

**MINUTES OF THE
SENATE COMMITTEE ON GROWTH AND INFRASTRUCTURE**

**Eighty-second Session
April 19, 2023**

The Senate Committee on Growth and Infrastructure was called to order by Chair Dallas Harris at 3:54 p.m. on Wednesday, April 19, 2023, in Room 2144 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Dallas Harris, Chair
Senator Pat Spearman, Vice Chair
Senator Julie Pazina
Senator Scott Hammond
Senator Ira Hansen

STAFF MEMBERS PRESENT:

Kristin Rossiter, Policy Analyst
Jessica Dummer, Counsel
Paula Peters, Committee Secretary

OTHERS PRESENT:

Amy Davey, Administrator, Office of Traffic Safety, Nevada Department of Public Safety
Eddie Bowers, Captain, Nevada Highway Patrol, Nevada Department of Public Safety
Steven Johnson, Director, Forensic Science Division, Washoe County Sheriff's Office
David Astles, Ph.D., Criminalist, Forensic Analyst of Alcohol, Forensic Science Division, Washoe County Sheriff's Office
Cheryl Blomstrom, Nevada Trucking Association
Beth Schmidt, Las Vegas Metropolitan Police Department
Jason Walker, Washoe County Sheriff's Office
Greg Herrera, Nevada Sheriffs' and Chiefs' Association

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Erica Roth, Washoe County Public Defender's Office
John Piro, Clark County Public Defender's Office
Julia Monteiro, Integrative Providers Association
Katre Saunders, Pardon Me, Please
Vicki Higgins, Coalition for Patient Rights
Abad Angel Piza, Pardon Me, Please
James Creel, Center for Incubation & Findings Research
Alyson McCormick, Assistant City Manager, City of Sparks
Jennifer Berthiaume, Nevada Association of Counties
Nic Ciccone, City of Reno
Ashley Garza Kennedy, Clark County

CHAIR HARRIS:

We will open the hearing on Senate Bill (S.B.) 447.

SENATE BILL 447: Authorizes the use of testing devices to determine the presence of a controlled substance or prohibited substance in the oral fluid of a person in certain circumstances. (BDR 43-1081)

AMY DAVEY (Administrator, Office of Traffic Safety, Nevada Department of Public Safety):

Senate Bill 447 authorizes the use of oral fluid testing devices as an aid in DUI determination. This is a companion bill to Assembly Bill (A.B.) 239 sponsored by the Sunset Subcommittee of the Legislative Commission, which adds certain duties to the Committee on Testing for Intoxication.

ASSEMBLY BILL 239: Makes various changes relating to government administration. (BDR 23-896)

However, S.B. 447 adds a critical component that authorizes law enforcement officers to consider oral fluid testing when making preliminary DUI evaluations.

Impaired driving continues to be a significant safety concern on our roadways. Fifty-five percent of fatal crashes are substance involved, and up to 87 percent of wrong way fatal driving crashes include substance impairment.

We had questions prior to this meeting about the validity of the testing which Dr. David Astles will address. Steven Johnson will walk us through the proposed amendment ([Exhibit C](#)) to the bill.

EDDIE BOWERS, CAPTAIN (Nevada Highway Patrol, Nevada Department of Public Safety):

Preliminary breath testing (PBT) devices have been used for many years to help officers confirm or dispel the presence of alcohol as it relates to an impaired driving offense.

A PBT device has typically been used at the end of a thorough investigation completed by a police officer which includes looking at numerous factors: vehicle driving behavior, the way a driver presents when contacted by a police officer on a traffic stop or on the scene of a crash. Upon completion of field sobriety testing in the field, the subject is then given the PBT test to determine whether he or she has alcohol in their system.

For many years, there was not such a device to help aid in discerning whether someone has drugs in his or her system. Officers can elect to participate in extensive training to become a Drug Recognition Expert (DRE). This two-week training is complex. Officers are taught many things about drug categories and the effects these drugs have on the human body. But the reality is that you cannot attend this training until you have more than two years of experience as a police officer.

The Peace Officers' Standards and Training Academy provides the National Highway Traffic Safety Administration (NHTSA) training in Advanced Roadside Impaired Driving Enforcement. The training provides additional tests for police officers to use to help determine if a driver is impaired due to drug use.

Oral fluid testing has been used widely throughout the Country since 2009. It is similar to a PBT test in that it is done at the roadside. It is preliminary; it is not evidential in nature. It is an extra piece of evidence to help an officer reach a correct arrest decision.

Oral fluid testing is nonintrusive, similar to a PBT for alcohol when somebody blows into a straw on the side of the highway. With an oral fluid sample, the officer tears open a new swab, gives that to a driver who swabs his or her mouth and returns the swab to the officer. The officer then inserts the provided sample into a testing device.

Depending on the type of device you are using, it usually takes from five to eight minutes to reveal either a positive or negative result for as many as six to seven different types of drugs.

The oral fluid device that we have used previously tests for amphetamines, methamphetamines, benzodiazepines, cannabis, cocaine and opiates. Each of these test cassettes has cutoff limits.

You are all familiar with the per se law that says if your blood alcohol content (BAC) tests 0.08 percent or higher, that is illegal in and of itself. The same could be said for methamphetamines. If a person's blood tests with 100 nanograms or more of methamphetamine in his or her system, that is considered illegal in and of itself.

Some of these oral fluid test cassettes have varied cutoff limits. For example, one of the devices we have been using for methamphetamine has a cutoff limit of 50 nanograms. If someone driving a car is tested and has under 50 nanograms in the system, the device would read that as negative. Conversely, if he or she had more than that, it may read as positive.

The blood test per se amount is 100 nanograms of methamphetamines for an impaired driving offense in our State. A positive reading on an oral fluid roadside test is not an evidentiary test. It is only one extra piece of evidence like alcohol. Consider, you can be below a 0.08 percent BAC, yet still be impaired to render you incapable of operating motor vehicles. There are two different theories under which that might be prosecuted, but the cutoff limits are different.

The cutoff limits depend on the manufacturer and the test cassettes you are using. My colleagues will be able to speak to the science of that. Their involvement with the Committee on Testing for Intoxication is important. The Committee will approve the devices and the cassettes that are used to ensure we are selecting devices that are scientifically reliable.

With the recruitment and retention issues plaguing departments across the State, we only have 80 DREs in the entire State. That is not only in the Nevada Highway Patrol, that is every police agency in our State. We need more DREs. However, the eligibility requirement of two years' experience limits participation in the DRE training.

If we can get trusted reliable equipment into the officers' hands out in the field, this is something extra to help them develop frames of reference and associate with people to grow their experience level.

Oral fluid testing is a technology-driven approach to help save lives. The equipment is tested, it is reliable. There have been extensive studies done in other states to prove this.

STEVEN JOHNSON (Director, Forensic Science Division, Washoe County Sheriff's Office):

I am a member of the Committee on Testing for Intoxication, a former Nevada Forensic Analyst of Alcohol and the current Director for the Washoe County Sheriff's Office Forensic Science Division.

It is vital that we continue to pursue advancements in technology that may assist in creating safer roads. Oral fluid testing is one of those technologies that may assist law enforcement officers within their DUI investigations.

Oral fluid testing uses a well-established immunoassay technology to look for the presence of specific drug compounds in oral fluid. This is the same type of technology used in a home pregnancy or COVID-19 test kit. The drug compounds vary from test kit to test kit but are usually designed to detect common drugs of abuse such as THC, opiates, cocaine and methamphetamines.

Oral fluid testing is a qualitative test, which means the kits test for the presence of the specific drugs on that test kit. This type of test is best suited as a presumptive or preliminary test, not an evidential test.

My team and I were asked to review [S.B. 447](#) and provide feedback. In doing so, we submitted recommendations to amend this bill, [Exhibit C](#). I will detail those and explain why these recommendations were submitted.

Sections 1 and 14 provide law enforcement with the ability to obtain a preliminary oral fluid sample to determine the presence of a controlled substance. We did not see any issues with these sections.

Sections 2 through 5 include oral fluid in license revocation statutes, specifically *Nevada Revised Statutes* (NRS) 484C.210 through NRS 484C.240. Oral fluid testing does not provide direct evidence of impairment nor time of substance

use. Oral fluid testing can only be used to determine the presence of a substance on that test kit. Until further research is conducted into the correlation between positive oral fluid and impairment, we suggested removing the language in those sections.

Sections 5 through 13 and sections 15 through 17 add "and Drug Impairment" to the name for the Committee on Testing for Intoxication. Intoxication is a term that can be used for both alcohol and drug impairment. The addition to the Committee's name does not change the Committee's role nor does it clarify its purpose. We recommended removing that language.

Section 5 adds "or oral fluid testing device, as applicable," to subsection 4 of NRS 484C.240. This subsection requires evidence of a device to be calibrated and maintained as required by the Committee on Testing for Intoxication.

Calibration has a specific meaning in science and metrology and refers to a systematic approach to demonstrate the accuracy and precision of a quantitative measuring device. Current oral fluid testing devices do not fit within that scope of calibration nor does the Committee have established requirements for these types of devices. We recommended removing that language.

Sections 9 through 11 add oral fluid testing to the scope of the Committee on Testing for Intoxication in NRS 484C.610 through NRS 484C.630.

Assembly Bill 239, as amended, provides expanded language in NRS 484C.640 to allow the Committee on Testing for Intoxication to study and make recommendations for technology and methods of detecting and determining the presence of alcohol and the effect of driving under the influence of alcohol, controlled substances and prohibited substances.

The language as amended in A.B. 239 would allow these recommendations and requirements to be applied to oral fluid testing and include the goals set forth in sections 9 through 11 of this bill. We recommended removing this language in these sections in support of the language in A.B. 239.

Section 15 adds oral fluid language to various subsections in NRS 488.480. Assembly Bill 239, as amended, would add the language to support oral fluid and other samples as allowed. We recommended removing this language in support of the language in A.B. 239.

Section 16 adds oral fluid language to various subsections in NRS 50.315. This statute specifically addresses affidavit and declaratory language for activities commonly performed by forensic analysts of alcohol for evidential breath testing devices.

As described earlier, oral fluid testing should only be used for preliminary purposes to support DUI investigations. Calibrations may not apply to oral fluid testing devices, and the Committee on Testing for Intoxication does not have established requirements. We recommended removing this language.

Section 17 adds oral fluid language to various subsections throughout NRS 50.320. This statute specifically addresses affidavit or declaratory language for expert witnesses regarding the quantity of a controlled substance or alcohol in a sample. Since oral fluid looks at the qualitative results, not quantitative results, we recommended removing this language.

Oral fluid testing can be an effective tool for law enforcement agencies. It can further enhance their ability to investigate DUI cases. With the recommendations I have outlined as well as the language in A.B. 239, the State can implement a robust and effective oral fluid testing program that will create safer roads for Nevada.

DAVID ASTLES, PH.D. (Criminalist, Forensic Analyst of Alcohol, Forensic Science Division, Washoe County Sheriff's Office):

I am prepared to answer any technical questions, and I have submitted a written Oral Fluid Q and A ([Exhibit D](#)).

CHAIR HARRIS:

Just because they are in a vehicle, why would we require drivers to consent to a test that may indicate they have done anything illegal?

CAPTAIN BOWERS:

They are not required to submit to this test. Last Session, A.B. No. 427 of the 81st Session removed the sanction of seizing the driver's license or permit of the person for refusing to submit to a PBT for alcohol.

This Session, S.B. 447 would extend the requirement to preliminary testing of oral fluid under NRS 484C.150, the PBT law. I do not know if it is structured differently than last Session.

CHAIR HARRIS:

Section 1 of S.B. 447 reads that any person “shall be deemed to have given his or her consent to a preliminary test.” Based upon what I heard from you, it is not illegal for me to have 50 nanograms of methamphetamine, but that 50 nanograms will draw a positive test?

CAPTAIN BOWERS:

Yes, it will test positive.

CHAIR HARRIS:

I am not sure how we avoid forcing people to consent, just by virtue of driving, to a test not quite capable of giving you an “are you intoxicated under the law or not” result. Does that make sense?

CAPTAIN BOWERS:

Yes. Nevada's law was changed after the 2014 Nevada Supreme Court decision on *Byars v. State*, 130 Nev. 848, 336 P.3d 939 (2014). They can refuse to take the test.

With respect to an impaired driving offense, if someone has a positive reading for methamphetamine, this does not result in a DUI arrest. There are other factors; the test is only one piece of the puzzle. It is a cornerpiece, it is a good piece, and you know where it goes. Most puzzles have three other corners; impaired driving offenses have other factors.

You cannot prove an impaired driving offense with just a positive test. The same has been said for a PBT for alcohol. Everything factors in, and the totality of circumstances is the lens with which we view the situation.

CHAIR HARRIS:

Alcohol testing is different because we have a per se law for alcohol. If you test over 0.08 percent, by law you are intoxicated even if you think otherwise. The opportunity for you to test under the limit does not mean you are not intoxicated. That would be similarly true here. Maybe you have less, but you could also have 25 nanograms, test negative and still be intoxicated.

I do not know if the functionality operates the same when you are tripping at an arbitrary number unrelated to the law. Is there any opportunity or any science developing where these will be quantitative, not just qualitative?

CAPTAIN BOWERS:

There is, and one of my colleagues will speak to that.

DR. ASTLES:

We first distinguish between the amount of a substance in the blood versus the amount of substance in oral fluid which is basically saliva. The science is a bit unclear or contradictory as to the relationship between amounts detectable in oral fluid and amounts detectable in blood. There seems to be a fairly positive correlation between presence in oral fluid and presence in blood. Therefore, we view this as more appropriate as a preliminary tool, as opposed to an evidentiary tool, because of that lack of direct correlation.

As Captain Bowers indicated, oral fluid testing can have a role as an investigative tool for the officer. We do not believe that the science supports going any further than that at this time, but it is constantly being researched.

Many jurisdictions have been undertaking pilot studies, some more in depth than others. Alabama has a program of roadside oral fluid testing combined with preservation of an oral fluid sample for subsequent lab testing combined with blood testing. It is building data on those kinds of issues. Much of the research in this area has been difficult because of the illegality of the substances. It is a developing field, and there are gaps in the knowledge.

MS. DAVEY:

As a layperson, I understand a law enforcement officer witnessing an event would want to engage with that driver. Standard field sobriety testing would be conducted. A PBT for alcohol would be conducted.

There are times where you cannot understand or necessarily explain why you are witnessing or observing signs of impairment, and the oral fluid testing device can help you with that. The device can also test negative, and that can help you understand that perhaps this person has some other type of impairment and needs additional assistance.

The officer needs an overall understanding of how to proceed with the decision to use the device at the roadside because the next step is to administer evidential testing. We do not have a standard process across our State for evidential testing. In other words, the law enforcement officer would make an

arrest decision, take somebody in and order the evidential testing. If that person has a 0.08 percent or higher alcohol level, the testing would not go any further.

This device may indicate to the officer that requesting a drug test would help to understand what is going on. If the BAC test results are 0.05 percent or 0.06 percent but something is going on and the combination is that we are seeing impairment, we need to continue that investigative process.

CHAIR HARRIS:

My understanding today is that even if you test at 0.06 percent, if you are impaired, you are impaired. Is that correct?

CAPTAIN BOWERS:

That is correct. You can be under 0.08 percent, but if it were only that and you did not exhibit signs of impairment in the other field sobriety tests, it is highly unlikely anybody would be arrested for that, nor should they. But if they are performing field sobriety tests and the subject exhibits inclusive impairment on the NHTSA standardized sobriety tests and was driving poorly, there are other factors to consider.

I might have stopped somebody for something as benign as going 10 mph or 15 mph over the speed limit. I see indicators of impairment and administer field sobriety tests. Maybe they perform poorly, and I give them a PBT for alcohol that tests negative. I explore the possibility of drug use, am told something like, "no, I do not do drugs" and then offered the excuse of poor balance or something similar. I could then suggest an oral fluid test which tests negative.

Using the oral fluid test is a way to see the whole picture of what is going on with a person and is taken into consideration when making an arrest decision. In my example, the driver performed poorly on his field sobriety tests, but his driving was fine apart from speeding. Poor field sobriety tests yet negative on alcohol and drug testing shows it is only a tool.

CHAIR HARRIS:

Given other indications of impairment, my concern is even if tests come back negative, maybe they are still impaired. You will need to use your judgment, and in that instance, the tests were not helpful.

Conversely, maybe people do poorly on the test because something else is going on with them, but they show positive because they test 0.30 percent, and that was not causing their impairment. Now those people go to jail, even though they are under what would be the normal limit.

All the tools we have today to judge impairment are much better indicators than an oral fluid test that will indicate positive even below the legal limit. Do you understand what I am worried about? Am I making any sense?

MR. JOHNSON:

One important point of clarification is that the results on an oral fluid test are not the same as the results on a blood sample. When we are looking at per se laws, we do not have one for oral fluid testing. And we cannot correlate an oral fluid result to a blood per se. That is an important distinction.

This is a tool for law enforcement to help make determinations out in the field. If they are making observations, no alcohol signs from a PBT and no positive results from an oral fluid test could be a medical event that law enforcement officers may be able to respond to.

It is a tool. It should not be used to convict on impairment. The other tests would have to be done. The one benefit to this testing is that it is noninvasive. You asked what would happen if a law enforcement officer did not see signs and symptoms of impairment and there was no alcohol. If the officer thought it was a drug, the next step would be for the driver to go a phlebotomist to draw blood. This oral fluid testing would give law enforcement the opportunity to check for potential drugs prior to bringing the driver in for a blood draw.

CHAIR HARRIS:

This is a tool, but is it a good tool? What is the correlation between the oral fluid test result, positive or negative, and determining whether someone is impaired? Or are all of the other things you do to test for field sobriety much more correlated to impairment, and this is a neat kind of thing that does something.

You may use this test, but I do not know if that means you should be using it.

DR. ASTLES:

It is important to distinguish that in Nevada statute, there is a distinction between impairment and per se violations. Therefore, assessing impairment is based on the totality of circumstances, including driving pattern, observations of the driver behavior and field sobriety testing.

The use of an oral fluid test at the roadside could give an indication of whether that impairment was being caused by an illicit drug, for example, without necessarily a reference to the per se statutes. It is possible that there would also be a per se violation, but there does not need to be a per se violation if there is a demonstrable impairment.

The two—oral fluid test and per se statute—go hand in hand; in that sense, it is a tool with limitations. Assembly Bill 239 proposes placing the responsibility under the Committee for Testing for Intoxication. This is where proper investigation of the tool, development of regulations and any appropriate training programs for law enforcement officers would come into play to indicate when it would be appropriate to use that tool.

Oral fluid testing is a tool, as with any tool, it has its strengths and weaknesses. Assembly Bill 239 would address these, and we would place boundaries or constraints on the use of that tool.

CHAIR HARRIS:

Today, if we ask a driver to consent to an oral fluid device test and the answer is yes, why do we need to mandate that consent is given just by sitting behind the wheel of a vehicle?

CAPTAIN BOWERS:

You are reading the bill, but caselaw exists that allows a driver to say "no." Today, if police officers in the field ask a driver to take a PBT for alcohol and the driver refuses, that is not an automatic arrest decision. There is no sanction for that refusal.

Earlier you questioned, why we would use an oral fluid device if we have these other tests which are better indicators. These tests were developed years ago by NHTSA. In 1981, I think, the Southern California Research Institute started defining field sobriety tests that were considered valid. None of these tests are 100 percent accurate.

It started with the Horizontal Gaze Nystagmus Test being 77 percent likely that somebody would be impaired over a 0.10percent. The human body is different among people and their bodies. Different people get used to having varying levels of substances in their body.

We teach students in a classroom environment, and the three phases of detection are vehicle in motion, driver contact and pre-arrest screening. In a perfect world, maybe you encounter all three. I see a vehicle driving poorly, monitor it and pull it over. I make contact with the driver who presents slurred speech. I detect the odor of alcohol, and something is off about their eyes. I administer standardized field sobriety tests, and the driver shows clues of impairment.

That sounds great in a textbook but not always in the real world. You might arrive at the scene of a crash where someone's tire fell off. The driver is on the side of the highway; you no longer have a vehicle in motion, and you smell alcohol on the person. Perhaps he or she was injured in that crash to the extent of being unable to do some of the tests. In a case like that, if it was alcohol, maybe you use this technology piece, a PBT for alcohol. It is no different with this oral fluid device. It is only an added piece of developing technology that helps an officer decide if something is an issue.

CHAIR HARRIS:

I would suggest the difference is a qualitative versus quantitative piece. I would be more comfortable if it could tell you how much was present, as you can with alcohol.

SENATOR HANSEN:

When you see a driver weaving around on the road, you have probable cause. You pull him over. You do all of your current tests. You have a compelling interest in protecting the other drivers on the roadway because this driver may have an issue. This is simply a tool to help reach that conclusion.

It is obvious none of the tools you mentioned are 100 percent perfect every time. By extending this to oral fluids testing and using this tool, you help make the roadways potentially safer by getting an impaired driver off the road. It is not a perfect tool though. It appears to have issues, which is obviously one of Chair Harris's concerns.

Captain Bowers, you have the responsibility of protecting all the other drivers from a driver who could potentially cause them harm. In your opinion, is this tool an advancement over your current practices?

CAPTAIN BOWERS:

Yes, I could not agree with you more. It is absolutely an advancement and a game changer in providing officers a tool to help them save lives. When you put it that way, everybody might think of an impaired driver as perhaps crashing and harming another. I also have the view that arresting that driver for an impaired driving offense also saves that driver from hurting himself.

Back in 2009, I began using these devices, working with manufacturers and performing studies at their request where someone would be provided a test swab, that sample would be tested by the device, and another sample would be provided to a cooperative suspect to swab his or her mouth. It would be sent off to a lab in Pennsylvania renowned for its ability to test such substances.

If an arrest was made, that person was taken to jail and given a third test, a blood test. You would now have three pieces of data, three test results that all point to one conclusion, that the person did have an illegal substance in his or her body. The blood test would tell precisely how much. In my opinion, it is a reliable, accurate tool that has been around since 2009 or earlier.

SENATOR HANSEN:

Chair Harris and I both share a common concern, we do not want people being essentially forced to self-incriminate. You mentioned earlier in your testimony though that they can basically say, "I am sorry, I do not understand that. I do not want to take the test, and you can talk to my lawyer. I am not cooperating any further."

If this bill passes, would they still have that right against self-incrimination?

CAPTAIN BOWERS:

Today, if I pull over drivers and I smell alcohol or they are slurring their speech, I will ask them to exit their car. That person can tell me, "I am not answering any of your questions." I will ask, can I look at your eyes? Can I give you the Horizontal Nystagmus Test? Will you walk for me? Will you stand on one leg? Will you blow into this device?" The driver can say "no" to all my requests.

Maybe when I asked them to exit their car, they staggered to the back. If that is all the information that I have, I will arrest them. I have no choice, I cannot let them drive off down the road. It is not because they refused to do the tests that I asked of them. I am arresting them because of what I perceive is a possible impairment based on my observations.

SENATOR HANSEN:

At that point, what do you do? You have an added responsibility of protecting the safety of the other people on the roadway. I am sure you have heard various versions of "I am drunk, and I do not want to cooperate. Call my lawyer." At that point, you will still need to arrest them. Not because they are not cooperating but simply to protect other people on the roadway from possible harm, even themselves.

CAPTAIN BOWERS:

Absolutely, and conversely, I have stopped vehicles and smelled strong odors of marijuana, which is legal now. I have asked drivers to exit and if they will take some tests, and they refuse.

Perhaps I stopped them "for being expired for more than 60 days" and smelled marijuana, but they are lucid and articulate. Nothing is there for me to say "I smell marijuana, so I am arresting them." I could have them take an oral fluid test if they cooperated, but a positive test does not matter. A positive reading for a marijuana product is not an issue for a misdemeanor based on changes in the law. You need to have something more in the totality of circumstances to determine somebody was impaired and should be arrested.

SENATOR HANSEN:

It is your responsibility as an officer to err on the side of caution. Take the marijuana example. By following me, you noticed I am driving erratically or doing something else that provides you with probable cause to pull me over. If in doubt, would you keep me or a driver in a similar situation off the roadway?

CAPTAIN BOWERS:

Absolutely, because public safety is the goal in everything.

SENATOR PAZINA:

If someone were to consent to the oral fluid test and tests positive but under the legal limit, does that automatically give law enforcement the opportunity to then do a blood test?

CAPTAIN BOWERS:

No, it does not. For me to compel, command or request any type of evidentiary testing, I have to build a case to that end. There is no one singular thing that if you have this, then they have to be arrested or are now compelled to submit to a test.

The 2013 U.S. Supreme Court case *Missouri v. McNeely*, 569 U.S. 141 (2013) decision resulted in the 2014 *Byars v. State* case I mentioned earlier. It changed everything as far as someone being able to say, "Now that you have arrested me, I refuse to take a blood test." In that situation, I have to apply for a seizure order from a judge. The application will provide everything that has led to my request for this evidentiary blood test. It would include what I saw, what I smelled, if an oral fluid test was given and, if so, the results.

I could tell the judge that I gave the driver an oral fluid test and it tested positive for cocaine. Based on that result and all the other factors, I am requesting a seizure order for a blood test. If the judge thinks I have probable cause, a warrant for a blood test may be issued.

DR. ASTLES:

I will clarify that the roadside oral fluid testing we are talking about would not provide any kind of quantitative indication to suggest the suspect was above or below any kind of legal limit. It would simply identify the presence of one of the categories of drugs tested. It is simply an indication that a class of drug is at play in that particular case. That is the extent of the information it will provide.

SENATOR SPEARMAN:

I have a question about training. Medical conditions exist that can present as intoxicated. Auto-brewery syndrome is a condition where someone can eat bread or any type of starch or carbohydrates and instead of the body breaking these down in the system, it converts them to a yeast-like substance that smells like alcohol.

We are hearing that the test may not be perfect, but it should not be the enemy of good. Are any of your officers trained in discerning low blood sugar, high blood sugar and other medical conditions that could make someone present as intoxicated when not? Slurred speech could be due to high blood pressure or a symptom of a stroke.

I am concerned if someone is arrested, can an officer discern a medical issue and reach out to a doctor for information? The doctor could confirm if there was a medical condition that could present as intoxication symptoms.

CAPTAIN BOWERS:

Yes, police officers are trained at the academy to rule out medical impairment by asking a host of medical questions to discern if someone is taking prescription medication, being ill or having any physical or mental conditions being treated by a doctor.

With respect to diabetes, officers are trained that someone with ketoacidosis could produce an odor of alcohol. Breath testing devices would likely read that as an interference because it is not the type of alcohol that evidential tests are designed to detect.

I have been a police officer for 23 years, and I have encountered people having a diabetic episode. It is helpful to identify that immediately, so you can get them the appropriate medical care they need to elevate their blood sugar level. There are many opportunities to consider that a medical condition could be an issue.

DR. ASTLES:

Under Nevada regulations for evidentiary breath testing, officers are required to be recertified every three years. Only State-certified forensic analysts of alcohol, such as myself, are allowed to train those officers in evidentiary breath testing. My colleagues and I have contact with every officer in Nevada at least once every three years for that training.

I will speak on behalf of myself and my colleagues to issues you mentioned. One example is in the NHTSA training for DUI detection when it talks about the role of PBT. One of the important roles of the roadside PBT is to ascertain whether the amount of alcohol one is seeing is consistent with the level of impairment observed through the other parts of the investigation.

If not, then one has to ask what else is going on. If someone is seeing impairment but a low alcohol level, then that triggers the question, what else is going on? It could be drugs, or it could be a medical issue.

Having an additional tool such as roadside oral fluid testing would more quickly determine if it is likely drug use or a potential medical issue which requires a different kind of response.

Officers are trained in that they have to recertify regularly. We regularly discuss issues about ascertaining the source of impairment. Having another tool in the toolbox would be helpful.

CHAIR HARRIS:

I will ask one question again as I do not think I got an answer. Can you, today, ask a driver to consent to one of these oral fluid tests?

CAPTAIN BOWERS:

We can ask them, and they can refuse.

CHAIR HARRIS:

Why do we need sections 1 and 14?

CAPTAIN BOWERS:

At present, I use the oral fluid testing device. Let us say I ask someone to swab the mouth and he or she gets a positive reading for a substance. I arrest that person and ask,

Will you freely and voluntarily consent to a chemical test of your blood to determine the drug content in your system? Before you answer, you can refuse me this request. But if you do, there is a license sanction, and I will ask a judge if I may have a warrant. They may refuse me, but if they grant a warrant, then we are going to do a blood test.

If that person does not consent to the oral fluid testing, then I go through the process I mentioned earlier and obtain a warrant for the blood test. This is now something to be argued. The defense can make a motion to say, "the judge made a decision based on information potentially flawed. A device used is not scientifically proven or reliable."

That is why the Committee on Testing for Intoxication is important in the process to approve the device. The scientists who look at the data provided by the manufacturer will tell police officers if it is a reliable piece of equipment to use. This statute is important. This bill is important because it removes that cloud of suspicion and helps judges make correct decisions based on reliable equipment.

CHAIR HARRIS:

You are inadvertently making my point for me that the standards and everything important should probably come before we tell people that just by driving or being in actual physical control of a vehicle, you have given your consent to take this oral fluid test. If a driver does not comply but you have reason based upon all of the other indicators, you can still arrest them and go through the proper channels to get a warrant that will require them to take a blood test.

You already have the ability to do what you are seeking to do through this bill, especially since you have gutted the other pieces. Assembly Bill 239 seems to be the important piece you need to put the weight behind the science, not sections 1 and 14, but you do not have to respond to that.

CHERYL BLOMSTROM (Nevada Trucking Association):

We support S.B. 447 and the addition of oral fluid testing to determine impairment. Every truck driver is required to pass a preemployment drug test and submit to random drug testing. Before the January 2020 implementation of the Drug and Alcohol Clearinghouse, which is administered by the Federal Motor Carrier Safety Administration, there did not appear to be a big drug problem in the Nevada trucking industry.

They were barely double digits, and then we started testing. At the end of December 2020, 1,846 truck drivers had the status of their commercial driver's licenses (CDL) declared prohibited. They had the ability to correct their prohibited status, but they were off the road. Our industry has zero tolerance for any kind of substance for obvious reasons.

Through the end of last year, 120,000 drivers nationwide had their CDLs pulled or placed in prohibited status, and 57.2 percent of those positive tests were for marijuana. We know there are issues surrounding the testing for marijuana, which is why Nevada has moved away from urine tests for marijuana and now requires blood tests for DUIs.

The Trucking Association has been fortunate to work with Dr. Todd Simo, the chief medical officer at HireRight, in developing recommendations for our industry that we think will better detect impairment. To quote him "with the ever-shifting sands of marijuana decriminalization, oral fluid is the one current drug testing specimen that can be used to make a determination of occupational safety impairment at the time of collection."

The reason is that the oral fluids known detection window is 20 hours or less. However, growing evidence indicates that THC causes impairment for periods greater than 24 hours. This means that if someone tests positive for the THC in marijuana using oral fluid testing, the donor is most likely impaired or under the influence at the time of collection. Any adverse employment action taken is based upon impairment and not simply testing positive, impairment versus usage. This impairment determination may allow employers to take negative employment action on candidates and employees, even in states that require accommodation for decriminalized marijuana use.

BETH SCHMIDT (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department (LVMPD) supports S.B. 447. The LVMPD is experiencing an increase in drug-related DUIs. The PBTs as one of our tools are only able to detect the presence of alcohol. The PBTs are not able to assist in determining if drugs are the intoxicants potentially affecting a driver's ability to operate a vehicle on a roadway.

Adding oral fluids testing to the laws presented in this bill would greatly enhance the ability to conduct effective DUI investigations in the field by helping law enforcement officers detect if drugs are present. Oral fluids testing is a tool that will help officers save lives.

CHAIR HARRIS:

Does the LVMPD currently use oral fluid testing?

Ms. SCHMIDT:

No, the LVMPD does not use oral fluid testing.

CHAIR HARRIS:

Why not?

Ms. SCHMIDT:

We have not used oral fluid testing. We have PBTs, but we support bringing oral fluid testing in as another tool.

CHAIR HARRIS:

The currency of the law is that you could be using them, but you are not. Is that correct?

Ms. SCHMIDT:

That is correct. We do not have that technology, but that is where the science is going and why we support this bill.

CHAIR HARRIS:

To clarify, you do not need the law change to do that. Is that right?

Ms. SCHMIDT:

That is correct, we do not need the law.

JASON WALKER (Washoe County Sheriff's Office):

We support S.B. 447. Ms. Schmidt said everything that I would have said. Washoe County wants to use this tool. Any additional tools and resources that can assist us to arrive at a proper decision is a good thing. In my opinion, DUIs are getting more difficult to investigate unless somebody is falling over drunk from consuming too much. Oral fluid testing is only another factor in the totality of a DUI investigation.

CHAIR HARRIS:

Does Washoe County use oral fluid testing?

MR. WALKER:

No, we do not use oral fluid testing.

CHAIR HARRIS:

Could you use oral fluid testing if you so chose?

MR. WALKER:

If we had access to that technology and chose to use that as a factor in determining, we would absolutely use oral fluid testing.

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CHAIR HARRIS:

You do not need the law change to do that. Is that right?

MR. WALKER:

That is correct.

GREG HERRERA (Nevada Sheriffs' and Chiefs' Association):

We also support S.B. 447 and thank the presenter for bringing this information forward. We support the opportunity to have additional tools and technology to help law enforcement personnel in determining impairment and helping keep our roadways safer throughout Nevada.

SENATOR HANSEN:

The bottom line the Chair is driving at is that, in the absence of the passage of this law, why is law enforcement not currently using oral fluid testing? You have that ability to use oral fluid testing now; but if the law is passed, does it somehow give you an enhanced opportunity in court? I got that impression from Captain Bower's testimony.

Is this something the law enforcement community wants because they are afraid that when they take these issues to court, the State has not given you the green light to use oral fluid testing? Therefore, a defense attorney will say the client was prosecuted with a device not approved by the State. It is an unproven technology to such a point that even Nevada refused to put this in the law.

MR. HERRERA:

Based upon hearing Captain Bowers testify, that is a concern and my belief as well.

SENATOR HANSEN:

I respect your comment because if we do not need a law, I do not want a new law. In the absence of passing this bill, would we be somewhat handicapped and handcuff your abilities to protect your compelling need to protect the public's safety on the roadways? It is one of those juggling acts for us.

ERICA ROTH (Washoe County Public Defender's Office):

I am testifying in opposition. I want to first touch on the question that Chair Harris raised. The answer was that the law does not need to be changed to implement oral fluid testing now.

Second, it is important to note that many things utilized in a traffic stop investigation for DUI of both alcohol and controlled substances are not in law. For example, the Horizontal Gaze Nystagmus Test, the walk-and-turn test and the one-leg stand test. We have not determined that those things need to go into statute.

Those three tests have something in common with the oral fluid test: none have been scientifically proven. In fact, the opposite is true. I did a quick Google search during this meeting, and multiple peer-reviewed studies find that the oral fluid test is not reliable.

This gets to my third point when we talk about what that means in court. If the purpose of this law is to circumvent what is already set up in law, we need to make sure the evidence is reliable because that evidence that can be used in criminal practice in trials against people could potentially take away their life and liberty.

We do not put oral fluid testing into statute to avoid a criminal defense attorney looking at that evidence and saying this is wrong. People should not be subject to that because it will impact every single one of us.

We do not need to put bad science into statute. Police officers already have the ability to do this oral fluid testing. I heard someone laugh earlier about arresting someone for not paying renewal fees or something similar.

These arrests have real and collateral consequences that are not funny. You can lose your liberty, your children, your job and your housing. When we are talking about putting something in statute, it needs to be reliable, and oral fluid testing is not reliable.

I want to touch briefly on the training. I talked about the three sobriety field tests that have something in common with the oral fluid test—none are scientifically reliable. As criminal defense attorneys, we raise that issue all the

time. The court usually agrees it is not scientifically reliable, but that "it is a factor that we consider, and therefore we find there was probable cause."

Regarding Senator Spearman's question about training, I just pulled up the NHTSA website that trains officers on how to conduct a roadside investigation for a DUI. I did a quick search on my phone and could not find anywhere that trains officers for doing these oral fluid tests. Who will train them? The NHTSA does not offer training.

We oppose this bill.

CHAIR HARRIS:

Ms. Roth, if you were referring to the vehicle registration being 60 days and over, Captain Bowers was making a reference to my traffic stop bill, not joking necessarily about the circumstances.

JOHN PIRO (Clark County Public Defender's Office):

We had no discussion about known error rates. We had no discussion about national acceptances. We had no discussion if this had been studied by the National Academy of Sciences.

One of the things I find most problematic is the amendment removing calibration because no calibration standards exist for oral fluid test devices. The alcohol breath test is calibrated. They have to calibrate that. It is a known standard used frequently and based on actual science.

There are issues here. There was a discussion of COVID-19 tests. There were advertisements in the Governor's race about false-positive COVID-19 tests. There is no standard for what will be picked up by these oral fluid tests. The science needs to be developed more before we put this into statute. That is my main concern, and that is why I oppose this bill.

This would be a great bill for a study. We should study and gather data before we put it into Nevada law.

Regarding Alabama using oral fluid testing, Alabama is one of the false conviction capitals in the U.S. I do not want to do anything in Nevada that the state of Alabama does.

SENATOR HANSEN:

You questioned training on the oral fluids testing. They are not using it, so it makes sense that they have not had the training. If we put it in law, then they would implement training and testing. It is not fair for you to say they have not been trained because they are not using oral fluid testing yet.

Technology is always improving. You and your fellow defense attorneys have a great point that this testing is not to the stage where we want to put it into statute. Judging from Chair Harris's reaction in particular, the bill probably has difficulties. But as this technology improves, would it be something we should put into statute?

As the defense attorney, your job is to help protect people from abusive law enforcement. On the other hand, law enforcement has a compelling interest in protecting the other drivers on the roadways. I am juggling these two things. As these technologies improve, should we put oral fluid testing in statute?

MR. PIRO:

As a criminal defense attorney, my job is to protect people accused of a crime. However, I live in the community, and I care about our roads being safe. As the technology gets better and if we have a reliable data set based on science that states the false-positive error rates, we could move forward. We would need to develop a data set we could review and discuss. But until we get to that point, we should not put oral fluid testing in the law.

We always talk about presumption. Presumption means you are going to jail if you get that oral fluid swab, and it tests positive for something. Even if the test result is not accurate, you are going to jail. I am going to jail, and anybody else who gets that oral fluid swab is going to jail. Presumptive is a nice little word to say here in this hearing, but you are going to jail for 12 hours.

SENATOR HANSEN:

There are many different types of drugs. If I am drinking, they can smell it. What tools do they have to detect unusual types of drugs when they have a possible impairment situation?

MS. ROTH:

Many tools and information are located on the NHTSA website. Officers are trained on detecting impairment for controlled substances and marijuana. This

gets to the heart of the issue where we agree we need an actual study. We need real data on who is impaired when under the influence.

For example, marijuana is legal in Nevada. I have seen marijuana DUIs where the person has not smoked marijuana for at least 24 hours, but they are a regular smoker. I tell my clients, "If you smoke marijuana, you cannot drive." I am telling everyone in this room that is true because when you do a blood draw, if you regularly smoke marijuana, you will get a DUI.

If they see red bloodshot, watery eyes, it may or may not be related to being under the influence, as you could have allergies. I had a client once who was arrested, brought in and almost lost his job when they finally got the blood test results that he was on antihistamines. He was a nervous guy taking antihistamines who had no criminal history.

We need better data and science backing up how we arrest and control who is on our roads.

JULIA MONTEIRO (Integrative Providers Association):

As written, we oppose S.B. 447. I concur with the last two oppositions. I have submitted our letter ([Exhibit E](#)) of opposition.

KATREE SAUNDERS (Pardon Me, Please):

I am a cofounder of Pardon Me, Please, which is a national 501(c)(3) organization dedicated to driving responsible change in social equity, inclusion, criminal justice and reentry. We have enough social stratification. I serve on the Social Equity Council for the Coalition for Patients Rights, national and Nevada.

Many of you may know me as a POW for the failed drug war in Nevada and the U.S. I may come across as angry, but I am grateful for each of you, your service and the opportunity to respectfully testify against S.B. 447 and the additional social problem that it creates.

As a medical cannabis patient, I take Rick Simpson Oil (RSO) for my chronic pain, fibromyalgia, severe migraine and PTSD. The RSO is fat-soluble. The nanogram limits are invalid for people like me who use higher doses of medicine. This means nanograms of THC detected in a person's oil fluid may not be an accurate reflection of intoxication level, thus putting vulnerable patients, including me, at risk.

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This bill would disproportionately impact patients who use higher doses of marijuana. These patients are more likely to have higher levels of THC in their oral fluid even if they are not impaired.

To be tested at the discretion of the officer and subject to a \$60 testing fee sounds like weaponized criminal justice to me. See my letter ([Exhibit F](#)) of opposition.

VICKI HIGGINS (Coalition for Patient Rights):

The intent of this bill is good. We do not want impaired drivers on our roads. Unfortunately, it puts medical cannabis patients at risk for being penalized simply for using their chosen medicine. Not all cannabis patients are cardholders; there are prohibitions for being a cardholder. It is not always easy for people to be a cardholder.

Legal cannabis patients have been trying for decades to get this addressed. We know nanogram levels are not a meter for impairment. The numbers were simply pulled from nowhere, and no scientific validation exists for the nanogram numbers that supposedly indicate impairment. This method is not fair to legal medical cannabis patients as a cannabis patient will always have nanograms in their system.

Per se does not work. It is patently flawed. We need a reasonable way to determine impairment. Impairment should be assessed by trained citing officers observing documented behavior and using video body cameras, not nanogram levels. Use of this testing device creates social and medical discrimination.

This bill does not define the device to be used for this testing. A proven device should be listed as part of this bill. I cannot support this bill as written, and I have submitted a letter ([Exhibit G](#)) of opposition.

ABAD ANGEL PIZA (Pardon Me, Please):

I am a community health worker and a cofounder of Pardon Me, Please. However, I have been a medical patient in Nevada for 15 years. I can tell you from experience that you are not helping anybody with this bill.

I am not sure who wrote this bill, but I have yet to see where the manufacturer, sciences or specifics are listed. If an officer is suspicious, he can at his

discretion, without any basis in science, impose an otherwise innocent person to pay a \$60 testing fee.

I am interested to learn who validated the science behind this device or if the manufacturer was surveyed for secondary considerations, such as third-party manipulations.

Who is the manufacturer? Why is science and the manufacturer being kept secret? Is it because the science is known as a pseudoscience? Unless you can disclose it, Pardon Me, Please opposes this bill.

According to a PubMed article from the National Institutes of Health, police officers, lawyers and even our judges have resorted to pseudoscience in the past, and some still do. Pseudoscience is relying on bodies of information that may appear to be science but in reality lack the characteristics of scientific knowledge.

JAMES CREEL (Center for Incubation & Findings Research):

The Center for Incubation & Findings Research is the lead research institute for the Community-Based Clinical Cannabis Evaluation and Research Network. We have been researching cannabis for over two decades. We echo what Ms. Roth of the Washoe County Public Defender's Office and Mr. Piro of the Clark County Public Defender's Office said about the lack of science.

The NHTSA has bigger budgets and more experience than any law enforcement agency. Therefore, the NHTSA should qualify and quantify the testing strategies deployed in the field for the standardized field sobriety test.

We want to address that positive and negative results are not enough information to base anything on. You may have heard of people testing positive for opioids by eating poppy seeds.

If law enforcement can use the oral fluid test now without a new law, we recommend that law enforcement officers find a way to sharpen up their act. We are opposed to S.B. 447.

Ms. DAVEY:

I want to circle back on a few things. We did not bring the forensic scientists with us today in the absence of science. We did not bring reams of scientific

documents with us. When you talk about who will provide the standards, who will do the training, these standards are established.

The American Automobile Association (AAA) is a basic road safety organization. I brought an AAA Foundation report with me today, *Use of Oral Fluid to Detect Drugged Drivers: A Toolkit for Lawmakers, Toxicologists & Criminal Justice Professionals*. The International Association of Chiefs of Police also publishes guidelines.

There has been concern about oral fluid devices. Scientific devices are not specified in statute for the same reason we do not specify PBT devices. Devices are manufactured by Abbott Laboratories and other laboratories. The Abbott *SoToxa Mobile Test Systems* Publications brochure ([Exhibit H](#) contains copyrighted material. Original is available upon request of the Research Library.) details one fluid-testing device.

We are not relying on a Google search to tell us if there is science. Dr. Astles prepared a comprehensive research analysis of the science. Twenty-three states use oral fluid testing, and large pilot projects have been completed.

DR. ASTLES:

A few testifiers raised the issue around medical cannabis. There is currently no illegal per se level for THC in Nevada. Therefore, one cannot be convicted of a DUI for an illegal per se violation of cannabis in Nevada. It has to be proven by impairment only.

That is a perhaps a misunderstanding of statute as well because the oral fluid testing would be used as a presumptive investigative device by law enforcement. There would not be an associated chemical testing fee for anybody.

Different manufacturers are making oral fluid-testing products. Most are designed for the employment market, and some are being marketed for law enforcement.

In 2021, the NHTSA published *Evaluation of On-Site Oral Fluid Drug Screening Technology* which evaluated five different manufacturers' devices. It found that two of them met a certain set of standards and three did not. One of them is Drager Technologies, which has been used by the Nevada Highway Patrol. The

other one is now owned by Abbott Labs, which is being tested in a number of jurisdictions across the Country.

One of the difficulties in looking at the data from other states is given the differences in impaired driving laws. It is difficult to compare one state's experience with another state. It is like comparing apples to oranges in some cases. For example, a state with zero tolerance for controlled substances if its law prohibits driving with any detectable amount of a controlled substance is a different environment than a state similar to Nevada that has illegal per se levels for certain drugs.

The basic science behind the devices has been around for decades. As was mentioned, it is the same technology used for COVID-19 and home pregnancy test kits where you get the two lines. None of those test kits are infallible, but they can be pretty good.

The question was raised about known error rates. The manufacturers' published sensitivity and specificity data are available. Some of the pilot studies have information which goes beyond those statistics and uses positive predictive value statistics. If you get a positive, what is the likelihood it is truly positive? That somewhat different statistic depends on how widespread the substances are in the population.

This complex environment is why A.B. 239 proposes having the Committee on Testing for Intoxication study and make recommendations for regulations and for the use and training to address many of the issues raised.

CHAIR HARRIS:

We will close the hearing on S.B. 447 and open the hearing on A.B. 2.

ASSEMBLY BILL 2: Revises provisions relating to public safety. (BDR 43-355)

ALYSON MCCORMICK (Assistant City Manager, City of Sparks):

Assembly Bill 2 is the result of the City's sole bill draft request. The law allows the Nevada Department of Transportation (NDOT) and its contractors to use nonflashing blue lights on their vehicles during road maintenance and similar activities. Assembly Bill 2 would add local governments and their contractors to the list of entities allowed to use nonflashing blue lights on their vehicles during their own road maintenance activities.

Blue light is more visible from further away in certain conditions, including snow and nighttime. If drivers can see local government contractors or local government vehicles from further away, they can more effectively and safely take appropriate actions such as slowing down or changing lanes to avoid those vehicles.

This is especially important for much of the work that local government maintenance crews perform. For example, City of Sparks employees are responsible for maintaining traffic signals at 113 intersections and 734 lane miles of roadways. These essential maintenance activities require city vehicles to move much more slowly than general traffic or to stop in the roadway.

Most nonresidential streets in Sparks have speed limits of 35 mph, and others have speed limits up to 55 mph, making increased visibility from further away especially important.

Assembly Bill 2 will allow local government vehicles to use nonflashing blue lights like the NDOT vehicles. These lights are more visible, improving safety for local government employees and the traveling public alike.

JENNIFER BERTHIAUME (Nevada Association of Counties):

The Nevada Association of Counties (NACO) is in support of A.B. 2 and thanks the City of Sparks for this traffic safety enhancement.

NIC CICCONE (City of Reno):

We are in support of this bill. It supports the safety of our maintenance and operations workers and our Department of Public Works.

ASHLEY GARZA KENNEDY (Clark County):

Ditto to everybody else. We are in support of A.B. 2.

CHAIR HARRIS:

We will close out the hearing on A.B. 2 and open the hearing on A.B. 47.

ASSEMBLY BILL 47: Revises provisions governing the operation of off-highway vehicles. (BDR 43-394)

MS. BERTHIAUME:

I am presenting A.B. 47 on behalf of NACO, whose members represent all 17 of Nevada's counties.

Nevada is home to a variety of outdoor recreation opportunities. It is home to Lake Mead National Recreational Area, the first national recreation area, and the Silver State OHV Trail located in Lincoln County, the first congressionally designated off-highway vehicle (OHV) route.

Our member counties have seen a record number of visitors locally and from across the Country, looking to take advantage of all that our beautiful State has to offer.

Counties across Nevada have been constructing and maintaining various roads and trails designed for OHV usage, with a handful of counties creating community-wide OHV trail plans to further attract OHV users. Some of these communities have even organized or sponsored OHV races and events intended to bring individuals from across the Country and the globe to Nevada.

This bill proposes a new subsection of NRS 490.090. Under section 1, this bill would create subsection 5, which outlines that local government would be allowed to construct, maintain and operate a trail for use by OHVs adjacent to or near a highway, including, without limitation, a paved highway.

As counties make plans for further recreational opportunities, A.B. 47 seeks to make a clarification in law. There is no intention or desire to impact existing rights of way for paved highways or paved roads in any way, with counties going through a public local ordinance process should they choose to construct, maintain and operate OHV trails adjacent to or near a highway.

SENATOR HANSEN:

Senator Edgar Flores sponsored S.B. 338 because he wanted to drive OHVs on roadways. He gutted his bill down to nothing. This bill appears to be a companion bill. Is this bill related in any way to his bill?

SENATE BILL 338: Revises provisions relating to off-highway vehicles. (BDR 43-678)

MS. BERTHIAUME:

Not necessarily, the intent of this bill is to allow government entities to create plans to make these trails adjacent to highways.

SENATOR HANSEN:

I thought they might be, but the bills do not appear to be related.

CHAIR HARRIS:

What in the law might be construed to prohibit a government entity from constructing, operating and maintaining an OHV trail?

MS. BERTHIAUME:

There is no clarification in law that this is allowed or not allowed. Local government entities would prefer it be explicitly allowed.

CHAIR HARRIS:

This might be a question for Legislative Counsel Bureau. I do not know if our Committee Counsel drafted this bill. It is not the most important point, but this bill does not seem to be drafted in a way that gives permission. The bill says it may seem like you cannot do this, but let us make sure nothing can be construed to say that you cannot.

You could have drafted a bill that said local government may do X, Y or Z. Or local government could have just done X, Y or Z since no law says you cannot do it. Yet, this bill says "nothing ... shall be construed to prohibit" that indicates something in the NRS might be construed to prohibit building these OHV trails.

Ms. Dummer, did you write this bill?

JESSICA DUMMER (Counsel):

As far as I am aware, nothing in statute would prohibit a local government from constructing trails on property that it owns or otherwise has the right to construct trails on. Your interpretation of the law that it says it will not be considered to do this is correct.

SENATOR SPEARMAN:

It is probably one of those where it does not say whether we cannot or can; but in case you are not here in ten years and we do it, future Legislators sitting on a dais can say you should not have done it and point to this.

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CHAIR HARRIS:

We will close the hearing on A.B. 47. Having no further business to come before the Senate Committee on Growth and Infrastructure, we are adjourned at 5:36 p.m.

RESPECTFULLY SUBMITTED:

Paula Peters,
Committee Secretary

APPROVED BY:

Senator Dallas Harris, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Introduced on Minute Report Page No.	Witness / Entity	Description
	A	1		Agenda
	B	1		Attendance Roster
S.B. 447	C	2	Amy Davey / Nevada Department of Public Safety	Proposed Amendment
S.B. 447	D	7	David Astles / Washoe County Sheriff's Office	Oral Fluid Q and A
S.B. 447	E	26	Julia Monteiro / Integrative Providers Association	Letter of opposition
S.B. 447	F	27	Katree Saunders / Pardon Me, Please	Letter of opposition
S.B. 447	G	27	Vicki Higgins / Coalition for Patient Rights	Letter of opposition
S.B. 447	H	29	Amy Davey / Nevada Department of Public Safety	SoToxa Mobile Test Systems Publications Brochure