

Problem Gambling Program

- While Nevada has drug and alcohol courts, DUI courts, and a prostitution prevention court, it has no specialty court devoted to gambling.
- During the 2009 session, the Nevada State Legislature established a *criminal diversion program* for problem gamblers.
- A.B. 102 passed 34-8 in the Assembly and unanimously in the Senate, was approved by the Governor, and went into effect on October 1, 2009.

We Are Not Unique

- Pretrial diversion programs started in the 1960s.
- Judge Mark G. Farrell, the Senior Justice in the Amherst, New York Criminal and Civil Court, initiated the nation's only Gambling Treatment Court in 2001.
- He found that the cost of gambling court treatment is only one sixth the amount of money it costs to keep someone in jail.
- Louisiana has a Gambling Treatment Referral Program.
- Michigan and Rhode Island have diversion programs that accept cases for treatment of gambling addictions.

Genesis

- Came out of the Sub-Committee on Legal Issues under the Nevada Governor's Advisory Commission on Problem Gambling in 2007 under the leadership of the late Dr. Rena Nora
- 20 members including two judges (Albright and Moss), attorneys, advocates (Carol O'Hare), recovered gamblers, verified problem gambling counselors (Denise Quirk) and an economist.

Assembly Bill 102 (2009 Nevada Legislature)

- Existing law authorized a court to assign a person who commits certain crimes to an appropriate program of treatment for alcohol or drug abuse.
- A.B. 102 would authorize a court to establish a program for the treatment of problem gambling.
- The bill would allow a problem gambler who has been convicted of certain crimes and who committed the crime in furtherance or as a result of problem gambling to be eligible for assignment by a court to a treatment program and provide eligibility requirements and conditions that must be completed for such treatment.

Minutes of the Meeting of the Assembly Committee on Judiciary—April 7, 2009

Three amendments were considered at the meeting regarding A.B. 102:

1. Providing judicial authority to determine whether a person on parole or probation is eligible for the problem gambling program.
2. Authorizing a defendant to file a petition to seal his criminal record after successful completion of the program.
3. Authorizing qualified mental health professionals to work with clients in a court ordered program for problem gambling.

April 7, 2009 cont.

- The amendments were proposed by the marriage and family therapist group and the psychologist group, and was agreed to by the Department of Health and Human Services.
- Supporters of the bill noted how the program was unique to Nevada and how gambling addiction has ruined many lives.
- Problem gambling had been a significant issue and supporters compared the program to specialty courts, such as, drug court and mental health court.
- The Department of Health and Human Services' agreed to the proposal.

April 7, 2009 cont.

Several concerns about the diversion program were made:

- A situation is created where a person self-identifies himself as a problem gambler, and the court has to determine if he truly is a problem gambler.
- Many people will self-certify that they are problem gamblers, whether or not a true problem exists, just to avoid punishment for their crimes.
- No monitoring system is available in addiction as opposed to alcohol or drug abuse.
- No test is available to see if a person will continue to gamble.

April 7, 2009 cont.

Denise Quirk, director of the Reno Problem Gambling Center, addressed the issues raised. She noted:

- A judge can make credible evaluations because detailed personal histories, concerning all aspects of the person's mental and physical health, are taken through written and verbal questioning.
- Professionals can determine whether a person meets the criteria by using standardized assessment tools and diagnostic questions.
- The individual's criminal history can be obtained and he would have to explain to the judge why he is a candidate for placement.

April 7, 2009 cont.

- Another supporter of the bill stated similar arguments were made against drug court and mental health court, yet the programs have been very successful.
- Although no blood test is available for gambling addiction, the issue should still be addressed.
- the committee, however, remained concerned about the lack of objective standards and ways to grade the success or failure of a program.

April 7, 2009 cont.

- To address the concerns, it was decided that the person would have to affirm that he is a problem gambler, and the court would need reason to believe the person is a problem gambler.
- Then, a hearing would be held to decide if the person was entitled to receive treatment under the bill.
- Amendments suggested by the Department of Health and Human Services were taken.

Minutes of the Senate Committee on Health and Education—May 14, 2009

- Some district attorneys simply opposed the bill instead of submitting amendments.
- The Las Vegas Sands Corporation submitted documents with amendatory language to ensure participants of the program are not relieved of their obligation to pay full restitution to the victim of the crime.
- It was clarified that one condition to the diversion program is that the person pay restitution of the crime, which establishes a relationship between the crime committed and the person's gambling addiction.

May 14, 2009 cont.

- The Committee was convinced that drug and alcohol courts have been successful.
- Also noted was that the fundamental difference between drug court and the diversion program is that drug abuse is a crime whereas gambling is not a crime.
- The committee stressed the importance that the diversion program did not tolerate a participant's violation of the program's standards or re-offense.
- The committee stressed the diversion program should not create any extraordinary privileges.
- The bill was then passed unanimously.

So, how does it work?

Discretionary Program

- The law establishes a rehabilitation program for problem gamblers who have committed a crime in furtherance of their problem gambling.
- NRS 458A.200(1) begins: “**A court *may* establish a *program* for the treatment of problem gambling.**” NRS 458A.200(1) (emphases added).
 - Discretionary
 - Attorney Case in Las Vegas– Court held it did not have to be a specialty court.

Presentencing- Not Pretrial

- A problem gambler who has been convicted of a crime and who committed the crime in furtherance or as a result of problem gambling is eligible to elect to be assigned by the court to a program for the treatment of problem gambling before he or she is sentenced.

Exceptions To Eligibility

- A crime against the person (assault, battery etc.)
- A crime against a child
- A sexual offense
- An act that constitutes domestic violence
- The problem gambler has a record of two or more convictions of a crime described in subsection 1 or a similar crime in violation of the laws of another state, or of three or more convictions of any felony
- Other criminal proceedings alleging commission of a felony are pending against the problem gambler
- Additional considerations if on probation or already in a program

Court May Hold A Presentence Hearing

- To determine:
 - whether the person committed the crime in furtherance or as a result of problem gambling and
 - whether the person should receive treatment under the supervision of a ***qualified mental health professional***.
- The district attorney may present the court with any evidence concerning whether the person committed the crime in furtherance or as a result of problem gambling and the advisability of permitting the person to make the election.

Preprogram Examination

- If the court, after a hearing, determines that a person is entitled to accept the treatment, the court shall order a ***qualified mental health professional*** to conduct an examination to determine
 - whether the person is a problem gambler,
 - whether the person committed the crime in furtherance or as a result of problem gambling and
 - whether the person is likely to be rehabilitated through treatment.
- The qualified mental health professional shall report to the court the results of the examination and recommend whether the person should be placed under supervision for treatment.

“Qualified mental health professional”

- A certified problem gambling counselor ([chapter 641C](#) of NRS).
- A certified problem gambling counselor intern ([chapter 641C](#) of NRS).
- A licensed physician ([chapter 630](#) or [633](#) of NRS).
- A licensed nurse ([chapter 632](#) of NRS) who is authorized by the State Board of Nursing to engage in the practice of counseling problem gamblers.
- A licensed psychologist or a psychological assistant ([chapter 641](#) of NRS) who is registered with the Board of Psychological Examiners ([chapter 641](#) of NRS)
- A licensed clinical professional counselor or clinical professional counselor intern ([chapter 641A](#) of NRS)
- A licensed marriage and family therapist or marriage and family therapist intern ([chapter 641A](#) of NRS) and is authorized by the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors to engage in the practice of counseling problem gamblers.
- A licensed clinical social worker ([chapter 641B](#) of NRS) and is authorized by the Board of Examiners for Social Workers to engage in the practice of counseling problem gamblers.

Findings The Court Must Make Regarding The Defendant

- Is a problem gambler,
- Committed the crime in furtherance or as a result of problem gambling,
- Is likely to be rehabilitated through treatment and
- Is a good candidate for treatment.

Offer of Election

- May be placed under the supervision of the qualified mental health professional for not less than 1 year and not more than 3 years
- Must agree to pay restitution as a condition upon the election of treatment
- Must pay the cost of the program (unless funded)
- During treatment, the person may be confined in an institution or, at the discretion of the qualified mental health professional, released for treatment or supervised care in the community

Requirements of Assignment

- Include the terms and conditions for successful completion of the program
- Require payment of restitution
- Provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress toward completion of the program
- Must be administered by a qualified mental health professional

If Successful -

- The conviction will be set aside, and
- If the person's conviction is set aside, he or she may file a petition for the sealing of all records relating to the setting aside of the conviction.

If Unsuccessful -

- If, before the treatment period expires, the qualified mental health professional determines that the person is not likely to benefit from further treatment, the qualified mental health professional shall advise the court. The court shall then:
 - Arrange for the transfer of the person to a more suitable program, if any; or
 - Terminate the supervision and conduct a hearing to determine whether the person should be sentenced.
- If, after the treatment period, the qualified mental health professional has not certified that the person has completed the program of treatment, ***the court shall sentence the person.***