

**MINUTES OF THE  
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-sixth Session  
March 3, 2011**

The Senate Committee on Transportation was called to order by Chair Shirley A. Breeden at 3:35 p.m. on Thursday, March 3, 2011, in Room 2135 of the Legislative Building, Carson City, 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 Shirley A. Breeden, Chair  
Senator Michael A. Schneider, Vice Chair  
Senator Mark A. Manendo  
Senator Dean A. Rhoads  
Senator Mike McGinness  
Senator Elizabeth Halseth

**COMMITTEE MEMBERS ABSENT:**

Senator John J. Lee (Excused)

**GUEST LEGISLATORS PRESENT:**

Senator Sheila Leslie, Washoe County Senatorial District No. 1

**STAFF MEMBERS PRESENT:**

Kelly Gregory, Policy Analyst  
Bruce Daines, Counsel  
Laura Adler, Committee Secretary

**OTHERS PRESENT:**

John R. Johansen, Office of Traffic Safety, Department of Public Safety  
Sandy Heverly, Executive Director, Stop DUI, Inc.  
Laurel Stadler, Rural Coordinator, Northern Nevada DUI Task Force  
Chuck Reider, P.E., Assistant Chief Safety Engineer, Nevada Department of Transportation

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Douglas Konersman, Marketing Manager, Nevada Safety & Diagnostics  
Jim Holmes, Northern Nevada DUI Task Force  
Brian Sanchez, Major, Nevada Highway Patrol, Department of Public Safety  
Lisa Rasmussen, Legislative Chairman, Nevada Attorneys for Criminal Justice  
Tierra D. Jones, Deputy Public Defender, Clark County Public Defenders Office  
Orrin J. H. Johnson, Deputy Public Defender, Washoe County Public Defender's Office  
Rebecca Gasca, Public Advocate, American Civil Liberties Union of Nevada  
John Tatro, Judge, Justice and Municipal Court, Carson City

CHAIR BREEDEN:

We will open the meeting with Senate Bill (S.B.) 166.

**SENATE BILL 166**: Revises provisions governing the installation of an ignition interlock device following a conviction of driving under the influence of alcohol or a controlled substance. (BDR 43-27)

SENATOR SHEILA LESLIE (Washoe County Senatorial District No. 1):

This bill is part of the legislative agenda of the Attorney General's Advisory Coalition on Impaired Driving, supported by Stop DUI and Mothers Against Drunk Driving (MADD). You should have received testimony from Frank Harris, State Legislative Affairs Manager, MADD ([Exhibit C](#)).

Over the past three years, in my professional capacity as a specialty courts coordinator, I have seen how effective interlock devices are in stopping drunk driving and in changing the behavior of chronic drinkers. Even in that short period of time, in the last few years while we have had the felony driving under the influence (DUI) program in Washoe County, the technology has greatly improved. I believe the interlock has forced people to think about the dangers of drunk driving every time they get in the car. We know that the majority of convicted drunk drivers, even those with suspended licenses, continue to drive. You will hear testimony that the Centers for Disease Control and Prevention (CDC) has found that interlock devices reduce repeat drunk-driving offenses on an average of 67 percent. Last week, the CDC endorsed interlocks for all convicted offenders.

This bill started as part of a research effort I undertook on mandatory interlock legislation for all DUIs as implemented in New York and California. Other states close to Nevada with this requirement include New Mexico and Arizona, and

they are experiencing excellent results as reflected in MADD's testimony. However, after working with our community, it became apparent that Nevada is not ready for this step. We have too many drunk drivers. Our capacity to provide interlocks for every convicted drunk driver—we did the math—cannot happen yet. In rural Nevada we have some unique issues with implementing a mandatory interlock law. Instead, in meeting with the Attorney General's Advisory Coalition, traffic safety experts and advocacy groups, we decided to bring forth S.B. 166 for your consideration.

The first part of the bill revises the definition of high-blood-alcohol concentration (BAC) to 0.15. You previously had a bill on BAC sponsored by Senator Manendo. This bill would also expand the scope of people who had to have an interlock device in their car. Another part of the bill removes exceptions to the court mandating interlocks. I am sure there are judges in the audience today who are in a panic about that, and we do understand. It is important to take all those exceptions out in the bill draft and have the Legislature review each one of them. In the past, as you will hear from our experts, sometimes we have used the exceptions to the extent that they become the rule, and nobody is getting an interlock. This begs the question: "Why have an interlock law if everybody can use an exception to get out of it?" We realize there should be some exceptions, but we would like you to consider carefully each of the exceptions to make sure the ones we have in our statutes really need to be there.

The third part of S.B. 166 removes the ability of an employer to override our law. The current law says that employees can notify their employer of their DUI, and that the employer can override the interlock requirement, letting them drive without an interlock on a public roadway while at work. It is one thing if the employer wants them not to use the interlock on the company truck on a private road. It is quite another for an employer to be able to decide their employees do not have to use the interlock on a public road. I would like you to consider carefully whether you want to leave it that way, where an employer can make that decision.

After observing the behavior of chronic drinkers who have multiple DUIs, I have become convinced that interlocks really do change behavior and save lives, and that is why I am here today.

JOHN R. JOHANSEN (Office of Traffic Safety, Department of Public Safety):

I am the Impaired Driving Program Manager. The first chart in the handout ([Exhibit D](#)) has three different bars from 2006 to 2009. The tallest bar is the total number of traffic fatalities in Nevada for each year. The 431 shown for 2006 is the highest number of traffic fatalities we ever had in Nevada. We have been making steady progress since then. The 243 fatalities in 2009 are the lowest traffic fatalities since the early 1980s, which is good news. The smallest numbers are alcohol-related fatalities. Those numbers may look small, but the National Highway Traffic Safety Administration (NHTSA) has changed the definition from "... any fatal crash with any amount of alcohol ..." to "... an operator of a motor vehicle or motorcycle with an alcohol level of 0.08 or above ... ." The new definition eliminates impaired pedestrians, 50 percent of which were killed by sober drivers. That takes a chunk out of the numbers.

The third bar is the annual number of vehicle miles driven. The downturn in the economy has not kept us from driving as much. There has been less than a 5 percent change in the numbers from 2006 to 2009. Part of the reason for the decrease in traffic fatalities involving impaired drivers is DUI arrests in Nevada increased to 20,128 for 2009. There are approximately 1,720,000 licensed drivers in Nevada, meaning one out of every 84 licensed drivers was arrested for DUI in 2009. Counting the chairs in this room, a full house is around 80 to 90 people. One of those people was likely to have been arrested for a DUI last year. When you are on the road, you can easily count 80 vehicles either in front, behind or beside you; it is a scary observation.

SENATOR MANENDO:

It is great to see the DUI fatalities going down. Do you have numbers on property damage or bodily harm?

MR. JOHANSEN:

I can provide the actual numbers later, but now they would be rough numbers. Serious injury crashes run from 18,000 to 20,000 a year. Of those, approximately 10 percent are alcohol related. For property damage, you can almost double those numbers.

SENATOR MANENDO:

Would that be around 3,000?

MR. JOHANSEN:

We have little data on property damage only.

SENATOR MANENDO:

While the numbers are going down for fatalities, we still have a significant problem with property damage and bodily harm, too.

MR. JOHANSEN:

You are correct. There are still a lot of crashes that do not result in fatalities.

Of course, DUI is a crime of driving while a person is impaired. When a person is convicted, there are fines, jail, losing the driver's license, community service, etc. But there is an underlying cause for DUI. It is the problem of abuse of alcohol or dependence on alcohol. That requires a different approach to change a person's behavior. The penalties are designed to deter and discourage repeat offenders. More often, what is needed is frequent testing and counseling, whether individually or as part of a group, to change the individual's behavior. All of these solutions are designed to protect the motoring public.

A breath ignition interlock device (BIID) is designed to protect the public. Also, it addresses the crime of driving while impaired, helps prevent a reoccurrence and promotes a change in behavior. The BIID attached to the vehicle prevents consumers of alcohol from starting their cars, and they begin to change their thought processes and behavior to drive sober eventually. Studies in my other handout, [Exhibit E](#), describe the effectiveness of the BIID in North America. Recidivism, while the BIID is in place as compared to no BIID, is reduced 40 percent to 90 percent. The 67 percent to which Senator Leslie referred, is about midpoint. Ohio, Oregon, North Carolina, West Virginia, Maryland, Illinois, New Mexico, and Alberta and Quebec, Canada, were surveyed. New Mexico is closest to the average of all surveyed, being at 66 percent reduction of DUI recidivists with the BIID installed.

Most importantly, the surveys show a beneficial behavior change with use of a BIID. After the BIID was removed, the recidivism of DUI arrests was still reduced by 22 percent. This reduction comes two years after the interlock was removed, which is good news. One study showed 15,109 DUI offenders on BIIDs, while 379 people were arrested for a DUI when they should have had BIID on their vehicle. That is 2.5 percent of the entire population that reoffended while using the BIID. Of those 379 reoffenders, 77 percent were

driving a car not equipped with a BIID. That is 23 percent, or 87 people, arrested for DUI while supposedly driving a BIID-equipped vehicle. Whether they chose to drive another vehicle or disable or bypass the BIID, we are not sure. That is a good record for a highly advanced technical tool.

The next two charts, [Exhibit D](#), are the results of a combined and thorough analysis of breath tests given by BIIDs. The interlock records every test, whether alcohol related or not. In New Mexico, Texas, Alberta and Quebec combined, 20,000 offenders resulted in 50 million breath-test results. What was interesting is that all lockout test results were the same; Tuesday is the lowest number, and Friday and Saturday are always the highest number of lockouts. Anytime this survey is done, there will be a check-mark pattern, indicating that drinking and driving episodes are more frequent on weekends, which carry into Sundays and Mondays. This is supported by crash and fatality data. Even more interesting is the next chart showing the time of day when the BIID locks the vehicle. The most frequent time of day is between 7 a.m. and 9 a.m. It may seem counterintuitive, but easily explained because people would have drunk through the evening, gone to bed and, when awakened, still retained the alcohol in their systems. This results in complaints that the BIID is not working because they had nothing to drink that day. That may be true, but there would still be alcohol in their systems from the previous night.

The BAC estimator gives an idea of how that works and why people would have that much alcohol in their system in the morning. Weight related to the number of drinks is an easy way to estimate the BAC. Using the BAC estimator, 1 drink is the equivalent of 1 normal beer, a 1.5 ounce drink of distilled liquor or a 5 ounce glass of wine. Also the BAC estimator accounts for how long the person has been drinking. From the time of the first drink the body starts to metabolize and get rid of the alcohol. There are a series of charts, [Exhibit D](#), for men on the BAC estimator by weight and by number of drinks; there is only a slight difference for women. A 175 pound man consuming 10 drinks would be at a 0.25 BAC. The sample calculations show how a person gets to 0.165, which is near the average for DUI arrest and a fatality. An average, reasonably healthy 175 pound male consuming 9 drinks in 4 hours would have an estimated BAC level of 0.225. His body would also be getting rid of some of the alcohol at the rate of 0.015 per hour, so after four hours the BAC would be reduced by 0.06, leaving him with an estimated BAC of 0.165. If 0.015 is what the body gets rid of each hour, then it would take 11 hours to reach zero. That

is why at 7 a.m. the next morning the BIID would not let the car start because he is still at a 0.04 or 0.05 BAC. The BIID is doing the job.

There are 761 active BIIDs, in use as of the beginning of this March. There were 20,000 DUI arrests in 2009. The Department of Motor Vehicles (DMV) records for a similar period show almost 14,000 DUI convictions in 2009, about a 70 percent conviction rate. That means there are nearly 14,000 people who could have been eligible for a BIID. Realistically, we could expect 6,000 to 7,000 people to be eligible for a BIID, yet we are only doing 761. Of those 761 people using a BIID, 625 are required to do so by DUI court-ordered treatment programs for people who are convicted of felonies and misdemeanors.

The BIIDs from Nevada providers cost between \$80 and \$100 a month. Another device to detect alcohol usage is a Secure Continuous Remote Alcohol Monitor (SCRAM) that costs \$12 a day, or \$360 a month. The difference is the BIID only monitors alcohol use when a person is attempting to operate a car. The SCRAM is a 24-hour monitoring device, but does not indicate what you are doing, so that person could still drive a car. Neither device provides instant notification. They both have to be downloaded and read and have the results forwarded to the court. It could be weeks or a month before the information is known. Putting cost into perspective, a 6-pack of beer a day equals \$135 a month.

*Nevada Revised Statute* (NRS) 484C.400 is the penalty section for DUIs. If a driver impaired by alcohol transports a person under age 15, it is an aggravating factor in determining the sentence. The NRS 484C.460 provides for an exception on requiring use of the BIID if the defendant declares a hardship or needs to drive or transport a family member to or from school.

There are four BIID manufacturers in Nevada, located throughout the State. With any of these manufacturers, once the device is installed, the memory unit can be exchanged once a month via the mail. Two units are provided upon purchase. The company downloads the recorded information and reports to the authorities. Nearly 100 BIIDs are currently in use, making this method a viable option in rural areas. One manufacturer's device is equipped with a camera, at no extra cost, that matches the photo to test results, so we know who took the test.

SENATOR HALSETH:

The word "must" takes away the judiciary discretion of the court. Did I hear that would be amended if a judge testified it would be burdensome?

CHAIR BREEDEN:

Senator Leslie mentioned there might be judges present who would be willing to testify in support of S.B. 166. We will wait to hear their comments.

SANDY HEVERLY (Executive Director, Stop DUI, Inc.):

I have prepared testimony in support of S.B. 166 ([Exhibit F](#)). This is all so personal to me because of my own family's experience with a drunk driver, and I hope you will support this bill.

LAUREL STADLER (Rural Coordinator, Northern Nevada DUI Task Force):

I am in support of S.B. 166. I would like to focus my testimony on the improved technology and using the right tool for the job, which I will present in my prepared testimony ([Exhibit G](#)).

CHUCK REIDER, P.E. (Assistant Chief Safety Engineer, Nevada Department of Transportation):

I outlined my presentation ([Exhibit H](#)) so you can follow along. My office administers the Nevada Highway Safety and Improvement Program, an engineering program designed to look for high-crash locations throughout Nevada's public roads. We also helped develop Nevada's Strategic Highway Safety Plan (SHSP). I am the chair of the Nevada Executive Committee on Traffic Safety (NECTS) comprised of 15 state, local and federal executives from 13 agencies. The NECTS directs the development and implementation of Nevada's SHSP that is a five-year plan to reduce fatalities and serious injuries in Nevada. Between 2006 and 2010, an average of 325 people were killed annually on Nevada's highways, and that is not acceptable. The SHSP is collaborative and strategic which means we use all four "Es" of safety: enforcement, engineering, education and emergency medical services. This plan is data-driven and looks for strategic solutions to address problems on our highways. Through the SHSP, we identified impaired driving as one of five critical areas on which Nevada needs to focus to reduce fatalities and serious injuries.

Between 2005 and 2009, 574 people died and 915 people were seriously injured on Nevada roadways because of drunk drivers. It is widely recognized



that many DUI first offenders, and most repeat offenders, are dependent on alcohol or have alcohol use problems and will likely continue to drink and drive unless they receive assistance. The SHSP impaired driving critical emphasis area team determined the most effective approaches included supporting a stronger ignition-interlock law, supporting mandatory evaluation of all DUI offenders including first-time offenders and establishing a court-monitoring research program for misdemeanor DUI offenders. Senate Bill 166 supports the efforts of the SHSP.

DOUGLAS KONERSMAN (Marketing Manager, Nevada Safety & Diagnostics):  
I am one of the local BIID providers. I brought a BIID so you can see, try it and find out exactly what it does. I have been in the business for six years, and it is disconcerting that the BIID is not being used as it should be used with all DUI persons because it does stop them from starting their vehicles if alcohol is in their system. After 6 years, we are up to 54 clients. When you consider the amount of people driving DUI these days, it is a pitifully small amount of BIID users. I furnish a mobile service covering the entire northwest part of Nevada from Tonopah to Winnemucca to Reno. I know the BIID device is not being effectively utilized. There are way too many exceptions who say they cannot afford it, yet they are still drinking and driving.

CHAIR BREEDEN:

Mr. Konersman, would you please show and explain your BIID to the Committee?

MR. KONERSMAN:

This is the handset, which is what most people see, that comes out from under the car's dashboard. There is a mouthpiece that allows the person to blow into it. It prevents somebody trying to circumvent by using a balloon, a compressor or other device. The BIID is inserted into the ignition system so the driver must pass the breath test before the vehicle will start. It is not a burden to use; it is simple to operate by anyone who wants to use the vehicle.

CHAIR BREEDEN:

Is there any way it could be disassembled so a person could avoid using it?

MR. KONERSMAN:

If a person is technically proficient and would crawl up under the dashboard, as I do when installing the BIID, they might be able to circumvent it. However, we

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put certain markers on all the wires to make sure the device is tamperproof. The BIID is checked monthly, and if we notice there has been any tampering with it, the offender is usually immediately taken into custody.

CHAIR BREEDEN:  
How much does the device cost?

MR. KONERSMAN:  
Our charge for the BIID is \$75 to install and \$90 a month to use.

JIM HOLMES (Chairman, Northern Nevada DUI Task Force):  
In the 15 years I have been involved with the Northern Nevada DUI Task Force, we have experienced approximately 2,200 DUI-related fatalities. To some, this figure may not mean a lot, but to a person or family member involved in one of these accidents, it means a lot. The Task Force commissioned a study about five years ago, in which we found each DUI fatality cost the State, the county and the city \$1.2 million. During the 15-year period, 2,200 fatal DUI accidents suggest that it cost the State, counties and cities approximately \$2.6 billion. Nevada is in the midst of a financial crisis trying to balance its budget, and this Committee has an opportunity to reduce this cost by passing S.B.166. The previously mentioned report, [Exhibit E](#), said the BIID is highly effective, and we strongly support its use.

CHAIR BREEDEN:  
Did I hear you correctly when you said each DUI fatality cost us \$1.2 million?

MR. HOLMES:  
The State, counties and the cities. What comprises that cost is law enforcement, medical, judicial and correctional. All add up to that \$1.2 million. I can supply a copy of that report to the Committee, if you would like.

CHAIR BREEDEN:  
Yes, please.

BRIAN SANCHEZ (Major, Nevada Highway Patrol, Department of Public Safety):  
I am the operation commander for northern Nevada. I want to add to the statistics brought from the Office of Traffic Safety, Department of Public Safety. Our statistical data for the average DUI arrest in Nevada shows an

average of 0.15 BAC, if not higher, based on the arrests our officers are making every day in our northern, central and southern command groups.

LISA RASMUSSEN (Legislative Chairman, Nevada Attorneys for Criminal Justice):  
We are opposed to S.B. 166. There seems to be no explanation for changing the existing statute calling for the use of BIID for offenders who have a BAC of 0.18 or higher and proposing to reduce it to 0.15. I have not heard anything from any proponent about why the reduction is proposed to go to 0.15, other than that a lot of people arrested for DUI have a 0.15 BAC or higher. My understanding is that the 0.18 threshold was determined some time ago because it was a delineating factor. People who had a BAC of 0.18 or higher while driving were in a different category of being considered a high-risk offender.

We are opposed to the proposal to take out any judicial discretion to make it mandatory no matter what under any circumstances. We have always been of the opinion that treatment is better than punishment. Punishment works to some extent. There are those extreme offenders who simply cannot stop drinking, and that is the purpose of the BIID. When it comes to people who have their first and only DUI with no indication they are a high-risk or repeat offender, that is not what this bill targets. Judicial discretion should decide circumstances of this particular offense. Is this a person who has not had much experience with alcohol and drank too much on this particular occasion? From everything I have heard today, we are all operating under the assumption that everyone who is arrested for a DUI does this repeatedly and consumes massive amounts of alcohol daily. There is nothing to support that. Some people drink alcohol occasionally and get arrested for a DUI. They are not repeat offenders and not necessarily high-risk people.

I am in favor of a bill that targets people who are actually high risk. We are always in favor of treatment rather than punishment for people who have an addiction to alcohol. Utilizing the BIID across-the-board, no matter what, for anyone with a 0.15 or higher BAC, penalizes some people who do not have behavioral issues; they had poor judgment on one occasion. It also does not address the people who do need treatment. I understand the goal is to reduce fatalities, but I am not sure S.B. 166 accomplishes that goal. The BIID prevents the car from starting if there is any detection of alcohol, I am not sure that fairly targets the group of people who are driving while impaired. Somebody could

have a BAC of 0.005, and the car would not start. Is that what we are trying to accomplish?

Finally, there seems to be a growing group of people who drive while impaired but not by alcohol. A lot of people use pills and other kinds of substances that impair their ability to drive. This bill does nothing to target that group of people. For all of those reasons we need judicial discretion. We need judges to be able to tailor sentences appropriate to the circumstances of the crime.

SENATOR MANENDO:

I agree there is nothing now like a BIID to address the issue of drugs or medication. What would you consider to be a habitual DUI driver? I understand there are those who have been arrested the first time and do not drink regularly. Would you support this bill if it was that person's second time, or if their BAC was 2.5?

MS. RASMUSSEN:

I would support it if it were a second time, because then a high-risk pattern is established. I am not suggesting that people who are arrested for drunk driving have not done it before, but there are some people who have not done it before. One way we could determine who are the high-risk offenders needing the BIID is through a screening program. They could be sent to an alcohol screening program where they are asked specific questions to get at the issues. We would not be opposed to a BIID on a second offender, and not opposed for the high limits suggested. In other words, if it is a first-time DUI of 0.2 or higher, I would not complain. That is a substantial BAC and it is dangerous to drive at that level because of risking injury to yourself and others. You have to look at where we started. It used to be that 0.08 was the limit. It used be that 0.10 was the limit. For some reason, the Nevada Legislature decided that 0.18 was an area to make a cutoff where people above that are potentially higher-level offenders. I do not know why we are talking about a 0.15, no matter what, without any discretion for determining the individual circumstances surrounding that offense.

SENATOR MANENDO:

You mentioned a screening panel, is that like an evaluation of somebody?

MS. RASMUSSEN:

Yes. That could be done by either a State agency or an independent agency where they would do an intake to ask thorough questions about the habits of

these people. Those counselors would be good at determining whether someone was at risk or not.

SENATOR MANENDO:

I am glad to hear that, because we have a bill that would do exactly that.

TIERRA D. JONES (Deputy Public Defender, Clark County Public Defenders Office): We are opposed to S.B. 166 for the same reasons that Ms. Rasmussen stated. Mainly, it takes complete discretion away from judges. It is important that the judge be in the position to make the decision of whether or not somebody should have this BIID. The judge presiding over the case has seen the case through from the beginning. This is the judge who saw the person at their initial appearance and during the sentencing. This is the judge who read the police report about the misdemeanor or felony and presided over the trial. The judge is in the best position to determine whether or not this BIID is needed.

Taking the full discretion away from judges makes everybody eligible for the BIID when the situation may not warrant it. The BIID would not be imposed until sentencing. In Clark County, it could take years to complete the sentencing. We could be talking about somebody going on a BIID the day they are arrested. The BIID does not come into play until conviction. So, the judge needs to have the discretion to determine any type of release condition, such as SCRAM or anything of that nature. This would not put judges in the position to decide, based on what they read and what they know about the case, exactly what should be done.

There is also discussion that the BIID would allow people to lead normal lives. We disagree. There is the section in the bill about employers requiring an interlock device if the employee is driving on public roads. That is going to lead to a lot of people being terminated by their employers. In this economy, small businesses cannot afford the financial burden associated with the BIID, if part of the job involves driving. These people are not going to be able to continue with their everyday lives and will add to the 15 percent of our people who are unemployed, because employers are not going to pick up the financial portion of this.

There would be situations where we would support S.B. 166. One would be if this bill would ensure that the people who have committed these driving offenses are not able to continue driving. Most of my clients do not have cars.

They borrow a car from someone or use a friend's car, and that was the vehicle involved in the DUI. Believe it or not, these offenders are still able to find people who will loan them their cars. Most of the cars my clients are driving before and after their DUI would not have this breath-interlock device installed on them because those are not the offenders' cars. According to the paperwork submitted to the court, my clients are indigent, and most do not have cars.

ORRIN J. H. JOHNSON (Deputy Public Defender, Washoe County Public Defender's Office):

We also oppose S.B. 166. It is important to remember the discretion of the judge swings both ways. There is nothing right now preventing a judge from ordering a BIID for the person who has a 0.085 and is a first-time DUI offender. Usually, there is a suspended sentence of 80 days to 90 days hanging over the person's head, and the judge can impose a wide array of different requirements including the SCRAM, which is often ordered, but there is nothing in the statute about the SCRAM. It is the judge who sees the facts of the case, and that is why we say it is important the judge sees all those facts and is the one to make the exception.

At the last hearing on this topic, we heard that two-thirds of the people who get a first-time DUI never reoffend. That cuts against earlier testimony suggesting that anyone caught drinking and driving is probably doing it every day. That is hyperbole. Most of the folks I see—and I have seen hundreds of DUIs—are scared by the first DUI arrest that puts them in handcuffs, and they will not be back. This bill adds expense for those folks who are already inclined to follow the rules, without actually solving the problem. The people Ms. Jones talked about who borrow friends' cars, or the true addicts, are the ones on which we need to focus the resources. They are trading those expenses for the booze, not just for the BIID, but also for the fines we need, and for the treatment programs we support. We would much rather see that money go toward treatment programs than for a BIID that is easy to defeat.

Look at some of the numbers and the fine print in the studies, [Exhibit E](#). The first study from North Carolina deals with second-time DUI offenders, so that does not apply to this bill. The Maryland study also deals with multiple DUI offenders. Senator Leslie mentioned she had the experience of seeing the BIID at work. Seeing it in the specialty court program where there are felony DUIs or multiple DUIs is what they are talking about in the studies. Those people are consistently and constantly monitored and held to account in the way that the

courts work. Under this bill, they would not be supervised to the same extent. That would limit the effectiveness of this bill. Again, spending resources on things other than what might actually solve the problem is the better approach without taking the discretion away from judges. It is almost impossible to ensure compliance. I never once, in my three and a half years with the public defender's office, have seen somebody brought back for revocation of their suspended sentence because they were driving with the BIID or it was not imposed. You cannot make them put a BIID in a vehicle they do not have. You cannot verify the device is actually in the car, in the same way it can be verified they are actually going through a treatment program, or they are paying their fines. Most judges I have talked to are often frustrated with the BIID for that purpose.

I would like to note something Senator Manendo said about it maybe being a second-time DUI. Again, the discretion issue is what we think is important. We respect what you are trying to do in keeping people safe on our roads. It is the judicial discretion where it should be, and we should keep that line bright with the maximum discretion so judges can look at all the facts and do the right thing. Let the judge who is looking at the person focus the sentence and do the most to solve the problem. Leaving it to the judge, who is driving the same roads and has the same concerns, is the more appropriate course of action. The current laws are adequate to address this while making sure judges look at the cases and properly consider the exception, which they do on the record.

REBECCA GASCA (Public Advocate, American Civil Liberties Union of Nevada):  
The three prior testifiers spoke enough to the points, and we agree with them. I want to note the indigency exception is an important component of the existing law. Those who are indigent in Nevada and across the nation tend to be racial and ethnic minorities, and this would have a disparate impact on them.

JOHN TATRO (Judge, Justice and Municipal Court, Carson City):  
I am neutral on S.B. 166. I am president of the Nevada Judges of Limited Jurisdiction Association. I am not here in opposition. I think the BIID is a great tool. That is just it; it is a tool that should be available for judges to use in sentencing.

I would like to dispel a few things that came across in testimony. There are 90 judges in our association. We have our meetings twice a year, and we are extremely concerned about people drinking and driving and killing someone.

Every day in court, I see several DUI offenders. Not a day goes by that I am not arraigning a DUI offender. Every single time I arraign them and set bail, I do a risk assessment using all the resources available to me. If I let this person out of jail, are they going to do this again and kill somebody? That is a high priority every day. I have heard talk about SCRAM and perhaps it is inferior to the BIID. I am not saying it is inferior or superior. What I am saying is that it works.

Yesterday, a man who had a second-offense misdemeanor DUI came in with a 0.3 something. The attorneys argued about letting him out of jail. I was not going to let him out of jail. What I did was say he was going to stay in jail and be evaluated while there. We have counselors who come to the jail and evaluate people to tell me the risk and what kind of counseling is needed. Then I send the offender directly from jail to the counseling center for an inpatient program. The DUI offender does not go on the street until he has been through that inpatient program. The offender gets out of the inpatient program, and then has to go into intensive outpatient counseling, consisting of three hours a day, three days a week for months, which gradually goes down as the risk diminishes and they deal with their addiction. The other testifiers are right that many of them do not have cars. I do have them check in every day with our department of alternative sentencing. They blow, and if they are zero, they come back the next day. If they blow and there is any alcohol, they go to jail, and we start over. We assess these people and look at their entire package before we decide they need the BIID or the SCRAM, a daily check-in or very intense supervision. We take this extremely seriously.

I respect Laurel Stadler and send many people to her victim-impact program. Ms. Stadler said that NHTSA said judges need to have all the tools available. That is exactly right. Sometimes when we order so many things, it is not going to happen, because the DUI offender does not have that kind of money. People have minimized the fact they do not have money—they do not have money. I have them fill out financial questionnaires. I see a lot of these people, and I know a lot of the families. I did not just jump into this, I have been a judge for 16 years and am always conscious of what is going to happen when these people leave.

First off, judges want discretion for all the reasons I just talked about. To give a cookie-cutter sentence does not work. Different people need different things. Some need BIID and some need SCRAM. I am not opposed to any device. It is that we need the discretion. I cautiously bring this up about a United States



Supreme Court case: *Blanton v. North Las Vegas*, 489 U.S. 538 (1989). In that case, the U.S. Supreme Court said that a person does not have to have a jury trial on a misdemeanor if the punishment does not exceed 6 months in jail and up to a \$1,000 fine. There are those who argue that we keep putting all these minimums on the DUIs and going past the *Blanton* standard. That is a cautionary thing for consideration.

Another point is removing the financial exemption about which Senator Leslie said the judges would be panicking. We are not panicking, but we are realists and know so many of these DUI offenders do not have money. When I exempt someone from the interlock, there are zeroes everywhere on their financial statement. That may change down the line, but when I see them, that is the way it is. As the public defenders stated, so many of the people we see are in abject poverty. I know they scrounge up money for alcohol and drugs. I always ask how they paid for the methamphetamines. They never do, because the meth is free, and I hear this every day in court. It is not true, but that is what they say.

If this bill goes into effect, the courts would not be capable of monitoring this to the extent it needs to be monitored. For instance, if I sentence people who comply with all their conditions, at the end of the year their cases are closed. They may not have obtained a driver's license during that time, so they would not have gotten the BIID. Their cases are closed, and there would be no monitoring of that BIID except by the company. Perhaps the answer would be that the Department of Public Safety takes on the monitoring or the DMV much like they do with the driver's license suspensions. We do not suspend a person's driver's license in a DUI. The DMV does. We send the conviction to the DMV which triggers the action. We do not have the resources or the ability to keep cases open for monitoring.

SENATOR MANENDO:

I am still confused on the neutral part of your testimony. The general public, who are not attorneys, would probably say that was not neutral. Could you touch more on how important you feel those evaluations are? Do you see people who have been evaluated coming back as repeat offenders? Do you think an evaluation is positive?

JUDGE TATRO:

First of all, I am not an attorney, I am a lay judge. When I say neutral, it is that we do not oppose public policy. What I am doing is telling you of our concerns. I am asking you to take into consideration the practical aspects of what is going to happen day in and day out.

Evaluations are extremely important. I order evaluations all the time. I send evaluators to the jail to assess people while they are in jail. I order many people to have evaluations. The law says that I have to order an evaluation on any DUI above a 0.18 BAC or anybody under the age of 21. I do it a lot of other times, especially if I have a young person that is under, maybe at, a 0.14, I will order an evaluation just to be safe.

SENATOR MANENDO:

Do you see those folks coming back after they have been evaluated? Obviously, I think everybody would agree that evaluations are a positive public policy we have.

JUDGE TATRO:

An evaluation is just that, an evaluation. What is important is the follow-up if they go to the counseling. Of course, we see some come back.

SENATOR MANENDO:

Do you think it is worthwhile when there are evaluations, counseling and programs? Is that a good use of resources for people who are drinking and driving?

JUDGE TATRO:

It is a good resource for people who have an addiction to alcohol or drugs, whether they are driving or not.

SENATOR MANENDO:

A portion of the bill has to do with lowering that BAC threshold. We have another bill on evaluations, and appreciate your perspective.

CHAIR BREEDEN:

Ms. Rasmussen mentioned there was no explanation about the reduction of the BAC limit. Ms. Heverly, does the coalition have an explanation?

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MS. HEVERLY:

There have been numerous studies, and we went over them last week on S.B. 91. What we found over the years, through numerous studies, is the 0.15 has been recognized nationally as an indicator for someone who has an alcohol addiction problem. That is why we want to reduce the 0.18 to 0.15 to at least come into the same realm as the rest of the country in addressing these issues.

SENATE BILL 91: Revises provisions governing driving under the influence.  
(BDR 43-626)

CHAIR BREEDEN:

There being no further business before the Senate Committee on Transportation, we are adjourned at 5:07 p.m.

RESPECTFULLY SUBMITTED:

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Laura Adler,  
Committee Secretary

APPROVED BY:

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Senator Shirley A. Breeden, Chair

DATE: \_\_\_\_\_

**EXHIBITS**

**Committee Name:** Committee on Transportation

**Date:** March 3, 2011

**Time of Meeting:** 3:35 p.m.

<b>Bill</b>	<b>Exhibit</b>	<b>Witness / Agency</b>	<b>Description</b>
	A		Agenda
	B		Attendance Roster
S.B. 166	C	Senator Leslie	Submitted Frank Harris MADD letter
S.B. 166	D	John Johansen	Ignition Interlocks presentation by Department of Public Safety
S.B. 166	E	John Johansen	Effectiveness of Alcohol Ignition Interlock Devices
S.B. 166	F	Sandy Heverly	Testimony
S.B. 166	G	Laurel Stadler	Testimony
S.B. 166	H	Chuck Reider	Testimony outline