

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Seventh Session
February 27, 2013**

The Senate Committee on Transportation was called to order by Chair Mark A. Manendo at 8:05 a.m. on Wednesday, February 27, 2013, in Room 2135 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 Mark A. Manendo, Chair
Senator Kelvin Atkinson, Vice Chair
Senator Pat Spearman
Senator Joseph P. Hardy
Senator Donald G. Gustavson

STAFF MEMBERS PRESENT:

Jered McDonald, Policy Analyst
Darcy Johnson, Counsel
Melodie Swan-Fisher, Committee Secretary

OTHERS PRESENT:

Tom Conner, Chief Administrative Law Judge, Administrative Services Division,
Department of Motor Vehicles
Laurel Stadler, Northern Nevada DUI Task Force
Lisa Foster, AAA
D. Eric Spratley, Lieutenant, Washoe County Sheriff's Office

Chair Manendo:

We will open the hearing with Senate Bill (S.B.) 19.

SENATE BILL 19: Revises provisions concerning driving under the influence of intoxicating liquor or a controlled substance. (BDR 43-366)

**Tom Conner (Chief Administrative Law Judge, Administrative Services Division,
Department of Motor Vehicles):**

I am here in support of S.B. 19. The bill corrects a problem in sanctions imposed when a person is convicted of a DUI violation under a local ordinance as opposed to the State law regarding DUI. *Nevada Revised Statute* (NRS) 484A.400 grants local authorities the power to adopt ordinances that prohibit driving while under the influence of intoxicating liquor or controlled or prohibited substance. Chapter 484A, section 410 of NRS allows local authorities who have adopted such ordinances to adopt the same penalties set forth in NRS 484C.400 for a DUI conviction obtained under State law. These statutes, taken together, make it clear this body intends that a person convicted of a violation under a local DUI ordinance should receive the same sanctions as a person convicted of a DUI violation under State law. Unfortunately, because of NRS 483.460, approximately 25 persons a week, who have been convicted under a local ordinance of driving while under the influence, are escaping one of the most significant sanctions for that violation—the revocation of their driver’s licenses.

Nevada Revised Statute 483.460 requires the Department of Motor Vehicles (DMV) to revoke the driver’s license of any person convicted of a violation of NRS 484C.110 or NRS 484C.120. However, NRS 483.460 does not give the DMV that same authority when a person is convicted under a local ordinance that prohibits driving while under the influence, nor can the DMV interpret NRS 483.460 broadly enough to assume that authority because of the Supreme Court decision in *Krahn v. State Department of Motor Vehicles and Public Safety*, 108 Nev. 1015 (1992). In *Krahn*, the Supreme Court reversed the 90-day revocation of the driver’s licenses of persons convicted of a DUI violation under federal law. In doing so, the Court ruled that NRS 483.460 was clear and unambiguous and provided no opportunity for judicial construction. Since the statute granted authority to revoke only for violations of what was, at the time of adoption, NRS 484.379, any local ordinance prohibiting the same or similar conduct was rendered insufficient to grant the DMV authority to revoke. Therefore, NRS 484.379, which is currently NRS 484C.110, is a DUI statute mandated under federal law.

Senate Bill 19 solves this problem by adding an additional paragraph to NRS 484A.410. This additional paragraph makes it clear that a violation of

DUI covered under a city or county ordinance shall be deemed a violation of NRS 484C.110 or NRS 484C.120 for the purposes of driver's license revocations under NRS 483.460.

Laurel Stadler (Northern Nevada DUI Task Force):

I agree with Mr. Conner's presentation on this bill. I do, however, have a question regarding page 2, lines 10 through 12 of the bill. To me, these lines seem confusing. The bill says the county or city ordinance would be handled the same as the State law, except "for all purposes other than the imposition of a criminal penalty pursuant to NRS 484C.400." These are the penalties for the first, second and third offenses. Why is "... the imposition of a criminal penalty ..." eliminated from what the city and county sanctions would be for the DUI? Maybe I am not reading it right, or maybe it is just confusing to me.

Mr. Conner:

We have proposed an amendment to S.B. 19 ([Exhibit C](#)). The proposed amendment would eliminate ...

Chair Manendo:

Did you send the proposed amendment to our staff?

Mr. Conner:

As far as I know, we did.

Chair Manendo:

I do not think so.

Mr. Conner:

I will make sure you get a copy of the proposed amendment. The amendment proposes to strike the following language from S.B. 19 section 1, proposed subsection 2:

... for all purposes other than the imposition of a criminal penalty pursuant to NRS 484C.400. A person convicted of a violation of such an ordinance is subject to each other provision of law that applies to a person convicted of a violation of NRS 484C.110 or NRS 484C.120, including, without limitation, the revocation of

the license, permit or privilege to drive of the person pursuant to NRS 483.460.

The language of concern and causing confusion has been taken out by the proposed amendment to S.B. 19.

We did this because I heard from personnel in the Office of Traffic Safety (OTS) shortly after the bill was published. The OTS personnel are also concerned about the language, specifically the wording on page 2, lines 10 through 12, which reads: " ... for all purposes other than the imposition of a criminal penalty pursuant to NRS 484C.400." The OTS personnel thought the language added confusion to the bill. It seems that anyone convicted under a local ordinance could, at a later time, claim the prior conviction was not valid for purposes of enhancement. After reading the bill and talking to the personnel in OTS, we in the Administrative Services Division of the DMV, decided lines 10 through 12 introduced confusion into the bill. We thought the language did not advance our purposes, so we asked that it be removed.

Darcy Johnson (Counsel):

The reason that language exists is the State penalties are provided for in NRS 484C.400. Subsection 1, paragraphs (a) and (b) of NRS 484C.400 already allows for applying the first and second offenses to the penalties in this section, the State section.

The reason we put the exception in this bill is the third offense is a felony, and therefore, the local ordinances are not allowed to be used for prosecuting it. The local authorities can prosecute first- and second-offense penalties as misdemeanors up to the severity of what is stated in State law; but they cannot prosecute the third offense because, as felonies, they are outside of their jurisdiction. The justice courts and municipal courts cannot even hear a felony offense. Therefore, upon a third conviction, State law would have to take over.

Because the use of the first two DUI convictions at the local level are already provided for in S.B. 19, we propose adding language to make it clear that persons convicted of a first or second DUI under a local ordinance will be prosecuted according to that local ordinance. Local authorities are empowered not only to enact a DUI ordinance, but they can set a penalty for a DUI offense. A DUI conviction obtained at the local level is a misdemeanor. When an offender gets to the third offense, the only option to prosecute for the felony conviction

is to be convicted under the State offense. That is why we proposed the language in section 1, subsection 2 of S.B. 19. It is not an easy set of circumstances to understand, but it is important that the distinction be in the bill. Otherwise, an offender may escape the felony conviction because a local ordinance might not provide for a felony penalty.

Senator Hardy:

Are the local ordinances allowed to convict for the first and second DUI offense? Is this addressed in the ordinances of all the local jurisdictions? As I read it, the bill says there cannot be double jeopardy, and local authorities cannot impose a criminal penalty pursuant to NRS 484C.400. I need assurance the local authorities have ordinances that cover the first and second offenses.

Mr. Conner:

Local authorities could still prosecute under the State statute unless they have adopted their own ordinances prohibiting DUI. If they prosecute under the State statute, there would be no question the revocation provisions of NRS 483.460 would allow the DMV to revoke driver's licenses. It is only in those situations in which a local ordinance prohibiting DUI is used for the conviction that the DMV does not have the authority to revoke the driver's license. As it stands now, if a local authority adopts an ordinance, and a person is convicted under that ordinance, the DMV must send the conviction information back to the local authorities with the response that, under NRS 483.462, the DMV does not have the authority to revoke the driver's license. Here is an example: A person is convicted of a DUI under the Henderson Municipal Code. The Henderson Municipal Court reports the conviction to the DMV. The DMV then returns the conviction information to the Henderson Municipal Court with the response that, under NRS 483.462, the DMV, does not have authority to revoke.

If that person had been convicted of the same conduct and prosecuted under the State statute for the offense, the DMV would have the authority to revoke his or her license. It is only because of the current language of NRS 483.460 that we are having this problem. That is what needs to be corrected. The answer to your question is that it really depends on whether local authorities have adopted their own ordinances prohibiting this conduct. If they have, that is where the problem arises.

Senator Hardy:

Are you saying the problems arise only when the local authorities have adopted their own ordinances that allow revocation? If they have not adopted their own ordinances allowing revocation, they are covered under State law, and everything is okay?

Mr. Conner:

It is not a question of whether the local authorities have adopted their own revocation ordinances. The concern arises when local authorities adopt a DUI ordinance. The local authorities could use the language in the State DUI statute, for example, making no changes to it, and adopting it as their city ordinance. They can simply change the citation number and adopt it as their own. A person driving under the influence in their city would be violating the local ordinance. If a person is convicted of such a violation, one of the sanctions imposed would be that the local authority—the court, as in my example highlighting Henderson—would be required to notify the DMV of the conviction. However, when we at the DMV receive notice of a conviction obtained via a local ordinance, we must refuse it for revocation. Because we do not have authority over local ordinances, we must refuse for revocation all convictions bearing local ordinance numbers, or numbers different from NRS 484C.110 or NRS 484C.120. The responsibility to respond to convictions must be returned to the local authority. The convicted offender can avoid the sanction approved by the Legislature because he or she was prosecuted under a local DUI ordinance.

Senator Hardy:

If we pass this bill, will the local authorities need to do away with their ordinances so the State statute will take effect for everyone, or do the local authorities need an ordinance to revoke a DUI offender's license to achieve that?

Mr. Conner:

As it stands now, there are State DUI statutes, NRS 484C.110 and NRS 484C.120. These statutes can be enforced statewide. Using the Henderson example again, if a person is convicted of DUI pursuant to the City of Henderson's City Attorney's decision to charge under NRS 484C.110, the court is obligated to notify the DMV. The DMV is then obligated to revoke. The additional statute is NRS 483.460.

If the Legislature had not chosen to give local authorities the ability to enact their own DUI ordinances, we would not be here. All DUI offenders would be prosecuted under NRS 484C.110 or NRS 484C.120, whichever was appropriate. However, the Legislature has given local authorities the ability to enact DUI ordinances. For this reason, many local authorities are encountering challenges. In fact, the problem came to light when a convicted offender challenged the conviction handed down in the City of Reno, which has its own DUI ordinance. Someone was convicted for a second offense under the ordinance. When the authorities reported the second offense conviction to the DMV, the DMV revoked the offender's driver's license for 1 year. The convicted person then requested an administrative hearing to challenge our decision to revoke the license. Since that conviction was obtained pursuant to a local ordinance violation, we did not have the authority to revoke the license.

The language of NRS 483.460 says, specifically, that for a violation of NRS 484C.110 or NRS 484C.120—anything styled other than under NRS—the DMV simply does not have the authority to revoke the driver's license. Senate Bill 19 has no bearing on the DMV's ability to revoke, regardless of whether a local authority has made a decision to adopt its own ordinance. If a local authority has decided to enact its own DUI ordinance, and a person is convicted under that ordinance, this bill proposes to give the DMV the authority to proceed with the revocation. Right now, this provision does not exist. For a first offense, the driver's license revocation is for 90 days, by statute. For a second offense, it is 1 year. As Ms. Johnson has already stated, local authorities do not have the ability to prosecute a person for a third offense. A third offense would be a felony, and felonies are prosecuted under State law. This bill would enable the DMV to revoke first- and second-offense DUIs that are prosecuted under a local ordinance as opposed to the State statute. Again, that is entirely at the local authority's discretion. If the local authority has an ordinance and chooses to use it, S.B. 19 would give the DMV the authority to follow through and impose the driver's license revocation.

Senator Hardy:

Are you saying we do not need to amend S.B. 19 because it addresses what we need to do, even though it may be hard to understand?

Mr. Conner:

Personally, I prefer the amendment because I heard immediately from someone from the OTS concerning the language of the bill. The person who contacted

me expressed exactly the same argument we have heard this morning—concern over the language that says “for all purposes other than the imposition of a criminal penalty ...”

Does a person convicted under a local ordinance escape the enhancement penalties? Let us say the person is convicted twice of a DUI in municipal court. On the third offense, this person will be in district court on a felony violation. Does the language of this statute give counsel who represents a defendant the opportunity to challenge the statute with the contention that the statute claims the prior ordinance violations are for all purposes other than the imposition of a criminal penalty? When I reviewed the bill, it seemed that the language introduced more confusion than was required for the purposes of what the DMV needed. The DMV simply needs the authority to revoke the driver’s license for DUIs charged under a municipal ordinance violation.

Senator Hardy:

Will the amendment address that? Stated otherwise, is it true local authorities that have passed ordinances, for instance, need to change them to give the DMV power to revoke driver’s licenses, or will the amendment mitigate such situations?

Mr. Conner:

The bill would not require the local authorities to do anything. The only thing it does is make clear the DMV has the authority to revoke a driver’s license if a person is convicted of violating a local ordinance. If local authorities have an ordinance prohibiting DUI, they do not need to do anything.

The City of Reno has an ordinance that prohibits DUI, and about 25 people per week are being convicted of those violations. The local authorities notify the DMV of their DUI convictions. Because they have DUI ordinances, they need do nothing. All S.B. 19 does is make clear that the DMV has the authority to impose the revocation of driver’s licenses of offenders reported to us as having been convicted of two prior offenses. This is the same revocation that would be required if an offender had demonstrated exactly the same conduct and had been convicted of violating a State statute.

Senator Hardy:

That is the point I am making. I do not want the local authorities in my district to have to pass an ordinance that would negate their power to enforce

a DUI offense. Such a scenario would send a confusing message to local authorities. They would think they would not have to have a DUI ordinance on their books. I do not want the local authorities to have to do anything. I want them to keep their DUI ordinances on the books and not have to bring this up, other than to fix this gap we have been talking about. Are you saying the amendment will make it clear, and we will be able to do what we need to do at the DMV by closing the gap?

Ms. Johnson:

I can tell you that we, in the Legal Division, drafted S.B. 19 understanding that the law already allows for the locals to prosecute for DUI as a misdemeanor. Some local authorities do not have an ordinance. If they do, they can prosecute for any misdemeanor penalty that is up to and including what is in State law. To be considered a felony conviction, the third offense must be prosecuted under the State law. Conviction is already covered in State statute. We only wanted to make clear that a person cited for a first- or second-offense DUI at the local level will be prosecuted under the local ordinance.

Senator Hardy:

Will the proposed amendment, which we have not seen, be compatible with that philosophy?

Ms. Johnson:

The piece of the amendment that concerns me is the last four words of section 1 subsection 2, which state the offense will be deemed a violation of the State DUI laws "for all other purposes." The phrase seems to indicate a person could be prosecuted for a felony under a local ordinance, which is forbidden at present in State law. The local ordinances cannot prosecute for a conviction more severe than a misdemeanor.

Senator Hardy:

That brings me full circle. The bill may be confusing, but not as confusing as requiring local authorities to rescind their ordinances to be in compliance. Fortunately, we do not need them to do that. All we need to do is pass the law. If we need to make changes to the amendment, we can do that. Are you saying we do not need an amendment?

Ms. Johnson:

The first portion of section 1, subsection 2 of the amendment crosses out all of the language we had proposed and instead says, "... for the purposes of NRS 484.360 ..." This would give the local authorities the ability to have DMV suspend licenses, which was, as I understand it, the intent of this bill. If we stop right there, I think all needs will be satisfied.

Ms. Stadler:

Would it clarify things to have a subsection under NRS 484C.400 referring to the felony, so it is clear only the felony portion of the section is handled under this portion of the statute?

Ms. Johnson:

The Legal Division's point in drafting S.B. 19 was to address that a violation of an ordinance enacted by the governing body of a city or county is already not prosecuted under NRS 484C.400. It is provided for in NRS 484C.400. An offender is prosecuted under the local ordinance, not under NRS 484C.400. The language in NRS 484C.400 simply specifies what was already happening. If someone is cited under the local ordinance, he or she is prosecuted under the local ordinance. If someone is cited under the State statute, he or she is prosecuted under the State statute. But the State statute already provides for the instance in which a person already has one or two local DUIs that meet the qualifications. For one, the convictions for first and second offenses must be within 7 years. They still count as first or second offenses under the State statute. When an offender gets to the third offense, he or she must be cited under NRS 484C.400 to be convicted of a felony. The offender was never prosecuted under the State statute for local ordinances. We are just making that clear in S.B. 19. What we do not want is to cite an offender for a third offense under a local ordinance, because the felony provisions will not apply.

Ms. Stadler:

I am not familiar with local ordinances, but do any of them refer to prosecution similar or equal to what is in the State law? If so, it seems this bill would counteract the local ordinances if those ordinances said something to the effect that the offense is punishable as covered by State law. But this says "not for those purposes." I am still confused.

Senator Spearman:

Mr. Conner, it seems the intent behind this bill was to synchronize language between municipal codes and State statutes. Is that correct?

Mr. Conner:

The intention of the bill was to give the DMV the authority to revoke the driver's license of a person convicted under a local ordinance. At present, we do not have that ability. The original idea behind the bill was to amend the language of NRS 483.460. The Legislative Counsel Bureau's (LCB) decision was to instead change the language of NRS 484A.410. Perhaps that is why there is confusion. All the DMV needs is language that says "for the purposes of driver's license revocation, a conviction under a local ordinance is the same as a conviction under State law."

This scenario is not theoretical. It is happening every day. I query our DMV Division of Central Services and Records weekly regarding how many people this is affecting. They tell me that 25 to 30 DUI offenders a week are affected. These are persons who are convicted under local ordinances. The DMV Division of Central Services and Records regularly receives notification that we cannot revoke these offenders' driver's licenses. These persons are escaping prosecution on one of the DUI violations.

All we need is language indicating the DMV can revoke for those convictions for a person convicted under a local ordinance violation. The way the LCB has chosen to do it advances our purposes. However, it does so with a lot of confusion. One person in this hearing has already expressed concern about the language of the statute. The explanation Ms. Johnson has provided does not seem to clarify things for me. What is clear to me is that a local authority cannot prosecute for a felony violation. That language the Legal Division has advanced for the purpose of making it clear does not do that. The language is already clear. The extra language adds unnecessary confusion to the statute.

Lisa Foster (AAA):

The AAA is in support of this bill. Our understanding is that S.B. 19 closes a loophole that was allowing some offenders to go free or not to be prosecuted fully. I do not understand how the amendment addresses or impacts the bill. However, the AAA does support the original intent of the bill.

Senator Hardy:

I understand, as I consider AAA's viewpoint, that S.B. 19 will raise issues with auto insurance. I see the bill's effect based on the fact that I am a medical doctor. I am concerned about the 25 to 30 first- or second-offense DUI offenders who are on our roads every week. As a legislator, I feel obligated and pressured to stop that as soon as we can. These 25 offenders per week are the same as dangerous missiles, and they are hurling themselves at innocent persons and wreaking havoc. We have to pass this bill. I cannot say this strongly enough. I am appalled at this problem.

D. Eric Spratley (Lieutenant, Washoe County Sheriff's Office):

I support S.B. 19 as it was originally written and echo Senator Hardy's sentiments on it.

Chair Manendo:

I am closing the hearing on S.B. 19. I want to process it, but I would like you to talk to our legal staff, Mr. Conner, before we move on S.B. 19. Perhaps we can make some changes to your proposed amendment ([Exhibit C](#)) so we can bring it back soon during a work session. We have your contact information and will be in touch. The Committee does not have the proposed amendment. No one provided it to our staff. In the future, please give our staff copies of all amendments and proposed amendments so the Committee has all the pertinent information. Can you please email the proposed amendment to us?

Mr. Conner:

Yes.

Chair Manendo:

We will now hear S.B. 43.

SENATE BILL 43: Revises provisions relating to the operation or movement of certain vehicles. (BDR 43-340)

With nobody speaking on S.B. 43, I will close the hearing on S.B. 43.

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Chair Manendo:

Seeing no further business to come before the Transportation Committee, the meeting is adjourned at 8:45 a.m.

RESPECTFULLY SUBMITTED:

Melodie Swan-Fisher,
Committee Secretary

APPROVED BY:

Senator Mark A. Manendo, Chair

DATE: _____

<u>EXHIBITS</u>				
Bill	Exhibit		Witness / Agency	Description
	A	1		Agenda
	B	2		Attendance Roster
S.B. 19	C	1	Mr. Conner	Proposed amendment