DRIVING WHILE INTOXICATED

Bulletin No. 83-7

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

December 1982

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FEBRUARY 1983

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RESOLUTION OF THE LEGISLATIVE COMMISSION

The legislative commission, at a meeting held on May 12, 1982, created an interim subcommittee to study the operation of the law concerning driving while intoxicated, as amended by Senate Bill No. 83 of the 61st session of the Nevada Legislature. Following is an extract of the minutes of the commission's meeting on that date:

"Creation of subcommittee to study S.B. 83 (DUI)--Assemblyman Erik Beyer. Mr. Beyer appeared to present this request. He discussed the problems encountered by the arresting officers, attorneys and judges in enforcing S.B. 83 and said he felt it was the responsibility of the legislature to investigate any flaws in the law.

"Mr. Beyer suggested that a seven-member subcommittee be appointed to study S.B. 83 in depth and submit its recommendations to the next session of the legislature. He said that Mr. Crossley had proposed a budget of $4,130 to cover expenses of the subcommittee.

> "MR. RUSK MOVED THAT A SUBCOMMITTEE BE APPOINTED TO STUDY S.B. 83 AND THAT IT WORK WITH THE LEGAL DIVISION. SECONDED BY MR. REDELSPERGER AND CARRIED." Minutes, p.6.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 62ND SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with a resolution of the legislative commission dated May 12, 1982, in which the commission pursuant to subsection 5 of NRS 218.682 created an interim subcommittee to study the operation of the law concerning driving while intoxicated, as amended by Senate Bill No. 83 of the 61st session of the Nevada Legislature.

The chairman of the legislative commission, Robert R. Barengo, appointed the following subcommittee to make the study:

Assemblyman Janson F. Stewart, Chairman;
Senator Wilbur Faiss
Senator Lawrence E. Jacobsen
Assemblyman Erik Beyer
Assemblyman Patty D. Cafferata
Assemblyman Alan Glover
Assemblyman Robert M. Sader

The legislative commission approves the subcommittee's report with its suggested legislation and transmits the report to the members of the 1983 legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
February, 1983

LEGISLATIVE COMMISSION

Assemblyman Robert R. Barengo, Chairman
Assemblyman Joseph E. Dini, Jr., Vice Chairman

Senator Keith Ashworth
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Senator Jean E. Ford
Senator Virgil M. Getto
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Senator James N. Kosinski

Assemblyman Mike Malone
Assemblyman Paul W. May, Jr.
Assemblyman Kenneth K. Redelsperger
Assemblyman Robert F. Rusk

I. THE INTERIM STUDY IN GENERAL

1. Introduction: The risks and costs of driving while intoxicated.

In 1981 there were 642,000 active, licensed drivers in Nevada. Many of these drivers drink intoxicating liquor and some use controlled substances or drugs. Thus, the potential for the crime of driving while intoxicated is high. It has been estimated that, nationally, one out of every ten drivers at night on a weekend is intoxicated.

Driving while intoxicated not only occurs frequently, it is also dangerous to the populace. Sheriff David Banovich of Churchill County states that driving while intoxicated is the most dangerous ongoing activity in his jurisdiction. Assaults and major felonies do occur, but unpredictably, while the crime of driving while intoxicated is being committed all the time and often results in bodily injury or death.

Alcohol-related traffic accidents are the leading cause of death among all Americans under the age of 35. In the past 10 years, 250,000 people have been killed on the nation's highways by drunken drivers, and over a million others have been seriously injured. Drunken drivers are blamed for one-half, or 25,000, of the nation's traffic deaths each year. Alcohol-related accidents cost society an estimated $24 billion annually.

Nevada ranks first among the states in fatal traffic accidents for the number of miles driven. In 1981 there were 259 fatal motor vehicle accidents resulting in 295 deaths. Intoxicating liquor was a contributing factor in a majority of these accidents. At least one driver had been drinking in 58 percent of the fatal accidents, and 36 percent of these accidents involved at least one driver who was legally intoxicated.

2. Existing Nevada law on driving while intoxicated.

On May 12, 1982, the legislative commission created an interim subcommittee to study the operation of the law on driving while intoxicated, as amended by Senate Bill No. 83 of the 61st session of the legislature. The major changes which were made in this law by the 1981 legislature are as follows:

Minimum penalties:

1st offense: Minimum fine of $100 and mandatory attendance at an educational course on the abuse of alcohol and controlled substances added.

2nd offense within 5 years: Minimum fine of $500 and jail term of 10 days added.

3rd or subsequent offense within 5 years: Established as a felony with a minimum fine of $2,000 and imprisonment for 1 year.

Negligent driving while intoxicated which results in death or substantial bodily harm: Minimum fine of $2,000 and imprisonment for 1 year added.

Driving while driver's license is suspended or revoked for an alcohol or drug-related offense or failing to submit to a chemical test to determine the amount of alcohol in the blood ("implied consent law"): Minimum fine of $500 and jail term of 30 days added.

Prior offenses: The period during which prior offenses are considered was extended from 3 to 5 years.

"Implied consent law" (failure to submit to a chemical test):

1st failure to submit: Period of suspension of driver's license doubled to 1 year.

2nd failure to submit: Revocation of driver's license added, for a period of 3 years.

No probation or suspended sentence and a strict limitation on plea bargaining:

This provision was added for driving while intoxicated, negligent driving resulting in death or substantial bodily harm and driving while a driver's license is suspended for an alcohol or drug-related violation.

Treatment as an alcoholic or drug addict:

The procedure for treatment was changed from a deferred prosecution under chapter 458 of NRS, which resulted in a dismissal of the charge of driving while intoxicated upon completion of treatment, to post-conviction treatment.

Minimum jail sentences were added as a condition of treatment: The offender must serve 5 days if a second offense, and 30 days if a third or subsequent offense.

Civil action for personal injury caused by driving while intoxicated:

A provision was added which allows a jury to award punitive and exemplary damages, as well as compensating for the victim's loss.

3. Hearings and testimony.

The subcommittee was advised to investigate the problems purportedly being encountered by police officers, prosecutors and judges in enforcing the law on driving while intoxicated. The subcommittee met three times, in Sparks, Las Vegas and Carson City, and at each of the meetings received testimony from police officers, prosecutors, defense attorneys and judges, as well as victims of intoxicated drivers.

The victims of accidents involving intoxicated drivers related the pain and the costs they suffered, and the relatives of victims who were killed related their loss. Following are several examples of the testimony of victims and relatives, which underscore some of the most important problems with Nevada's current law on driving while intoxicated:

Robert Conboy, a police officer with the Las Vegas Metropolitan Police Department, was on his way home from work on a motorcycle when a pickup truck crossed the centerline and hit him head-on. Officer Conboy was severely injured and permanently disabled by a driver who was highly intoxicated and had five prior arrests for driving while intoxicated, several involving accidents, and who was currently in litigation for an accident involving driving while intoxicated which had been going on for 15 months without a disposition.

Arden Stumpf, whose daughter was killed by a drunken driver in Las Vegas in 1980, has since appeared in court 13 times on the case, hoping to see justice done, yet the accused has not gone to trial and the case is repeatedly continued.

Martha George Ceccarelli of Concerned Citizens and Victims of Drunk Drivers, is a retired dental hygenist from Reno who lost her first husband and two sons 30 years ago in an accident involving a drunken driver, and her 20-year-old daughter by a second marriage was killed by a drunken driver in a two-car crash in Washoe Valley 3 years ago. The drunken drivers in both of those fatal accidents were repeat offenders.

David Van Cleave, who as a teenager was rendered quadraplegic by a 15-year-old drunken driver, said that a strict law on driving while intoxicated is not only essential to protect public safety but also to protect the drinker, who might otherwise be the one killed or crippled.

This testimony emphasized the danger to the public caused by intoxicated drivers, the pain and loss suffered by their victims, the fact that these intoxicated drivers are often back driving on the highways soon after their accidents and arrests, and finally, the court delays which are frequently encountered before justice is done.

4. Statistics on accidents, arrests and court dispositions.

In addition to testimony from victims on the operation of the law on driving while intoxicated, the subcommittee conducted a survey of the disposition of these cases in the courts and obtained statistics on traffic accidents, fatal accidents and arrests as a result of driving while intoxicated.

Statistics from the department of transportation indicate there were 1,327 alcohol-related traffic accidents during July-December 1980 and 1,284 such accidents during July-December 1981. In this comparison of alcohol-related traffic accidents for like periods, one occurring before and the other after the recent amendments to the law on driving while intoxicated became effective, the figures show a three percent decline of such accidents, which is not statistically significant.

Statistics from the department of motor vehicles indicate that in the period July-December 1980 there were 79 fatal, alcohol or drug-related traffic accidents and for the like period after amendments to the law on driving while intoxicated became effective, July-December 1981, there were 77 such fatal accidents, a decrease of 2.5 percent (see Appendix C-1). On the other hand, in the 6-month period before the amendments became effective, January-June

1981, there were 74 such accidents, and for the like period after the amendments became effective, January-June 1982, there were 90 such accidents, an increase of 22 percent, so that there was no discernible effect on fatal, alcohol or drug-related traffic accidents after the amendments to the law on driving while intoxicated became effective. Other factors, such as seasonal weather conditions and the economy, also affect accident rates and nothing can be drawn from these figures relative to the effect of the recent amendment of the law.

The subcommittee also obtained statistics from the court administrator's office on the number of filings for violating the law on driving while intoxicated which were made in various courts in 1980 (see Appendix C-2). The figures show that there were 6.8 filings per 1000 population in Clark County, 14.0 filings per 1000 in Washoe County, 12.5 filings per 1000 in Carson City and 13.9 per 1000 in the other counties of the state. The striking difference in these figures is that there were only half as many filings for violating this law in Clark County as there were in the other counties. Before the law on driving while intoxicated was amended in 1981, those violations that were filed in Clark County were reputedly reduced to "reckless parking" tickets, with a minimal fine being assessed, and as a result, enforcement of the law on driving while intoxicated was low.

The subcommittee also received statistics from the Nevada highway patrol on the number of arrests for driving while intoxicated (see Appendix C-3). These statistics indicate that in the highway patrol's administrative area I (Clark, Esmeralda, Lincoln and Nye counties) during the last 6 months of 1981, arrests for driving while intoxicated increased 98 percent over the like period for the preceding year, and during the first 6 months of 1982 increased 28 percent over the like period in the preceding year. This increase in arrests in area I is largely due to a method of management which is called "policing for results," or management by objective, in which the officers on patrol attempt to set their own enforcement objectives for a period of time. After the law on driving while intoxicated was amended in 1981, which included provisions that prohibit probation or suspended sentences and limit plea bargaining in such cases, the attitude of troopers in the highway patrol changed with respect to such violations. The troopers set as their highest priority an increase in the enforcement of and arrests for driving while intoxicated and the result of almost doubling such arrests has brought the southern part of the state much closer to the statewide rate of arrests per 1000 population.

One consequence of this increase in arrests for driving while intoxicated in the southern part of the state is an increase in the filing of those cases in the courts. The subcommittee prepared and sent to the justices of the peace and municipal court judges in the state a questionnaire on the disposition of cases involving driving while intoxicated for the periods July-December 1981 and January-June 1982. The Justice's Court of Las Vegas Township was unable to respond to the questionnaire because of computer problems but did furnish the subcommittee with statistics on the number of cases on driving while intoxicated which had been filed and terminated between January 1980 and July 1982 (see Appendix C-4). These figures indicate that the amended law on driving while intoxicated did not immediately cause an increase in filings in the period July-December 1981, but the provision on no probation or suspended sentences and limited plea bargaining in cases of driving while intoxicated caused a dramatic increase in the percentage of such cases which were not terminated at the end of the 6-month period, to 41 percent, almost 5 times as many unterminated cases for this 6-month period as for the average number of unterminated cases in the preceding three like periods. The figures for January-June 1982 show that, compared to the previous 6-month period, the number of filings of such cases increased 39 percent and more than half of those cases, 57 percent, were not terminated at the end of the period.

Thirty-seven of the state's seventy-three justice's and municipal courts responded to the subcommittee's questionnaire on the disposition of cases of driving while intoxicated (see Appendix C-5). The summary figures for the state indicate that 6 percent of these cases were dismissed before trial, 4 percent were disposed of by plea bargain, 58 percent of defendants pleaded guilty to driving while intoxicated and 32 percent requested trials. The figures for disposition at trial indicate that 3 percent of the cases were dismissed, 6 percent of the defendants were acquitted, 8 percent were convicted of lesser offenses, such as reckless driving, and 83 percent were convicted of driving while intoxicated.

The courts were also asked to indicate the average fines and jail sentences which were imposed on persons convicted of driving while intoxicated (see Appendix C-6). The penalties imposed by the justice's and municipal courts in Reno and Sparks are typical for the courts outside of Clark County. These courts were imposing an average fine of $320 for a first offense, and when jail sentences were imposed, they averaged 5 days in length. For second

offenses the minimum penalties which are required by statute are a $500 fine and 10 days in jail; the courts in Reno and Sparks were imposing fines averaging $505, and when jail sentences were imposed they averaged 26 days in length.

In Clark County, the justice's and municipal courts outside of Las Vegas which responded to the questionnaire indicated that they impose an average fine of $275 and no jail sentence for a first offense, and there were no convictions in those courts for second offenses. The Justice's Court of Las Vegas Township did not respond to the questionnaire, and the Municipal Court of Las Vegas reported its fines and jail sentences for first and second offenses in the aggregate, the average fine being $215 and the average jail sentence, when imposed, being 20 days. Without further information from the Municipal Court, it appeared to the subcommittee that either there were very few convictions for second offenses, or, if there were, the fine being imposed for a first offense was the statutory minimum of $100. The subcommittee recommended increasing the minimum fine for a first offense to $200.

In its review of this survey of the disposition of cases of driving while intoxicated, the subcommittee felt that the number of dismissals before trial (6 percent) and plea bargains (4 percent) and the conviction rate at trial (83 percent) indicated that the prosecutors and courts were doing a good job of strictly enforcing the law on driving while intoxicated in the court system, as the legislature had intended by prohibiting probation and suspended sentences and limiting plea bargaining. The subcommittee also received testimony on problems in the courts concerning the validity of prior convictions and demands for jury trials, which are briefly discussed in Appendix D.

5. Comparison of Nevada law with other states.

The subcommittee compared Nevada's law on driving while intoxicated with the laws of 11 states which are considered to be "strict" because they require the imposition of a minimum sentence of at least 1 day in jail for a first offense (see Appendix E). The chart in Appendix E is not a comprehensive survey of all the states, but only a few states which have recently amended their laws to make them more strict. It illustrates the range of penalties and typical penalties in these laws. The comparison includes minimum fines, jail sentences and suspensions of drivers' licenses which are imposed for first, second and third offenses, and whether these states have adopted an "illegal per se" law which makes it a separate offense to drive a vehicle with 0.10 percent or more of alcohol in the blood. Nine of those eleven states have adopted such an "illegal per se" law. The summary figures for penalties are the medians, or middle values, for those states which impose specific minimum penalties in the categories being compared.

In Nevada's law on driving while intoxicated no minimum jail sentence is required for a first offense, 10 days is required for a second offense and 1 year for a third or subsequent offense. Among the 11 states with strict laws, the medians for minimum jail sentences are 2 days for a first offense, 10 days for a second offense and 6 months for a third offense.

For fines, the minimums in Nevada are $100 for a first offense, $500 for a second offense and $2000 for a third or subsequent offense. Among the states with strict laws, medians for minimum fines are $250 for a first offense, $300 for a second offense and a range of $295 to $1000 for a third offense (only four of these states have minimum fines for a third offense).

For suspensions of drivers' licenses, the minimums in Nevada are none for a first offense, 6 months for a second offense and none for a third offense, except when a person is convicted of a second or third offense, the department need not issue or renew a license, and the person is ineligible for a license for an indefinite period, if his continued driving is found to be inimical to public safety (but this latter sanction is seldom imposed). The medians for states with strict laws are determinate periods of suspension or ineligibility after revocation of 3 months for a first offense, 1 year for a second offense and 3 years for a third offense. The department of motor vehicles recommended that the subcommittee change all sanctions against holders of drivers' licenses from suspensions to revocations and that the periods of ineligibility for a license after revocation be the median values of 3 months, 1 year and 3 years for first, second and third offenses, respectively.

II. THE SUGGESTED LEGISLATION: BDR 43-346

After receiving testimony from the public and police officers, prosecutors, defense attorneys, judges and the department of motor vehicles, the subcommittee decided to recommend major changes to the law on driving while intoxicated in the areas of enforcement (preliminary testing of breath), prosecution ("illegal per se" law, a new offense of driving with 0.10 or more percent of alcohol in the blood), general deterrence (administative and criminal penalties) and specific deterrence (education and treatment).

1. Enforcement: Preliminary testing of breath.

The draft bill provides in section 2 for preliminary testing of a driver's breath. The subcommittee received testimony that devices had recently been developed which measure the percentage of alcohol in a driver's blood and are portable. A breath-testing device such as this is used by a police officer in the field at the scene of a traffic stop or accident, before an arrest, to determine whether a driver has been drinking, and if so, how much. The test is demanded by the officer under the "implied consent law," in which a person who drives a vehicle in this state has by law impliedly given his consent to take such a test.

The test may be demanded if the officer has an "articulable suspicion" that the driver is under the influence of intoxicating liquor or a controlled substance. An articulable suspicion is a lower threshold for justifying a search than reasonable or probable cause, but the lower threshold is permitted under the U.S. Supreme Court case of Terry v. Ohio, 392 U.S. 1 (1968), if the search is a minimally intrusive one, such as a pat-down for weapons. An articulable suspicion differs from an inchoate suspicion, or hunch, in that the officer must have specific and articulable facts which, taken together with rational inferences from those facts, warrant his demand that the driver take the preliminary test of his breath.

A preliminary test of the breath enables an officer in the field to make a quick and simple determination whether a person is legally intoxicated and probable cause exists to arrest him, especially in a marginal case where an experienced drinker has learned to compensate for his intoxication and performs reasonably well on the traditional "field sobriety test." A preliminary test of the breath can also show that a driver is not impaired, and can thus be released and not suffer the indignity and inconvenience of an arrest.

The result of a preliminary test of the breath is in ordinary circumstances introduced into evidence at a trial to show only that there was probable cause to arrest a driver, but not that he was legally intoxicated (section 2). Evidence of intoxication is ordinarily obtained from an "evidentiary test," a chemical test of the breath, blood or urine, which is given at a police station or health care facility (section 14).

The National Highway Traffic Safety Administration has recommended in its "Report on a National Study of Preliminary Breath Test (PBT) and Illegal Per Se Laws," DOT HS-806-048, August, 1981, that the states enact a law which provides for preliminary testing of the breath, and it is considering adding such a test as a criterion for elegibility for supplementary grants under the Barnes bill, H.R. 6170. Also, the Presidential Commission on Drunk Driving has recommended the use of such a test. At present, 19 states have laws which permit preliminary testing of breath.

2. Prosecution: "Illegal per se" law.

The draft bill provides in section 8 that it is unlawful for a person to drive or be in actual physical control of a motor vehicle while "under the influence of intoxicating liquor" or with "0.10 percent or more by weight of alcohol in his blood." The phrase "under the influence of intoxicating liquor" is an element of the crime of driving while intoxicated in existing Nevada law, subsection 1 of NRS 484.379. The subcommittee has recommended in the draft bill the addition of the phrase "has 0.10 percent or more by weight of alcohol in his blood" as an alternative element to "under the influence." This would, in effect, create a separate offense which makes it "illegal per se," or unlawful in itself, for a driver to have the proscribed amount of alcohol in his blood.

Under current law, "under the influence" may be proved at trial by the observations of a police officer or other witnesses or by a chemical test of the driver's blood. NRS 484.381 provides that if the result of a chemical test shows a defendant had 0.10 percent or more by weight of alcohol in his blood, it is presumed that he was "under the influence of intoxicating liquor." The presumption is disputable, however, and the accused may present witnesses or testify himself that he "was not drunk." A jury may, and frequently does, believe the testimony of the accused and his witnesses that he was not drunk, notwithstanding the scientifically established fact that every person's ability and judgment is notably impaired, he is under the influence of intoxicating liquor and his driving constitutes a hazard, when he has "0.10 percent or more by weight of alcohol in his blood." In Sweden, the proscribed amount is 0.05 percent of alcohol in the blood.

The "illegal per se" law, or new offense recommended by the subcommittee, changes the standard of "0.10 percent or more * * *" from a presumption to a definition of intoxication. Under the "illegal per se" law a prosecutor may charge alternatively that a driver was "under the influence" or had the proscribed "0.10 percent" of alcohol in his blood, and if the chemical test is

admitted into evidence, the prosecutor may move to strike from the criminal complaint the element of being "under the influence." As a result, the judge must then instruct the jury that, if it finds the defendant was driving with the proscribed amount of alcohol in his blood, it must find him guilty, and the defendant may not argue that he "was not drunk."

The "illegal per se" law also speeds up trials and usually results in a higher conviction rate at trial. After enacting an "illegal per se" law, the conviction rate for driving while intoxicated doubled in Alabama, and increased from 81.0 to 90.3 percent in Washington. The increase in convictions should also discourage those arrested from contesting the charge, or requesting a jury trial, for the purpose of delay.

The adoption of an "illegal per se" law has been recommeded by the National Highway Traffic Safety Administration in its above-mentioned report of August 1981. The enactment of such a law is also a criterion for receiving a basic grant for "alcohol traffic safety programs" under the Barnes bill, H.R.6170. The Presidential Commission on Drunk Driving has also recommended that each state establish a new offense which prohibits driving with 0.10 percent or more of alcohol in the blood. At present, 23 states have enacted such a law.

3. General deterrence: Administrative and criminal penalties.

The literature emphasizes that the general deterrence or threat of punishment of a criminal law is best achieved by certain, severe and swift punishment. The subcommittee felt that the legislature, in 1981, made criminal penalties more certain by adding the prohibitions against probation and suspended sentences and the limitation on plea bargaining, and more severe by adding minimum fines and jail sentences and making a third offense within 5 years a felony. The subcommittee felt, however, that the element of certainty of punishment is not fully realized in the judicial process and that swiftness of punishment is sometimes lacking in the court system.

a. Penalties against holders of drivers' licenses.

The subcommittee decided that certain, severe and swift punishment could be increased by imposing administrative sanctions against holders of drivers' licenses. The sanctions concerning drivers' licenses would also have the salutary effect of incapacitating intoxicated drivers, getting them off the roads.

Under the existing law, a court may suspend the driver's license of a person convicted of a first offense for a period of 30 days

to 1 year, must suspend the license in case of a second offense for not less than 6 months, and no suspension or revocation is provided for in case of a third or subsequent offense. Thus, the suspension for a first offense is discretionary and not certain, and there is no sanction for a third offense. The subcommittee also received testimony that judges do not always impose a suspension of a driver's license for a second offense, even though it is mandated by statute.
The subcommitttee decided that sanctions against drivers' licenses will be more certain if imposed by the department of motor vehicles instead of the courts (section 22 of draft bill). The sanctions against drivers' licenses will also be more certain, and severe, if imposed against a driver who fails a chemical test for alcohol, without regard to whether he is convicted of driving while intoxicated. Thus, a revocation and ineligibility for a license for a period of 90 days is provided in subsection 3 of section 3 of the draft bill for a driver who fails a chemical test for alcohol, but subsection 4 of that section provides that if the driver is later convicted of an alcohol-related offense, he is to be given credit for the period of ineligibility under subsection 3.

The subcommittee decided that sanctions against drivers' licenses would be more severe if licenses were revoked, rather than suspended (sections 3 and 22). A revoked license is physically destroyed and the person must apply for a new license after his period of ineligibility for a license expires, and if granted a license, the person must provide evidence of "noncancelable" or "SR-22" insurance (section 24). The subcommittee also decided that the median values for the periods of suspension among states with strict laws on driving while intoxicated should be added. Section 22 of the draft bill provides for periods of ineligibility of 90 days for a first offense of driving while intoxicated, 1 year for a second offense and 3 years for a third or subsequent offense, and also a period of 3 years if convicted of negligent driving while intoxicated which results in death or substantial bodily harm, felony reckless driving or homicide resulting from driving while intoxicated. Also, if a driver fails to submit to a preliminary test of his breath, his driver's license is revoked immediately and he is ineligible for a license for a period of 90 days. This provides an incentive for a driver to take the preliminary test (section 3). If a driver fails to submit to an evidentiary test at the police station, his license is revoked and he is ineligible for a license for a period of 1 year if it is his first such failure within 7 years, or 3 years if it is his second failure within 7 years (section 3). A 7-year limitation on record-keeping was added so that the department of motor vehicles would not have to keep the records of such failures indefinately.

The sanctions against drivers' licenses are made swift by requiring the police officer, as agent for the department of motor vehicles, immediately to revoke and seize the license of a driver who fails to submit to a chemical test for alcohol or who fails the test itself (section 15). When a driver's license is so revoked, the driver has a right to appeal to a hearing officer of the department and to have a temporary license for a period of 7 days or until the hearing is completed. The driver may then appeal the revocation to the district court, which may issue a stay of the revocation only if a substantial question is raised (section 16).

A person whose license has been revoked in connection with driving while intoxicated is eligible for a restricted license or "work permit" after half the period of his ineligibility for a license has run (section 23), instead of being eligible for a restricted license immediately, as in existing law.

Prompt suspension of drivers' licenses for alcohol-related violations is a criterion for receiving a basic grant under the Barnes bill and has also been recommended by the Presidential Commission on Drunk Driving.

b. Criminal penalties.

The subcommittee decided that the minimum fine for a first offense of driving while intoxicated should be increased from $100 to $200. This increase will result in more uniformity in the assessment of fines for first offenses, and will ensure that more of the cost of enforcing this law and prosecuting violations will be paid for by the violators.

The subcommittee also decided to make the penalty for a first offense of driving while intoxicated more strict by requiring that a person who is convicted serve at least 2 days in jail. The report of the Presidential Commission on Drunk Driving, which was issued after the subcommittee's final meeting, also recommends a minimum sentence of 2 days in jail or 100 hours of work for the community for a first offense. In states bordering on Nevada, Utah requires 2-10 days in jail or working in a facility for the treatment of alcoholics, Arizona requires 1 day in jail if the percentage of alcohol in the blood is 0.20 or more, and California requires 2 days in jail or a substantial fine and a revocation of the drivers' license for 1 year. Some objections were made against this minimum jail sentence for a first offense, because of the expense in providing each indigent defendant with a public defender and the cost in jailing those who are convicted. The increase in the minimum fine for a first offense should help to offset those increased costs, and if more demands for trials are made because of the minimum jail sentence, this should be counterbalanced by an increase in guilty pleas, and convictions at trial, because of the "illegal per se" law.

c. Extent of application of the law.

"On or off the highways."

The subcommittee received testimony that there were problems in some courts in prosecuting violations of driving while intoxicated which occur on private property, especially on private roads and in parking lots. The subcommittee felt that driving while intoxicated created such a hazard that the law prohibiting it should apply throughout the state, as most criminal laws do, and not be limited in application to the highways of the state, as most traffic laws are limited (sections 8 and 12).

"Within 7 years."

The subcommittee also decided that the period during which prior offenses are considered should be extended from 5 to 7 years (section 10).

Sequence of offenses and convictions.

Under existing law, a violation of the law on driving while intoxicated counts as a prior offense only if the accused has been convicted of the prior offense before the subsequent offense occurs. The operative language for a second, misdemeanor offense in subsection 4 of NRS 484.379 is "Any person who violates * * * after having once been convicted * * *." The operative language for a felony in subsection 5 of that section is "any person who violates * * * after having been convicted more than once * * *." The problem with basing a prior offense on the time of the conviction is that such a law provides a strong incentive for defendants to have their cases continued indefinately in court; as long as the trial for an offense is being continued in court, the offense cannot count as a prior offense.

The subcommittee received testimony from prosecutors that some people are being arrested for a second or even a third offense, before a first offense has been tried. Basing a prior offense on the date of conviction enables an accused to escape from the underlying intent of the law, which is to impose greater punishment for repeated bad acts. In other words, the intent of a law such as driving while intoxicated is to punish more for a repeated offense, not a conviction, as long as the offense is evidenced by a conviction. A conviction is merely a legal ascertainment that an offense has been committed. State v. Brantley, 205 N.E. 2d 391, 393 (Ohio, 1965).

The subcommittee decided that, for the purpose of imposing penalties, an offense for which there is a conviction should be considered a prior offense as of the date of its occurrence. The draft bill so provides in subsection 2 of section 10 (see Appendix F for further discussion.) In addition, the subcommittee decided that an offense for which there is a conviction should be considered a prior offense, without regard to the sequence of offenses and convictions. Unless this is so, a person who is charged with but not yet convicted of a first offense can plead guilty to a second offense and avoid the statutory intention that repeated bad acts should be more severely punished. In State v. Cain, 257 A.2d 746 (N.J. Super. 1969), which involved New Jersey's statute on driving while intoxicated, a driver was arrested for offense A, arrested and convicted of offense B, and later convicted of offense A. At his sentencing on offense A, the court treated offense B as a prior offense. The court said, "it is sufficient if there are two convictions regardless of the sequence of the offenses." 257A.2d at 747.

4. Specific deterrence: Treatment of offenders.

Specific deterrence is punishment which is aimed at making an offender aware of the legal threat in his future activities, and usually consists of education or treatment, which is more akin to rehabilitation than deterrence. In 1981 the legislature added as a penalty for driving while intoxicated that an offender must attend an educational course on the abuse of alcohol and controlled substances. The subcommittee left this penalty unchanged in the suggested legislation.

In 1981 the legislature also provided that an offender could "elect to undergo treatment approved by the court for at least 1 year . . . ." Subsection 6 of NRS 484.379. The offender's entry into treatment is automatic if he is classified as an alcoholic or abuser of drugs, agrees to pay the costs of the treatment, has served 5 days in jail if it is his second offense or 30 days in jail if it is his third offense, and has his driver's license suspended for at least 90 days. The statute provides that an offender may elect treatment only once in 5 years, so that if he fails to benefit from treatment he can not abuse the state's generous reduction of penalties a second time.

Treatment under the 1981 law was criticized by some prosecutors because the provision for an election did not permit a prosecutor to object to treatment if circumstances warranted it. Also, there was testimony that defense lawyers were preventing the rehabilitative intent of treatment by advising their clients to "save the election of treatment for when you are convicted of a third, or felony,

offense; then you can avoid the year in prison by electing treatment and serving only 30 days in jail." The subcommittee decided that the procedure for treatment should not be an election, and provided in the suggested legislation for an application by the offender for treatment, with notice of the application being given to the prosecutor and allowing him 10 days to request a hearing if he wishes to oppose it (section 11).

Under the suggested legislation, treatment is not available to a person who has been convicted of a third offense, and eligibility is not limited to once within a 5-year period. Instead, treatment may be applied for in both a first and a second offense if the offender agrees to serve or has served one-half of the minimum jail sentence, and the prosecutor may object to treatment if an offender has failed or not benefitted from prior treatment. Also, the period of ineligibility after an offender's driver's license has been revoked would, like time in jail, be cut in half if he undergoes treatment, to 45 days for a first offense or 6 months for a second offense. In addition, a program of treatment would be approved by the state, as in chapter 458 of NRS, rather than by the court under the existing law.

With this revision in the procedure for treatment, it is expected that more defense attorneys will encourage their clients to undergo treatment, since they cannot "save it for the felony."

5. Comparison of suggested legislation with the Barnes bill and recommendations of the Presidential Commission on Drunk Driving.

The Barnes bill (H.R. 6170, PL 97-364):

On October 28, 1982, the President signed into law the Barnes bill, H.R. 6170, which provides for incentive grants to the states for "alcohol traffic safety programs." This law provides criteria for eligibility to receive basic grants of matching funds, over a period of 3 years, of 75, 50 and 25 percent, respectively. The four criteria for obtaining a basic grant, and the sections of the suggested legislation, BDR 43-346, which relate to these criteria, are as follows:

1. Suspension of drivers' licenses. The federal criterion would require as a minimum that a state suspend a driver's license for 90 days for a first offense or 1 year for a second offense if: a) the driver submits to a chemical test to determine the amount of alcohol in his blood and fails the test, or b) the driver fails to submit to a chemical test. The suggested legislation would meet or exceed these criteria (see sections 3 and 22).

2. Mandatory jail sentences for repeat offenders. The federal criterion would require as a minimum that a state punish a person convicted of driving while intoxicated more than once in any 5-year period by imprisonment for not less than 48 consecutive hours or not less than 10 days of work for the community. The proposed legislation provides in section 10 for a minimum sentence of 10 days in jail for a second offense, although the sentence may be served in 24-hour segments.

3. Adoption of "illegal per se" law. The federal criterion would require a state to make it unlawful to drive with 0.10 percent or more of alcohol in the blood. Section 8 of the draft bill would meet this criterion.

4. Increased enforcement. The federal criterion would require a state to show "increased efforts or resources" in the enforcement of alcohol-related traffic laws and increased publicity concerning such enforcement. The National Highway Traffic Safety Administration is currently in the process of adopting regulations to spell out the specific criteria for demonstrating an increase in efforts or resources. These regulations are due to be announced on February 1, 1983.

The Barnes bill also provides for supplemental grants in addition to the basic incentive grants. The criteria for supplemental grants are discussed in Appendix G.

Report of the Presidential Commission on Drunk Driving.

On December 13, 1982, the Presidential Commission on Drunk Driving issued an interim report so that state legislatures convening in January, 1983, could act on the recommendations early in the year. The report has not yet been distributed, but reportedly recommends: 1) increasing the legal age for drinking intoxicating liquor to 21, 2) adoption by the states of an "illegal per se" law, 3) preliminary testing of the breath, 4) restraint in plea bargaining, 5) 2 days in jail and a substantial minimum fine for a first offense and 6) programs of education to discourage drunken driving. Nevada's law on driving while intoxicated, if amended by the subcommittee's proposed legislation, would meet all of these recommendations of the Presidential Commission.

III. SUGGESTED LEGISLATION: CONCURRENT RESOLUTION, BDR 347

The Barnes bill, H.R. 6170, PL 97-364, which was signed into law by the President on October 28, 1982, contains criteria for determining a state's eligibility to receive grants for "alcohol traffic safety programs." One of the criteria for receiving a basic grant is increasing efforts and resources for the enforcement of laws on driving while intoxicated, and informing the public about these increases. One of the criteria for a supplementary grant is the development of self-sufficient local programs for "alcohol traffic safety." The subcommittee felt that due to the economic recession and the scarcity of tax revenues, it would not recommend the creation of any new governmental agencies, but felt that there were many citizens in Nevada who were concerned about driving while intoxicated and that programs of "alcohol traffic safety" could be effectively carried out by self-supporting citizens' advisory bodies, composed of these concerned citizens, working on a voluntary basis in cooperation with state and local governmental agencies which are interested in "alcohol traffic safety." The subcommittee believes that it is important to mobilize public opinion so that everyone views drinking and driving as unacceptable behavior, but feels that the use of volunteers to attain this end is reasonable in a period of fiscal restraint.

APPENDIX A

SUMMARY--Revises laws on driving while intoxicated. (BDR 43-346)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to traffic violations; revising the provisions concerning driving while intoxicated; providing preliminary tests for intoxication; providing for summary revocation of drivers' licenses; providing a penalty for driving with a certain percentage of alcohol in the blood; increasing certain other penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 484 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. Any person who drives or is in actual physical control of a vehicle on or off a highway in this state shall be deemed to have given his consent to a preliminary test of his breath for the purpose of determining the alcoholic content of his blood when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where he stops a vehicle, if the officer has an articulable suspicion that the person to be tested was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance.

2. The person under suspicion must be informed that his failure to submit to the preliminary test will result in the immediate revocation of his privilege to drive a vehicle.

3. If the person fails to submit to the test, the officer shall seize his license or permit to drive as provided in NRS 484.385, and if reasonable grounds otherwise exist, the officer shall arrest him and take him to a convenient place for the administration of a reasonably available evidentiary test under NRS 484.383.

4. The result of the preliminary test must not be used in any criminal action, except to show there were reasonable grounds to make an arrest, unless the result of an evidentiary test under NRS 484.383 is not available.

Sec. 3. 1. Except as otherwise provided in subsection 2, if a person fails to submit to an evidentiary test as directed by a police officer under NRS 484.383, his license, permit or privilege to drive must be revoked as provided in NRS 484.385 and he is not eligible for a license, permit or privilege to drive for a period of 1 year.

2. If the person who has failed to submit to such a test has had his license, permit or privilege to drive suspended or revoked for failing to submit to such a test within the immediately preceding 7 years, he is not eligible for a license, permit or privilege to drive for a period of 3 years.

3. If a person fails to submit to a preliminary test of his

breath as directed by a police officer under section 2 of this act, or the result of a test given under NRS 484.383 or section 2 of this act shows that he had 0.10 percent or more by weight of alcohol in his blood at the time of the test, his license, permit or privilege to drive must be revoked as provided in NRS 484.385 and he is not eligible for a license, permit or privilege for a period of 90 days.

4. If revocation of a person's license, permit or privilege to drive under NRS 483.460 follows a revocation under subsection 3 which was based on his having 0.10 percent or more by weight of alcohol in his blood, the department shall cancel the revocation under that subsection and give the person credit for any period during which he was not eligible for a license, permit or privilege.

5. Periods of ineligibility for a license, permit or privilege to drive which are imposed pursuant to this section must run consecutively.

Sec. 4. NRS 484.219 is hereby amended to read as follows:

484.219 1. The driver of any vehicle involved in an accident on or off the highways of this state resulting in bodily injury to or the death of any person shall immediately stop [such] his vehicle at the scene of [such] the accident or as close thereto as possible, and shall forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements of NRS 484.223.

2. Every such stop [shall] must be made without obstructing traffic more than is necessary.

3. Any person failing to comply with the provisions of subsection 1 shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, or by a fine of not more than $5,000, or by both fine and imprisonment.

Sec. 5. NRS 484.229 is hereby amended to read as follows:

484.229 1. Except as provided in subsection 2, the driver of a vehicle which is in any manner involved in an accident, resulting in bodily injury to or the death of any person or total damage to any vehicle or item of property to an apparent extent of $350 or more, shall, within 10 days after the accident, forward a written report of the accident to the department of motor vehicles. If the accident results in substantial bodily harm to any person, as defined in NRS 193.015, or the death of any person, the report must be made without regard to whether the accident occurred on or off the highways of this state. Whenever damage occurs to a motor vehicle, the operator shall attach to the accident report an estimate of repairs or a statement of the total loss from an established repair garage, an insurance adjuster employed by an insurer licensed to do business in this state, an adjuster licensed under chapter 684A of NRS, or a motor vehicle physical damage appraiser licensed under chapter 684B of NRS. The department may require the driver or owner of the vehicle to file

supplemental written reports whenever the original report is insufficient in the opinion of the department.

2. The driver of a vehicle subject to the jurisdiction of the Interstate Commerce Commission or the public service commission of Nevada need not submit in his report the information requested pursuant to subsection 3 of NRS 484.247 until the 10th day of the month following the month in which the accident occurred.

3. A written accident report is not required under this chapter from any person who is physically incapable of making a report, during the period of his incapacity.

4. Whenever the driver is physically incapable of making a written report of an accident as required in this section and he is not the owner of the vehicle, the owner shall within 10 days after knowledge of the accident make the report not made by the driver.

5. All written reports required in this section to be forwarded to the department by drivers or owners of vehicles involved in accidents are without prejudice to the person so reporting and are for the confidential use of the department or other state agencies having use of the records for accident prevention purposes, except that the department may disclose the identity of a person involved in an accident when his identity is not otherwise known or when he denies his presence at the accident.

6. No written report forwarded under the provisions of this section may be used as evidence in any trial, civil or criminal,

arising out of an accident except that the department shall furnish upon demand of any party to such a trial, or upon demand of any court, a certificate showing that a specified accident report has or has not been made to the department in compliance with law, and, if such report has been made, the date, time and location of the accident, the names and addresses of the drivers, the owners of the vehicles involved and the investigating officers. Such a report may be used as evidence when necessary to prosecute charges filed in connection with a violation of NRS 484.236.

Sec. 6. NRS 484.259 is hereby amended to read as follows:

484.259 Unless specifically made applicable, the provisions of this chapter, except those relating to driving under the influence of controlled substances or intoxicating liquor as provided in NRS 484.379, [shall] 484.3795 and section 3 of this act, do not apply to persons, teams, motor vehicles and other equipment while actually engaged in work upon the surface of a highway but [shall] apply to such persons and vehicles when traveling to or from such work.

Sec. 7. NRS 484.376 is hereby amended to read as follows:

484.376 As used in NRS 484.377 to 484.393, inclusive, and sections 2, 3, 10 and 11 of this act, unless the context otherwise requires [, "controlled substance" means a controlled substance as defined in chapter 453 of NRS.] :

1. "Controlled substance" has the meaning ascribed to it in NRS 453.041.

2. "Substantial bodily harm" has the meaning ascribed to it in NRS 193.015.

Sec. 8. NRS 484.379 is hereby amended to read as follows:

484.379 1. It is unlawful for any person who [is] :

(a) Is under the influence of intoxicating liquor ; or

(b) Has 0.10 percent or more by weight of alcohol in his blood,

to drive or be in actual physical control of a vehicle [within] on or off the highways of this state.

2. It is unlawful for any person who is an habitual user of or under the influence of any controlled substance or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any chemical, poison or organic solvent, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle to drive or be in actual physical control of a vehicle [within] on or off the highways of this state. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection.

[3. Any person who violates the provisions of subsection 1 or 2, and who has not been convicted of a violation of one of those subsections or any law which prohibits the same conduct in any jurisdiction within 5 years before the violation took place, is guilty of a misdemeanor. Except as provided in subsection 6, the court shall order him to pay tuition for and attend courses on the use and abuse of alcohol and controlled substances approved by the department, shall fine him not less than $100 nor more

than the maximum fine permitted for a misdemeanor, and may sentence him to imprisonment in the county jail for not more than 6 months. The court may order the department of motor vehicles to suspend his driver's license for a definite period of not less than 30 days nor more than 1 year and not to allow him any limited driving privileges unless his inability to drive to and from work or in the course of his work would cause extreme hardship or prevent his earning a living.

4. Any person who violates the provisions of subsection 1 or 2 within 5 years after having once been convicted in any jurisdiction of a violation of subsection 1 or 2, NRS 484.3795 or a law which prohibits the same conduct is guilty of a misdemeanor. Except as provided in subsection 6, the court shall sentence him to imprisonment for not less than 10 days nor more than 6 months in the county jail, fine him not less than $500 and direct the department of motor vehicles to suspend his driver's license for a period specified in the order which must be not less than 6 months and not allow him any limited driving privileges unless his inability to drive to and from work or in the course of his work would cause extreme hardship or prevent his earning a living.

5. Except as provided in subsection 6, any person who violates the provisions of subsection 1 or 2 within 5 years after having been convicted more than once in any jurisdiction of a violation of subsection 1 or 2, NRS 484.3795 or a law which prohibits the same conduct, shall be punished by imprisonment in the state

prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than $2,000 nor more than $5,000. A person so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp or similar facility.

6. A person who has been convicted of a violation of subsection 1 or 2 may elect to undergo treatment approved by the court for at least 1 year if:

(a) He is classified as an alcoholic or abuser of drugs by a:

(1) Counselor certified to make that classification by the bureau of alcohol and drug abuse of the rehabilitation division of the department of human resources; or

(2) Physician certified to make that classification by the state board of medical examiners;

(b) He agrees to pay the costs of the treatment;

(c) He has served a term of imprisonment in the county jail of:

(1) Five days if it is his second conviction; or

(2) Thirty days if it is his third conviction,

in any jurisdiction of violating subsection 1 or 2, NRS 484.3795, or a law which prohibits the same conduct, within 5 years; and

(d) The court orders the department to suspend his driver's license for a period specified in the order which must not be less than 90 days and not more than the time required to complete the treatment. The court may not allow him any limited driving privileges unless his inability to drive to and from work or in

the course of his work would cause extreme hardship or prevent his earning a living.

A person may elect treatment pursuant to this subsection once in any period of 5 years.

7. If a person who has elected and qualified for treatment pursuant to subsection 6:

(a) Fails to complete the treatment satisfactorily, he must be sentenced to the fine and imprisonment to which he would have been sentenced had he not elected treatment. The sentence to imprisonment must be reduced by a time equal to that which he served before beginning treatment.

(b) Completes the treatment satisfactorily, he may not be sentenced further, but the conviction remains on his record of criminal history.

8. No person convicted for the second or a subsequent time within 5 years of violating the provisions of subsection 1 or 2 may be released on probation. No sentence imposed for violating the provisions of subsection 1 and 2 may be suspended, nor may any program of education, counseling or treatment be ordered or permitted before conviction. No prosecuting attorney may dismiss a charge of violating the provisions of subsection 1 or 2 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

9. Any term of confinement imposed under the provisions of

this section may be served intermittently at the discretion of the judge or justice of the peace. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the person convicted, but any sentence of 30 days or less must be served within 6 months from the date of conviction or within 6 months after the date of sentencing if the person elected to undergo treatment pursuant to subsection 6. Any segment of time the person is confined must not consist of less than 24 hours.

10. Jail sentences simultaneously imposed under this section and NRS 483.560 or 485.330 must run consecutively.]

Sec. 9. Chapter 484 of NRS is hereby amended by adding thereto the provisions set forth as sections 10 and 11 of this act.

Sec. 10. 1. Any person who violates the provisions of NRS 484.379:

(a) For the first offense within 7 years, is guilty of a misdemeanor. Unless he is allowed to undergo treatment as provided in section 11 of this act, the court shall order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the department and complete the course within the time specified in the order, and unless the sentence is reduced pursuant to section 11 of this act, shall sentence him to imprisonment for not less than 2 days nor more than 6 months in jail and fine him not less than $200 nor more than $1,000. The court shall notify the department if the offender fails to complete the course within the specified time.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Except as provided in section 11 of this act, the court shall sentence him to imprisonment for not less than 10 days nor more than 6 months in jail and fine him not less than $500 nor more than $1,000.

(c) For a third or subsequent offense within 7 years, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than $2,000 nor more than $5,000. An offender so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp, restitution center or similar facility.

2. Any offense which occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. No person convicted of violating the provisions of NRS 484.379 may be released on probation, and no sentence imposed for

violating those provisions may be suspended, nor may credit be given for attending any program of education, counseling or treatment before conviction. No prosecuting attorney may dismiss a charge of violating the provisions of NRS 484.379 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

4. Any term of confinement imposed under the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months from the date of conviction or within 6 months after the date of sentencing if the offender underwent treatment pursuant to section 11 of this act. Any segment of time for which the offender is confined must consist of not less than 24 consecutive hours.

5. Jail sentences simultaneously imposed under this section and NRS 483.560 or 485.330 must run consecutively.

6. As used in this section, unless the context otherwise requires, "offense" means a violation of NRS 484.379 or 484.3795 or homicide resulting from the driving of a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct.

Sec. 11. 1. A person who is found guilty of a first or second violation of NRS 484.379 within 7 years may, at that time or any time until he is sentenced, apply to the court to undergo a program of treatment for alcoholism or drug abuse for at least 1 year if:

(a) He is classified as an alcoholic or abuser of drugs by a:

(1) Counselor certified to make that classification by the bureau of alcohol and drug abuse of the rehabilitation division of the department of human resources; or

(2) Physician certified to make that classification by the state board of medical examiners;

(b) He agrees to pay the costs of the treatment; and

(c) He has served or will serve a term of imprisonment in jail of:

(1) One day if it is his first offense within 7 years; or

(2) Five days if it is his second offense within 7 years.

2. A prosecuting attorney has 10 days after receiving notice of an application for treatment pursuant to this section in which to request a hearing on the matter. The court shall order a hearing on the application if the prosecuting attorney requests it or may order a hearing on its own motion.

3. At the hearing on the application for treatment the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter upon affidavits and other information before it.

4. In granting an application for treatment the court shall advise the offender that:

(a) Final sentencing in his case will be postponed.

(b) If he is accepted for treatment by a facility approved by the state, he may be placed under the supervision of the facility for a period not to exceed 3 years and during treatment he may be confined in an institution or, at the discretion of the facility, released for treatment or supervised aftercare in the community.

(c) If he is not accepted for treatment by such a facility or fails to complete the treatment satisfactorily, he must be sentenced to the fine and imprisonment to which he would have been sentenced had he not been allowed treatment. The sentence of imprisonment must be reduced by a time equal to that which he served before beginning treatment.

(d) If he completes the treatment satisfactorily, he may not be sentenced to a term of imprisonment which is longer than that provided for the offense in paragraph (c) of subsection 1 or fined more than the minimum provided for the offense in section 10 of this act, but the conviction remains on his record of criminal history.

5. The court shall administer the program of treatment pursuant to the procedures provided in NRS 458.320 and 458.330, except that the court shall not defer the sentence or set aside the conviction.

6. The court shall notify the department, on a form approved

by the department, upon granting the offender's application for treatment and his failure to be accepted for or complete treatment.

Sec. 12. NRS 484.3795 is hereby amended to read as follows:

484.3795 1. Any person who, while under the influence of intoxicating liquor [, or] or with 0.10 percent or more by weight of alcohol in his blood, or while under the influence of a controlled substance , [as defined in chapter 453 of NRS,] or under the combined influence of intoxicating liquor and a controlled substance, or any person who inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent to a degree which renders him incapable of safely driving or steering a vehicle, does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle [, which] on or off the highways of this state, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, any person other than himself, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than $2,000 nor more than $5,000. A person so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp , restitution center or similar facility.

2. No prosecuting attorney may dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty

or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial. A sentence imposed pursuant to subsection 1 may not be suspended nor may probation be granted.

Sec. 13. NRS 484.381 is hereby amended to read as follows:

484.381 1. In any criminal prosecution for a violation of NRS 484.379 or 484.3795 in which it is alleged that the defendant was driving with 0.10 percent or more by weight of alcohol in his blood, the amount of alcohol in the defendant's blood as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance is presumed to be the amount present at the time of the alleged violation if the sample of blood or urine was taken or the test of the defendant's breath was given 2 hours or less thereafter.

2. In any criminal prosecution for a violation of NRS 484.379 or 484.3795 or [a prosecution for involuntary manslaughter] for homicide relating to driving a vehicle [while] , in which it is alleged the defendant was driving under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time of the alleged violation as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance [shall give] gives rise to the following presumptions:

(a) If there was at that time 0.05 percent or less by weight of alcohol in the defendant's blood, [it shall be presumed] that the defendant was not under the influence of intoxicating liquor.

(b) If there was at that time [in excess of] more than 0.05 percent but less than 0.10 percent by weight of alcohol in the defendant's blood, [such fact shall not give rise to any] no presumption that the defendant was or was not under the influence of intoxicating liquor, but [such] this fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10 percent or more by weight of alcohol in the defendant's blood, [it shall be presumed] that the defendant was under the influence of intoxicating liquor.

[2.] 3. The provisions of [subsection 1 shall not be construed as limiting] subsections 1 and 2 do not limit the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor [.] , including the results of tests or samples obtained more than 2 hours after the alleged violation.

Sec. 14. NRS 484.383 is hereby amended to read as follows:

484.383 1. Except as provided in subsections 4 and 5, any person who drives or is in actual physical control of a vehicle [upon] on or off a highway in this state shall be deemed to have given his consent to [a chemical] an evidentiary test of his blood, urine, breath or other bodily substance for the purpose of determining the alcoholic content of his blood or the presence of a controlled substance when such a test is administered at the direction of a police officer having reasonable grounds to

believe that the person to be tested was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance and:

(a) After he was arrested for any offense allegedly committed while he was driving a vehicle under the influence of intoxicating liquor or a controlled substance; or

(b) He is dead, unconscious or otherwise in a condition rendering him incapable of being arrested.

2. The person arrested must be informed that his failure to submit to [such] the test will result in the [suspension] revocation of his privilege to drive a vehicle . [for a period of 6 months.]

3. Any person who is dead, unconscious, or otherwise in a condition rendering him incapable of refusal shall be deemed not to have withdrawn his consent, and any such test may be administered whether or not the person is informed that his failure to submit to the test will result in the [suspension] revocation of his privilege to drive a vehicle. [for a period of 6 months.]

4. Any person who is afflicted with hemophilia or with a heart condition requiring the use of an anticoagulant as determined by a physician is exempt from any blood test which may be required pursuant to this section.

5. Where the alcoholic content of the [defendant's] blood of the person arrested is in issue, [a person] he may refuse to submit to a blood test if means are reasonably available to perform a breath or urine test, and may refuse to submit to a blood or

urine test if means are reasonably available to perform a breath test. If the person requests a blood or urine test and the means are reasonably available to perform a breath test, and he is subsequently convicted, he must pay for the cost of the substituted test, including the fees and expenses of witnesses in court.

6. Where the presence of a controlled substance in the blood of the person [arrested] is in issue, [he may refuse to submit to a blood test if means are reasonably available to perform a urine test, but he may not submit to a breath test in lieu of submitting to a blood or urine test.] the officer may direct him to submit to a blood or urine test, or both. The officer shall inform him that his failure to submit to either or both of the tests, as required, will result in the revocation of his privilege to drive a vehicle. A failure to submit to either or both of these tests constitutes a failure to submit to one test under this section.

[6.] 7. If a person under arrest [refuses] fails to submit to a required [chemical] test as directed by a police officer under this section, [the police officer shall submit to the department of motor vehicles within 10 days a sworn written statement that he had reasonable grounds to believe the arrested person had been driving a vehicle upon a highway while under the influence of intoxicating liquor or a controlled substance and that the person refused to submit to the test upon the officer's request.] none may be given, except that in the case of a person arrested for a violation of NRS 484.3795 or subsection 2 of NRS 484.377 or for

homicide resulting from the driving of a vehicle in which there is reasonable cause to believe that he was driving under the influence of intoxicating liquor or a controlled substance, the officer may direct that reasonable force be used to the extent necessary to obtain a sample of blood from that person.

Sec. 15. NRS 484.385 is hereby amended to read as follows:

484.385 1. [If a person under arrest refuses to submit to a required chemical test as directed by a police officer under NRS 484.383, none shall be given; but the department of motor vehicles, upon receipt of a sworn written statement of such officer that he had reasonable grounds to believe the arrested person had been driving a vehicle upon a highway while under the influence of intoxicating liquor or a controlled substance and that the arrested person refused to submit to such test upon the request of the officer, shall immediately notify the person by mail that his privilege to drive is subject to suspension and allow him 15 days after the date of mailing such notice to make a written request for a hearing. Except as provided in subsection 2, if no request is made within the 15-day period, the department shall immediately:

(a) Suspend his license or instruction permit to drive for a period of 1 year;

(b) If he is a nonresident, suspend his privilege to drive a vehicle in this state for a period of 1 year and inform the appropriate agency in the state of his residence of such action; or

(c) If he is a resident without a license or instruction permit to drive, deny him the issuance of a license or permit for a period of 1 year after the date of the alleged violation.

2. If the person who refused the required chemical test has previously had his license suspended because he refused such a test, the department shall immediately revoke his license, instruction permit or privilege to drive in this state, and not restore it or grant any permit, license or privilege for a period of 3 years.

3. If the affected person requests that the hearing be continued to a date beyond the period set forth in subsection 1 of NRS 484.387, the department shall issue an order suspending or revoking the license, privilege or permit to drive a motor vehicle, which is effective upon receipt of notice that the continuance has been granted.

4. The suspension or revocation provided for in subsection 1 becomes effective 10 days after the mailing of written notice thereof by the department to any such person at his last-known address.

5.] As agent for the department, the officer who directed that a test be given under NRS 484.383 or section 2 of this act or who obtained the result of such a test shall immediately serve an order of revocation of the license, permit or privilege to drive on a person who fails to submit to the test or has 0.10 percent or more by weight of alcohol in his blood, if that person is

present, and shall seize his license or permit to drive. The officer shall then advise him of his right to administrative and judicial review of the revocation and to have a temporary license, and shall issue him a temporary license on a form approved by the department if he requests one, which is effective for only 7 days including the date of issuance. The officer shall immediately transmit the person's license or permit to the department along with the written certificate required by subsection 2.

2. When a police officer has served an order of revocation of a driver's license, permit or privilege on a person pursuant to subsection 1, or later receives the result of an evidentiary test which indicates that a person, not then present, had 0.10 percent or more by weight of alcohol in his blood, the officer shall immediately prepare and transmit to the department, together with the seized license or permit and a copy of the result of the test, if any, a written certificate that he had:

(a) An articulable suspicion that the person had been driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance and that the person refused to submit to a required preliminary test;

(b) Reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance and the person refused to submit to a required evidentiary test; or

(c) Reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle with 0.10 percent or more by weight of alcohol in his blood, as determined by a chemical test.

The certificate must also indicate whether the officer served an order of revocation on the person and whether he issued the person a temporary license.

3. The department, upon receipt of such a certificate for which an order of revocation has not been served, after examining the certificate and copy of the result of the chemical test, if any, and finding that revocation is proper, shall issue an order revoking the person's license, permit or privilege to drive by mailing the order to the person at his last known address. The order must indicate the grounds for the revocation and the period during which the person is not eligible for a license, permit or privilege to drive and state that the person has a right to administrative and judicial review of the revocation and to have a temporary license. The order of revocation becomes effective 5 days after mailing.

4. Notice of [intention to suspend or revoke, notice of] an order of [suspension or] revocation [,] and notice of the affirmation of a prior order of [suspension or] revocation or the cancellation of a temporary license provided in NRS 484.387 is sufficient if it is mailed to the person's [last-known] last known address as shown by any application for a license. The date of

mailing may be proved by the certificate of any officer or employee of the department of motor vehicles, specifying the time of mailing the notice. Such a notice is presumed to have been received upon the expiration of 5 days after it is deposited, postage prepaid, in the United States mail.

Sec. 16. NRS 484.387 is hereby amended to read as follows:

484.387 1. [If a request for a hearing is made within the appropriate time, the department of motor vehicles shall afford the person an opportunity for a hearing to] At any time while a person is not eligible for a license, permit or privilege to drive following an order of revocation issued pursuant to NRS 484.385, he may request in writing a hearing by the department to review the order of revocation or the period of ineligibility. The hearing must be conducted within [60] 15 days after receipt of the request [. The hearing must be conducted] , or as soon thereafter as is practicable, in the county where the [accused] requester resides unless the parties agree otherwise. The director of the department of motor vehicles or his agent may issue subpenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the [accused.] requester. The department shall issue an additional temporary license for a period which is sufficient to complete the administrative review.

2. The scope of the hearing must be limited to the [issues of whether a police officer had reasonable grounds to believe the person had been driving a vehicle upon a highway while under the

influence of intoxicating liquor or a controlled substance, had been placed under arrest, and had refused to submit to the test upon the request of the police officer.] issue whether or not the person failed to submit to a test or had 0.10 percent or more by weight of alcohol in his blood at the time of the test. Upon an affirmative finding on [each of the issues,] this issue, the department [of motor vehicles shall issue an order suspending the license, privilege or permit to drive a motor vehicle, unless the suspension order has already been made, in which case the order must be affirmed.] shall affirm the order of revocation. If a negative finding is made on [any of the issues then no suspension may be ordered or the prior suspension order] the issue, the order of revocation must be rescinded . [, as the case may be.]

3. If, after the hearing, [an order of suspension is issued or a prior order of suspension] the order of revocation is affirmed , the person whose license, privilege or permit has been [suspended] revoked is entitled to a review of the [matter] same issue in district court in the same manner as provided by NRS 483.520. The reviewing court may issue a stay of the revocation upon appropriate terms if a substantial question is presented for review which is supported by affidavits or relevant portions of the record of the hearing. The court shall notify the department upon the issuance of a stay and the department shall issue an additional temporary license for a period which is sufficient to complete the review.

4. If a hearing officer grants a continuance of a hearing at

the request of the person whose license was revoked, or a court does so after issuing a stay of the revocation, the officer or court shall notify the department, and the department shall cancel the temporary license and notify the holder by mailing the order of cancellation to his last known address.

Sec. 17. NRS 484.389 is hereby amended to read as follows:

484.389 1. If a person refuses to submit to a required chemical test provided for in NRS 484.383 [,] or section 2 of this act, evidence of [such refusal shall be] that refusal is admissible in any criminal or administrative action arising out of acts alleged to have been committed while [such person] he was driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

2. Except as provided in subsection 4 of section 2 of this act, a court or hearing officer may not exclude evidence of a required test or failure to submit to such a test if the police officer or other person substantially complied with the provisions of NRS 484.383 to 484.393, inclusive, and section 2 of this act.

3. If a person submits to such a test, full information concerning [such test shall] that test must be made available, upon his request, to him or his attorney.

Sec. 18. NRS 484.777 is hereby amended to read as follows:

484.777 1. The provisions of this chapter are applicable and uniform throughout this state on all highways to which the public

has a right of access or to which persons have access as invitees or licensees.

2. Unless otherwise provided [,] by specific statute, any local authority may enact by ordinance traffic regulations which cover the same subject matter as the various sections of this chapter if the provisions of [such] the ordinance are not in conflict with this chapter. It may also enact by ordinance regulations requiring the registration and licensing of bicycles.

3. A local authority shall not enact an ordinance:

(a) Governing the registration of vehicles and the licensing of drivers;

(b) Governing the duties and obligations of persons involved in traffic accidents, other than the duties to stop, render aid and provide necessary information; or

(c) Providing a penalty for an offense for which the penalty prescribed by this chapter is greater than that imposed for a misdemeanor.

4. No person convicted or adjudged guilty of a violation of a traffic ordinance [shall] may be charged or tried in any other court in this state for the same offense.

Sec. 19. NRS 484.779 is hereby amended to read as follows:

484.779 1. Except as provided in subsection 3, a local authority may adopt, by ordinance, regulations with respect to highways under its jurisdiction within the reasonable exercise of the police power:

(a) Regulating or prohibiting processions or assemblages on the highways.

(b) Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction.

(c) Designating any highway as a through highway, requiring that all vehicles stop before entering or crossing the highway, or designating any intersection as a stop or a yield intersection and requiring all vehicles to stop or yield at one or more entrances to the intersection.

(d) Designating truck and bicycle routes.

(e) [Regulating the operation of bicycles and requiring the registration and licensing thereof.

(f)] Adopting such other traffic regulations related to specific highways as are [specifically] expressly authorized by this chapter.

2. An ordinance relating to traffic control enacted under this section is not effective until official traffic-control devices giving notice of [such] those local traffic regulations are posted upon or at the entrances to the highway or part thereof affected as may be most appropriate.

3. An ordinance enacted under this section is not effective with respect to:

(a) Highways constructed and maintained by the department of

transportation under the authority granted by chapter 408 of NRS; or

(b) Alternative routes for the transport of radioactive, chemical or other hazardous materials which are governed by regulations of the United States Department of Transportation,

until the ordinance has been approved by the board of directors of the department of transportation.

Sec. 20. NRS 484.791 is hereby amended to read as follows:

484.791 1. Any peace officer may, without a warrant, arrest a person if the officer has reasonable cause for believing that such person has committed any of the following offenses:

(a) Homicide by vehicle;

(b) Driving [,] or being in actual physical control of [,] a vehicle while under the influence of intoxicating liquor [;] or with 0.10 percent or more by weight of alcohol in his blood;

(c) Driving or being in actual physical control of a vehicle while under the influence of any controlled substance, [or driving a vehicle while under the influence of any other] drug or other chemical to a degree which renders the person incapable of safely driving a vehicle;

(d) Failure to stop, [or failure to] give information [, or failure to] or render reasonable assistance [,] in the event of an accident resulting in death or personal injuries, as prescribed in NRS 484.219 and 484.223;

(e) Failure to stop [, or failure to] or give information [,] in the event of an accident resulting in damage to a vehicle or

to other property legally upon or adjacent to a highway, as prescribed in NRS 484.221 and 484.225; or

(f) Reckless driving.

2. Whenever any person is arrested as authorized in this section he shall be taken without unnecessary delay before the proper magistrate as specified in NRS 484.803, except that in the case of either of the offenses designated in paragraphs (e) and (f) a peace officer [shall have] has the same discretion as is provided in other cases in NRS 484.795.

Sec. 21. NRS 483.250 is hereby amended to read as follows:

483.250 The department shall not issue any license under the provisions of NRS 483.010 to 483.630, inclusive:

1. To any person who is under the age of 16 years, except that the department may issue:

(a) A restricted license to a person between the ages of 14 and 16 years pursuant to the provisions of NRS 483.267 and 483.270.

(b) An instruction permit to a person who is at least 15 1/2 years of age pursuant to the provisions of subsection 1 of NRS 483.280.

(c) A restricted instruction permit to a person under the age of 16 years pursuant to the provisions of subsection 3 of NRS 483.280.

2. To any person whose license has been revoked until the expiration of the period [for which the license was revoked.] during which he is not eligible for a license.

3. To any person whose license has been suspended; but, upon

good cause shown to the administrator, the department may issue a restricted license to him or shorten any period of suspension.

4. To any person who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who has not at the time of application been restored to [competency by the methods provided by law.] legal capacity.

5. To any person who is required by NRS 483.010 to 483.630, inclusive, to take an examination, unless he has successfully passed the examination.

6. To any person when the administrator has good cause to believe that by reason of physical or mental disability that person would not be able to drive a motor vehicle with safety upon the highways.

7. [To any person when the administrator has good reason to believe that the driving of a motor vehicle on the highways by that person would be inimical to public safety or welfare. Two or more convictions of driving while under the influence of intoxicating liquors or of a controlled substance as defined in chapter 453 of NRS are sufficient evidence of conduct inimical to the public welfare, and the administrator shall refuse to issue or renew a license for a person so convicted until it is proven to the reasonable satisfaction of the administrator that an issuance or renewal is not opposed to the public interest.

8.] To any person who is not a resident of this state.

Sec. 22. NRS 483.460 is hereby amended to read as follows:

483.460 1. Unless otherwise provided by [law,] statute, the

department shall revoke [, for 1 year,] the license , permit or privilege of any driver upon receiving a record of his conviction of any of the following offenses, when that conviction has become final [:] , and the driver is not eligible for a license, permit or privilege to drive for the period indicated:

(a) For a period of 3 years if the offense is:

(1) Violation of NRS 484.3795 or subsection 2 of NRS 484.377 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

(2) A third or subsequent violation within 7 years of NRS 484.379.

(b) For a period of 1 year if the offense is:

[1. Manslaughter] (1) Any other manslaughter resulting from the driving of a motor vehicle [.

2. Any] or felony in the commission of which a motor vehicle is used, including the unlawful taking of a motor vehicle.

[3.] (2) Failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or [personal] bodily injury of another.

[4.] (3) Perjury or the making of a false affidavit or statement under oath to the department under NRS 483.010 to 483.630, inclusive, or under any other law relating to the ownership or driving of motor vehicles.

[5.] (4) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(5) A second violation within 7 years of NRS 484.379.

(c) For a period of 90 days, if the offense is a first violation within 7 years of NRS 484.379.

2. The department shall revoke the license, permit or privilege of a driver convicted of violating NRS 484.379 who fails to complete the educational course on the use of alcohol and controlled substances within the time ordered by the court and shall add a period of 90 days during which the driver is not eligible for a license, permit or privilege.

3. When the department is notified by a court that a person who has been convicted of violating NRS 484.379 has been permitted to enter a program of treatment pursuant to section 11 of this act, the department shall reduce by half the period during which he is not eligible for a license, permit or privilege to drive, but shall restore that reduction in time if notified that he was not accepted for or failed to complete the treatment.

Sec. 23. NRS 483.490 is hereby amended to read as follows:

483.490 1. Unless otherwise provided by [law,] specific statute, the department may not suspend a license for a period of more than 1 year.

2. [Unless a suspension for a period of 3 years is required by NRS 484.385, the department may, after the expiration of 1 year from the date of revocation of a license and when the period of revocation exceeds 1 year,] After a driver's license has been suspended or revoked and half the period during which the driver

is not eligible for a license has expired, the department may issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle [for purposes of his employment only, if the department is satisfied that a severe hardship exists.] to and from work or in the course of his work, or both. Before issuing a restricted license, the department must be satisfied that a severe hardship exists because the applicant has no alternative means of transportation to and from work or he must drive regularly as a condition of his employment, and that the severe hardship outweighs the risk to the public if he is issued a restricted license.

3. A driver who violates a condition of a restricted license issued under subsection 2 or by another jurisdiction is guilty of a misdemeanor, and if his license was suspended or revoked for a violation of NRS 484.379, 484.3795, section 3 of this act or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct, he shall be punished in the manner provided by subsection 2 of NRS 483.560.

[3.] 4. The periods of suspensions and revocations under this chapter and under [NRS 484.385] section 3 of this act must run consecutively, except as provided in NRS 483.465 and 483.470, when the suspensions must run concurrently.

[4.] 5. Whenever the department suspends or revokes a license, the period of suspension , or of ineligibility for a

license after the revocation , begins upon the effective date of the revocation or suspension as contained in the notice thereof.

Sec. 24. NRS 483.525 is hereby amended to read as follows:

483.525 The department may not restore a driver's license, permit or privilege of driving a motor vehicle in this state which has been revoked [or suspended] unless the person who is seeking the license, permit or privilege submits evidence that he is maintaining insurance or is financially responsible for the operation of any motor vehicle of which he is the owner or which is owned by a member of his household and which he may be expected to operate.

Sec. 25. NRS 483.560 is hereby amended to read as follows:

483.560 1. Except as [otherwise] provided in [this section,] subsection 2, any person who drives a motor vehicle [on a highway of this state] at a time when his driver's license has been canceled, revoked or suspended is guilty of a misdemeanor.

2. If the license was suspended , [or] revoked or restricted because of a violation [in any jurisdiction] of NRS 484.379, 484.3795 [or 484.385,] , section 3 of this act or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct , he shall be punished by imprisonment in [the county] jail for not less than 30 days nor more than 6 months, and by a fine of not less than $500 [.] nor more than $1,000.

[2.] No person who is [convicted of a violation of this section and whose license had been suspended or revoked because of a violation in any jurisdiction of NRS 484.379, 484.3795 or 484.385 or a law which prohibits the same conduct] punished under this section may be granted probation and no sentence imposed for such a violation may be suspended. No prosecutor may dismiss a charge of such a violation in exchange for a plea of guilty or of nolo contendere to a lesser charge or for any other reason unless, in his judgment the charge is not supported by probable cause or cannot be proved at trial.

3. Any term of confinement imposed under the provisions of [subsection 1] this section may be served intermittently at the discretion of the judge or justice of the peace. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the person convicted. However, the full term of confinement must be served within 6 months after the date of conviction, and any segment of time the person is confined must not consist of less than 24 hours.

4. Jail sentences simultaneously imposed under this section and [NRS 484.379] section 10 or 11 of this act must run consecutively.

5. The department upon receiving a record of the conviction or punishment of any person under this section upon a charge of driving a vehicle while his license was [suspended] :

(a) Suspended shall extend the period of the suspension for an additional like period. [If the conviction was upon a charge of driving while a license was revoked the department]

(b) Revoked shall extend the period of [revocation] ineligibility for a license, permit or privilege to drive for an additional 1 year.

(c) Restricted shall revoke his restricted license and extend the period of ineligibility for a license, permit or privilege to drive for an additional year.

Suspensions and revocations under this section must run consecutively.

Sec. 26. NRS 50.325 is here by amended to read as follows:

50.325 1. Whenever a person is charged with an offense punishable under chapters 453 or 484 of NRS or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance and it is necessary to prove the existence of any alcohol or the existence or identity of a controlled substance as defined in chapter 453 of NRS, the district attorney or city attorney may request that the affidavit of a person qualified as provided in NRS 50.315 be admitted in evidence at the trial of or preliminary examination into the offense.

2. [Such request shall] The request must be made at least 10 days prior to the date set for [such] the trial or examination and [shall] must be sent to the defendant's counsel and to the

defendant, by registered or certified mail , by the prosecuting attorney.

3. If [such] the defendant [,] or his counsel ⌈,⌉ notifies the district attorney or city attorney by registered or certified mail at least 96 hours prior to the date set for ⌈such] the trial or examination that the presence of [such person] the expert is demanded, the affidavit [shall] must not be admitted. A defendant who demands the presence of an expert and is convicted of violating NRS 484.379 shall pay the fees and expenses of that witness in court.

4. If at the trial or preliminary examination the affidavit of an expert has been admitted in evidence, and it appears to be in the interest of justice that ⌈such] the expert be examined or cross-examined in person, the ⌈district court] judge or justice of the peace may adjourn the trial or preliminary examination for a period of not to exceed 3 judicial days for the purpose of receiving such testimony. The time within which a preliminary examination or trial is required is extended by the time of [such] the adjournment.

Sec. 27. NRS 458.260 is hereby amended to read as follows:

458.260 1. Except as provided in subsection 2, the use of alcohol, the status of drunkard and the fact of being found in an intoxicated condition are not:

(a) Public offenses and shall not be so treated in any ordinance or resolution of a county, city or town.

(b) Elements of an offense giving rise to a criminal penalty or civil sanction.

2. The provisions of subsection 1 do not apply to the offenses enumerated in NRS 412.536, 412.538, 483.460, 483.490, 484.379, 484.3795, [484.381, 484.385,] 488.205, 493.130 , [and] 705.250, subsection 2 of NRS 483.560, section 3 of this act and homicide resulting from driving while under the influence of intoxicating liquor or a controlled substance, or to similar offenses set forth in any ordinance or resolution of a county, city or town.

3. This section does not make intoxication an excuse or defense for any ciminal act.

Sec. 28. NRS 458.300 is hereby amended to read as follows:

458.300 Subject to the provisions of NRS 458.290 to 458.350, inclusive, an alcoholic or a drug addict who has been convicted of a crime is eligible to elect treatment under the supervision of a state-approved alcohol or drug treatment facility before he is sentenced unless:

1. The crime is a crime against the person as provided for in chapter 200 of NRS;

2. The crime is that of selling a controlled substance as defined in chapter 453 of NRS;

3. The crime is that of driving under the influence of intoxicating liquor or while an habitual user or under the influence of a controlled substance or other chemical as provided for in NRS

484.379, or such driving which [results in involuntary manslaughter as provided in NRS 200.070 or which] causes the death of or substantial bodily harm to another person as provided in NRS 484.3795;

4. The alcoholic or drug addict has a record of one or more convictions of a crime of violence or of selling a controlled substance as defined in chapter 453 of NRS, or of two or more convictions of any felony;

5. Other criminal proceedings alleging commission of a felony are pending against the alcoholic or drug addict;

6. The alcoholic or drug addict is on probation or parole and the appropriate parole or probation authority does not consent to such election; or

7. The alcoholic or drug addict elected and was admitted, pursuant to NRS 458.290 to 458.350, inclusive, to a treatment program on two prior occasions within any consecutive 2-year period.

Sec. 29. In extending to 7 years the period during which prior offenses may be considered, the legislature intends that any offense as defined in subsection 6 of section 10 of this act which occurred on or after July 1, 1976, and is evidenced by a conviction be considered a prior offense for the purposes of this act.

APPENDIX B

SUMMARY--Urges voluntary groups to educate public on dangers of driving while intoxicated. (BDR 347)

CONCURRENT RESOLUTION--Encouraging local governments to form voluntary bodies to educate the public on the dangers of driving while intoxicated.

WHEREAS, The State of Nevada proportionately ranks first in the nation in deaths from traffic accidents; and

WHEREAS, Traffic accidents are the leading cause of death of all Nevadans between the ages of 14 and 44; and

WHEREAS, Year after year, approximately 60 percent of all fatal traffic accidents in Nevada involve at least one driver who has been drinking; and

WHEREAS, The citizens of this state should be made aware of the continuing problem of driving while intoxicated; and

WHEREAS, In a period of fiscal restraint in government, programs of education on the danger of driving while intoxicated may still be given in the communities of this state by enlisting the aid of volunteers; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the governing bodies of the counties and incorporated cities of this state are encouraged to form citizens' advisory bodies, composed of volunteers, to work in cooperation with local law enforcement agencies, courts and news media, the department of

motor vehicles and its traffic safety division and the department of human resources and its bureau of alcohol and drug abuse to develop programs of education on the dangers of driving while intoxicated for presentation to businesses, service clubs, athletic leagues and other groups in the communities of this state; and be it further

RESOLVED, That these citizens' advisory bodies are encouraged to raise their own money and to seek and accept grants to pay for the cost of their activities; and be it further

RESOLVED, That copies of this resolution be prepared and transmitted forthwith by the legislative counsel to the governing body of each county and incorporated city in this state and to the directors of the department of human resources and department of motor vehicles.

APPENDIX C

FATAL ALCOHOL AND DRUG-RELATED

TRAFFIC ACCIDENTS 1980-82

	Jan.-June	Pct. change	July-Dec.	Pct. change
1980	77		79	
1981	74	-4	77	-2.5
1982	90	+22	64*	-17

* Preliminary figure; follow-up investigations will increase this total.

Source: Fatality File Analyst, Department of Motor Vehicles.

COURT FILINGS FOR VIOLATIONS OF THE LAW ON

DRIVING WHILE INTOXICATED 1980

	Clark County	Washoe County	Carson City	Other*
Population	463,087	193,623	32,022	100,859
Filings:				
Justice's Courts	1,392	670	89	1,046
Municipal Courts	1,770	2,049	312	356
Total	3,162	2,719	401	1,404
Filings per 1,000	6.8	14.0	12.5	13.9

* Not all courts in the state are included in this survey.

Source: Court Administrator's Office.

NEVADA HIGHWAY PATROL

ARRESTS FOR DRIVING WHILE INTOXICATED 1980-82

	Area I (Clark, Esmeralda, Nye and Lincoln)		Area II (Washoe and rural except area III)		Area III (Elko, White Pine, Lander, Humboldt (part))	
	Jan.-June % chg.	July-Dec. % chg.	Jan.-June % chg.	July-Dec. % chg.	Jan.-June % chg.	July-Dec. % chg.
1980	639	497	641	615	121	130
1981	721 +13	982 +98	615 -4	555 -10	162 +34	120 -8
1982	923 +28	1072 +9	695 +13	614 +11	116 -28	107 -11

Note: These statistics reflect only arrests by the Nevada Highway Patrol and do not include arrests of other law enforcement agencies.

Source: Nevada Highway Patrol.

JUSTICE'S COURT OF LAS VEGAS TOWNSHIP

FILING AND TERMINATION OF CASES OF

DRIVING WHILE INTOXICATED 1980-82

	Filings	Cases Terminated	Cases not Terminated	Percent not Terminated
1980 Jan.-June	782	702	80	10
July-Dec.	602	576	26	4
1981 Jan.-June	663	579	84	13
July-Dec.	754	442	312	41
1982 Jan.-June	1,045	450	595	57

Terminated case means a conviction or other final disposition, such as a dismissal, finding of not guilty, and so forth.

Source: Subcommittee Survey.

SURVEY OF JUSTICE'S AND MUNICIPAL COURTS

DISPOSITION OF CASES OF DRIVING WHILE INTOXICATED,

JULY 1981-JUNE 1982

	Las Vegas Municipal (1)	Other Clark County (3)	Reno-Sparks (4)	Carson-Douglas-Incline (3)	Other Rural (24)	Totals (37 of 75 courts)
Disposition of cases of driving while intoxicated (percent):						
Dismissals before trial	9	7	5	4	5	6
Plea bargains	0	0	5	6	4	4
Guilty pleas	64	83	45	84	70	58
Trials	27	10	45	6	21	32
Trial by jury or court (percent):						
Jury	0*	0	.3	11	12	1.7*
Court	100	100	99.7	89	88	98.3
Disposition at trial (percent):						
Dismissals	3	0	3	3	5	3
Acquittals	9	0	5	17	4	6
Guilty of driving while intoxicated	84	100	83	63	86	83
Guilty of lesser offense	4	0	9	17	5	8

* Eighty-four percent of the reported trials were held in municipal courts, in which jury trials are not available. Eleven percent of reported trials in justice's courts were heard by juries.

Source: Subcommittee survey.

SURVEY OF JUSTICE'S AND MUNICIPAL COURTS

AVERAGE PENALTIES IMPOSED IN CASES OF

DRIVING WHILE INTOXICATED

JAN.-JUNE 1982

	Las Vegas Municipal (1)	Other Clark County (3)	Reno-Sparks Urban (4)	Carson-Douglas-Incline (3)	Other Rural (24)
Average penalties:					
First offense					
Percent fined	80*	100	98	99	97
Average amount of fine	$215*	$275	$320	$362	$357
Percent jailed	20*	0	3	14	5
Average days in jail	20*	0	5	4	12
Percent fined and jailed	0*	0	23	13	3
Second offense					
Percent fined	*	0	100	100	96
Average amount of fine	*	0	$505	$517	$553
Percent jailed	*	0	100	100	94
Average days in jail	*	0	26	10	17
Percent fined and jailed	*	0	100	100	94
Third offense					
Preliminary examinations	0	4	22	7	9

* Penalties for first and second offenses reported in aggregate.

Source: Subcommittee survey.

APPENDIX D

Jury trials

The subcommittee received testimony that defendants who are charged with driving while intoxicated are demanding jury trials in municipal courts although they are not afforded such a right under Nevada law. Art. 1, sec. 3 of the Nevada constitution provides that "The right of trial by Jury shall be secured to all and remain inviolate forever * * *." This provision has been construed in the same manner as Art. III, sec. 2, par. 3 and Amendment VI of the U.S. Constitution, to the effect that a jury trial is guaranteed only in those cases in which a jury trial was available under the common law or at the time the constitution was adopted. Cases not triable by jury may be tried summarily.

Driving while intoxicated was not a crime triable by jury when the Nevada constitution was adopted. In the opinion of the legislative counsel, the legislature can repeal the right to a trial by jury in justice's courts in cases of driving while intoxicated, or it can extend the right of trial by jury to the municipal or police courts in cases of driving while intoxicated, or it can leave the law as it is, and allow jury trials in justice's courts but not in municipal courts.

The demand for jury trials in municipal courts is currently on appeal to the Nevada Supreme Court. The principal arguments being advanced are that denial of the right to trial by jury in municipal courts in the case of driving while intoxicated, when trial by jury is available in justice's courts, is a denial of equal protection of the law, and that driving while intoxicated is not a "petty" but a "serious" offense under federal standards and trial by jury should be available. The argument based on equal protection is answered by the fact that justice's and municipal courts are different jurisdictions, and the rational basis for the legislature's not extending the right to trial by jury to municipal courts, and providing instead for summary trials, was the much heavier case load expected in municipal courts.

The argument that driving while intoxicated is not a "petty" offense is somewhat more difficult to answer. Under federal judicial standards a "petty" offense, which may be tried summarily, is one in which the maximum penalty is 6 months in jail and a fine of $500 (the widely established maximum penalties for a misdemeanor). Those were the maximum penalties in Nevada for driving while intoxicated until the legislature in 1981 extended the maximum fine for a misdemeanor to $1,000, the first such extension since the maximum was set at $500 in 1911. Considering the amount of inflation and how much the value of the dollar has shrunk since 1911, it seems unlikely that raising the maximum fine for a misdemeanor to $1,000, the first such increase in 70 years, has suddenly

turned the crime of driving while intoxicated (and all other misdemeanors) into serious offenses.

A misdemeanor offense may also be a "serious" offense if the maximum penalty exceeds that of a misdemeanor because of "collateral consequences." It is argued that Nevada's law on driving while intoxicated is a serious offense because of the mandatory attendance at an educational course on the abuse of alcohol and controlled substances in the case of a first offense, and the possible suspension of a driver's license for 30 days to 1 year for a first offense and the mandatory suspension of a driver's license for not less than 6 months for a second offense, which are judicially imposed penalties. (It is suspected the real reason why driving while intoxicated may be considered by some to be a serious offense is that driving and being intoxicated, when done separately, are not unlawful, and many citizens who are not otherwise criminals are guilty of this crime). It was the intention of the subcommittee to remove from the courts the imposition of penalties against holders of driver's licenses and to restore the imposition of them to the administrative agency that issues the licenses in order to achieve administrative efficiency, and also to reduce the likelihood that revocations of licenses will be considered by the courts to be a collateral consequence of a crime rather than an administrative violation.

The subcommittee also considered the feasibility of extending the right to trial by jury to municipal courts in cases of driving while intoxicated and reducing the size of the jury to some number less than 12, which in the opinion of the legislative counsel would require a constitutional amendment, or empaneling one jury to hear all such cases which are before the court on any given day. The subcommittee decided that the problem of jury trials in municipal courts was too complex for it to deal with in three meetings and that the problem should be addressed by the sixty-second session of the legislature.

Validity of prior convictions.

The subcommittee received testimony that certain courts are rejecting prior convictions for driving while intoxicated when a second, third or subsequent offense is charged, because a record of a prior conviction does not show on its face that the defendant was represented by or had waived counsel.

The U.S. Supreme Court, in Baldasar v. Illinois, 446 U.S. 222 (1980), held that a prior uncounseled misdemeanor conviction

could not be used collaterally to impose an increased term of imprisonment upon a subsequent conviction. In Baldasar the defendant was charged with a second violation of a theft statute which made a first offense a misdemeanor punishable by up to 1 year in jail and a second offense a felony punishable by 1 to 3 years in prison. The rule in Baldasar clearly applies when a person is charged with a third or subsequent offense under NRS 484.379, in which case the records of conviction of prior offenses must show on their face the presence or waiver of counsel.

In the case of a second offense under NRS 484.379, however, the penalty is not extended, or enhanced, as in Baldasar. Here, the statute only adds a minimum term of imprisonment which must be served. Since the Baldasar case was decided by a 4-1-4 vote which included a per curiam opinion supported by 3 concurring opinions, two of which were joined in by two justices, the majority in support of the holding was very tenuous. In the opinion of the legislative counsel, such a case should be limited in application to its facts and not read expansively and applied by implication to a second offense under NRS 484.379. The current law on this matter, as enunciated by the U.S. and Nevada Supreme Courts, is that a misdemeanor conviction may not be collaterally attacked on the ground that the record of conviction does not show on its face the presence or waiver of counsel, unless the prior conviction is to be used to extend the maximum penalty in a subsequent offense.

The subcommittee found that the justice's and municipal courts are now ensuring that the records of conviction in their courts for driving while intoxicated contain the information necessary to make them acceptable for proving prior offenses. Since the question of whether the Baldasar case applies to second offenses for driving while intoxicated is now being decided in the courts, the subcommittee decided that it would not recommend legislation on this issue.

APPENDIX E

MINIMUM PENALTIES FOR DRIVING WHILE INTOXICATED: STATES RECENTLY REVISING LAWS TO REQUIRE AT LEAST 1 DAY IN JAIL FOR 1ST OFFENSE

	1st offense			2nd offense			3rd offense			illegal per se	Comments
	days jail	fine	suspen. of lic.	days jail	fine	suspen. of lic.	mo. jail	fine	suspen. of lic.		
ALASKA	3	-	1 mo	10	-	30 days	36	-	-	.10	
ARIZONA	1*	250	3 mo*	60	-	1 yr	6	-	3 yr	.10	*BA over .20
CONNECTICUT	2*	300	3 mo	2-60	300	1 yr	-	-	3 yr	.10	*BA .20+
CALIFORNIA	2*	375*	*	90	375	-	4	375	3 yr	.10	*if probation: $375 & 1 yr. revocation or 2 days jail and restricted license
FLORIDA	2*	250	6 mo	10	1000	1 yr	1	1000	5 yr	.10	*if BA .20+, 72 hours
IOWA	2	-	4 mo	-	-	8 mo	-	-	1 yr	.13	
KANSAS	2	200	3 mo	90	-	yes	3	-	1 yr	.10	
LOUISIANA	10/2*	125	no	30/15*	300	no	12/6*	-	no	no	*if rehabilitation
TENNESSEE	2	250	1 yr	45	500	2 yr	4	1000	3 yr	no	
UTAH	2	299	no	10	299	no	1	299	no	*	*.08 presumptive, .10 per se
WASHINGTON	1	-	1 mo	7	-	2 mo	7d.	-	perm.	.10	
average *	2.6#	256	4 mo	35	521	10 mo	7.5	670	2.7 yr	.10	*for states w/minimum #some states require a high BA
median *	2	250	3 mo	10	300	12 mo	6	-	3 yr	-	*the middle value
NEVADA	-	100	no	10/5*	500	6 mo / #indef.	12/1*	2000	no / #indef.	no	*if treatment #if conduct inimical to public safety

APPENDIX F

"Subsequent offense" statutes.

A "subsequent offense" statute is distinguishable from a recidivist or habitual criminal statute in which the maximum penalty for the primary offense is enhanced or extended because of repeated criminality, rather than a repeated offense. In contrast to the rule for "subsequent offense" statutes, the rule for recidivist statutes is that a prior conviction may be counted only if the conviction antedates the principal offense.

There are currently 23 crimes in Nevada Revised Statutes for which a greater maximum penalty is imposed for a subsequent offense:

118.340	Violations by landlord
201.020	Nonsupport
201.210	Lewdness
201.220	Indecent exposure
201.430	Advertising of prostitution
201.440	Permitting the advertising of prostitution
202.350	Dangerous weapons
202.820	Explosives
205.217	Theft of sound recordings
207.175	Deceptive advertising
207.260	Molesting a minor
408.433	Selling or advertising in a rest-stop
454.326	Fraudulent order for drugs
584.150	Sale of impure butter
598.640	Deceptive trade practices
618.685	Violation of standards for occupational health
624.360	Violation by contractor
645.321	Discrimination by real estate broker
648A.290	Violation by polygraphic examiner
652.260	Violation by director of medical lab
706.756	Operating as carrier without certificate
706.8848	Violation by taxicab driver
706.8849	Violation by taxicab driver

For example, NRS 207.260 provides that "any person who annoys or molests any minor is guilty of a misdemeanor. For the second and each subsequent offense, he shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years * * *." The courts have upheld a statute such as this, and allowed a greater punishment to be imposed for a subsequent offense, even though the subsequent offense is committed before the accused is convicted of the prior offense. Strode v. State, 537 S.W. 2d 162 (Ark. 1976), State v. Dale, 81 N.W. 458 (Iowa, 1900), State v. Guiendon, 273 A.2d

790 (N.J. 1971), State v. Brantley, 205 N.E. 2d 391 (Ohio, 1965), U.S. v. Eastern Airlines, Inc., 199 F. Supp. 177 (S.D. Fla. 1961), 24 ALR2d 1247, 1252 (1952). It is the subcommittee's intention that the foregoing rule on subsequent offenses not be made inapplicable to existing statutes for which a greater maximum penalty is imposed for a subsequent offense solely because these statutes do not contain the substance of subsection 2 of section 10 of the draft bill.

APPENDIX G

Criteria for supplementary grants to states under the Barnes bill:

The Barnes bill, H.R. 6170, PL 97364, contains seven possible criteria for determining the eligibility of states to receive supplemental grants for "alcohol traffic safety programs":

1. Keep records of drivers on a statewide basis: NRS 483.450 requires courts to report violations of traffic laws to the department of motor vehicles, and NRS 483.400 requires the department to keep records of drivers.

2. Minimum age of 21 for drinking intoxicating liquor: NRS 202.020 provides that it is unlawful for a minor to purchase or consume alcoholic beverages.

3. Establish locally coordinated and administered "alcohol traffic safety programs" which are financially self-sufficient: The suggested concurrent resolution, BDR 347, urges counties and cities to create self-supporting citizens' advisory bodies of volunteers to develop and present programs of education on the dangers of driving while intoxicated (subdivision III of this report and Appendix B). The subcommittee decided not to recommend the creation of additional governmental agencies because of the state of the economy and the shortage of tax revenues. It is felt that compliance with this criterion should depend on the efforts of volunteers and the effectiveness of their programs, rather than whether the programs are performed by governmental agencies.

4. Impoundment of vehicle or confiscation of license plates as a penalty for driving while a driver's license is revoked: Nevada law does not provide for such a penalty.

5. Presentence screening authority: The citizens of Nevada do not favor probation and suspended sentences in misdemeanor cases, as evidenced by the defeat at the last general election of Senate Joint Resolution No. 18 of the 60th Session which would have amended the Nevada constitution to permit justice's and municipal courts to defer and suspend sentences. Also, presentence reports, which are prepared by the department of parole and probation, are not authorized in misdemeanor cases. Section 11 of the draft bill, however, allows an offender to apply for treatment before sentencing.

6. Creation of programs of treatment: NRS 484.379 currently provides for an election of treatment and the draft bill in section 11 would change the procedure for an election to that of an application.

7. Consideration of recommendations of the Presidential Commission on Drunk Driving: An interim report of the commission was issued December 13, 1982, but was not yet distributed 6 weeks later. The final report is due to be issued in April, 1983, but if it is not available before the Nevada legislature adjourns, the legislature can provide for a contingent interim study or the legislative commission during the interim may direct that a study be conducted for this purpose.

In addition to the seven criteria for supplemental grants in the Barnes bill, the National Highway Traffic Safety Administration has suggested eight additional possible criteria:

1. Designation of a "State alcohol highway safety program coordinator": The department of motor vehicles may designate such a coordinator under NRS 481.067.

2. Programs of prevention and long term education: The state department of education has not created a curriculum for driver education, and the position of education consultant for driver education has been left vacant for budgetary reasons. The citizens' advisory bodies discussed in criterion number 3, above, and the traffic safety division in the department of motor vehicles, may carry out these programs.

3. Authorizing preliminary testing of the breath: This is recommended in section 2 of the draft bill.

4. Use of roadside checks to detect drunken drivers: This is a question of policy in local law enforcement agencies.

5. Allowing an arresting officer to choose the chemical test to be given: In the draft bill, section 14, if the officer suspects the presence of a controlled substance he may direct the driver to submit to a blood or urine test, or both; otherwise, the least intrusive test which is reasonably available must be offered.

6. Elimination of plea bargaining: This is provided in NRS 484.379 and is not recommended for alteration in the draft bill.

7. Enactment of a dram shop law (making a person who dispenses intoxicating liquor liable for injuries resulting from driving while intoxicated): Nevada has no dram shop law, but NRS 42.010 does provide for punitive damages in case of a tort by an intoxicated driver.

8. Enactment of a provision that a driver with 0.05 percent or more of alcohol in the blood is presumed to be impaired: In NRS 484.381, more than 0.05 but less than 0.10 percent of alcohol in the blood is not a presumption but a fact which may be considered by the trier of fact. The subcommittee did not recommend changing this provision.