table game. The technology now exists to support gaming while you are at home, twenty-four hours a day, seven days a week, on your mobile device or computer. Today, there are six states that legally offer various forms of online gambling (including online casino games and poker): New Jersey, Delaware, Pennsylvania, Connecticut, Michigan, and West Virginia.¹⁵ This list is expected to grow rapidly, with states like Nevada considering legalization after some major operators have recently withdrawn objections.¹⁶

Daniel Trolaro is the Assistant Executive Director of the Council on Compulsive Gambling of New Jersey, Inc. He has done many presentations specifically on the potential harm that online sports wagering and “igaming” poses. Trolaro teaches that for the compulsive gambler, gambling is not just about the money or winning; it is about the rush the gambler gets when he or she gambles.¹⁷ Online gaming removes all the hurdles that in-person gambling requires participants to clear. Instead of getting out of bed, getting dressed, getting in your car, and driving to a land-based casino, placing bets or playing slots is as easy as waking up and grabbing your phone. Studies have shown that there is a direct connection between dopamine levels in the human brain and the “high” sought by a gambler.¹⁸ Because higher dopamine levels make us feel better and forget about the worries of life, the questions for the problem gambler are: How much? How often? and When next?¹⁹

If casino gaming offers that dopamine drip for a compulsive gambler, online wagering is a syringe in their vein, according to Trolaro.²⁰ In New Jersey, calls to the gambling helpline grew exponentially in 2020, with thirty-four percent of callers reporting that their problem involved mobile wagering. By contrast, this number was only four percent in 2019.²¹ Legal sports betting went live in New York in January 2022, and more than \$2 billion was wagered in the

¹⁵ Nick Chappell, *Best Legal US Online Casinos*, US BETS (Oct. 19, 2021), <https://www.usbets.com/online-casino/>.

¹⁶ Erik Gibbs, *MGM Resorts Casino Supports Launch of iGaming in Nevada*, GAMBLING NEWS (Oct. 5, 2021), <https://www.gamblingnews.com/news/mgm-resorts-ceo-supports-launch-of-igaming-in-nevada/>.

¹⁷ Daniel J. Trolaro, Assistant Exec. Dir., The Council on Compulsive Gambling of N.J., *Problem Gambling Webinar: Sports Betting and Online Gambling* (Dec. 10, 2020) (on file with authors).

¹⁸ *Id.*

¹⁹ *Id.*; Ferris Jabr, *How the Brain Gets Addicted to Gambling*, SCI. AM. (Nov. 1, 2013), <https://www.scientificamerican.com/article/how-the-brain-gets-addicted-to-gambling/>.

²⁰ *Id.*

²¹ *Id.*

first five weeks, generating nearly \$80 million in tax revenue for the state.²² This uptick in sports wagering was accompanied by a forty-six percent increase in calls to the problem gambling hotline.²³

Experts stress that it is too soon to make broad declarations on the impact of legalized sports betting across the country, but early signs—especially the enormous spike in helpline calls—show that gambling addiction may be as much of a public health danger as opiates or alcohol because of the stunning speed of its destructive path.²⁴ Most recently, the Connecticut Council on Problem Gambling (CCPG) reported that calls to the helpline have quadrupled since sports betting became legal, and the number of online chat requests went from 13,344 in all of 2021 to 13,143 in January 2022 alone.²⁵ Kaitlin Brown is a licensed counselor for drug, alcohol, and gambling addiction, as well as a fourteen-year veteran working in addiction services, including the past five at the CCPG.²⁶ Brown said that this surge has been crushing and the guardrails for problem gambling are about forty years behind other addictions.²⁷ “I thought it would be three, four, five years till we were seeing this level of people looking for help . . . [b]ut it took about six to eight weeks,” she said.²⁸

When it comes to sports betting, gaming operators try to use language suggesting that betting is a skill-based activity, rather than gambling.²⁹ This language includes words like “put money on” instead of “play” and promotes options such as “early cash out” if a bet is not going well and the player wants to repurpose funds for the next wager. This concept is similar to the game show “Deal or No Deal,” where players know that a \$1 million case is out there and with their skill, they can be the one to find it while turning down other offers. “Early cash out” lets players take profit early if their bet is coming in. Or, if their bet is going against them, they can cash out early to get some of their money back. Cash out offers are made in real time based on live “market prices.”³⁰ In this alternate world, sports betting is not really gambling, but more akin to day

²² Jesse McKinley, *Online Sports Betting's N.Y. Debut: \$2.4 Billion in Wagers in 5 Weeks*, N.Y. TIMES (Feb. 22, 2022), <https://www.nytimes.com/2022/02/22/nyregion/sports-betting-ny.html>.

²³ Andrew Cohen, *New York's Record-Setting Mobile Betting Debut Also Sees a Surge in Problem Gambling Calls*, SPORTTECHIE (Feb. 11, 2022), <https://www.sporttechie.com/new-yorks-record-setting-mobile-betting-debut-also-sees-a-surge-in-problem-gambling-calls#>.

²⁴ Ryan Hockensmith, *Inside the Life of a Gambling Help Line Worker*, ESPN (Feb. 9, 2022), https://www.espn.com/chalk/story/_/id/33237601/inside-life-gambling-help-line-worker.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Cohen, *supra* note 23.

³⁰ *Id.*

trading stocks or other forms of investing, that use skillful money management.

This illusion of offering the gambler more control keeps them engaged by enabling them to outsmart, outwit, and outlast, as if they were on another gameshow “Survivor.” People simply believe they have a better chance of winning when they are given the control to decide where they can allegedly leverage their own skill or sports knowledge. Even worse, it makes the players believe that if they simply improve their own skill level, more winning is inevitable.³¹

Now armed with the ability to analyze an unending amount of statistical data, there is no shortage of media gurus who tout the best bets on any upcoming sports event. This tracking of data makes wagering on just the final outcome of sporting events too mundane. Accordingly, sportsbooks now offer proposition bets during games that allow people to wager on countless events within each contest.³² Lost your last bet? No time to be upset; just place another bet to chase your loss over and over and over. Why wait hours to be rewarded when you can keep hitting that button to chase the next reward in seconds, bringing on that dopamine sought by problem gamblers with each steady wager.

Being able to speed up play on a mobile device or place money on continual proposition bets during a sporting event is fuel for a problem gambler seeking that next dopamine rush. The brain learns to hit the gas pedal much faster than the brakes. This digital dopamine drip of constant reinforcement and encouragement to make that next bet is exactly what the problem gambler craves.³³ Immersion, continuity, and speed are the exact triggers that mobile gaming utilizes, creating problem gamblers.³⁴ In New Jersey, for example, the percentage of calls to the gambling helpline related to online sports betting has grown in lockstep with the increase in handle,³⁵ accounting for about twenty percent of all calls to the helpline.³⁶ There is genuine concern that the growth of mobile sports betting will lead to a significant increase in problem gamblers.

In addition to the proliferation of government-sanctioned gaming, operators continue to push for the easing of the rules regarding patron access to funds during gaming sessions. Historically, casino patrons can wager using cash only. Patrons must either bring sufficient funds to wager, have access to funds in a bank account, or ask the casino for borrowing privileges. In the United States,

³¹ *Id.*

³² Steve Patrella, *What is a Prop Bet? Definitions, Examples, More*, ACTION NETWORK (Sept. 23, 2021), <https://www.actionnetwork.com/education/prop-bet>.

³³ Trolaro, *supra* note 17.

³⁴ *Id.* at 44.

³⁵ *Id.*

³⁶ Jim Walsh, *Diversion Program Would Offer Help to Criminals with Gambling Addiction*, CHERRY HILL COURIER-POST (June 7, 2021, 6:21 AM), <https://www.courierpostonline.com/story/news/2021/06/07/new-jersey-gambling-treatment-diversion-court-caputo-nevada/7580642002/>.

credit cards cannot be used for wagering. When wagering online, funds must either be deposited directly with an operator at a physical location prior or transferred through a digital transaction. There is a strong push, however, to bend these regulations to allow for easier access to funds during gaming sessions via digital wallets.³⁷ Combined with mobile gaming, cashless wagering creates new risk factors for people who are prone to disordered gambling. Without addressing the utility of cashless wagering, the fact remains that systems approved to more easily fund gaming will lead to more disordered gambling behaviors.

III. THE SPECIALTY COURTS MODEL AND SOCIETAL BENEFITS

A traditional court of law is only one facet of the specialty court model. Specialty courts, also known as the “Problem-Solving Court Model” involve an interdisciplinary team, usually led by a judge or parole authority, that treats one type of offense or offender.³⁸ Drug courts are likely the most well-known of the specialty courts; and from that model, they now include other therapeutic jurisprudence opportunities such as domestic violence courts, veterans’ treatment courts, and other mental health courts.³⁹ Their common goal is twofold: (1) to promote case management within the court system by expediting processing and disposition, thus increasing trial capacity; and (2) to reduce crime by addressing addiction and its underlying issues through therapeutic approaches.⁴⁰ Drug courts, for example, specifically aim to reduce rates of recidivism, reduce substance use among participants, and provide rehabilitative resources.⁴¹

By connecting the judicial, law enforcement, and treatment communities, specialty courts are in a unique position to address participants’ needs.⁴² The drug court model’s baseline includes offender screening, judicial interaction, monitoring and supervision, graduated sanctions and incentives, and treatment and rehabilitation services.⁴³ At the local level, specialty courts can

³⁷ Contessa Brewer, *Coronavirus May Sway Regulators to Allow Casinos to Say Goodbye to Cash*, CNBC NEWS (June 16, 2020), <https://www.cnbc.com/2020/06/16/coronavirus-may-sway-regulators-to-allow-casinos-to-say-good-bye-to-cash.html>.

³⁸ *Problem-Solving Courts*, NAT’L INST. OF JUST. (Feb. 20, 2020), <https://nij.ojp.gov/topics/articles/problem-solving-courts>.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Drug Courts: A Smart Approach to Criminal Justice*, OFF. OF NAT’L DRUG CONTROL POL’Y (May 2011), <https://obamawhitehouse.archives.gov/ondcp/ondcp-fact-sheets/drug-courts-smart-approach-to-criminal-justice> [hereinafter *A Smart Approach to Criminal Justice*].

⁴² *Id.* These needs include education, housing, job training, and other mental health referrals.

⁴³ *Overview of Drug Courts*, NAT’L INST. OF JUST. (July 22, 2020), <https://nij.ojp.gov/topics/articles/overview-drug-courts>.

create their own standards of accountability by providing access to a continuum of alcohol, drug, and other treatment and rehabilitation services.⁴⁴ Continued compliance requires both graduated sanctions (which involve more frequent drug testing, in-patient detoxification/treatment, additional court appearances, and short periods of incarceration) and graduated incentives (characterized by fewer drug tests, fewer court appearances, dismissal of criminal charges, and reduced/set-aside sentences).⁴⁵

The first drug court was implemented in Florida in 1989.⁴⁶ Drug courts are specialized court docket programs that target adults charged with or convicted of a crime, youth involved in the juvenile justice system, and parents with pending child welfare cases who have alcohol and other drug dependency problems.⁴⁷ In 1994, Congress began to support the development of state and local drug court programs with the Drug Court Discretionary Grant Program.⁴⁸ By 2010, Congress had provided more than \$530 million in federal appropriations for drug court grants.⁴⁹ Since their inception, virtually every jurisdiction in the country has adopted treatment courts.⁵⁰ Today, federal, state, and private funding are available for specialty treatment courts nationwide.⁵¹

The Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”) recognizes gambling disorder as a type of behavioral addiction.⁵² By definition, a gambling disorder is repeated gambling behavior that leads to problems for the individual, his or her family, and society at large.⁵³ Substance-related disorders and behavioral addictions have similar clinical expression, brain origin, physiology, comorbidity, and treatment.⁵⁴

The clinical similarities among addiction disorders—such as those involving drugs, mental health disorders, and recognized gambling disorders—all meet the criteria for eligibility and potential success in a treatment-court setting. At its core, the criminal justice system aims to combat crime and protect

⁴⁴ *A Smart Approach to Criminal Justice*, *supra* note 41.

⁴⁵ Celina Franco, *Drug Courts: Background, Effectiveness, and Policy Issues for Congress*, CONG. RSCH. SERV. (Oct. 12, 2010), at 1.

⁴⁶ *Id.*

⁴⁷ *Drug Courts*, U.S. DEPT. JUST. PROGRAMS (last visited Feb. 9, 2022), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/drug-courts.pdf> [hereinafter *OJJDP Drug Courts*].

⁴⁸ *Id.* at 2.

⁴⁹ *Id.* at 27.

⁵⁰ *A Smart Approach to Criminal Justice*, *supra* note 41.

⁵¹ *Grants & Funding*, U.S. DEPT. JUST. PROGRAMS: DRUG CRTS. (last visited Feb. 9, 2022), <https://www.ojp.gov/feature/drug-courts/grants-funding>.

⁵² *What is Gambling Disorder?*, AM. PSYCHIATRIC ASS’N (Aug. 2021), <https://www.psychiatry.org/patients-families/gambling-disorder/what-is-gambling-disorder>.

⁵³ *Id.*

⁵⁴ *Id.* See also, Jon E. Grant et al., *Introduction to Behavioral Addictions*, 36 AM. J. DRUG & ALCOHOL ABUSE 233–41 (Sept. 2010).

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society through policing measures, punishing those who commit crimes and rehabilitating them so that they can safely return to society.⁵⁵ The criminal justice system should also support victims of crime and minimize the impact of their experience.

Although treatment courts vary in target populations and resources, the programs are generally managed by a multidisciplinary team including judges, defense attorneys, prosecutors, social workers, community corrections officers, and treatment service professionals.⁵⁶ Law enforcement, family members, and people in the community can support treatment court candidates by participating in hearings, programming, and events such as graduation.

There are more than 3,500 drug and multifaceted treatment courts across the United States, about half of which are adult treatment drug courts.⁵⁷ In their simplest form, treatment courts offer a “carrot and stick” approach:

The primary purpose of these [drug court] programs is to use a court’s authority to reduce crime by changing defendants’ substance abuse behavior. In exchange for the possibility of dismissed charges or reduced sentences, eligible defendants who agree to participate are diverted to drug court programs in various ways and at various stages in the judicial process. These programs are typically offered to defendants as an alternative to probation or short-term incarceration.⁵⁸

Other types of treatment courts have emerged to address issues specific to unique populations, including tribal, driving while intoxicated (DWI), reentry, veterans, mental health, and co-occurring programs.⁵⁹

The National Institute of Justice (NIJ) funds research on drug court processes, impact, and cost efficiency.⁶⁰ A study on ten years of cohorts in the Multnomah County Drug Court found that participants were less likely to be rearrested five-plus years later than comparable individuals, but reductions ranged from seventeen percent to twenty-six percent across cohorts with changes

⁵⁵ See generally DORIS LAYTON MACKENZIE, SENTENCING AND CORRECTIONS IN THE 21ST CENTURY: SETTING THE STAGE FOR THE FUTURE (July 2001), <https://www.ojp.gov/sites/g/files/xyckuh241/files/archives/ncjrs/189106-2.pdf>.

⁵⁶ *OJJDP Drug Courts*, supra note 47.

⁵⁷ *Id.*

⁵⁸ *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, GOV’T ACCOUNTABILITY OFF., GAO-05-219 at 3, (Feb. 2005), <https://www.gao.gov/assets/gao-05-219.pdf>.

⁵⁹ *The Problem-Solving Court Model*, NAT’L INST. JUST., <https://nij.ojp.gov/topics/articles/problem-solving-courts> (last visited Feb. 3, 2022).

⁶⁰ See generally *About Us*, U.S. DEPT. JUST.: OFF. JUST. PROGRAMS, <https://www.ojp.gov/about/offices/national-institute-justice-nij> (last visited Feb. 23, 2022).

in programming and judge assignments.⁶¹ NIJ's Multisite Adult Drug Court Evaluation found that these programs are successful in helping participants reduce their drug use and criminal activity during the program and thereafter.⁶²

Compared to traditional case processing and supervision, treatment courts have higher investment costs due to the array of services involved.⁶³ However, the savings associated are far greater given the reduction in crimes, rearrests, and incarcerations. Drug courts that target individuals with high criminogenic risk and significant substance abuse treatment needs yield the most effective interventions and maximize return on investment.⁶⁴ It is estimated that for every \$1 spent on drug courts, about \$2.21 is saved in the criminal justice system alone.⁶⁵

NIJ's Multisite Adult Drug Court Evaluation (MADCE) found:

- Participants reported less criminal activity (40% vs. 53%) and had fewer rearrests (52% vs. 62%) than comparable individuals.
- Participants reported less drug use (56% vs. 76%) and were less likely to test positive (29% vs. 46%) than comparable individuals.
- Treatment investment costs were higher for participants, but with less recidivism, drug courts saved an average of \$5,680 to \$6,208 per individual overall.⁶⁶

Gambling treatment courts align well with the goals of our criminal justice system. Accountability for criminal conduct, accompanied by the opportunity to receive treatment for disordered gambling and restitution for victims, satisfies the pillars of criminal justice reform.

The tables below show outcomes measured by MADCE (**Table 1**) and a comparison of benefits enjoyed by drug court participants versus individuals outside of drug court (**Table 2**).

⁶¹ *Drug Courts*, U.S. DEPT. JUST.: OFF. JUST. PROGRAMS, <http://www.pacenterofexcellence.pitt.edu/documents/BJA%20Fact%20Sheet%20on%20Drug%20Courts.pdf> (last visited Feb. 1, 2022) [hereinafter *OJP Drug Courts*].

⁶² *Id.*

⁶³ *Drug Courts Are Cost-Effective, Compassionate Thing to Do*, HAZELDEN BETTY FORD FOUND., <https://www.hazelden.org/web/public/ade60612.page> (last visited Feb. 1, 2022).

⁶⁴ *A Smart Approach to Criminal Justice*, *supra* note 41.

⁶⁵ *Id.*

⁶⁶ *OJP Drug Courts*, *supra* note 61.

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Category	Sub-Category	Impacts
Social productivity	Employment Education Services and support provided	Earnings Schooling Child support payments, community service
Criminal justice system	Monitoring Police Courts Corrections Drug court	Probation officer meetings, drug tests, electronic monitoring Arrests Hearings Jail and prison (sanctions or otherwise) Case management, administrative costs
Crime and victimization		Crimes committed
Service use	Drug treatment Medical treatment Mental health treatment Other	Emergency room, detoxification, residential care, outpatient, methadone Hospital stays unrelated to drugs Stays in mental health facilities unrelated to drugs Halfway houses, public housing, homeless shelters
Financial support use	Government Other	Welfare, disability, other entitlements Money from family and friends

Category	Drug Court Participants	Comparison Probationers	Net Benefit
Social productivity	\$20,355	\$18,361	\$1,994
Criminal justice system	-\$4,869	-\$5,863	\$994
Crime and victimization*	-\$6,665	-\$18,231	\$11,566
Service use*	-\$15,326	-\$7,191	-\$8,135
Financial support use	-\$4,579	-\$3,744	-\$835
Total	-\$11,206	-\$16,886	\$5,680

*Difference is statistically significant ($p < 0.01$).

Treatment courts must be flexible and willing to adapt to a changing society. Judge Keith Spaeth has handled the drug court docket in the Common Pleas Court of Butler County, Ohio, for more than twenty years and has seen the need for regular evaluation and expansion of services.⁶⁷ He describes his role as part cheerleader and self-esteem builder for program participants, but he also notes that the program is only effective if he can impose serious consequences when defendants falter.⁶⁸ Without a hammer, it is even more difficult to implement the structural changes needed to help people suffering from addiction disorders.⁶⁹

Just as drug courts have adapted to shifts in drug culture and emerging drugs such as opioids, Judge Spaeth believes that the expansion of treatment courts for other mental health issues and other vulnerable groups, such as military veterans, has been a natural progression.⁷⁰ He readily sees the value that treatment courts can provide to people with gambling addiction disorders as the access and expansion of regulated gaming continues nationwide.⁷¹ Judge Spaeth stated, “Treatment courts must constantly track, evaluate, and adjust in order to remain effective.”⁷² He concluded that there are many defendants in the criminal justice system who are only there due to underlying mental health disorders and if we deal with that root cause, we can reduce recidivism.⁷³

IV. NEVADA’S FIRST GAMBLING TREATMENT DIVERSION COURT

A. *Creation and Establishment of the Gambling Treatment Diversion Court*

The 2016 article “Shuffling the Deck: The Role of the Courts in Problem Gambling Cases” discusses the passage of Nevada Assembly Bill 102.⁷⁴ The bill went into effect on October 1, 2009,⁷⁵ and was codified in the Nevada Revised Statutes (NRS) under Chapter 458A (Prevention and Treatment of Problem Gambling).⁷⁶ This statute established a program for criminal diversion related to gambling. Nevada courts were authorized to create a treatment program for

⁶⁷ Interview by Scott Frederick with Judge Keith M. Spaeth (Jan. 14, 2022); *see generally* Judge Keith M. Spaeth, COMMON PLEAS COURT OF BUTLER COUNTY, OHIO, http://www.bccommonpleas.org/judges/judge_keithspaeth.php (last visited Feb. 1, 2022).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *See* Cheryl B. Moss, *Shuffling the Deck: The Role of the Courts in Problem Gambling Cases*, 6 UNLV GAMING L.J. 145, 147 (2016) [hereinafter *Shuffling the Deck*].

⁷⁵ *Id.* at 164.

⁷⁶ NEV. REV. STAT. § 458A (2021).

problem gamblers who commit a crime in furtherance of a gambling problem,⁷⁷ but the courts rarely invoked the statute early on due to lack of awareness.

Nearly ten years later in September 2018, Chief Judge Linda Bell of the Eighth Judicial District Court approved the creation and establishment of Nevada's first Gambling Treatment Diversion Court (GTDC).⁷⁸ This decision signaled the judiciary's recognition and awareness that gambling diversion would benefit the community. When GTDC was established, two gambling cases were deemed eligible for diversion under NRS Chapter 458A.⁷⁹ A GTDC team assembled and included the presiding judge, a GTDC court coordinator (a credentialed mental health and addiction professional), a prosecutor, a public defender, and a community provider (the Nevada Council on Problem Gambling). Nevada's Specialty Courts Program provided guiding principles and expertise of operations and best practices.⁸⁰

B. Eligibility Hearing

As noted, Nevada courts can create a treatment program for problem gamblers who committed a crime in furtherance of a gambling problem.⁸¹ Generally, crimes related to gambling include petit larceny (e.g., shoplifting), burglary, robbery, possession of burglar tools, drug/alcohol offenses related to comorbidity (DWI, possession), criminal possession of stolen property, grand larceny, identity theft, theft from employer, forgery, false impersonation, embezzlement, theft from family, bad checks, falsely reporting crimes to avoid family detection, endangering the welfare of a child, resisting arrest, criminal mischief, assault, and controlled substance sale.⁸² In Nevada, a defendant is ineligible for gambling treatment diversion if he or she committed a felony or

⁷⁷ See *id.* § 458A.200.

⁷⁸ Co-author Judge Moss penned the acronym "GTDC" when she created the Gambling Treatment Diversion Court; Cheryl Moss, *Meet Your GTDC Team: Nevada's First Gambling Treatment Diversion Court*, STATE BAR OF NEVADA <https://nvbar.org/meet-your-gtdc-team-nevadas-first-gambling-treatment-diversion-court/> (last visited Mar. 27, 2022).

⁷⁹ Cheryl Moss, *Nevada's First Gambling Treatment Diversion Court: A Judge's Historical and Personal Perspective on Problem Gambling*, NEVADA GAMING LAWYER: STATE BAR OF NEVADA (2019), <https://www.nvbar.org/wp-content/uploads/16-Diversion-Court.pdf>.

⁸⁰ See generally *Specialty Court Program Overview*, NEV. ADMIN. OFF. CTS., https://nvcourts.gov/AOC/Programs_and_Services/Specialty_Courts/Overview/ (last visited Mar. 10, 2022) [hereinafter *Specialty Court Program Overview*].

⁸¹ NEV. REV. STAT. § 458A.220(1).

⁸² Mark G. Farrell, *A "Struggle" for Progress and Therapeutic Innovation in the Criminal Justice System: Origins, Implementation and Challenges*, PROBLEM GAMBLING AND THE LAW (Apr. 2016), <https://studyslide.com/doc/216077/the-honorable-mark-farrell>.

gross misdemeanor, a crime against a child, a sexual offense, or domestic violence.⁸³

When a case is initially heard by a criminal court judge, there are two methods by which GTDC diversion is available as an alternative to incarceration. The first method is that the defendant (or his or her attorney) can advise the court of the election for diversion.⁸⁴ The second method is that the court can, *on its own motion*, raise the issue of whether it is appropriate to divert the defendant to treatment and monitoring.⁸⁵ At this stage of the case, the court must hold an eligibility hearing.⁸⁶

At the eligibility hearing, the court receives testimony and evidence of whether the crime was done specifically because the defendant was afflicted with a gambling disorder. The most important finding is that the crime was committed in furtherance of a gambling addiction.⁸⁷ The next most important findings are that a qualified mental health professional—preferably a certified problem gambling counselor—evaluated the defendant, that the defendant met the criteria for having a gambling disorder, and that treatment would benefit the defendant.⁸⁸ With these findings, the trial court judge has the authority to order the defendant to participate in GTDC diversion.

C. *Transfer to the GTDC*

Once the criminal court judge enters written findings and an order, an Order Directing the Participant to Enter the GTDC Program must be filed to grant the GTDC jurisdiction over the defendant's case.⁸⁹ The GTDC court coordinator will then contact the defense attorney and the defendant to submit a Specialty Court Application and a Gambler's Contract and advise them of the first court date.⁹⁰

Once a criminal case has been transferred to GTDC, the participant must submit a detailed Specialty Courts Application that includes a consent form and an authorization for release of financial records, medical records, and other

⁸³ NEV. REV. STAT. § 458A.210.

⁸⁴ *Id.* § 458A.220(1)(b).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* § 458A.220(1)(b).

⁸⁸ *Id.*

⁸⁹ *See Nev. v. Rodney Gene Camacho, Order Transferring Jurisdiction to Gambling Treatment Diversion Court, EIGHTH JUDICIAL DIST. CT., CLARK COUNTY, NEV. (Nov. 7, 2019).*

⁹⁰ *The State of Nev. Eighth Jud. Dist. Ct. Specialty Courts Application, 7-27; Gambling Treatment Diversion Court, EIGHTH JUDICIAL DIST. CT., CLARK COUNTY, NEV. (Nov. 21, 2018),* <https://documentcloud.adobe.com/link/review?uri=urn:aaid:scds:US:48df1f9d-1b17-3394-b9e0-56965e9ee723> 32–35 [hereinafter Gambler's Contract].

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related information.⁹¹ The participant must also sign a Gambler's Contract which acknowledges the participant's agreement to comply with certain conditions, including:

- attend all court hearings;
- abstain from all forms of gambling, wagering, betting, lotteries, raffles, pools, fantasy leagues, live games, and internet-based games (even if they are "just for fun");
- abstain from using illicit drugs, alcohol, mind-altering substances, and non-approved prescriptions;
- comply with all court orders; complete orientation, intake, and undergo a gambling assessment; submit all requested medical and other records;
- submit an initial drug test and comply with random drug testing; participate in individual treatment for gambling disorder;
- participate in treatment for other co-morbid addictions, if applicable;
- submit requested financial records and a Financial Disclosure Form;
- obtain court approval to maintain employment in a gaming establishment;
- comply with GPS or other methods of location monitoring;
- understand that there may be consequences and sanctions for failure to comply, including termination from GTDC; and
- understand that all GTDC court proceedings are not confidential and any recordings may be used for educational purposes.⁹²

D. GTDC Court Program

Because Nevada was the first state to provide diversion treatment to adult participants, there was a learning process regarding how GTDC would evolve over time. Nevada now has sixty-five Specialty Court programs: twenty-one adult drug courts; nine DUI courts; six veterans treatment courts; six mental health courts; four family treatment courts; four juvenile drug courts; four community courts; three habitual offender courts; two medication-assisted

⁹¹ *Eighth Judicial District Court Specialty Court Programs*, EIGHTH JUDICIAL DIST. CT., CLARK COUNTY, NEV., <http://www.clarkcountycourts.us/departments/specialty-courts/> (last visited Mar. 10, 2022).

⁹² Gambler's Contract, *supra* note 90.

treatment courts; two co-occurring disorders courts; two prison re-entry courts; one trauma court; and one gambling diversion treatment court.⁹³

The expertise and knowledge base of Nevada's Specialty Courts program provided a solid foundation for the creation and implementation of the state's first gambling diversion court. District Judge Lack Lehman founded Nevada's first drug court (the nation's fifth) in 1992. Shortly after, Judge Peter Breen created the first drug court in Northern Nevada.⁹⁴

With the passage of Assembly Bill 29 (NRS 176.0613), the Specialty Court Funding and Policy Committee became active in 2003. This committee oversees the Nevada courts' application process, creates policies and procedures, sets standards for minimum program and funding criteria, and provides recommendations to the Statewide Judicial Council regarding funding distribution.⁹⁵ GTDC became fully operational in a short period of time by relying on specialty courts' best practices and standards.

After two months of preparation, GTDC heard its first two cases, and the treatment court was officially in session on November 30, 2018.⁹⁶ A few minor updates were made to the court's electronic case management and calendaring system, and each GTDC case retained its original criminal case number.⁹⁷ As is characteristic of most treatment courts, GTDC proceedings are less formal. At the initial hearing, the judge makes introductions, addresses the individual as a participant (as opposed to a defendant), advises the participant of the requirements to succeed in the program, and provides verbal encouragement and support with a firm stance.⁹⁸ Court attendance is every two weeks, which tapers off if the participant demonstrates progress and compliance.⁹⁹

⁹³ *Specialty Court Program Overview*, *supra* note 80.

⁹⁴ Michael Douglas, C. J., *Specialty Court Review*, NEV. SUP. CT., <https://www.leg.state.nv.us/App/InterimCommittee/REL/Document/11041#:~:text=Nevada%E2%80%99s%20First%20Drug%20Court%20founded%20by%20District%20Judge,first%20drug%20court%20in%20Northern%20Nevada%20shortly%20thereafter> (last visited Mar. 10, 2022).

⁹⁵ *Specialty Court Program Overview*, *supra* note 80.

⁹⁶ *Update Report*, NEV. GAMBLING TREATMENT DIVERSION CT. (Jan. 29, 2020), https://dhhs.nv.gov/uploadedFiles/dhhs.nv.gov/content/Programs/Grants/Advisory_Committees/ACPG/Gambling%20Treatment%20Diversion%20Court%20Update%2001.29.2020.pdf.

⁹⁷ *See Nev. v. Jerry Nann Meador*, Order to Set Aside Conviction and Dismiss the Matter with Prejudice Pursuant to NRS 458A.240., EIGHTH JUDICIAL DIST. CT., CLARK COUNTY, NEV. (Dec. 20, 2021).

⁹⁸ Richard Schuetz, *The Judge Who Does Not Judge*, GGB NEWS (Sept. 27, 2020), <https://ggbnews.com/article/the-judge-who-does-not-judge/>.

⁹⁹ *See Lists of Incentives and Sanctions*, NAT'L ASS'N DRUG CT. PROFS., <https://www.ndci.org/wp-content/uploads/2020/12/Incentives-and-Sanctions-List.pdf#:~:text=As%20noted%20previously%2C%20many%20drug%20courts%20reduce%20supervision,after%20their%20appearances%20or%20attend%20fewer%20probation%20appointments> (last visited Mar. 10, 2022); *see also* NAT'L DRUG

What makes GTDC unique from other specialty courts is that it specifically focuses on financial matters involving the participant. The participant must fill out a Financial Disclosure Form to inform the judge of the participant's financial condition.¹⁰⁰ The form itemizes income, deductions, monthly living expenses, additional income (i.e., business income, rental income, or third-party contributions), child expenses, assets, and debts.¹⁰¹ The Financial Disclosure Form is typically reviewed monthly. A participant must also disclose other financial documents, such as tax returns, prior W-2G gambling winnings, prior player card activity provided by casinos, credit reports, credit card statements, tax liabilities, bank statements, pay stubs, business assets and liabilities, tips and tip-compliance documents, and spousal income and debts.¹⁰²

Before each court session, the GTDC judge and the team members convene for a "staffing session."¹⁰³ At the staffing session, the team briefly discusses each participant's progress since the last court hearing relative to treatment, the participant's compliance with court-mandated drug testing, location monitoring, submission of financial documentation, and any relevant updates.¹⁰⁴ Through these discussions, the judge can determine how to approach and engage with each participant in a meaningful and encouraging manner.

For treatment, the participant must attend individual therapy and at least two support meetings each week.¹⁰⁵ As the case progresses and based on the therapist's recommendations, the judge may order that individual counseling sessions be gradually reduced to once or twice a month depending on how well the participant is doing.¹⁰⁶ However, the participant must continue to attend a minimum of two support meetings every week, such as Gamblers Anonymous.¹⁰⁷

CT. INST., THE DRUG COURT JUDICIAL BENCHBOOK (Douglas B. Marlowe & William G. Meyer eds., 2017), https://ndcrc.org/wp-content/uploads/2021/10/The_Drug_Court_Judicial_Benchbook_2017.pdf

¹⁰⁰ *Financial Disclosure Form*, LEGAL AID CTR. S. NEV.: FAMILY CTS. & SERVS. CTR., <https://www.familylawselfhelpcenter.org/images/forms/misc/financial-disclosure-form-pdf-fillable.pdf> (last visited Mar. 10, 2022).

¹⁰¹ *Id.*

¹⁰² There have been no issues with spouses objecting to disclosure of their financial assets and liabilities during co-author Judge Moss's tenure on GTDC. In one participant's case, GTDC required the participant to separate his income and debts from his spouse's income and debts so that the court could better assess his financial condition and ability to pay restitution.

¹⁰³ Moss, *supra* note 79.

¹⁰⁴ See Pennington County Drug Ct., Participant Handbook 3 (2021), <https://ujs.sd.gov/uploads/drugcourt/PenningtonDrugCourtHandbook.pdf>.

¹⁰⁵ Gambler's Contract, *supra* note 90.

¹⁰⁶ *Shuffling the Deck*, *supra* note 74, at 171.

¹⁰⁷ Nev. Div. of Pub. & Behav. Health, Gambling Treatment Diversion Court: Update Report (Nov. 2, 2020), <https://dpbh.nv.gov/uploadedFiles/dpbh.nv.gov/content/Programs/ProblemGamblin>

Some participants may attend online support meetings over Zoom, and the judge may require at least one in-person meeting per week.¹⁰⁸

A participant who enters diversion must submit to random weekly drug testing in the initial stage of the program.¹⁰⁹ There are no exceptions, even if the participant has no history of abusing substances.¹¹⁰ Participants who are fully compliant are later advised that they may be subject to a random drug test at any given time even though the court no longer requires drug-test monitoring.¹¹¹ This requirement is important because gambling disorders can be diagnosed with other comorbid addictions involving drugs and alcohol. Moreover, the court must be aware that one addiction may be replaced with a different addiction.¹¹² GTDC protocols mandate that all participants must remain clean and abstinent for the duration of the program. In certain circumstances, however, the court can approve prescriptions that the participant must take under doctor's orders.¹¹³

A participant must consent and comply with location monitoring. In Nevada, the GTDC used a free app that participants must agree to use 24/7 on their smartphones.¹¹⁴ All the participants have willingly complied with using the app and expressed no complaints.¹¹⁵ The gambling court coordinator can perform spot checks on them, and the app has special features such as geolocation zone alerts and location history.¹¹⁶

Words matter, and the words from a judge can have a powerful impact on a participant. When the judge becomes aware that a participant's progress has stagnated, the judge must think of creative ideas to motivate the participant to make positive changes. One such idea is to assign homework for each participant, such as preparing a PowerPoint presentation about their personal budget. Other ideas from Nevada's court include asking the participant to read excerpts on recovery in their native language, to talk about their online education, to provide a cooking recipe, and to discuss their travels.¹¹⁷ The participants benefit from the informal nature of GTDC proceedings as well as support and encouragement from the GTDC team.

g/ACPG/Gambling%20Treatment%20Diversion%20Court%20%20update%2011.2.2020(2).pdf.

¹⁰⁸ *Id.*

¹⁰⁹ Gambler's Contract, *supra* note 90 at 32.

¹¹⁰ *Id.* at 34.

¹¹¹ *Id.* at 32.

¹¹² *The Genetics of Drug and Alcohol Addiction*, ADDICTIONS & RECOVERY (July 12, 2021), <https://addictionsandrecovery.org/is-addiction-a-disease.htm>.

¹¹³ *Id.*

¹¹⁴ See *Location Safety*, LIFE360, <https://www.life360.com/> (last visited Feb. 1, 2022).

¹¹⁵ Judge Moss presided over GTDC proceedings for two years from 2018 to 2020.

¹¹⁶ *Id.*

¹¹⁷ Judge Moss presided over GTDC proceedings for two years from 2018 to 2020.

E. Incentives, Sanctions, and Termination Issues

Not all stories and conversations during GTDC sessions are positive or uplifting. The GTDC team is prepared for incidences of relapse, failed drug tests, and rearrest. There are protocols for addressing sanctions and holding a termination hearing. The GTDC coordinator is responsible for informing the court of any violations.¹¹⁸ The violations come in varying degrees, such as a positive alcohol test, a positive test for opiates or other drugs, failure to pay restitution, violation of location monitoring, and more serious violations such as rearrest.¹¹⁹

When a violation is brought to the attention of the judge, the GTDC team discusses the transgression during a staffing session.¹²⁰ The judge ultimately decides how to address the violation with the participant.¹²¹ If it is a low-level violation, the judge should look at the totality of the circumstances surrounding the violation.¹²² The participant must be notified of the violation and have an attorney present (either an assigned public defender or a private attorney), and the participant must be given an opportunity to explain to the judge the context and circumstances of the alleged violation.¹²³

A participant's "willful disobedience to the lawful process or mandate of a court" constitutes a misdemeanor.¹²⁴ While GTDC proceedings are based on criminal cases and thus fall under NRS § 199.340(4), NRS Chapter 22 also addresses the subject of contempt and due process.¹²⁵ First, the judge must find the act or conduct in question to be willful, intentional, or deliberate.¹²⁶ Second, the judge must give the participant a chance to explain why the act occurred.¹²⁷ Third, the judge may decide to impose a sanction commensurate with the nature of the act.¹²⁸

Sanctions can range from verbal warnings to termination from the GTDC program. The following are guidelines for specialty court judges from the Administrative Office of the Illinois Courts' "Problem-Solving Courts Standards":

¹¹⁸ Moss, *supra* note 79.

¹¹⁹ Judge Moss presided over GTDC proceedings for two years from 2018 to 2020.

¹²⁰ Judge Moss presided over GTDC proceedings for two years from 2018 to 2020.

¹²¹ Peggy Fulton Hora, *The Role of the Drug Court Judge 20* (Mar. 2017), <http://www.justicespeakersinternational.com/wp-content/uploads/2017/03/Role-of-the-Judge.pdf>.

¹²² Randy Monchick et al., *Drug Court Case Management: Role, Function, and Utility*, NAT'L DRUG CT. INST., 9–10 (2006), <https://www.ndci.org/wp-content/uploads/Mono7.CaseManagement.pdf>.

¹²³ NEV. REV. STAT. § 199.340 (2020) (addressing criminal contempt).

¹²⁴ *Id.*

¹²⁵ NEV. REV. STAT. §§ 22.010 to 22.140 (2020).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

8.2 -INCENTIVES, SANCTIONS AND THERAPEUTIC ADJUSTMENTS

(a) All responses to a participant's behavior shall be predictable, fair, consistent and without regard to a person's gender, race, nationality, ethnicity, limited English proficiency, disability, socio-economic status or sexual orientation.

(b) Incentives, sanctions, and therapeutic adjustments shall be administered to motivate a person to comply with the PSC program requirements and to successfully complete the PSC program. The entire PSC team shall have input into the discussion of what constitutes an appropriate response to a participant's behavior with the final decision to be made by the PSC judge.

(c) Prior to the administration of any sanction, incentive or therapeutic adjustment, the judge shall advise the participant in open court of the sanction, incentive or therapeutic adjustment and the reason for the administration. The participant shall be permitted to address the court about the sanction, incentive or therapeutic adjustment for the court to consider.

(d) A PSC's policies and procedures concerning the administration of sanctions, incentives, and therapeutic adjustments are to be specified in writing and provided to the participant in the PSC participant handbook.¹²⁹

As noted, the goal is to motivate the participant to comply with the diversion program. In addition, the specialty court judge must provide due process, notice, and an opportunity to be heard when violations occur. This is congruous with the principles of NRS Chapter 22 addressing contempt of court.

Illinois' "Problem-Solving Courts Standards" book provides the following list of incentives:

1. Verbal praise
2. Small tangible rewards
3. Recognition in court
4. Symbolic rewards
5. Posted accomplishments
6. Written commendations
7. Reduced supervision requirements
8. Reduced community restrictions
9. Enhanced milieu status
10. Moderate tangible rewards

¹²⁹ ADMIN. OFF. ILL. CTS., PROBLEM-SOLVING COURTS STANDARDS 29 (2d ed. 2019).

11. Fishbowl drawings

12. Self-improvement services
13. Supervised social gatherings
14. Supervised day trips
15. Travel privileges
16. Large tangible rewards

17. Point systems

18. Ambassadorships
19. Commencement ceremony
20. Legal incentives¹³⁰

Numbers eleven and seventeen above can be problematic and should **not** be used in GTDC. Number eleven, which involves a raffle and prize, is a form of gambling which, for obvious reasons, is not appropriate for GTDC. Number seventeen may not be appropriate because point systems can be triggers for a person with a gambling disorder, similar to a casino player having a rewards card and earning points.

Nevada's GTDC offers incentives such as permission to attend family gatherings, verbal praise, permission to travel, recognition and applause in the courtroom, certificates of accomplishment, symbolic rewards, books on recovery, and a graduation ceremony. Some specialty courts give out coins or tokens for a participant in the recovery phase, but those items are not appropriate for GTDC for the same reason as point systems.

In addition to offering incentives, specialty courts also impose sanctions. The Illinois "Problem-Solving Courts Standards" book provides the following sanctions:

1. Verbal admonishments
2. Letters of apology
3. Essay assignments
4. Daily activity logs
5. Journaling
6. Life skills assignments
7. Jury box observation
8. Increased community restrictions
9. Team roundtables
10. Increased supervision requirements
11. Useful community service
- 12. Monetary fines or fees**
13. Holding cell
14. Day reporting
15. Electronic surveillance
16. Home detention
17. Flash jail sanctions

¹³⁰ *Id.* at 54–60 (emphasis added).

18. Termination¹³¹

Number twelve pertaining to monetary fines or fees as a sanction may be problematic in GTDC, particularly for problem gamblers who do not know how to maintain their budget while deep in their addiction. The remaining sanctions on Illinois' list may be applied in GTDC treatment diversion. In Nevada's GTDC program, two participants were terminated for rearrest. The rearrests involved a gambling crime, which appeared to indicate that the participants relapsed or failed to make positive changes toward abstinence and recovery.¹³²

F. Graduation and Restitution

The GTDC judge, after collaboration and discussions with the GTDC team about the participant's overall progress, has authority to graduate a participant based on compliance, payment of restitution, and a finding that the participant has benefitted from the treatment diversion program.¹³³ Upon graduation, the GTDC judge will acknowledge the participant's successful completion of the GTDC program and sign an Order of Dismissal and Set Aside of the criminal conviction.¹³⁴ The maximum length of Nevada's GTDC program is thirty-six months.¹³⁵

A participant's inability to pay restitution due to financial hardship or circumstances, despite reasonable good-faith efforts to pay, does not prevent the participant from having a conviction set aside and their criminal case dismissed.¹³⁶ In *Bearden v. Georgia*, the Supreme Court held that a court must look into the debtor's willfulness.¹³⁷ If the defendant can pay but willfully refuses to do so, there would be grounds for revocation of probation.¹³⁸ On the other hand, if the defendant demonstrates reasonable efforts to gain the means to pay, then the court may impose alternatives to incarceration for punishment and deterrence purposes.¹³⁹ Although *Bearden* addressed probation revocation, the Supreme Court's discussion of a defendant's good faith and demonstrated financial hardship can apply to restitution issues that arise in GTDC. Successful

¹³¹ *Id.* at 61–65 (emphasis added).

¹³² Interview with Stefanie Hui, Former Nevada GTDC Ct. Coordinator (December 2020) (on file with author).

¹³³ THE DRUG COURT JUDICIAL BENCHBOOK, *supra* note 99, at 38.

¹³⁴ NEV. REV. STAT. §§ 458A.240, 458A.250 (2021).

¹³⁵ CLARK COUNTY CTS.: SPECIALTY CTS., GAMBLING TREATMENT DIVERSION FLYER (2021) http://www.clarkcountycourts.us/res/specialty-courts/GTDC_Flyer.pdf.

¹³⁶ *See Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

¹³⁷ *Id.* at 672.

¹³⁸ *Id.* at 672–73.

¹³⁹ Ann K. Wagner, Comment, *The Conflict over Bearden v Georgia in State Courts: Plea-Bargained Probation Terms and the Specter of Debtors' Prison*, 2010 U. CHI. LEGAL F. 383, 385 (2010).

completion of the GTDC program is attainable, and alternative means in lieu of incarceration, such as a civil confession judgment, ensure continued restitution payments to the victim.

In Nevada, when a GTDC participant owes a large restitution amount, the criminal judge assigned to the case must balance the interests of the State representing the victim, and those of the GTDC participant who is indigent but sincerely wants to continue paying what he or she can afford.¹⁴⁰ If a participant has not fully paid restitution at the end of the diversion program, but has demonstrated full compliance with other requirements, the GTDC judge can order that the participant execute a “Confession of Judgment” for the remaining restitution amount. As part of their lifelong recovery, a participant will continue to pay the monthly restitution amount to the victim. Writing a check every month and making the payment serve as a reminder to the participant of their recovery.

On October 26, 2021, Nevada’s GTDC held a graduation ceremony for its first participants.¹⁴¹ One participant graduated several months prior to the graduation date because of their perfect compliance and very low restitution.¹⁴² As for the two remaining participants, one owed more than \$30,000 in restitution, while the other owed over \$500,000.¹⁴³ Based on perfect compliance during the first two years of the three-year program, the participants were not required to attend all court hearings in the final year so long as they paid the monthly restitution amount.¹⁴⁴

The State must balance interests in both punishing and rehabilitating an individual, as well as protecting society.¹⁴⁵ Although the aforementioned participants had substantial restitution amounts that they must continue to pay, they were nevertheless eligible to graduate and receive a dismissal of their conviction.¹⁴⁶ GTDC graduation signifies the participants’ rehabilitation. Rehabilitated participants are less likely to recommit crimes and they typically pay for their own treatment (if doing so is within their financial means), saving

¹⁴⁰ See Steve Ruddock, *Better Way*, 1 GAMING L. REV. 20, 24 (2021).

¹⁴¹ *New Grads from Only Gambling Treatment Diversion Court in the Nation Offer Hope for Problem Gamblers Facing Justice System*, EIGHTH JUD. DIST. CT. BLOG (Oct. 27, 2021), <https://eighthjdcourt.wordpress.com/2021/10/27/new-grads-from-only-gambling-treatment-diversion-court-in-the-nation-offer-hope-for-problem-gamblers-facing-justice-system/>.

¹⁴² Judge Cheryl Moss (Ret.) & Stefanie Hui, Presentation on Gambling Treatment Diversion Court at 17.

¹⁴³ Judge Moss presided over GTDC from 2018 to 2020.

¹⁴⁴ Attendance for perfect compliance tapered down to once per month, once every two months, or only when the court required an appearance.

¹⁴⁵ See *Bearden*, 461 U.S. at 671.

¹⁴⁶ Order to Set Aside Conviction at 2, *State v. Meador*, No. C-13-289056-1 (Nev. Dec. 20, 2021).

taxpayer money from not having to incarcerate the participants.¹⁴⁷ In Nevada, completion of GTDC diversion results in dismissal and the setting aside of the defendant's conviction¹⁴⁸ with no probation, whereas in New Jersey, the pending legislative bill to establish gambling treatment diversion courts includes probation.¹⁴⁹

G. State of New Jersey GTDC Legislation

Nevada's GTDC heard its two first cases on November 30, 2018.¹⁵⁰ Two years later, GTDC had nine participants.¹⁵¹ In 2021, two new participants entered diversion, raising the total to eleven participants. One participant graduated in the first half of 2021, and two participants graduated in the second half.¹⁵² On January 17, 2022, two more participants graduated, and six remained in diversion.¹⁵³ The GTDC court will likely continue to receive referrals now that more Nevada judges and lawyers are aware of the GTDC program's existence.

To gain a better understanding of the scope of Nevada's GTDC and how it operates compared to other states with large gambling markets, we can look to New Jersey, another state with potential for a robust GTDC program. Two identical bills were introduced in the New Jersey Legislature. Assembly Bill A-5604 was introduced by Representative Ralph Caputo on May 12, 2021, and re-introduced on January 11, 2022, as Assembly Bill A-420. Senate Bill S3976 was introduced by Senator Nicholas Scutari on June 21, 2021, and re-introduced on January 11, 2022, as Senate Bill A-485.¹⁵⁴ The draft New Jersey bill was modeled after NRS Chapter 458A.

There are a few differences between the New Jersey draft language and the Nevada statutes. One difference is that the New Jersey bill specifically requires that the Department of Probation report to the court regarding the participant's treatment and progress.¹⁵⁵ In Nevada, all but one participant were

¹⁴⁷ Michelle Werdann, *How to Sentence Someone with a Gambling Addiction*, NAT'L JUD. C. (May 19, 2021), <https://www.judges.org/news-and-info/how-to-sentence-someone-with-a-gambling-addiction/>.

¹⁴⁸ NEV. REV. STAT. § 458A.220(2)(d) (2021).

¹⁴⁹ Assemb. 5604, 219th Leg. (2021) (enacted); Assemb. 420, 220th Leg. (2022); S. 3976, 219th Leg. (2021) (enacted); S. 485, 220th Leg. (2022).

¹⁵⁰ Moss, *supra* note 79.

¹⁵¹ NEV. DIV. PUB. & BEHAV. HEALTH, GAMBLING TREATMENT DIVERSION COURT 1 (2020).

¹⁵² Katelyn Newberg, *First Group Graduates Gambling Treatment Court Program*, LAS VEGAS REV. J. (Oct. 26, 2021, 6:46 PM), <https://www.reviewjournal.com/news/politics-and-government/clark-county/first-group-graduates-gambling-treatment-court-program-2466842/>.

¹⁵³ E-mail from Danika Navar, Specialty Cts. Coordinator, Nev. Eighth Jud. Dist., to Cheryl Moss, J., Nev. Eighth Jud. Dist. (Jan. 25, 2022) (on file with author).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

not under probation supervision. The participant who was under probation supervision had already been assigned a Nye County probation officer by the time he attended his first GTDC hearing.¹⁵⁶

A second difference is that the New Jersey draft bill proposed the establishment of a gambling treatment diversion court in three viciniges: north, central, and south.¹⁵⁷ In Nevada, there is only one gambling treatment diversion court, located in Las Vegas. Another difference is that the Council on Compulsive Gambling of New Jersey is directly identified as a referral resource, whereas in NRS Chapter 458A, the Nevada Council on Problem Gambling is not mentioned but is an integral part of the GTDC team as a community provider.¹⁵⁸

As of 2021, New Jersey's population is estimated to be 9.4 million.¹⁵⁹ In Nevada, the population is estimated at 3.14 million.¹⁶⁰ Because New Jersey has a population three times greater than Nevada, and because New Jersey has had legal casino gaming since 1976,¹⁶¹ online gaming since 2013, and sports betting since 2018,¹⁶² the estimated number of cases that could be diverted to a gambling treatment court in New Jersey is likely to be greater than the number of cases in Nevada upon passage of the proposed legislation.

V. LEGISLATION VS. JUDICIAL CREATION

A. *The Nevada Legislative Experience*

Nevada's GTDC was created through legislation. Assembly Bill 102 was approved on May 29, 2009.¹⁶³ However, the actual GTDC diversion program did not commence until November 30, 2018.¹⁶⁴ The nine-year gap was due to a widespread lack of awareness of the statute's existence within the legal community. During this gap, NRS Chapter 458A was applied to only a few criminal cases in which a district court judge diverted the defendant to treatment

¹⁵⁶ Court Minutes of Status Check, In the Matter of the Petition of Rodney Gene Camacho, No. C-20-346933-P (Nev. Apr. 7, 2020).

¹⁵⁷ Assemb. 5604, 219th Leg. (2021) (enacted); Assemb. 420, 220th Leg. (2022).

¹⁵⁸ *Id.*; S. 3976, 219th Leg. (2021) (enacted); S. 485, 220th Leg. (2022).

¹⁵⁹ *New Jersey Population*, POPULATION U, <https://www.populationu.com/us/new-jersey-population> (last visited Feb. 15, 2022).

¹⁶⁰ *Nevada Population*, POPULATION U, <https://www.populationu.com/us/nevada-population> (last visited Feb. 15, 2022).

¹⁶¹ *Casino Gaming in New Jersey*, STATE OF N. J. CASINO CONTROL COMM'N, <https://www.nj.gov/casinos/law/gamingnj/> (last visited Feb. 2, 2022).

¹⁶² *NJ Sports Betting: Best Betting Sites & Apps in New Jersey*, ESTNN (Dec. 23, 2021, 6:02 AM), <https://estnn.com/gambling/nj-sports-betting/>.

¹⁶³ A.B. 102, 2009 Leg., 75th Sess. (Nev. 2009).

¹⁶⁴ Cheryl Moss, *Nevada's First Gambling Treatment Diversion Court: A Judge's Historical and Personal Perspective on Problem Gambling in the Courtroom*, NEV. GAMING LAWYER. 72 (Sept. 2019).

and monitoring in lieu of incarceration.¹⁶⁵ In 2010, the Nevada Council on Problem Gambling published “Problem Gambling and the Law”, an information guide to increase awareness and educate the community about gambling treatment diversion.¹⁶⁶

It was not until September 2018 when District Court Chief Judge Linda Bell decided that it was time to create Nevada’s first gambling treatment diversion court. The addition of GTDC as a specialty court was intended to benefit Nevada citizens through rehabilitation and support while saving taxpayer money as an alternative to incarceration.¹⁶⁷

Could Nevada’s GTDC have been created through judicial means as opposed to legislation? The answer is no. The judicial branch interprets the law but cannot create it, as that function exclusively belongs to the legislative branch.¹⁶⁸ Nevada’s specialty courts were created statutorily through NRS section 178.0613.¹⁶⁹ NRS section 458A.220 provides that successful completion of GTDC will result in the setting aside of a criminal conviction.¹⁷⁰ In addition, NRS section 458A.250 gives participants the opportunity to seal their criminal records.¹⁷¹ The benefits of dismissal and the ability to seal one’s criminal records are available only because of legislative approval.¹⁷²

B. The Challenges and Benefits of Legislative Creation

Legislative creation of gambling courts does not happen overnight. It takes time to introduce a bill into committee, to have it pass in both houses, and to have the governor sign the bill into law. In addition to timing, other challenges arise in terms of garnering support for a gambling court bill, such as stigma, conflicting interests, and funding.

One of those pervasive challenges is stigma, defined as “a social phenomenon where certain characteristics, qualities[,] or features of an identifiable group are regarded in a strongly negative light.”¹⁷³ Stigmatisation can operate in a discriminatory way, create increased isolation, punish individuals further, and lead to increased levels of harm. The stigma associated

¹⁶⁵ *Shuffling the Deck*, *supra* note 74, at 165 (2016).

¹⁶⁶ NEV. COUNCIL ON PROBLEM GAMBLING, PROBLEM GAMBLING AND THE LAW 1 (2010).

¹⁶⁷ Werdann, *supra* note 147.

¹⁶⁸ *Separation of Powers*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/separation_of_powers_0 (last visited Mar. 11, 2022).

¹⁶⁹ *Specialty Court Program Overview*, *supra* note 80.

¹⁷⁰ NEV. REV. STAT. § 458A.220

¹⁷¹ *Id.*

¹⁷² *See generally id.*

¹⁷³ Jay Kaposi, *Gambling Harm and Stigma*, GAMBLING EDUC. NETWORK, <https://www.gamblingeducationnetwork.com/post/gambling-harm-and-stigma> (last visited Mar. 11, 2022).

with problem gambling may hinder societal views on the need for gambling courts:

Like substance abuse, problem gambling has long faced the social stigma of being a ‘moral failing’ rather than a medical condition—a condition thought to stem from lack of will power. Years of addiction science have battled this stigma, and the inclusion and placement of gambling disorder within the DSM-5 should serve as yet more authoritative determination that problem gambling is a diagnosable disorder and not and not a weakness of will or a failure of character.¹⁷⁴

An additional hurdle is that separate agencies such as the prosecution, department of probation, the defense bar, and mental health associations may have competing interests in how a GTDC bill may impact their respective organizations.¹⁷⁵ Another challenge is funding and the financial impact on state coffers.¹⁷⁶

However, gambling courts as problem-solving courts have identifiable benefits. Most of the participants in Nevada’s GTDC were first-time offenders. With treatment, support, and rehabilitation, the likelihood of recidivism was reduced with diversion. Moreover, involvement in GTDC provided each participant with the opportunity to maintain relationships with their significant others, children, other family members, and friends. In appropriate settings, family and friends are invited to attend GTDC proceedings and graduation ceremonies.¹⁷⁷ Gambling courts can also save lives, which is critical given that the rate of problem gamblers having suicide ideation is very high. One study found that nearly half of members of Gamblers Anonymous contemplated the act.¹⁷⁸ Furthermore, gambling courts make economic sense: instead of incarcerating problem gamblers, which cost Nevada taxpayers \$17,851 per inmate in 2015, GTDC participants can work during their probation.¹⁷⁹ This not only saves the State money, but it also gives participants the means to pay restitution to their victims.

¹⁷⁴ Raanan Kagan et al., *Problem Gambling in the 21st Century Healthcare System*, NAT’L COUNCIL ON PROBLEM GAMBLING (July 3, 2014), <https://www.ncpgambling.org/wp-content/uploads/2014/07/ACA-brief-web-layout-publication.pdf>.

¹⁷⁵ See generally *Shuffling the Deck*, *supra* note 74.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Michael L. Frank et al., *Suicidal Behavior Among Members of Gamblers Anonymous*, 7 J. GAMBLING STUD. 249 (1991).

¹⁷⁹ *Id.* In New Jersey, the cost to incarcerate an inmate is about \$61,603 per year. Cheryl Moss, *New Jersey Needs a Gambling Court*, NJ.COM (Mar. 29, 2021, 12:11 PM), <https://www.nj.com/opinion/2021/03/new-jersey-needs-a-gambling-court-opinion.html>.

C. *Expansion of GTDC Into Other States Through Judicial Creation*

Beyond Nevada, is it possible for courts of other states to create and manage a gambling treatment diversion program? The answer is yes. The late Judge Mark Farrell was the first judge with the insight and vision to judicially create and establish a gambling therapeutic court in Amherst, New York, in 2001.¹⁸⁰ Judge Farrell presided over the gambling court until his retirement in 2013.¹⁸¹ The Amherst gambling court was based on the drug court model.¹⁸² It was a problem-solving court that permitted defendants to enter into pre-plea or post-plea negotiations that included treatment, mandatory court appearances, and monitoring with the goals of rehabilitation and recovery. Failure to comply with gambling therapeutic court resulted in termination and incarceration.¹⁸³

The Pierce County Drug Court in the State of Washington developed a model to integrate screening and treatment for people with gambling disorders who entered the criminal justice system.¹⁸⁴ In 2012, the presiding judge, the prosecution, and defense counsel collectively determined that the success of the program justified imposing regular assessments and mandating participation in the program for people who met the clinical criteria for disordered gambling.¹⁸⁵

Judicial creation of gambling courts provides the judiciary with more latitude to incorporate treatment for gambling disorders. With the late Judge Farrell's vision and innovative thinking, a drug court-based model provides the foundation for addressing problem gambling in criminal cases.¹⁸⁶ States with existing specialty courts are better equipped to create standalone gambling court programs and can also integrate problem gambling treatment within their existing drug courts and other specialty courts. For example, Pierce County, Washington, integrated a gambling court with another specialty court.¹⁸⁷

¹⁸⁰ Anne Neville, *Mark G. Farrell, 72, Amherst Town Judge Who Ran Innovative Therapeutic Courts*, BUFFALO NEWS (Aug. 28, 2019), https://buffalonews.com/news/local/mark-g-farrell-72-amherst-town-judge-who-ran-innovative-therapeutic-courts/article_27cad83f-118f-5adb-bed1-0b3642e5ffd8.html.

¹⁸¹ *Id.*

¹⁸² Farrell, *supra* note 82.

¹⁸³ *Id.*

¹⁸⁴ Jim Leingang, *Starting the Conversation: Integrating Gambling Treatment and Drug Court*, EVERGREEN COUNSEL ON PROBLEM GAMBLING, 5 (Oct. 16, 2017), <http://wacodtx.org/wp-content/uploads/2017/10/C7-Problem-Gambling-and-Therapeutic-Justice.pdf>.

¹⁸⁵ *Id.* at 4.

¹⁸⁶ MASS. COUNCIL ON COMPULSIVE GAMBLING, FACT SHEET: GAMBLING & CORRECTIONS 3 (2015), <https://macgh.org/wp-content/uploads/2017/03/mccg-factsheet-corrections-15sep15.pdf>.

¹⁸⁷ Leingang, *supra* note 184, at 4.

Massachusetts integrated problem gambling treatment with the courts to include screening, assessments, pre-sentence investigations, and recommendations. The Massachusetts Council on Problem Gambling described its goals as follows:

1. Provide the court system with a pre-sentence investigation that outlines specific recommendations for those with a gambling disorder facing incarceration prior to sentencing. This allows for more defined sentencing options for those with problem gambling related issues.
2. Identify through validated assessments those in need of problem gambling referrals and services within the criminal justice system and upon reentry into the community.¹⁸⁸

Court integration of gambling treatment can be cost-effective and practical. One advantage is that the drug court model provides a foundation and best practices. A second advantage is that a standalone court could evolve from an existing track program based on increased need and number of cases.

The substantial growth and expansion of gaming in the United States is a likely predictor of increased numbers of severe, disordered gamblers. The widely held assumption that problem gambling can lead to crime was somewhat dispelled by a research study conducted by the University at Buffalo: “It’s not that one causes the other, but rather that the two are co-symptomatic.”¹⁸⁹

Debatable views aside, “[a]s long as there have been competitions, there have been people to bet on them. A percentage of those bettors develop gambling disorders, leading to personal and societal harm. The larger the pool of gamblers, the more people there will be who develop gambling addictions. It is inevitable.”¹⁹⁰ In early 2018, only Nevada had a comprehensive legal sports betting market. As of March 2022, licensed bookmakers are operating in thirty-three states and the District of Columbia, with more on the way.¹⁹¹ Given the unprecedented rise in gambling, more gambling treatment diversion courts are needed to help to break the cycle of problem gambling and crime. Families will be restored. Lives will be saved.

¹⁸⁸ MASS. COUNCIL ON COMPULSIVE GAMBLING, *supra* note 186, at 2.

¹⁸⁹ Bert Gambini, *Problem Gambling and Crime Appear Co-Symptomatic Not Causal*, UNIV. BUFFALO (Aug. 5, 2020), <http://www.buffalo.edu/news/releases/2020/08/003.html>.

¹⁹⁰ David Purdum, *Mercy Rule: Judge Aims to Get Gambling Addicts 'Out of Chaos' Rather Than Send Them to Prison* (Mar. 16, 2021), https://www.espn.com/chalk/story/_/id/30984945/judge-aims-get-gambling-addicts-chaos-rather-send-prison.

¹⁹¹ *Sports Betting Map*, *see supra* note 14.

VI. PUBLIC POLICY: THE ROLE OF GOVERNMENTS AND GAMING OPERATORS TO PROTECT PATRONS AND SOCIETY

It is widely accepted that problem gambling is a public health issue.¹⁹² Therefore, those who benefit and profit from gaming share societal responsibility for the negative implications of regulated gaming. Governments, regulators, operators, and patrons all share in the responsibility of creating and adhering to safeguards to educate and promote the goal of conscious and responsible gambling.¹⁹³ Moreover, because it is established that a segment of the patron population suffers from gambling disorders, the burden on the government and operators to protect those players and society is heightened.

Problem gambling is exhibited by a spectrum of behaviors and symptoms, with the most severe cases being diagnosed as pathological or compulsive gambling.¹⁹⁴ While the problem or disordered gambler often suffers from a variety of serious symptoms such as stress, anxiety, depression, and financial difficulties, pathological gamblers are likely to suffer more severe substance abuse and mental health disorders.¹⁹⁵ Pathological gamblers exhibit behaviors that often lead to many negative consequences, including family dysfunction, financial troubles, loss of property, poverty, violence, and suicide.¹⁹⁶ Estimates suggest that two to three percent of the U.S. population can be identified as problem gamblers, while one percent can be diagnosed as more serious pathological gamblers.¹⁹⁷

Governments that sanction and regulate gaming have an inherent conflict of interest when it comes to protecting patrons with gambling disorders. This is due to the government's role in creating and facilitating gambling—including the disordered variety—while receiving substantial tax revenue from gambling conduct.¹⁹⁸ Tax revenues grow when gaming revenues grow, however, for governments and operators to maximize these revenues, patrons must also lose more money. Every banked or mechanical game in a casino carries an advantage for the casinos known as the “house edge,” so over time the casino “win” over patrons is always guaranteed.¹⁹⁹ While the federal excise tax on sports betting is only 0.25%, the state and local rates on all gaming activities range from

¹⁹² Frank Catania & Gary Ehrlich, *Addressing Problem Gambling, in* REGULATING LAND-BASED CASINOS: POLICIES, PROCEDURES, AND ECONOMICS 469, 469 (Anthony Cabot et al. eds., 2d ed. 2018).

¹⁹³ *Id.* at 473.

¹⁹⁴ *Id.* at 470.

¹⁹⁵ *Id.* at 471.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 472–73.

¹⁹⁸ *Id.* at 474.

¹⁹⁹ *Casino House Edge Explained*, CASINO.ORG, <https://www.casino.org/features/house-edge/> (last visited Feb. 1, 2022).

6.75% in states like Nevada to as high as 50% on casino net win in other states.²⁰⁰ Additional and substantial tax revenue is also generated from casino operations as a whole, incorporating profits from dining, entertainment, and lodging.

People who gamble must also pay ordinary income tax on gambling “income” and, in some states, they are not permitted to take any deduction for gambling losses. In essence, a patron can lose money gambling yet still be forced to pay taxes on income they never realized. This is an anomaly in the tax code that further punishes gambling patrons.

Governments play a significant role in the creation of problem gambling disorders by partnering with gaming operators while also regulating them. By implication, we must then ask: what role must the government and the criminal justice system play when gambling disorders lead to nonviolent criminal behaviors?

Both regulators and operators are well aware of their duty to help prevent problem gambling, but there is considerable debate over whether their efforts, or lack thereof, are meaningful. In every state that sanctions gaming, there are safeguards in place such as those requiring staff to be trained to recognize distressed players on the property and providing for an allocation of funds for the treatment of gambling disorders for those who seek it.²⁰¹ Simply put, it is important that those who profit from gaming accept the fact that regulated gaming leads to disordered gaming for some patrons.

While much research and focus has been placed on how to prevent, diagnose, and treat gambling addiction disorders, questions persist. How should society deal with the reality that some criminal behavior is also a result of this disease? Who rightfully bears the burden of shared causation for these criminal acts, and what are the desired outcomes and goals for those patrons who are held criminally responsible?

In most criminal justice settings, governments try to balance goals related to the handling of criminal defendants. Accountability, punishment, rehabilitation, and restitution for victims all play a part, depending on the nature of the crimes involved.²⁰² The most common crimes that pathological or disordered gamblers commit involve an attempt to raise additional funds to continue their gambling activities—many times to chase previous losses and make themselves whole.²⁰³ When these crimes involve theft and embezzlement,

²⁰⁰ *State of the States 2020, The AGA Survey of the Commercial Casino Industry*, AM. GAMING ASS’N (June 2020), https://www.americangaming.org/wp-content/uploads/2020/06/AGA-2020-State_of_the_States.pdf.

²⁰¹ Catania & Ehrlich, *supra* note 192, at 483–96.

²⁰² See *Guide to the U.S. Criminal Justice System*, CRIMINALJUSTICE.COM, <https://www.criminaljustice.com/resources/guide-to-us-criminal-justice-system/> (last visited Feb. 1, 2022).

²⁰³ See Denise-Marie Griswold, *Gambling Addiction Facts and Statistics*, RECOVERY VILLAGE, <https://www.therecoveryvillage.com/process-addiction/compulsive-gambling/related/gambling-statistics/> (last updated Nov. 18, 2020) [hereinafter *Gambling Statistics*].

problem gamblers often claim that they had every intention of replacing the stolen funds as soon as their luck turned around and they win back the money they had lost. In reality, the recovery never occurs, the debt continues to grow, and the theft often continues. Once discovered, the spiraling loss for the victims is often so large that it cannot be recovered or repaid.

Under these circumstances, specialty courts provide an alternative to the typical criminal justice mechanisms and best serve the needs of society. Gambling treatment programs provide structure, accountability, treatment, support, and rehabilitation that allow for positive outcomes for the defendants, the victims, and society as a whole. Gambling disorders and other mental health disorders are treatable, and rates of recidivism in treatment courts are much lower than those of traditional sentencing courts.²⁰⁴

Funding for specialty court programs and how they should be raised has often been a subject of debate.²⁰⁵ Staffing needs and treatment costs are significant, but certainly well below the cost of incarceration and courts dealing with repeat offenders.²⁰⁶ As part of the shared responsibility of conducting and profiting from gaming operations, it should be expected that the gaming industry participate in funding gambling treatment court programs. A portion of profits are already set aside for problem gambling treatment initiatives,²⁰⁷ and this should be seen as a natural part of the treatment continuum and promotion of conscious gaming.

Furthermore, the industry should be required to allocate additional funds to support victims of gambling-related crimes through a pool specifically set aside for restitution purposes, in the same way that federal and state governments maintain Victims of Crime programs for non-gambling related offenses.²⁰⁸ This is not meant to absolve any criminal defendant of the obligation to make victims whole via restitution or subrogation. However, the victims should be compensated for their unrecouped losses in a timely fashion when those losses are through no fault of their own. To the extent that we know that funds obtained through a patron's illegal activity were then "won" by a casino operator, there is a compelling argument that a portion of these industry revenues should be

²⁰⁴ *Do Drug Courts Work? Findings from Drug Court Research*, NAT'L INST. JUST. (May 11, 2008), <https://nij.ojp.gov/topics/articles/do-drug-courts-work-findings-drug-court-research>.

²⁰⁵ *See Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use*, DRUG POLICY ALLIANCE (Mar. 21, 2011), <https://drugpolicy.org/drugcourts>; LISA N. SACCO, CONG. RSCH. SERV., R44467, FEDERAL SUPPORT FOR DRUG COURTS: IN BRIEF 7 (2018).

²⁰⁶ *OJP Drug Courts*, *supra* note 61.

²⁰⁷ Brian Pempus, *Each State Different on Combatting Problem Sports Gambling Under New Laws*, US BETS (Sept. 24, 2019), <https://www.usbets.com/state-sports-betting-problem-responsible-gaming-funding/>.

²⁰⁸ LISA N. SACCO, CONG. RSCH. SERV., R42672, THE CRIME VICTIMS FUND: FEDERAL SUPPORT FOR VICTIMS OF CRIME 1 (2020).

allocated back to the victims of the patron's theft.²⁰⁹ Controversial, perhaps, but this concept is akin to a pawn shop receiving stolen goods and having to legally return them to the rightful owner.

VII. CONCLUSION

Gambling in its purest form dates back to the earliest recorded history and Biblical times.²¹⁰ The issue of problem gambling also dates back to ancient history, as do attempts to protect those most vulnerable to disordered gambling. Strict prohibition on gambling merely drives these activities underground, and unregulated gaming poses its own set of risks with unscrupulous operators taking advantage of players. As states continue to legalize and regulate gaming to stimulate their economies, they must pay careful attention to people who are susceptible to gambling disorders.

Since the 1990s, there has been unprecedented growth of regulated gaming in the United States.²¹¹ Since just 2018, more than thirty states have legalized sports wagering.²¹² The projected growth in overall gaming revenues in the United States over the next several years could increase by several billions of dollars, and provide a tax windfall to local governments.

Unfortunately, this growth also comes at a cost to society and local communities. More than ten million gamblers suffer from some sort of gambling addiction or mental health disorder that hinders their ability to set proper boundaries for responsible and conscious gambling.²¹³ In addition to the toll this addiction takes on the problem gambler, their families, and communities, some of these gamblers will engage in criminal activity, including theft and embezzlement, to chase and recoup their losses and further support their gaming habits.²¹⁴

It is hard to escape the in-your-face messaging from gaming operators today.²¹⁵ Nationwide, it is almost impossible to turn on the television today

²⁰⁹ Nosa Omoigui, *Report Argues Operators Should Compensate Gambling-Related Crime Victims*, iGaming Business (Oct. 28, 2021), <https://igamingbusiness.com/report-argues-operators-should-compensate-gambling-crime-victims/>.

²¹⁰ *Matthew*, *supra* note 2.

²¹¹ Matt Villano, *All in: Gambling Options Proliferate Across USA*, USA TODAY (Jan. 26, 2013, 5:00 PM), <https://www.usatoday.com/story/travel/destinations/2013/01/24/gambling-options-casinos-proliferate-across-usa/1861835/>.

²¹² *Sports Betting Map*, *supra* note 14.

²¹³ *Gambling Statistics*, *supra* note 203.

²¹⁴ *Id.*

²¹⁵ See Katherine Sayre, *Gambling Ads Become the New Normal for American Sports*, WALL ST. J. (Oct. 24, 2021, 10:00 AM), <https://www.wsj.com/articles/gambling-ads-become-the-new-normal-for-american->

without seeing a commercial for a sports betting operator or fantasy sports website. Social media is replete with advertisements to groom new players with offers of free slot games as a gateway to purchasing digital coins to continue play and stoke the desire to play for real currency. As the marketing blitz and ease of gaming options increase, so do the number of problem gamblers.

Sports betting was once seen as taboo by professional and amateur sports leagues but is now embraced and normalized as a part of enjoying sports contests. Stadiums are sponsored by gaming operators, and sportsbooks operate inside some venues. Team owners, leagues, and major television networks have all partnered with the gaming industry to normalize betting activity.²¹⁶ This new reality stands in sharp contrast to just a few years ago when the sports industry was vehemently opposed to sports wagering, citing the ethical concerns.²¹⁷ Today, those concerns have given way to monetization and encouraging sports fans to wager early and often. Both retired and current professional athletes are proudly touting sports wagering on behalf of bookmaking operators.²¹⁸

For problem gamblers who commit nonviolent crimes related to their disease, treatment jurisprudence offers a cost-effective solution that meets the needs of society. Specialty courts nationwide have proven to be successful for those with diagnosed addiction disorders. In Nevada, a gambling treatment

sports-11635084000; Kate Marino, *Competition in Online Sports Betting is Fierce — and Not Profitable*, AXIOS (Oct. 13, 2021), <https://www.axios.com/competition-in-online-sports-betting-is-fierce-and-not-profitable-25adfa3c-f3dc-41f0-bcdc-92f05bbd54de.html>; Michael Applebaum, *The U.S. Sports Betting Race Is on — and Many Marketers Want a Piece of the Action*, AD AGE (Jan. 14, 2021), <https://adage.com/article/marketing-news-strategy/us-sports-betting-race-and-many-marketers-want-piece-action/2305551>; Richard N. Velotta, *UNLV Report Focuses on Harm of Sports-Wagering Ads, Illegal Sites*, LAS VEGAS REV. J. (Apr. 15, 2021, 9:00 AM), <https://www.reviewjournal.com/business/casinos-gaming/unlv-report-focuses-on-harm-of-sports-wagering-ads-illegal-sites-2329842/>.

²¹⁶ See *Arizona Coyotes Announce Sports Betting Partnership with SaharaBets*, ARIZ. SPORTS (Jan. 5, 2022, 7:21 AM), <https://arizonasports.com/story/2956552/arizona-coyotes-announce-sports-betting-partnership-with-saharabets/>; Press Release, New Orleans Saints, New Orleans Saints and Caesars Entertainment Announce Partnership: Stadium Rebranded as Caesars Superdome (July 26, 2021, 10:32 AM), <https://www.neworleanssaints.com/news/new-orleans-saints-caesars-entertainment-partnership-caesars-superdome-rebrand>; Adam Kilgore, *Capital One Arena Just Knocked Down the Final Wall Between Gambling and U.S. Pro Sports*, WASH. POST (May 26, 2021, 4:12 PM), <https://www.washingtonpost.com/sports/2021/05/26/capital-one-arena-sportsbook-william-hill/>.

²¹⁷ See *Murphy v. Nat'l Collegiate Athletic Assoc.*, 138 S. Ct. 1461, 1468–69 (2018).

²¹⁸ Press Release, BetMGM, BetMGM Signs Edmonton Oilers Captain Connor McDavid as Brand Ambassador (Mar. 4, 2022), <https://sports.betmgm.com/en/blog/betmgm-signs-edmonton-oilers-captain-connormcdavid-as-brand-ambassador/>.

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diversion court has been instituted to acknowledge the fact that problem gambling is also an addiction. This disorder can successfully be addressed in a specialty court setting.

Despite the inherent conflict of interests that exist, shared interests and responsibility demand that both governments and the gaming industry are part of the solution to address problem gambling. As a multibillion-dollar industry that feeds tax dollars to communities, sufficient funds must be set aside to support treatment of nonviolent criminal defendants whose crimes are related to their addiction and also to supplement restitution to their victims. This is in the best interests of society. Promoting responsible gaming while also acknowledging its negative impacts will also benefit the gaming industry as they prove that they can be responsible corporate citizens and provide much more value than harm to communities. Balancing responsibility among the government, the gaming industry, and patrons will best serve communities.

Providing treatment to problem gamblers and making victims whole is not meant to punish the gaming industry. Rather, it sets up a win-win-win-win scenario for governments, the gaming industry, troubled patrons, and the victims of gambling-related crimes. All parties must accept the requisite level of accountability while allowing the highly profitable gaming industry to continue to prosper and positively impact local economies.