

DISCLAIMER

Electronic versions of the exhibits in these minutes may not be complete.

This information is supplied as an informational service only and should not be relied upon as an official record.

Original exhibits are on file at the Legislative Counsel Bureau Research Library in Carson City.

Contact the Library at (775) 684-6827 or library@lcb.state.nv.us.

NOTES IN SUPPORT OF SB 433

Presently, NRS 50.315, 50.320 and 50.325 allows the State to introduce the declaration of the chemists who test a blood sample for alcohol or drugs, the nurse who draws the defendant's blood for testing and the chemists who calibrate the breath machine and prepare the solution used to test the machine. The problems with the present statutes are two-fold: 1. they don't allow the chemists to prepare a report, and 2. they limit the pertinent information that the declaration may contain. SB 433 will "fix" those problems:

REPORTS

When a person is suspected of driving under the influence of drugs, their blood is tested twice for the drugs. The first test is to determine what drugs are present and the second test confirms that a particular drug is present and in what amount. The normal method of performing the second (confirmation) test is to have a different chemist test for each type of drug. For example, if the first test shows cocaine and PCP, one chemist will do the confirming test on the cocaine and the other chemist will test for PCP. This saves time (and money) on the testing. It also allows the chemists to perform the tests quicker.

Unfortunately, under present law, both of the above chemists must do a separate declaration for each drug test. SB 433 will allow the two chemists to combine their findings into one "report" thus saving administrative costs and the amount of paperwork that must be generated by the lab.

SB 433 will not affect the defendant's rights in any way because the defendant may still object to the reports and compel the chemist to come to court to testify. The report must still be signed under oath by the chemist and the defendant is free to object to the report for the same reasons he can now object to the declarations.

INFORMATION IN THE DECLARATION

Under present law, the declaration of the persons set forth in NRS 50.315 - 50.325 is very limited as to what it may state. For example, NRS 50.315 provides that the

1 of 3
ASSEMBLY JUDICIARY

DATE: 4/23/03 ROOM 3138 EXHIBIT F

SUBMITTED BY: Bruce Nelson

nurse's declaration may state that she is a nurse, that she drew blood from a defendant and that she gave the blood sample to a police officer. The problem with the present law is that the State also needs to establish that the nurse is allowed to draw blood by the Nevada Board of Nursing (as required by NRS 484.393(1)(a)) and that the nurse did not use any alcohol when she drew the blood. NRS 50.315 does not currently allow the nurse to testify, by declaration, that she is allowed to draw blood or that she did not use any alcohol when she drew the blood. Thus, in every DUI trial, the nurse must appear to testify, in person, that she is allowed to draw blood and that she did not use any alcohol.

Having the nurse appear in every case defeats the purpose behind NRS 50.315, 50.320 and 50.325. Having the nurse appear in every case imposes significant costs on the State of Nevada and its political subdivisions. Most of the nurses who draw blood in DUI cases do so at the Clark County Detention Center. If that nurse is compelled to appear in the thousands of DUI cases we currently prosecute, she must be paid a witness fee by Clark County. If she is working at the jail when she is called to testify, then the jail must find a substitute for her while she goes to court. This imposes significant costs on the jail and Clark County. The problem is even worse in rural Counties because the nurse may have to travel a great distance to appear in court.

SB 433 will "fix" the problems with NRS 50.315. It will allow the nurse's declaration to be admitted into evidence to establish any fact relevant to the drawing of the blood (such as the fact that the nurse is allowed to draw blood and that she did not use any alcohol when she drew the blood).

The amendment will not affect the defendant's rights. The defendant can still compel the state to call the nurse as a witness in a misdemeanor case (if the defendant shows that there is some dispute as to the nurse's declaration) or in a felony case (for any reason). The defendant can still call the nurse as his own witness or show that the nurse's declaration is invalid.

CONCLUSION

SB 433 will correct some technical problems with NRS 50.315, 50.320 and 50.325. It will save the State of Nevada money (in witness fees and in other costs). It will make no changes to the defendant's rights with regard to the admissibility of the declarations or reports. SB 433 is good for everyone in Nevada.

Thank you

BRUCE NELSON
Deputy District Attorney
(702) 455-0368