

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY**

**Seventy-Third Session
April 5, 2005**

The Committee on Judiciary was called to order at 8:12 a.m., on Tuesday, April 5, 2005. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. William Horne, Vice Chairman
Ms. Francis Allen
Mrs. Sharron Angle
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Marcus Conklin
Ms. Susan Gerhardt
Mr. Brooks Holcomb
Mr. Mark Manendo
Mr. Harry Mortenson
Mr. John Ocegüera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman Richard Perkins, Assembly District No. 23, Clark County
(part)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst

Risa Lang, Committee Counsel
Judy Maddock, Committee Manager

OTHERS PRESENT:

Ben Graham, Legislative Representative, Nevada District Attorneys Association
Bruce Nelson, Deputy District Attorney, Vehicular Crimes Unit, Office of the Clark County District Attorney, Nevada
Kristin Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney; and representing the Nevada District Attorney's Association
Laurel Stadler, Chapter Director, Mothers Against Drunk Driving [MADD]
Bob Roshak, Sergeant, Las Vegas Metropolitan Police Department; and representing the Nevada Sheriffs' and Chiefs' Association
Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and representing the Nevada Sheriffs' and Chiefs' Association
Roger Vind, Lieutenant, Nevada Highway Patrol
Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections
Annie Holmes, Member, Northern Nevada Task Force on DUI [Driving Under the Influence]
Judy Jacoboni, Victims Advocate, Mothers Against Drunk Driving [MADD]
Fred Messmann, Boating Law Administrator, and Deputy Chief Game Warden, Nevada Department of Wildlife
Dave Mincavage, Assistant City Attorney, Crime Division, Henderson, Nevada
Douglas Konersman, Marketing Director, Nevada Safety and Diagnostics
Chuck Abbott, Office of Traffic Safety, Nevada Department of Public Safety; and Chairman, State Committee on Testing for Intoxication
Robert Crowell, Legislative Advocate, representing Nevada Trial Lawyers Association
Sam McMullen, Legislative Advocate, representing Nevada Subcontractor's Association
Gary Milliken, Legislative Advocate, representing Las Vegas Chapter, Associated General Contractors
Margi Grein, Director, Nevada State Contractors' Board
Laura Browning, Attorney, Haney Woloson and Mullins, representing Nevada State Contractors' Board

Chairman Anderson:

[Committee called to order. Roll taken. Chair reminded Committee members and the audience of the Committee Standing Rules and etiquette.] We will turn our attention to A.B. 256.

Assembly Bill 256: Establishes crimes of vehicular homicide and homicide by vessel for driving vehicle or operating vessel under influence of alcohol or certain substances which causes death under certain circumstances. (BDR 43-458)

Assemblywoman Buckley, Assembly District No. 8, Clark County (part):

Today we examine A.B. 256 which relates to driving under the influence of alcohol or a controlled substance. It establishes the crime of vehicular homicide, and homicide by vessel, for a person who drives a motor vehicle or operates a vessel under the influence of alcohol or controlled substances.

Under A.B. 256 the crime of vehicular homicide is created to provide enhanced penalties to repeat DUI [Driving Under the Influence] offenders. This is defined as a crime that is committed when a person who has previously been convicted of at least three offenses of DUI in violation of the law, and who causes the death of another person in either a car or a boat, while under the influence. The crime will be a category A felony punishable by imprisonment in the state prison for life with the possibility of parole or for a definite term of 25 years with eligibility for parole beginning after a minimum of 10 years have been served.

Existing law provides for a separate crime which is committed when a person who drives under the influence in violation of the law causes death or substantial bodily harm to another person, regardless of whether the person has previously been convicted of driving under the influence. The penalty under the current law prescribes imprisonment in the state prison for a minimum of not less than 2 years and a maximum of not more than 20 years, and a fine of \$2,000 to \$5,000.

In 2002, 17,419 people were killed in crashes involving alcohol. The public cost of these deaths alone was over \$114 billion. Any person, who can kill another in a car accident after ingesting alcohol, and already having been convicted of three other offenses of DUI, deserves the stiffest penalty under law. They need to be off our streets so as to reduce further harm to citizens. The National Commission Against Drunk Driving reports that one-third of all drivers arrested for DUI offenses are repeat offenders. More alarming and pertinent to A.B. 256

is that one out of every eight drunk drivers involved in a fatal crash has had a DUI conviction in the past three years.

[Assemblywoman Buckley, continued.] Approximately 2,300 victims are killed each year due to persistent drunk drivers. Persistent drunk drivers represent an estimated 65 percent of fatally injured drunk drivers, and 15 to 20 percent of all injured drivers. This amounts to 7,000 dead drivers and 250,000 injured drivers annually.

"Please put that bad man in jail for a very long time," Chance Holt, a nine-year-old boy wrote to Las Vegas District Court Judge Joseph Bonaventure at the sentencing of Michael Krivak, the man who killed the nine-year-old's father after a night of drinking and reckless driving. Judge Bonaventure said at the sentencing hearing, "Due to Mr. Krivak's criminal selfish acts, we are here; and because of those criminal acts, Chance watched his father die a brutal death." This crime should never have happened, though. Krivak's police record was over 80 full pages, including at least 4 drunk driving arrests in New Mexico. His actions that day were irresponsible and deplorable. I could go on and on, with example after example of individuals who lost everything because of repeat DUI offenders on the road.

We, as legislators and also as human beings, have sympathy for those who make mistakes. That sympathy fades after repeated instances of DUI and the results. After three DUI offenses, and then killing someone, it is no longer just a mistake to drive drunk. Under the new penalties for this crime, an act can be punishable under a category A felony.

In 1984, the Nevada Supreme Court declared that driving while under the influence of liquor was inherently dangerous, and naturally tended to destroy human life. It also stated that it was in the Legislature's domain to establish penalties that are deserving of the crime. It is time to do what we can to repeat DUI offenders, and it is time to make a difference in protecting our citizens from the horrors that are brought about by people who choose alcohol over safety.

Assemblyman Conklin:

Regarding page 13, Section 10, line 14, "Has previously been convicted of at least three offenses." In current state law, I guess they could technically be convicted of killing three other people, is that correct, or is it convicted of three DUI offenses?

Assemblywoman Buckley:

It would be any three DUI offenses, including those without injury. If one of those offenses ended up with substantial bodily injury or death, they would receive the current penalty under Nevada law.

We debated for a long time what the right threshold would be. What about the victim in the first incident? Right now for serious offenses involving injury or death we have the higher penalty. Vehicular homicide—that word “homicide” is a harsh word. After our debate, we decided to make a law for the worst of the worst, something where anyone looking at the facts of the case, anyone looking at the record, would say, “No more. This person is a menace and they deserve the harshest penalty there is.”

Chairman Anderson:

Under subsection 7(a) (b) and (c) on page 14 “offense” is further defined.

Assemblyman Conklin:

Do those three offenses include offenses in other jurisdictions outside the state of Nevada?

Assemblywoman Buckley:

That is correct and it’s in that same subsection, page 14, lines 10 and 11.

Chairman Anderson:

Clearly, the heart of A.B. 256 is in Sections 10 and 31. Section 31 deals with vessels under power or sail.

Ben Graham, Legislative Representative, Nevada District Attorneys Association:

Mr. Bruce Nelson, a senior deputy in the Clark County District Attorney’s Office, has participated in prosecuting more than 20,000 misdemeanor DUIs and over 400 felony DUIs. He is very familiar with this legislation and worked with Ms. Buckley and others on it. We feel A.B. 256 is a good step in getting the worst of the worst off the road.

Bruce Nelson, Deputy District Attorney, Vehicular Crimes Unit, Office of the Clark County District Attorney, Nevada:

This is a bill that will address the worst of the worst. It’s slightly different than California’s bill. In California, you only need one prior offense. Their supreme court created that offense. It held that once you get that one prior, among the things you do is go to a DUI school where you learn how dangerous it is to drink and drive. In Nevada, you would go to a victim impact panel where you learn the effects of drunk driving on persons. If you then choose to drink and drive again, that shows recklessness and malice and becomes vehicular homicide.

Chairman Anderson:

In California do they have the seven-year statute between the first and the second offense; the tolling?

Bruce Nelson:

I don't know if it's seven years, but I do know there is a statutory period in which the offenses have to occur.

Kristin Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney; and representing the Nevada District Attorneys Association:

I just want to add, "me, too."

Chairman Anderson:

What about prosecution of DUIs by Washoe County's District Attorney as compared with Clark County's statistics?

Kristin Erickson:

We have also found that people who have killed people while driving under the influence of alcohol do usually have several prior DUI convictions. This bill is punishing the worst of the worst.

Laurel Stadler, Chapter Director, Mothers Against Drunk Drivers [MADD]:

We are in support of this legislation. It certainly is one very necessary way to address the repeat offender.

Bob Roshak, Sergeant, Las Vegas Metropolitan Police Department; and representing the Nevada Sheriffs' and Chiefs' Association:

Me, too.

Michelle Youngs, Sergeant, Washoe County Sheriff's Office; and representing the Nevada Sheriffs' and Chiefs' Association:

We are in support of A.B. 256 as well.

Roger Vind, Lieutenant, Nevada Highway Patrol:

The Nevada Highway Patrol supports this bill. Additionally, this bill allows us the opportunity to use our very valuable roadside education process for commuters we do stop who have been drinking, but are not necessarily under the influence or impaired at the time.

Chairman Anderson:

Assembly Bill 256 gives you another tool for enforcement?

Roger Vind:

That is correct. Punishment is a deterrent. This allows us to be able to address the community in the public forum that we do and to discuss the consequences of drinking and driving.

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:

We took a look at A.B. 256 as far as its fiscal impact on the state. We made the determination that the fiscal impact would be fairly small and in the far distant future. As a result, we decided to put a "no fiscal impact" on the bill. However, the Department will be asking to construct or open eight prisons in the next ten years, so everything we do that adds to that population becomes problematic at some point.

I had a relative killed by a drunk driver, so I am not sympathetic to their cause. I don't know what the alternative to longer sentences is. I don't know how you stop that addiction without separating them from society and not letting them drink and drive.

Chairman Anderson:

I don't think there is anyone in our society today who does not have a family member or close friend who has been killed by a drunk driver. It is a reality, but that doesn't make it excusable. I believe it may not overly burden the prison system since there is only one person currently in the prison system who would fit this criterion.

Assemblyman Holcomb:

You said you would be building eight prisons within the next ten years. Could you guess the cost?

Fritz Schlottman:

We have had discussions with the Public Works Board and the people who do the cash flow analyses for the bonding capacity for the State. The figures are getting pretty scary.

Chairman Anderson:

I'll close the hearing and move to A.B. 421.

Assembly Bill 421: Provides that once person has been convicted of felony for operating vehicle or vessel while under influence of alcohol or controlled substance, any subsequent violation is treated as felony. (BDR 43-473)

Assemblyman Marcus Conklin, Assembly District 37, Clark County (part):

This particular bill can be described as a repeat offender bill for DUI. We have some inconsistencies in state statute as they currently stand with respect to DUI offenders. A person can be convicted of a misdemeanor DUI every three and a half years for a lifetime, and never get a stiffer penalty than potentially a fine and maybe a night in jail.

Statistics demonstrate that, on average, a person has to drink and drive 80 times before being caught. That's 80 times on the roadway, potentially beyond the DUI minimum limit, potentially threatening your life and the lives of your children and loved ones, before they get caught. I did some math on the number of drivers who are potentially drinking and driving on my way to work in the morning and it was amazing. In Las Vegas, if you extrapolate from the number of DUIs processed in any given year and multiply that times 80, I figure during my 14-mile drive to work I pass at least 3 drunk drivers. That's a problem for me.

This bill attempts to get at part of the problem Ms. Buckley's bill addressed. While her bill is addressing the worst of the worst, what we're trying to do is catch those people and give them a stiffer penalty before they kill someone. In Nevada law, you can get three DUIs in a seven-year period. The third DUI, if it falls within the seven-year period, becomes a felony DUI. This bill says once you have eclipsed felony status for DUI offenses, any subsequent offense will remain a felony. You cannot drive down the road drunk, kill someone, have that be a felony offense, go to prison for three years—seems like a light sentence for killing someone, possibly a family—and then get out of prison. Under current law, when you get out of prison you can go straight to a bar, drink yourself into oblivion, get in your car, and drive away. If you get pulled over, it would be a misdemeanor. Assembly Bill 421 says once you've eclipsed that barrier, any subsequent violation remains a felony.

Line 28 on page 6 through line 13 on page 7, are the real meat of the bill with respect to the change in statute that makes it clear that subsequent violations after the first felony will continue to be felonies.

In the second half of the bill on page 15, starting in Section 9, we have subsequent measures that deal with drug offenses. In this state we do have laws similar to DUI that make it illegal to drive under the influence of prohibited drugs as well. The bill treats both offenses the same.

Chairman Anderson:

You and I cosponsored a similar bill during the last session of the Legislature. It died in either the Senate or in Ways and Means.

Assemblyman Conklin:

It died in Ways and Means. It was my understanding that the fiscal note put on it by the prison system was just over \$4,000. Is that too large a price to pay to possibly prevent a few deaths?

Chairman Anderson:

There was confusion about the fiscal impact.

Bruce Nelson, Deputy District Attorney, Vehicular Crimes Unit, Clark County District Attorneys Office, Nevada:

Assembly Bill 421 is important because it does address the person who has had three bites of the apple and now they're up to their fourth bite. DUIs are the only laws in Nevada where we do this: they get their fourth offense and it goes back to being a misdemeanor. Someone who has committed four burglaries, four kidnappings, or four rapes is punished at least at the same level, if not more, for the fourth one. This bill will fix that, and I think the fiscal impact will be very light. It's very hard to get three DUI convictions in a seven-year period and then commit a fourth offense. By that point with most folks it's sunk in that they cannot drink and drive.

Assembly Bill 256 addressed the worst of the worst; this addresses the people who continue to drink and drive and who are going to kill someone. At least we can get them off the road for a while and, hopefully, get them some help in jail, or at least convince them that they can't continue to drink and drive.

Assemblyman Carpenter:

Could someone explain to me exactly how A.B. 421 and A.B. 256 would work?

Bruce Nelson:

In A.B. 421 you have to commit three DUIs within a seven-year period, get a felony conviction and then drink and drive again for this bill to become applicable. This bill does not address death or substantial bodily harm at all, with the exception that if you kill someone and then drink and drive again, your new offense would be a felony.

Assemblyman Carpenter:

On page 6, line 32 it speaks about "a homicide resulting from driving or being in actual physical control." In Ms. Buckley's bill [A.B. 256] you have three DUIs and then if they kill someone they're going to go to prison for a much longer

period of time. Assembly Bill 421 just speaks of prison and a minimum term of not less than two years. Could you explain that part to me?

Bruce Nelson:

Under A.B. 256 you would have to have three priors and then kill someone. Under A.B. 421 if you kill someone and then drink and drive again, your new offense would be a felony, but it would not be the vehicular homicide. It would be a 2-to-15 years' felony rather than the potential of life imprisonment. This bill will only come into effect if you either have three priors, or you kill someone, and then drink and drive again. Under A.B. 256 you have to have the three priors and then kill someone. This bill does not address people who kill; it addresses only people who continue to drink and drive after receiving a felony conviction.

Assemblyman Carpenter:

I'm still confused. If we're going to charge people with a felony after the third conviction, the time they spend in prison should also be increased. I don't see we're doing much if we're only putting them in prison for another year or two.

Chairman Anderson:

What I believe Mr. Carpenter is trying to get at is the fact that once you reach felony status, whether because of a third DUI or by way of a first-time vehicular homicide as a result of DUI, then any subsequent DUI driving event is going to be considered felonious.

Assemblyman Carpenter:

I understand that part. The part I'm having problems with is that if they're continuing to drink and drive they still receive the same penalty.

Chairman Anderson:

Mr. Carpenter's looking for a longer time period for subsequent events.

Bruce Nelson:

Assembly Bill 421 does increase the penalties slightly. For a third DUI offense, you're looking at 1-to-6 years in prison. For the fourth offense, or the felony after you've killed someone, it's 2 to 15 years. Assembly Bill 421 does give a higher penalty, but you have more prior DUIs. On page 6, lines 41 to 42, "...not less than 2 years and a maximum term of not more than 15 years..."

Assemblyman Conklin:

I hope both of these bills pass. Mr. Carpenter, in Ms. Buckley's bill, as I understand it, if you kill someone as a result of your fourth DUI offense, that is vehicular homicide, regardless of whether the first three DUI offenses were

misdemeanors or felonies. What A.B. 421 does is address the first three DUI offenses and anything after the first three offenses where no one is killed. If on your first DUI offense you kill or maim someone, that's punishable by up to 6 years in prison. A second offense, which may just be a DUI, is still a felony, even if you didn't kill someone. What we've done in A.B. 421 is stiffened those first DUIs in an attempt to send a clear message to the folks who are repeat offenders.

Assemblywoman Buckley:

We need a chart.

Ben Graham, Legislative Representative, Nevada District Attorneys Association:

We will work on a chart. These bills are aimed at situations we read about in the paper where we ask how on earth this person is still out there driving, doing these things.

Laurel Stadler, Chapter Director, Mothers Against Drunk Driving [MADD]:

We believe A.B. 421 offers a unique approach to specifically addressing the public safety concerns that repeat offenders present. In Nevada, after an offender reaches felony DUI level by being convicted of DUI for the third time within seven years, that offender has had every opportunity to change their behavior. They have been offered the Notice of Election Treatment Program on first and second offense DUIs, mandatory treatment in some cases, DUI school, fines, and a lot of other things at the misdemeanor level as well as Phase One treatment in the prison system with ongoing treatment as part of the 305 Program, if they are eligible for that.

If DUI offenders do not respond to this combination of treatment, educational programs, and sanctions three times, we feel that our best and only option is to further incarcerate them for subsequent convictions. To put an offender back out on our streets and highways as a misdemeanor offender, after four or more convictions, allows those offenders to laugh in the face of the law. Additionally, an offender who reaches felony status by virtue of a crash causing death or substantial bodily harm to another should never have the ability to revert back to misdemeanor status as they currently do.

What if a person 20 or 30 years after having a felony gets another felony? What if one time they fall off the wagon? The felon's alcohol consumption or falling off the wagon does not put him in jeopardy of being convicted under the statute. The felon's drinking, then driving, then being apprehended, then being convicted, puts him under this law. This is a lesson he should have learned as a result of killing or injuring a person, or because of the three previous DUIs no matter how many years have elapsed. Also, the threat of additional prison time

should act as a deterrent if the prisons are doing their job. As with every DUI law, we would much rather have this crime not be committed than have to punish and deal with the penalties and sanctions after it has.

We feel A.B. 421 is a very important piece of legislation to address the repeat offender and we surely hope this Committee supports this repeat offender law.

[Laurel Stadler continued.] Did the Chairman receive a letter from Sharon Zadra addressing A.B. 421?

Chairman Anderson:

I received one from Erin Breen ([Exhibit B](#)), but not from Sharon Zadra.

Laurel Stadler:

Reno City Councilwoman Sharon Zadra was working on a letter to be added to the testimony to this Committee. I have a draft of it. Could that be added later?

Chairman Anderson:

If it arrives in time, we will add it to the record.

Annie Holmes, Member, Northern Nevada Task Force on DUI:

The Task Force certainly is behind A.B. 421. The Task Force is responsible for the Victim Impact Panel in Washoe County. We see 200-250 people every month at our victim impact panels; any deterrence is certainly upheld by the Task Force.

I have been employed by the Sparks Municipal Court, a misdemeanor court, for many years and have seen firsthand the number of offenders who come through our court system again as a misdemeanor, after having the felony. I am the mother of a son who was killed nine years ago by a drinking driver.

Chairman Anderson:

We'll include your husband as being in support of A.B. 421 as well.

Judy Jacoboni, Victims Advocate, Mothers Against Drunk Driving [MADD]:

My daughter was killed in a head-on crash with a DUI driver. That started my involvement in making Nevada highways safer for others. This concept has been on MADD's and the Northern Nevada Task Force on DUI's "wish list" since about 1995.

The offender who killed my daughter was sentenced to the maximum of 20 years—felony DUI causing death—in the Nevada State Prison. She was later released on parole. Within just a few months of the expiration of her sentence, she re-offended. Because, while she was in prison, her seven-year time limit had

elapsed, she was charged with first offense misdemeanor DUI in Carson City Justice Court. If I had not gone to court that day to inform the judge that he was dealing with a career drinker and lifetime DUI offender, he would not have known that she had previously killed someone while DUI. Fortunately, he took that information into consideration in her sentencing, but the maximum sentence she could receive was six months in jail.

[Judy Jacoboni continued.] Please take this into consideration, because these felony offenders don't always go back to prison when they re-offend. They go into the justice court system as minor offenders. We need to get them off the streets. If they are career drinkers they are career felons.

Bob Roshak, Sergeant, Las Vegas Metropolitan Police Department; and representing Nevada Sheriffs' and Chiefs' Association:

We are behind A.B. 421.

Michelle Youngs, Washoe County Sheriff's Office; and representing Nevada Sheriffs' and Chiefs' Association:

We are in favor of A.B. 421.

Chairman Anderson:

We'll put Kristin Erickson, Chief Deputy District Attorney with the Washoe County District Attorney's Office, down in support of A.B. 421 as well.

Fred Messmann, Boating Law Administrator and Deputy Chief Game Warden, Nevada Department of Wildlife:

I'd like to have the record reflect that we support A.B. 256 and A.B. 421.

Chairman Anderson:

It is my intention to enter a letter from Sharon Zadra addressed to me in support of A.B. 421 into the record ([Exhibit C](#)). This letter concerns Shane Beals who apparently has been convicted of five DUIs in his adult life.

Is anyone in opposition to A.B. 421? The Department of Prisons can tell us what the affect will be.

Fritz Schlottman, Administrator, Offender Management Division, Nevada Department of Corrections:

I had some difficulty coming up with a fiscal number on this. That stems from my belief that if you're stupid enough to drink and drive once, you're stupid enough to drink and drive six, seven, or even more times. I'm not sure number two isn't just a speed bump on the way to number three. If we start putting people in prison, we might as well start at number two, because nothing less

than prison seems to slow these folks down. I don't anticipate a large fiscal note on A.B. 421, simply on the belief that someone who will drink and drive twice will probably drink and drive three times.

Chairman Anderson:

In other words, this is not going to be carrying a large fiscal note?

Fritz Schlottman:

Unless someone can convince me otherwise, knowing the nature of addiction and drinking and driving, nothing less than prison will stop them. I don't anticipate much of a fiscal note on it.

Chairman Anderson:

We'll close the hearing on A.B. 421 and turn our attention to A.B. 550.

Assembly Bill 550: Makes various changes concerning offenses involving use of intoxicating liquor and controlled substances. (BDR 43-832)

Ben Graham, Legislative Representative, Nevada District Attorneys Association:

What this bill addresses is the responsible use of legalized drugs but it does not get involved in traffic situations. In 2004 and late 2003, there were a couple of court decisions which brought into question the use of affidavits in trials we were having in municipal and justice courts. Because I knew the Chair had an interest in this measure, we met and talked about some of the technical issues involved. Unlike the earlier bills today, this is procedural.

Chairman Anderson:

I asked the Legal Division to prepare a summary of A.B. 550 ([Exhibit D](#)). Mr. Nelson will take us through the bill.

Bruce Nelson, Deputy District Attorney, Vehicular Crimes Unit, Office of the Clark County District Attorney, Nevada:

The bill will accomplish four things:

1. Under current law, we determine your priors. They have to be within a 7-year period. This bill would exclude the period of time you spend in jail from that 7-year calculation.
2. Assembly Bill 550 creates a requirement that you install an ignition interlock device as a condition for getting your driver's license back after you are convicted of DUI. Assemblyman Conklin made the point that you could drive 80 times before getting caught DUI. The

interlock device would address those 80 times. If you get in your car and try to start it, you have to breathe into the interlock device. If you have alcohol in your system, your car won't start. Once you're driving you have to breathe into it again at various intervals. If you [Bruce Nelson, continued.] fail, it will start flashing your car's lights and honking the horn. That will alert law enforcement. If your blood alcohol level is above 0.08, you have to install the interlock for 15 months. If you are below 0.08, it's for 12 months. If it's your third offense, then it is installed for 30 months. It has been argued that it may not be fair to make the offender's spouse breathe into the interlock to start the car. However, it has been our experience that the spouses and friends of offenders want the offender off the road as much as we do.

3. The third part of A.B. 550 will add a phlebotomist to the list of people who can draw blood. A phlebotomist is a person trained to draw blood. They are required to undergo training as set forth in NRS 652.127. This will alleviate the problem created by the *Crawford* decision. In *Crawford*, the United States Supreme Court, and the Nevada Supreme Court in the *Walsh* decision, held that we have to bring nurses to court to testify in DUI cases. The nurse has to testify that blood was drawn and that no alcohol was used during the blood draw. In one case in Clark County, the only nurse in an emergency room (ER) had to leave the ER to appear in court to testify. This will alleviate our nursing shortage, expand the list, and let someone draw blood who is already trained to draw blood.
4. Assembly Bill 550 will repeal sections that have been rendered obsolete by the *Crawford* decision. It will leave intact the use of affidavits for preliminary hearings in grand juries. The Supreme Court in *Crawford* only addressed having the nurse come into trial. You don't have the same right of confrontation that you do for grand jury and preliminary hearings as you do at trial, so we can continue to use affidavits there.

Chairman Anderson:

The importance of A.B. 550 is to clarify the *Crawford* decision in terms of who can draw blood and appear in court. In addition, it clearly states the penalty for first, second, and third DUIs regarding the interlock device.

Bruce Nelson:

That is correct.

Assemblyman Horne:

In Section 2 of A.B. 550 on page 5, you have added an additional part, "Has special knowledge, skill, experience, training..." Who did you have in mind? If we already have a whole list of other professionals that are trained, why would we need that paragraph?

Ben Graham:

Having blood drawn is a fairly perfunctory task. What we've tried to do here is expand the pool of people who can draw blood in a medically accepted manner. If you are in an area where there are insufficient numbers of nurses, or possibly no technical phlebotomist, a person with training to draw blood in a medically accepted manner would qualify. That is to expand the availability of people so we wouldn't have to bring the nurses in, not only in Clark County, but in some of the rural counties also.

Bruce Nelson:

Mr. Graham is correct. In some of our rural areas we may not necessarily have a phlebotomist or a nurse but we may have someone who is qualified by virtue of their training, experience, et cetera, to draw blood in a medically acceptable manner. The key phrase is "medically acceptable manner." This person has to be trained, or otherwise certified, to draw blood in a safe way. This is basically a catch-all. It would also include someone who was previously qualified to draw blood, in other words, the court has recognized this person as an expert who has drawn blood in the past.

Assemblyman Horne:

This still causes me some heartburn. Even in the rural areas I can't believe there would be a situation where there was no doctor, no physician's assistant, no registered nurse, no licensed practical nurse, no EMT [emergency medical technician], or no licensed phlebotomist available. The bill reads that if none of those are available then someone who has been trained previously, for instance a police officer, could draw blood. If you had a police officer who was still qualified as an EMT and made the blood draw, would he fall into that category, that catch-all?

Chairman Anderson:

We recognize that as a result of the Supreme Court decision, those persons are going to have to appear in court to substantiate, where previously they were able to do it by affidavit.

Bruce Nelson:

That is correct. I would like to point out that if the police officer is currently qualified as an EMT, he can draw blood anyway. There are some states that

train their police officers as EMTs or phlebotomists so they can draw blood. We don't intend to do that here in Nevada.

[Bruce Nelson continued.] This is simply a catch-all. If you have the training, if you can come into court and show that you drew blood in a medically acceptable manner, we're going to allow you to draw blood.

Chairman Anderson:

The determination is made by the court and not by the expediency of the police officer on the scene?

Bruce Nelson:

That is correct. The court would still have to qualify the person who drew the blood as an expert in the drawing of the blood. In other words, find out that the person was validly permitted to draw blood before the blood results would come into evidence.

Kristin Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney; and representing the Nevada District Attorneys Association:

Washoe County has also experienced the difficulties of the *Crawford* decision and, as a result, is in support of A.B. 550.

Assemblyman Carpenter:

In the rural areas, most communities have trained EMTs. Make sure that's somewhere in the language that they are allowed to draw blood because they are qualified.

Chairman Anderson:

In Section 2 of the bill at the top of page 5, line 1, in current statute they are covered.

Assemblyman Ocegüera:

From my experience in the field, we'll draw blood when we start an IV [intravenous line] and the hospital will throw it away because they don't accept it. With this language saying that these folks are allowed to do that kind of blood draw in statute, maybe in the future the blood will be accepted.

Dave Mincavage, Assistant City Attorney, Criminal Division, Henderson, Nevada:

The City of Henderson Attorney's office supports A.B. 550. It qualifies more people to conduct blood draws in DUI cases. This will increase our ability to

obtain testimony in court and spread subpoena appearances among a large group of qualified people.

Douglas Konersman, Marketing Director, Nevada Safety and Diagnostics:

We are the only authorized representative of the Dräger Corporation, maker of the only authorized ignition interlock device in Nevada. Our company is in a unique position. We are here solely to provide service for this law. Our experience over the past year that we have been in operation is that the judges don't like this law very much. They don't seem to want to deal with it. We had close to 8,000 DUIs in Nevada last year. In southern Nevada there are currently 214 people on the interlock program and there is 1 person in northern Nevada. The cost is about \$3 a day to have this device installed for a person who has been convicted of DUI. As we understand it, they spend about \$17 a day on alcohol so this takes just a little bit of their alcohol money away.

Ben Graham:

The judges have a wide degree of discretion under the current law. The way A.B. 550 reads, if the blood alcohol level is exceedingly high, as indicated here in Section 3, the installation would be mandatory to get the driver's license back.

Chairman Anderson:

That's the uniqueness of this particular piece of legislation. Judicial discretion is partially removed so that on a second or third DUI, and even on the first DUI depending upon the blood alcohol level, the interlock device is required. What would the impact be in the rural areas of Nevada in terms of availability and installation of the interlock device? Will this be practical outside Reno and Las Vegas?

Douglas Konersman:

My brother does the installations and testing. He has a plane so we are in a position to service all the counties in Nevada.

Assemblywoman Buckley:

On Section 3, page 5, "a court shall" order a person convicted of any DUI to install this device. This would apply to first time offenders, second time offenders; everyone. If it's a first violation, the term would be 12 months except for those who have a 0.18 blood alcohol content or greater. For a second violation or a violation of NRS 484.3795 the term would be 15 months. A third-time violator, or for a subsequent violation of NRS 484.3795, the term would be 30 months. Can you tell me how many folks currently have the devices, what the number of first-time DUI folks are in the state of Nevada, and how many would then be having this device for a year?

Douglas Konersman:

As it currently stands, in southern Nevada, the people down there are under the Serious Offenders Program. Those people usually have two to three DUIs before they're on the Program. Currently in northern Nevada there is one person convicted of DUI who currently has it installed. There are two judges in Sparks Justice Court who are working with Justice Kevin Higgins and utilizing this. I have several installations set up over the next few months, but as the law is currently written, the first-time DUI only gets the device for 3 months; not for the full 12 months.

Assemblywoman Buckley:

But not every first-time DUI offender gets it, correct?

Douglas Konersman:

As the law is currently written, no; it is up to the judge's discretion.

Assemblywoman Buckley:

Tell me about the numbers. How many interlock devices are installed now and how many would you anticipate would be installed under A.B. 550?

Douglas Konersman:

If we use last year's statistics, in Washoe County last year there were 1,376 drivers picked up for DUI.

Ben Graham:

We could ask that the Washoe County Sheriff's Office and our justice court people work with Mr. Konersman in the next day or so to get those numbers.

Assemblywoman Buckley:

I'm concerned that we're going from probably a few hundred of these installed statewide to possibly 10,000 in a year if we're going to install them for every first-time DUI offender. We might want to be more thoughtful about where it might make the most difference in stopping DUI. Assembly Bill 550 would make installation of the interlock device for 12 months mandatory for every first-time DUI offender. That's the way I read it.

Ben Graham:

In talking with Mr. Konersman and with the people drafting A.B. 550 our initial thought was just to make it mandatory with a higher blood alcohol level rather than all first-time offenders. That would be a substantial step.

Assemblywoman Angle:

You said you are the only authorized interlock dealer in Nevada. Does that prohibit other vendors from providing this service as well?

Douglas Konersman:

No, it does not. It just means they would have to submit their devices for the testing procedure that the company I represent has already done.

**Chuck Abbott, Office of Traffic Safety, Department of Public Safety; and,
Chairman, State Committee on Testing for Intoxication:**

I think there are four or five companies right now certified to vend ignition interlock devices in the state of Nevada.

Chairman Anderson:

The real issue we're trying to deal with here is that on a second DUI the judges were not taking advantage of the interlock device. We want to make sure on a second DUI that there was a requirement there be an ignition interlock device installed. Isn't that the group we're really trying to target? The first time, even if it's at a higher blood alcohol level of 0.18, the biggest question is going to be when they're driving after they've finished their treatment program and making sure they are somehow identified as being on the road.

Assemblywoman Angle:

We passed a law a couple of sessions ago that said that any drug or substance abuse-impaired person would be subject to this kind of law. Can your device detect anything besides alcohol?

Ben Graham:

This is an alcohol detection device. Recently a bracelet has been developed. Within five seconds of ingesting an illegal substance, it can send a signal to a satellite and the satellite can send that information on to the interested parties.

Chairman Anderson:

Other questions or testimony on A.B. 550?

Laurel Stadler, Chapter Director, Mothers Against Drunk Driving [MADD]:

I'm just going to be addressing the ignition interlock portion of the bill, which we wholeheartedly support. Studies have been done to show that these interlock devices reduce recidivism among convicted drunk drivers. We think it's a very important option that our state has not been taking advantage of and would, we believe, reduce the recidivism for these convicted drunk drivers.

[Laurel Stadler continued.] Also, if the Committee is going to be looking at possibly changing who is eligible for these devices, I'd like to ask that you consider making the time period for having the ignition interlock on their car even before they are eligible to get their driver's license back. Unfortunately, even people with license revocations do drive. I have a 2003 report from the Nevada Department of Motor Vehicles that indicated approximately 1,400 people were picked up for driving on a revoked license out of the 16,000 who had revoked licenses.

Chairman Anderson:

Those are people who have a revoked license. Are those people who were also DUI?

Laurel Stadler:

Yes. Their licenses were revoked for driving under the influence.

Concerning the conviction statistic previously mentioned, we've tried to track that over the years and it seems to be anywhere from about 75 percent to about 80 percent of the people who are arrested for DUI are convicted. In some years it has been lower than that.

Annie Holmes, Member, Northern Nevada Taskforce on DUI:

The DUI Taskforce supports A.B. 550.

Judy Jacoboni, Victim Advocate, Mothers Against Drunk Drivers [MADD]:

I want to speak in support of Section 1, subsection 8 of the bill. It changes the 7-year period for determining the period between offenses by excluding time spent under supervision in prison, jail, in a treatment program, or on parole or probation. These are times when the person is under direct supervision and not as free to make the choice about drinking and driving. Rightfully, this time period should be excluded from the look back period.

Chairman Anderson:

We'll also record Mr. Roshak and Ms. Youngs in support of A.B. 550 as well as the Nevada Highway Patrol. We think there will be no effect on the prison system.

Fritz Schlottman:

For the record, I think you hit the nail on the head with your last comment. From experiences gleaned on people who wear bracelets for house arrest, it doesn't affect their need to drink so the first thing they will try is tampering with the device. Then we'll pass a law creating a penalty for tampering with the device. I don't think flashing lights will slow them down, but they will be easier

to identify. Anything short of taking their driver's license and prohibiting them from operating or owning a vehicle will not stop them.

Chairman Anderson:

As we heard from Ms. Jacoboni, the fact that we take their driver's license away from them doesn't seem to stop them from driving vehicles.

Fritz Schlottman:

The case has been made many times that if they've got a car they're going to drink and drive.

Chairman Anderson:

I will close the hearing on A.B. 550. Let's turn our attention to A.B. 537.

Assembly Bill 537: Revises provisions concerning submittal of certain questions and disputes to State Contractors' Board. (BDR 3-294)

Assemblyman Richard Perkins, Assembly District No. 23, Clark County (part):

I brought A.B. 537 forward because of my frustration with the Contractors' Board over the years. This is probably the agency that has been legislatively targeted for elimination the most in the seven sessions that I've been here. In each one of those attempts, we find a way to make progress. This agency has done some very good things such as dealing with the pool crises in southern Nevada and the scams that occurred there; creation of the Residential Recovery Fund; and tracking down and prosecuting unlicensed contractors.

Last session, a historic and monumental construction defects bill was passed. It was outstanding. Prior to the passage of that bill, good contractors were getting caught up in civil suits and homeowners were involving themselves in the civil justice system in record numbers. This Legislature struck a great balance between contractors and homeowners last session, but where was the Contractors' Board? Shouldn't they have a role for those with no desire to access the courts? Homeowners in general don't want to be in court; they just want to correct the problem. Isn't this the agency that should be the referee between those parties? Every time I have made a suggestion to this agency that would be helpful to this state, it has been met with resistance.

My belief is that this Legislature creates the public policies for this state and the agencies are supposed to carry them out. It has been my experience that this agency does what they think public policy should be. There are a number of people here who have proposed amendments to A.B. 537. I would like to make

one thing perfectly clear. I have no concerns with and have great respect for the Board members. I don't believe the problem lies there. If this Committee continues to see the resistance I have seen in my seven sessions here, my recommendation would be an even simpler amendment: abolish this agency and start over. My suggestion is based on a long history of frustration because of a lack of cooperation. Assembly Bill 537 is not intended to change the balance you struck last session with Senate Bill 241 of the 72nd Legislative Session. It is just an attempt to have a more proactive, consumer-friendly state agency.

Chairman Anderson:

Is there anyone else speaking in support of clearing up an ambiguity so that a contractor, subcontractor, supplier, design professional, or claimant can submit a dispute or question to the State Contractors' Board.

Robert Crowell, Legislative Advocate, representing Nevada Trail Lawyers Association:

We do speak in support of A.B. 537. We believe it is consistent with Senate Bill 241 of the 72nd Legislative Session. In 2003 when this Committee had the draft before it, there were points you were going to use to amend S.B. 241. There was a draft point that said you wanted to create an informal, non-binding process where parties, if they wished, could ask the Contractors' Board to look at any dispute relative to construction defect, and that either party could request it. This legislation makes clear that that process could be instituted by either party. We do support it and believe it is consistent with the balance you struck last session.

Chairman Anderson:

So A.B. 537 clarifies that they may submit any disputes, which was the intent of our bill from the last session.

Sam McMullen, Legislative Advocate, representing Nevada Subcontractor's Association:

We think this part of Senate Bill 241 of the 72nd Legislative Session was a critical piece of the bill. We are people who do construction work and fought for the right to repair for individuals who had problems so that they could get their houses fixed as soon as possible, as easily as possible, and, from our point of view, try to accomplish it all without the need for litigation, liens, and expense. It seemed to us that Senate Bill 241 of the 72nd Legislative Session was a very homeowner-positive bill. We considered the ability to have a governmental resource, separate and apart from the contractor, the subcontractor, or other design professional, with some expertise that would be a resource for the homeowner if they had a question or dispute. This would be a way they could

go to someone they had some confidence in as being part of the public trust and a resource for them without necessarily requiring formal litigation or anything like that.

[Sam McMullen continued.] This was a critical piece to us because we thought that a governmental agency or occupational licensing board, like the Contractors' Board, that had control over contractor and subcontractor tickets and licenses, would have some real impact. It would have some expertise and, hopefully, we could create something that was a resource and another resort other than litigation.

During the last interim, the sequence of amendments on this bill created a legislative interpretation by counsel for the Contractors' Board that the word "and" meant that a homeowner could not go by themselves to the Contractors' Board and utilize them as a resource. The homeowner had to get the agreement of the people remaining behind the word "and" in the bill in front of you. That clearly was not intended nor was the other interpretation that this was merely a list of who could take conflicts to the Contractors' Board for resolution. Consequently, the "and"/"or" battle became something that ended up frustrating the whole opportunity to provide this resource to homeowners.

As people who are interested in the ability to just get in, repair, and resolve conflicts without getting to litigation, it really showed that maybe it was a lack of understanding about how valuable a process this could be. We had modeled it after the swimming pool ombudsman model that we had heard worked so well in terms of swimming pool construction disputes. It takes the right kind of people with the right kind of attitude and the right kind of expertise, to apply those and make it informal and easy for the homeowner to access. There needed to be the right kind of psychology and intention behind this. It wasn't so much the mechanical creation of this that was important, as it was its utilization as a resolving opportunity for problems or questions about these issues and trying to see if there was a way to get them resolved without litigation, without a lot of formal process.

We are as much concerned about the psychology and the support for homeowners in this as we are the mechanism. This is a feeling shared by all of us in the Coalition for Fairness in Construction as the group that really tried to make sure we had created all these opportunities. It was of great concern to us to watch the process over the interim and find that this resource wasn't created, but, more importantly, that there was, in our opinion, a lack of interest in providing this resource to homeowners.

[Sam McMullen continued.] We discovered that there is a formal Board meeting this coming Friday so, out of courtesy to you, and not having had an opportunity to work these problems out and see exactly what would be a working solution and whether or not the Contractors' Board really is interested in solving the problem, we are presenting one idea. There are a number of different models that can be utilized. There are models of ombudsmen such as the Consumer Advocate in the Attorney General's office. They can be lodged anywhere in government. We chose to believe that the Contractors' Board was an appropriate place. That is where the public interest should in fact be for the homeowner and for people who have problems with construction. The Board has some ability to influence how a licensee, licensed contractor or subcontractor thinks about these issues. We need to make sure that it's clearly for the homeowner; it's clearly resolving in terms of the disputes. This actually talks about another model that would be supported by the Contractors' Board in the administrative sense but, more importantly, independently appointed, independently functioning, independently staffed, and independently funded.

Chairman Anderson:

We delayed hearing A.B. 537 until this time even though it was clearly posted a week and a half ago. To find that you needed to delay this morning meant we lost our video connection to Ms. Margi Grein and the people in the south who had an interest in the other side of the issue. As a result, they couldn't hear what was happening. The person you wanted to speak to the bill is still not here. This is reminiscent of the problems we've had with this issue in the past.

I don't disagree with the need for an ombudsman, the question of duties and responsibilities and particularly in the NRS 624.CCC section of your amendment ([Exhibit E](#)), "...based on the projected budget for the coming fiscal year." As you well know, there are 10,000 or more homes currently in the state of Nevada that potentially have the need for this kind of help. There are large developers all over the southern part of the state. There are major issues here in the north that remain. Of course, I'm not happy with the Contractors' Board anyway. I am very disappointed that this apparently was not a high issue for some of the people who are interested in the bill.

Assemblywoman Buckley:

I know how frustrating it is to have an agency not follow through or reinterpret legislation and not give it its meaning. It's frustrating for all the people who testified on the matter. I don't know if this is the right way to go. I have a lot of experience with ombudsmen over the years. When we created the Consumer Health Care Ombudsman it was a long fight to get that passed. The office got up and running pretty quickly and, I think, has been an incredible success. We've had other experiences with ombudsmen, the homeowner's ombudsman,

for example. In contrast, I'd characterize it as five or six years of nothing, and then, maybe a little bit better. Sometimes an ombudsman is a good way to shake the status quo, and sometimes it's not.

[Assemblywoman Buckley continued.] What I think would be a better approach is to continue to have the Chair of Judiciary, I would volunteer, and I'm sure others would volunteer, work with the Contractors' Board and say, "Look. If you don't get this done and done well, we're going to abolish it. We set policy; you don't." I think the Chairman delivered that message to them and I think they heard it. I got an email about this hearing on Friday and what I was told was, "We wanted to respond really, really quickly to you and show that we're taking this very, very seriously so we set the hearing on Friday." There might be a misunderstanding. They might be trying to be responsive on Friday. If they are, it's because they heard the Chairman's message. We should move forward, not only with getting the original bill fixed, but having them try to get more involved in the front end, which is what I think we all want. If people get things fixed they won't have to hire lawyers. That's a good thing and that's what we want. That's why we created the Recovery Fund, and that's why we're urging them to be more proactive with advertisements. The lawyers can't have a problem with that either, or else they're not good lawyers.

I think we should support the original bill. I think we should have the Chairman continue to work with the Contractors' Board. If we don't see something happening by mid-May, we'll have a conference committee where we can make our displeasure known. I think the Board has heard our concern and that they want to do the right thing. Rather than setting up one new person with no staff that may not do anything anyway, with another year to be hired, we should really try to make the existing system work better and be more responsive to the community.

Sam McMullen:

That's exactly what we would hope would happen. We believed we would be discussing this amendment on Friday. This is to try and foster some dialogue and discussion. We are committed to working with the Contractors' Board and trying to figure out what works.

Chairman Anderson:

If we're going to move with A.B. 537, we would want to make it take effect upon passage and approval rather than on October 1, 2005.

Gary Milliken, Legislative Advocate, representing Las Vegas Chapter, Associated General Contractors:

Simply out of frustration we brought this amendment to you ([Exhibit E](#)). We were trying to get something moving and trying to get the state Contractors' Board to do what we thought they were going to do when Senate Bill 241 of the 72nd Legislative Session was passed.

Assemblywoman Angle:

I'm having some difficulty with the Contractors' Board myself on behalf of a constituent. They're having difficulty just getting an answer from the Contractors' Board. However, I'm just wondering if this ombudsman won't be just another layer and the homeowner will now have to go through the ombudsman to go to the Contractors' Board. How will this help the situation we're already experiencing?

Chairman Anderson:

Is that the intention, Mr. McMullen? Are you seeing all the complaints diverted to the ombudsman for investigation initially? Will the ombudsman take first charge of all the complaints?

Sam McMullen:

To the extent that this idea has any merit, we were thinking that it might be something separate and apart from the normal workload of the Contractors' Board. It's to facilitate the homeowner's responses, to facilitate the ease by which they can achieve that. If that's something the Contractors' Board can do, wonderful. If not, then maybe some other process that makes some sense. It wasn't meant to be a layered thing or just another hurdle that the homeowner had to go through to get relief. It was intended to be some helpful place for resolution of these conflicts.

Chairman Anderson:

I am of the opinion we might want to hold it for a work session and give the parties at least four or five days to see if there is something they can work out. If I'm hearing Mr. McMullen correctly, they think there may be some other points of discussion. I think we should give them that opportunity but it looks like it's a pretty clean bill and we can move with it without too much problem. I'm going to close the hearing on A.B. 537.

Assembly Bill 72: Increases penalty for subsequent convictions within 3-year period for use of drug paraphernalia or possession of drug paraphernalia with intent to use drug paraphernalia. (BDR 40-569)

I have a letter from the Executive Director of the Las Vegas Metropolitan Police Department's Office of Governmental Services relative to A.B. 72. The letter requests that A.B. 72 not be heard in Committee and be indefinitely postponed. The Chair will entertain a motion.

ASSEMBLYWOMAN BUCKLEY MOVED TO INDEFINITELY
POSTPONE ASSEMBLY BILL 72.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION PASSED. (Mrs. Angle and Mr. Mabey were absent
for the vote.)

The Chair is not unsatisfied with Ms. Buckley's piece of legislation from earlier today, nor Mr. Conklin's. I'm also not unsatisfied with the ignition interlock device either, although I think the bill needs some work in terms of time. Ms. Buckley, do you see a problem we have to work out on A.B. 256? The Chair will take a motion on A.B. 256.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS
ASSEMBLY BILL 256.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Angle and Mr. Mabey were absent
for the vote.)

I saw no problem with Mr. Conklin's bill A.B. 421. We passed it out of this Committee last session.

ASSEMBLYWOMAN OHRENSCHALL MOVED TO DO PASS
ASSEMBLY BILL 421.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION CARRIED. (Mrs. Angle and Mr. Mabey were absent
for the vote.)

On the bill I requested, we're going to have to do a little work on the time periods, particularly for first-time DUIs. I'm concerned that the judges aren't making better use of this second-time DUI interlock device. We're going to have

to send them a clearer message relative to this issue. Anyone else with concerns about A.B. 550?

Assemblyman Horne:

On the blood draw question and that paragraph, my problem is not with the list of those who we recognize as having expertise in drawing blood. It's that catch-all paragraph afterwards. I envision this being used and then a judge throwing it out. We will have a drunk driver back on the street because of an over aggressive attempt to prosecute. I think you can get the prosecution without doing that and that the bill still works without that paragraph.

Chairman Anderson:

Even with the caveat, "a person qualified as an expert on that subject in a court of competent jurisdiction?"

Assemblyman Horne:

Even with that in there because we've outlined it.

Assemblyman Conklin:

I know there was some concern about Section 3, subsection 2, paragraphs (a) and (b). The comment was that we would be getting everyone on the first violation. If we took out paragraph (a) and left in paragraph (b), we would only get the first-time violators who are 0.18 and above and everyone else who gets a standard DUI a second time. That might clear up that issue. The other thing I wanted to bring to your attention, on the previous page, subsection 8 of Section 1, I am very fond of that particular language which clarifies that your time served does not count as time.

Chairman Anderson:

It is one of the more important parts of this piece of legislation. Clearly, when you're under supervision, that's not the time where the interlock device is going to be set. Although I think it is important at all times, it's more important during those particular moments when you're not being supervised but are out there on the road. I think we have enough information. We may leave it discretionary for a first-time DUI but for a second-time DUI, I don't believe there should be any discretion.

Since we have reestablished our video connection with the south, I will reopen the hearing on A.B. 537. Speaker Perkins made it very clear, and I have asked for a copy of his remarks which are going to be submitted to the Committee to make sure that you clearly understand why he felt this was an important issue. We heard testimony during this hearing. Were you able to hear it?

Margi Grein, Director, Nevada State Contractors' Board:

We were able to watch the end of the discussion.

Chairman Anderson:

The Speaker has agreed to supply his remarks in writing. He spoke about his concerns both about the efficiency of the Board, but predominantly about the frustration we have all felt about this particular issue. Did you hear the question posed by Mr. McMullen relative to a possible ombudsman?

Margi Grein:

Yes, I did hear his comments but I was not sure if he was submitting an amendment or if he wanted to do it through the existing bill.

Chairman Anderson:

He's suggesting that there be an amendment to the bill creating the office of Homeowner Ombudsman. Do you feel there is any piece of information you would like to present to the Committee before we process A.B. 537?

Margi Grein:

If it is the intention of the Legislature that changing the "and" to "or" is in the best interests of the public, then we support that change and will carry out the duties you enact.

Chairman Anderson:

We were somewhat frustrated, as you well know, about the stumbling block relative to enforcement. This will give homeowners the opportunity to come to the Contractors' Board without having the permission of the contractors and, of course, contractors can come to you without permission of the homeowner. You might want to relate to the Committee why you were concerned about that issue.

Laura Browning, Attorney, Haney Woloson and Mullins, representing the Nevada State Contractors' Board:

The way the text was written, the word "and" was used. The Contractors' Board was concerned because the word "and" had been used. There are arguments on both sides about whether "and" can mean "or." Changing the language to an "or" will help the Contractors' Board facilitate this. The main concern has been whether or not the Contractors' Board can force homeowners to allow contractors and a member from the Contractors' Board into their house if the homeowner does not want to participate in this project. That's why we held onto the word "and." Since it was an "and," we wanted to make sure there was access into the homes. I understand this has been discussed at length among the Committee members, but that was the main problem. If we

change it to "or," certainly the Contractors' Board is more than happy to go forward with any of these complaints filed individually by any of these entities.

Chairman Anderson:

We're not going to process A.B. 537 today, so we'll close the hearing.

A small issue has been noted with one of our bills, A.B. 78. We had passed it out of this Committee some time ago. This is the bill concerning administrators of estates and it passed out of this Committee nine to four. In order for us to take up the bill again, it is necessary for us to entertain a motion to reconsider the bill. The bill passed out of Committee on a motion to amend and do pass. I would indicate to Mr. Carpenter and Mr. Ocegüera, who made and seconded the motion, that having prevailed on a nine to four vote, if it is your desire for us to re-examine the question, we can take up Ms. Buckley's issue.

**Assembly Bill 78: Makes various changes concerning administration of estates.
(BDR 12-592)**

Assemblywoman Barbara Buckley, Assembly District No. 8, Clark County (part):

I received a communication from Valerie Roslyn, the Ombudsman for Health Care. They encountered a concern about obtaining medical records. I think the Committee is aware that the Office of Consumer Health Assistance is available to help any consumer with health care problems. They ran into a problem where they had difficulty helping a spouse obtain the medical records of the other spouse because one of the hospitals was claiming that the personal representative of the deceased was not eligible to get the records. They asked if we had any bill left where it would make clear that a personal representative, a spouse, could get the medical records of the other spouse after that spouse had passed away. Assembly Bill 78 was identified as being one of the only vehicles left, so, as much as I disliked bringing up A.B. 78 again, this would allow us to correct this kind of technical matter, which, I think, furthers our original legislative intent ([Exhibit F](#)).

Chairman Anderson:

Is it Legal's opinion that we can do this, Ms. Yeckley?

René Yeckley, Committee Counsel:

Yes, it is our opinion that we can use this as a vehicle and that we can amend the statute to ensure that a trustee representing the estate can obtain these medical records.

ASSEMBLYMAN CARPENTER MOVED TO RECONSIDER
ASSEMBLY BILL 78.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Mabey was absent for the vote.)

We have heard the additional amendment that has been proposed by Ms. Buckley to amend A.B. 78 to make a reference to NRS [Nevada Revised Statutes] 629.061, to add "the personal representative of the estate of a deceased patient," and recognizing "personal representative" as it is described in NRS 132.265. It will help the trustee get the medical records of a deceased person.

ASSEMBLYMAN CARPENTER MOVED TO AMEND AND DO PASS
ASSEMBLY BILL 78 WITH THE AMENDMENT OFFERED BY
ASSEMBLYWOMAN BUCKLEY.

ASSEMBLYMAN OCEGUERA SECONDED THE MOTION.

Assemblywoman Allen:

I'm still unhappy with the 25 percent, but I have no problem with Ms. Buckley's amendment. How do I proceed?

Chairman Anderson:

We're further amending the bill. Since we rescinded our earlier action, you're still in opposition to the bill, Ms. Allen. The reason you're still in opposition is because of your original concern about the size of the estate and which we did not address.

[Chair requested a roll call vote.]

THE MOTION CARRIED. (Mrs. Allen voted no. Mr. Mabey was absent for the vote.)

We are adjourned [at 11:01 a.m.].

RESPECTFULLY SUBMITTED:

RESPECTFULLY SUBMITTED:

Judy Maddock
Recording Attaché

Terry Horgan
Transcribing Attaché

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: April 5, 2005

Time of Meeting: 8:12 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
A.B. 550	B	Erin Breen/Safe Community Partnership	Email letter in support
A.B. 421	C	Sharon Zadra	Letter in support
A.B. 550	D	Legislative Counsel Bureau	Summary of the bill
A.B. 537	E	Gary Milliken/Las Vegas Chapter, Associated General Contractors	Proposed amendment
A.B. 78	F	Assemblywoman Barbara Buckley	Proposed amendment