

**MINUTES OF THE
SENATE COMMITTEE ON TRANSPORTATION**

**Seventy-Eighth Session
March 26, 2015**

The Senate Committee on Transportation was called to order by Chair Scott Hammond at 8:06 a.m. on Thursday, March 26, 2015, 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 Scott Hammond, Chair
Senator Don Gustavson, Vice Chair
Senator Patricia Farley
Senator Mark A. Manendo
Senator Moises (Mo) Denis

GUEST LEGISLATORS PRESENT:

Senator James A. Settelmeyer, Senatorial District No. 17

STAFF MEMBERS PRESENT:

Megan Comlossy, Policy Analyst
Darcy Johnson, Counsel
Martha Barnes, Committee Secretary

OTHERS PRESENT:

Ann Yukish-Lee, Manager, Division of Central Services and Records, Department of Motor Vehicles
Sean McDonald, Administrator, Division of Central Services and Records, Department of Motor Vehicles
Chuck Callaway, Las Vegas Metropolitan Police Department
Andrew J. MacKay, Chair, Nevada Transportation Authority, Department of Business and Industry
Brian Rutledge, Deputy District Attorney, District Attorney, Clark County

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John T. Jones Jr., Nevada District Attorneys' Association
Bruce Nelson, Deputy District Attorney, District Attorney, Clark County
Bob Roshak, Nevada Sheriffs' and Chiefs' Association
Sandy Heverly, Executive Director, STOP DUI
Louis Desalvio, Laborers Union Local 872
Eric Spratley, Sheriffs' Office, Washoe County
Scott Gilles, City of Reno
Charles Powell, Nevada Highway Patrol, Department of Public Safety
Robin Wynkoop
Laurel Stadler, Northern Nevada DUI Task Force
Kelly Martinez, City of Las Vegas
Matt Richardson, Nevada Association of Public Safety Officers
Sean Sullivan, Public Defender's Office, Washoe County
Steve Yeager, Public Defender's Office, Clark County
Leonard Marshall, Las Vegas Metropolitan Police Department

Chair Hammond:

I will open the hearing on the first bill listed on our work session agenda, Senate Bill (S.B.) 142.

SENATE BILL 142: Revises provisions governing the equipment and training required to operate a motorcycle. (BDR 43-718)

Megan Comlossy (Policy Analyst):

I will read the work session document ([Exhibit C](#)). Senate Bill 142 removes the requirement for a motorcycle driver to wear protective headgear if the driver (1) is already 21 years of age; and (2) has been licensed to operate a motorcycle for not less than 1 year. A passenger who is at least 21 years of age is not required to wear protective headgear. Both the driver and passenger are required to wear protective glasses, goggles or face shields unless the motorcycle is equipped with a transparent windscreen that meets certain standards adopted by the Department of Motor Vehicles (DMV).

In addition, S.B. 142 requires an applicant for a motorcycle driver's license or endorsement to successfully complete an approved motorcycle safety course in addition to any written examination and driving test as may be required by the DMV.

Five amendments were proposed to this bill by Senator Gustavson; the first amendment removes sections of the bill requiring an applicant for a motorcycle driver's license or endorsement to successfully complete an approved motorcycle safety course in addition to any written examination and driving test as may be required by the DMV. The amendment makes no change to existing law, which requires an applicant to complete either a motorcycle safety course or a written examination and driving test.

The second amendment clarifies the definition of "trimobile".

The third amendment was developed after the hearing and requires the driver of a motorcycle who chooses not to wear a helmet to be covered by an insurance policy providing for at least \$50,000 in medical benefits for injuries incurred as a result of a crash while operating a motorcycle.

The fourth amendment was also developed after the hearing and provides that the failure of a motorcycle driver or passenger to wear protective headgear does not constitute contributory negligence per se, but may be admissible as evidence of contributory negligence in an action by the driver or passenger against any other person for injuries arising from a crash involving the motorcycle.

The fifth amendment provides the money in the Account for the Program for the Education of Motorcycle Riders may only be used to pay expenses of the Program and not for any other purpose.

Chair Hammond:

In order to understand what we are working towards, there is a term used by Ms. Comlossy called "contributory negligence" and our legal analyst will explain this term for the Committee.

Darcy Johnson (Counsel):

The concept of contributory negligence provides when there is an accident involving a motorcyclist who is not wearing a helmet, if the motorcyclist was not at fault for the accident, theoretically the other party would be at fault under a legal doctrine known as negligence per se. Because the driver of the motor vehicle broke a traffic law, this means he or she would be considered at fault. But under existing law, the motorcyclist would also be at fault, because he or she broke the helmet law; so the negligence per se would also be

responsible for any injuries suffered as a result of breaking the helmet law. The amendment says if someone chooses to wear a helmet, once it is no longer illegal, we will not extend the provision of contributory negligence to that person, but he or she would still be subject to a determination of contributory negligence. How much did his or her own decision, not to wear a helmet, contribute to his the injuries?

If someone is injured in a motorcycle crash and sues the person who caused the crash, that person can use this contributory negligence as a way to get the jury or the court to make both drivers share in the responsibility for the injuries suffered. This does not pertain to the cause of the crash, but relates to the resulting injuries. Theoretically, the attorney for the person who caused the crash would have to prove not wearing a helmet contributed in some way to the injuries.

The burden of proof would be almost impossible without this amendment, and it would no longer be unlawful to ride a motorcycle without a helmet.

Senator Denis:

Does this pertain to those who are not wearing helmets?

Ms. Johnson:

Yes. The law infers that if the motorcycle rider is not wearing a helmet during a crash, it is considered contributory negligence per se because the motorcycle rider is breaking the law. The amended language indicates it is no longer per se because the law is no longer being broken, but evidence can be submitted that not wearing a helmet somehow contributed to the severity of the injuries.

Chair Hammond:

Before I accept a motion on this bill, I would like to explain a couple of the amendments which were developed after much research and thought.

I fully support the right to choose whether to wear a helmet. However, I do not believe one person's decision not to wear a helmet should come at a cost to taxpayers.

Nevada is not the first state to repeal a mandatory helmet law, and the experience of other states indicates eliminating mandatory helmet laws leads to higher health care costs for motorcyclists who are in crashes. Specifically, the

data shows when a mandatory helmet law is repealed; helmet use decreases, hospital admissions of unhelmeted riders increase, injury severity and mortality increase, the incidence of lethal and nonlethal head injuries rise, and the length of the hospital stay and time spent in the intensive care unit, increases.

Currently, a motorcycle crash patient who is treated for a brain or spinal cord injury at a Nevada trauma center spends nearly twice as much time in the hospital as a motorcycle crash patient who does not have a spinal cord injury or brain injury. It costs an average of \$96,000 compared to \$53,000 when a helmet is being worn.

Experience from other states indicates passing this bill may increase the number of motorcycle crashes resulting in brain or spinal cord injuries in Nevada.

I believe the only fiscally responsible way to pass this bill out of Committee is to require motorcyclists to have additional medical insurance. The proposed amendment requires a motorcyclist who chooses not to wear a helmet to have \$50,000 of additional medical insurance. I believe this level of insurance is a good compromise, given that medical costs often exceed \$50,000 and because there are other potential costs to society; such as the cost of long-term care, lost productivity and reliance on taxpayer-funded programs, including Medicaid and social security insurance.

In addition, the amendment, explained by Ms. Johnson, provides that if a person chooses to ride without a helmet, this fact may be admissible as evidence of contributory negligence. That is, if the driver or passenger of a motorcycle is in a crash and sues another person for resulting injuries, the court could take the fact the motorcyclist choosing not to wear a helmet, into account. This amendment essentially provides a motorcyclist who does not wear a helmet assume additional risk.

Senator Manendo:

Referencing the \$50,000 in medical benefits, would it be for the riders who choose not to wear a helmet or would it cover all motorcycle riders?

Chair Hammond:

The \$50,000 covers the motorcycle rider and anyone who is on the motorcycle, but the rider pays for the additional medical insurance coverage.

Senator Manendo:

This includes the person driving the motorcycle. Would it be a different type of coverage when DMV sends out the notice of insurance being due?

Ann Yukish-Lee (Manager, Division of Central Services and Records, Department of Motor Vehicles):

In the *Nevada Revised Statutes* (NRS), chapter 485 directs the requirements for minimum coverage of insurance. The DMV would not verify a motorcycle driver carried the additional coverage required by S.B. 142.

Chair Hammond:

Would you be able to tell these riders they are required to carry additional insurance?

Ms. Yukish-Lee:

The insurance requirements pertain to vehicles, not drivers. What we require for a vehicle to be registered through the DMV is different from the intent of S.B. 142.

Senator Denis:

How do you guarantee insurance coverage when someone registers a vehicle? There is a minimum amount of insurance required for vehicles to be registered in Nevada. Who checks to ensure the amount of coverage is adequate?

Ms. Yukish-Lee:

We verify coverage through the DMV insurance program called Nevada LIVE, "Liability Insurance Verified Electronically." We have an electronic system where we enter the vehicle and insurance information, which is verified by the insurance company that provided the minimum liability coverage.

Senator Denis:

Could the same thing be used for motorcycle coverage?

Ms. Yukish-Lee:

Not today.

Senator Denis:

Is it because you are not set up for motorcycles?

Ms. Yukish-Lee:

Yes.

Senator Manendo:

If motorcycles are not covered now, would there be a programming change? Do you know how much it might cost?

Ms. Yukish-Lee:

There would be a programming change, but I do not know how much it would cost.

Chair Hammond:

Is there a minimum insurance level necessary to register a motorcycle? Does the DMV verify that minimum?

Ms. Yukish-Lee:

We verify the minimum requirements of insurance coverage for the motorcycle, not the driver.

Chair Hammond:

When we talk about the \$50,000 insurance policy, would anyone who is injured on the motorcycle be covered by insurance?

Ms. Johnson:

The way the amendment is drafted, it covers the operator or driver of the motorcycle. He or she only needs to carry that coverage pursuant to this amendment if choosing to ride the motorcycle without a helmet. A person who intends to wear a helmet all the time could go to the DMV with standard liability insurance coverage. The amendment covers an additional policy a motorcycle rider would purchase in order to be verified through the existing DMV insurance verification system.

Sean McDonald (Administrator, Division of Central Services and Records, Department of Motor Vehicles):

A programming piece will most likely be required in order to identify the type of insurance coverage based on the proposed amendment to S.B. 142.

Senator Denis:

Another way to address this issue is to require everyone who rides a motorcycle to increase his or her insurance. Would that require programming changes by the DMV? Could we increase the minimum to \$50,000 on the medical portion?

Ms. Yukish-Lee:

The statute is based on coverage for vehicles with a minimum limit of liability insurance necessary to register a vehicle. Vehicle registrations and drivers are separate in the eyes of the DMV so today there is no way to verify whether an individual has additional coverage. The DMV ensures the motorcycle carries the minimum liability insurance required by statute.

Senator Denis:

Is there a minimum medical now for vehicles?

Ms. Yukish-Lee:

There is a minimum medical on insurance coverage but it is across the board on all vehicles.

Senator Denis:

If we raise the minimum medical for all motorcycles, would that eliminate the need for programming?

Ms. Yukish-Lee:

The DMV would still require programming changes for a mechanism to verify the liability coverage on motorcycles only.

Senator Denis:

Are vehicles and motorcycles the same now?

Ms. Yukish-Lee:

Yes.

Senator Manendo:

The \$50,000 medical requirement will cover the driver, but what about the passenger on the motorcycle? Does the passenger have to wear a helmet or is it discretionary? Will the passenger need to take out additional insurance? If there are two people on a motorcycle and there is a crash, the cost to treat them will be more than \$50,000 because the passenger is not covered by additional

insurance. The costs will go against the insurance carried by the driver of the motorcycle.

If there are two people riding the motorcycle and there is a crash, the driver carries the extra insurance because of choosing not to wear a helmet and the passenger chooses not to wear a helmet. In one scenario, the two people on the motorcycle are hit; in the second scenario they skid and it is nobody's fault but their own. Maybe they hit ice, oil or water and the motorcycle goes down. Whose insurance policy will pay for the passenger's injuries if the driver's coverage is only \$50,000?

Ms. Johnson:

I am not an insurance expert but as I understand the intent of the amendment, the \$50,000 medical coverage is in addition to the existing liability coverage, which is \$30,000 for a passenger. The \$30,000 would already be in place, with the driver of the vehicle being responsible for the \$50,000 medical coverage included in the proposed amendment. The way the amendment is worded, the amount would be available "for injuries incurred"; it does not say "injuries by the rider." Presumably, if there were a passenger, the driver and passenger would split that amount. There is already \$30,000 underneath what would be split.

Senator Manendo:

The existing coverage is \$30,000 when the driver of a motorcycle is required to wear a helmet. If they are not wearing the helmet, however they will need the additional \$30,000. The intent of this amendment adds an additional \$50,000 for the driver; so where is the extra insurance coverage for the passenger? The amendment does not provide extra protection for the passenger riding on the motorcycle.

Senator Gustavson:

Insurance is required for a vehicle. If the owner registers a vehicle, it must have insurance coverage. Are the driver and all passengers in the vehicle covered whether it is a car, truck or motorcycle?

Ms. Yukish-Lee:

I am not an insurance expert, but my own personal insurance covers me when I am at fault in an accident as well as any other damages or injuries that I may incur.

Senator Gustavson:

If a person insures their vehicle for \$30,000 in medical coverage, are the driver of the vehicle and any passenger riding in the vehicle covered?

Ms. Johnson:

I believe that is correct but I do not know. If we had any people here from the insurance industry, we could ask them to clarify this information for us.

Chuck Callaway (Las Vegas Metropolitan Police Department):

Referencing the proposed amendment, in theory it seems like a good idea based on its design to cover the cost of injuries passed on to the taxpayers because the rider did not wear a helmet. Unfortunately, in practicality the amendment does not accomplish the intent of the bill.

The passing of S.B. 142 with the proposed amendment would be unenforceable for law enforcement. We would be unable to verify if someone has the required coverage or stop him or her if that person were not wearing a helmet because it would no longer be illegal.

Hypothetically, if I am a motorcycle rider, I can obtain an insurance policy and register my vehicle with the DMV. I could tell them I plan to wear a helmet every time I ride my motorcycle. Maybe I would wear a helmet 99 percent of the time, but one day it is extra hot outside and I do not wear the helmet and get in a crash. I am now in the hospital without the required coverage and the taxpayers will pay the bill. The proposed amendment is designed to stop this situation but for law enforcement, it is unenforceable.

Senator Denis:

In Nevada, we insure vehicles. I want to ask an insurance representative if policies are offered for individual drivers as opposed to insuring the vehicle.

Chair Hammond:

There still seem to be many questions regarding S.B. 142, so we will not vote on the bill today. We will hear the next bill on the work session agenda, S.B. 229.

SENATE BILL 229: Provides for the issuance of special license plates indicating support for Second Amendment rights. (BDR 43-713)

Ms. Comlossy:

I will read the work session document ([Exhibit D](#)). Senate Bill 229 provides for the issuance of special license plates indicating support for the rights guaranteed by the Second Amendment to the *Constitution of the United States*. The fees generated by such special license plates, in addition to all other applicable registration and license fees and governmental services tax, must be deposited with the State Treasurer and distributed to the Nevada Firearms Coalition or its successor on a quarterly basis.

Such funds are to be used for programs and activities in support of the right guaranteed by the Second Amendment. These special license plates must be approved by the Commission on Special License Plates and after approval, will not be issued until 1 of the 30 design slots for special license plates becomes available. A surety bond must be posted with the Department of Motor Vehicles.

There were no amendments proposed for this measure.

Senator Manendo:

Do we know how the education program will be set up in order to ensure the funding will be applied to education rather than a political action committee?

Chair Hammond:

The Nevada Firearms Coalition indicates they have two different systems; one for education and one is the political wing. Discussion ensued among the Committee in an earlier meeting to ensure the money was used for educational purposes only.

Senator Gustavson:

The NRS states any funds raised by the sale of the Second Amendment license plate cannot be used for political purposes.

Ms. Johnson:

The statute currently states the nonprofit charitable organization uses the financial support for charitable purposes relating to public health, education or general welfare. The other requirements specify the organization must be registered with the Office of the Secretary of State if required by law, and the name and purpose of the organization do not promote, advertise or endorse any specific product, brand name or service that is offered for profit. The

organization must be nondiscriminatory and the license plate will not promote a specific religion, faith or antireligious belief. It comes down to what will fit within the definition of public health, education or general welfare.

Chair Hammond:

Is this language contained in S.B. 229?

Ms. Johnson:

Nevada Revised Statute 482.367002 covers all of the charitable specialty license plates.

Senator Denis:

Would the organization be prohibited from any political support while funding their educational programs?

Ms. Johnson:

I would have to see if there is any case law pertaining to this issue. Someone could argue that advocacy falls under the term of education. The bill does not explicitly prohibit using the funds for political purposes. Education is the word that would have the most relevance to any kind of advocacy.

Senator Manendo:

I had the same question. Could the Nevada Firearms Coalition say that someone was pro-guns or anti-guns or could they talk about a specific piece of legislation? If people want to donate to a campaign, a specific candidate or a specific cause, they can. I am not comfortable with funds from the sale of a license plate being used in this fashion. The organization could write their own check.

Senator Gustavson:

Organizations have different functions; some are political and some are not. This is not the only organization with this type of structure.

Ms. Johnson:

The specific provision we are putting into law for this charitable license plate states the funding is to be used for its programs and activities in support of the rights guaranteed by the Second Amendment. This license plate language will have to fit within the framework of what is already allowed for these specialty

license plates. If the Committee would like to narrow the parameters, we could amend the language in the specific section dealing with only this license plate.

Chair Hammond:

Would the Committee members be interested in proposing amended language for this bill?

Senator Denis:

It would allay my concerns if we look at adding language that is more specific.

Chair Hammond:

We will look into adding specific language to the bill to get to a comfort level for all of the Senators so we will not vote on S.B. 229 today. We will discuss the last bill on our work session agenda, S.B. 263.

SENATE BILL 263: Revises provisions relating to the operation of certain vehicles. (BDR 43-1107)

Ms. Comlossy:

I will read the work session document ([Exhibit E](#)). Senate Bill 263 expands the exemptions from driving on a sidewalk to include electric vehicles designed to travel on no more than three wheels, if the vehicle is operated: (1) as an authorized emergency vehicle; (2) by an officer or other authorized employee of a law enforcement agency; or (3) a security guard.

Two amendments were proposed during the hearing: The first amendment was proposed by former Governor Robert F. List to strike "not more than" to clarify the bill refers only to vehicles with three wheels.

The second amendment was proposed by Chuck Callaway, Las Vegas Metropolitan Police Department. It adds a new section to authorize each board of county commissioners to enact an ordinance regulating the time, place and manner of the operation of a vehicle operating pursuant to this bill in the county, including prohibiting the use of such a vehicle in specific areas of the county.

During the hearings, there was some discussion if certain security guards should be able to use such a vehicle in areas like the Las Vegas Strip. There were

questions regarding how the bill related to Segways and other electric personal mobility devices.

Existing statute defines an “electric personal assistive mobility device.” This definition includes a Segway. An “electric personal assistive mobility device” is not considered a vehicle for purposes of requiring registration or a driver’s license, and it is considered a pedestrian for the purposes of traffic laws. Such a device is allowed on sidewalks and is required, in certain circumstances, to use sidewalks. Existing law also provides that local governments may regulate where and how such a device is operated. The second amendment to S.B. 263 proposes to allow county governments to make similar regulations for electric vehicles with three wheels.

Senator Denis:

Are Segways currently allowed on sidewalks and used for security purposes?

Ms. Johnson:

Counties and cities can further restrict Segways in terms of where they are allowed to operate.

Senator Denis:

In relationship to passing this law, do the cities and counties still have the ability to make this determination?

Ms. Johnson:

There are no changes in reference to Segways. The amendment to the bill adds the three-wheeled electric vehicles into the same area of usage as the existing Segways.

Senator Denis:

Does the amendment put these vehicles in the same boat as the Segways?

Ms. Johnson:

Not entirely; the three-wheeled vehicles are considered vehicles, so we have to give them special permission to be on a sidewalk, which is what the original bill did.

Chair Hammond:

Segways are considered pedestrians and were allowed the exemption to operate on sidewalks.

SENATOR DENIS MOVED TO AMEND AND DO PASS AS AMENDED
S.B. 263.

SENATOR GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

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Chair Hammond:

I will open the hearing on S.B. 278.

SENATE BILL 278: Revises provisions concerning an application for the registration of an off-highway vehicle. (BDR 43-92)

Senator James A. Settelmeyer (Senatorial District No. 17):

Senate Bill 278 stems from a constituent contact dealing with off-highway vehicle registrations indicating they had to have a notarized signature and at times, the notarization can cost up to \$50. The constituent thought it was steep when transferring off-highway vehicles to have to pay \$50 compared to the transfer of a vehicle where an affidavit can be signed. That was the genesis of the bill and when I contacted the three constituents, none of them wanted to testify on the bill.

I received an email message yesterday from the DMV indicating this requirement was changed in late 2014. They have no problem with the bill but told me it will have no effect. In that respect, someone from the DMV could confirm my information.

Mr. McDonald:

The information provided by Senator Settelmeyer is correct. As far as the registration component for the off-highway vehicles, we no longer require a notary on the documents. The only time we would look for a notarization is if we are completing a statement of facts for a transfer of ownership tied to a title. The notary requirement was abolished in October 2014.

Chair Hammond:

The bill addresses only off-highway vehicle registrations. The transfer of title is not mentioned in the bill. It sounds like the issue may be cleared up.

Senator Settlemeyer:

I agree with you. The other issue mentioned was moving the off-highway vehicle titling away from the DMV and to the dealers. We learned that change would have a fiscal note so the amendment was not entertained.

Chair Hammond:

I will close the hearing on S.B. 278 and open the hearing on S.B. 376.

SENATE BILL 376: Revises provisions relating to motor carriers. (BDR 58-632)

Senator James A. Settlemeyer (Senatorial District No. 17):

Senate Bill 376 also stems from a constituent issue. This particular issue deals with what some people refer to as the "competitors veto". The issue stems from a constituent at Lake Tahoe wanting to expand medallions for his taxi business to increase the number of vehicles. The owner ran into a situation and was stopped from completing the process with the Nevada Transportation Authority (NTA). That constituent now has a lawsuit pending and may not be able to testify based on the litigation.

I believe we should always have a remedy of law on any subject. If there is no remedy of law, it allows people to find other remedies which may not be of law. I find that problematic.

The heart of S.B. 376 allows a person running into a problem with the ability to appeal any decision to a court of law in order to find a remedy.

Chair Hammond:

Could you take us through a scenario? In one scenario someone already has a company and he or she wants to increase the number of medallions. The second scenario has someone trying to break into the industry with a new company.

Taking the first scenario, a company wants to increase the number of medallions for its business. The application is submitted, reviewed and rejected.

What happens now? Are there remedies in place? Is there a remedy allowing the courts to intervene or allow a person to go to court?

Senator Settlemeyer:

The final determination can be appealed; however, if you do not make it to the final determination then it cannot be appealed. If a person is stopped during the early portion of the process, which involves proving that expansion would not impact other businesses and if that person is stopped at that particular point by an intervenor, then the issue is not actionable or appealable. Senate Bill 376 seeks to add language to provide the ability to appeal a decision at any point in the process.

Chair Hammond:

Does the bill provide language so once the application is rejected the person has the ability to go to court rather than the agency to appeal the decision?

Senator Settlemeyer:

The concept is to appeal the decision to the court of law where there is the best chance of getting an impartial hearing.

Chair Hammond:

If the application is rejected, what is the process to appeal the decision? If a person goes through the final determination and the application is rejected, where does it go when it is appealed before it goes to a court of law?

Senator Settlemeyer:

I would have to verify with the agency, but it is my understanding that throughout the process to the final determination when the application is rejected, the person has the right to appeal to district court.

Chair Hammond:

Is there another step between being rejected and prior to appealing to district court?

Andrew J. MacKay (Chair, Nevada Transportation Authority, Department of Business and Industry):

Any decision either granting or denying is appealable to district court pursuant to NRS 233B. The statute states in order to file a petition for judicial review vis-à-vis an appeal to district court, a person has to exhaust the administrative

remedies. First, a person has to file a petition for reconsideration with the NTA. The bill enables an individual who wishes to appeal a decision to forego requesting reconsideration of the decision. The NTA is neutral in this matter. We do not have concerns with the bill because if an individual wants to appeal the decision to district court, he or she should have that opportunity. If we make a wrong decision, we want to know about it. We have never filed a motion to dismiss with respect to any appeal, even though we have faced a limited number of cases. This bill allows a person to go straight to district court in lieu of filing a petition for reconsideration.

Chair Hammond:

Senator Settlemeyer mentioned if a person does not make it to the final determination sequence the process stops. I understand an intervenor may say something to stop the process. If you never get to the final determination, can the decision be appealed for reconsideration? Can a person appeal for redetermination after exhausting the administrative remedies?

Mr. MacKay:

If no action has been taken by the NTA commissioners, under NRS 233B, filing an appeal of any administrative action to any state agency does not exclude an individual's ability to file suit relative to the licensing laws.

Senator Settlemeyer alluded to current litigation with the NTA. The litigation calls into question the constitutionality of certain State statutes with respect to the licensing elements of NRS 706. There are administrative remedies and often matters are not heard and adjudicated because someone abandons the application or withdraws it for a litany of issues. Ultimately, if an application is abandoned and an individual has not formally withdrawn the matter, the authority will vote to remove it from the schedule. This scenario happens very rarely. If a person withdraws their application, for whatever reason, there is still the ability to appeal in district court.

Chair Hammond:

Are we moving too quickly and skipping a portion of the process in order to be heard in district court? It is important to have access to district court when necessary. If the application is stopped for whatever reason and there is no final determination, is there some kind of administrative remedy first? Should we exhaust that avenue before going to district court?

Senator Settlemeyer:

I was trying to start simple with the bill; however, if the Committee wishes to go further that is up to you.

Chair Hammond:

I am not sure if we are going further but there may be other steps available prior to going to court.

Senator Denis:

Now, someone can submit an application to the NTA and it is accepted or denied. If denied, the person and application continues through the process of reconsideration, which allows different people to participate. After that, the person can go to district court.

If S.B. 376 passes, it will allow a person to go through the initial process and before getting to the reconsideration stage, he or she can go straight to district court.

Mr. MacKay:

Yes. If a person wants to file for reconsideration, oftentimes on citation matters issued to drivers, we have petitions for reconsideration filed regularly. The petitions are granted much of the time for various reasons, so the individual can come back and be heard again. The bill does not stop the person from filing for reconsideration, but it gives them the option of not taking the first step pursuant to NRS 233B and going straight to filing a petition for judicial review.

Chair Hammond:

Going back to the explanation provided by Senator Denis, an individual has submitted an application but it never gets to the point where the application is completely denied. When the applicant withdraws early, is that person able to petition for reconsideration at any point in the process?

Mr. MacKay:

No. I would defer to your counsel. Pursuant to NRS 233B to file a petition for judicial review, there has to be a formal action or disposition in the matter.

Chair Hammond:

At some point during the application process, an intervenor came in and said this application ought to be stopped. If there is an action, the application is eligible for reconsideration.

Senator Settlemeyer:

Under current law, without a final disposition by the NTA a person does not have the right to appeal to a court of law. If S.B. 376 passed today, it would allow any decision or action the statute impairs to have the ability to go to a court of law.

Chair Hammond:

Are you saying a person does not need to go through all of the administrative remedies if he or she wants to go directly to court?

Senator Settlemeyer:

Yes. I want to provide another avenue for individuals who feel the process may not be available to them for a remedy due to time constraints or if the process is too restrictive to allow for competition.

Chair Hammond:

Most of the time these applications have some sort of action associated to them unless the application is withdrawn. You are asking for a mechanism to bypass administrative remedies and go directly to a court of law.

Senator Denis:

Is there a judicial review now?

Mr. MacKay:

Yes.

Senator Denis:

Is there a point for a trial de novo?

Mr. MacKay:

A trial de novo would not be applicable to NRS 233B. Oftentimes what happens when a petition for judicial review is filed in Clark County District Court, the review is limited to what is in the record, order, ancillary documents and briefs. It is not a de novo review per se.

Senator Denis:

What would the difference be with a de novo review?

Ms. Johnson:

There is no provision in NRS 233B for trial de novo. The concept is the entire matter is being heard again.

Chair Hammond:

De novo means the whole trial over again. In this case, we are only looking at the decision.

Ms. Johnson:

The process is trying to determine if the agency abused its discretion or did not make its decision correctly.

Chair Hammond:

The process would be on trial and not the case.

Ms. Johnson:

Yes. Under NRS 233B the petition for judicial review ends the matter. I would have to conduct further research to be sure.

Senator Denis:

Some people do not feel they were heard and the de novo would give them a trial that would review the entire case again. I wanted to know if that is where you were trying to go or if the judicial review is enough.

Senator Settlemeyer:

I wanted to begin with this first step and hope it will resolve some of the issues encountered by my constituents.

Senator Denis:

How many times have there been judicial reviews? Once the review is complete, has the NTA ever been overturned?

Mr. MacKay:

With respect to petitions for judicial review, from decisions rendered by the NTA, there was one petition for judicial review that was granted that reversed the decision of the NTA. The NTA granted an extension of authority for a

certificated carrier who was looking to grow their business. There was an intervenor in the matter who did not like the decision granted by the NTA and appealed to district court. The court said no, due to the manner in which the decision was granted there were some procedural infirmities. The case was remanded back to the NTA with instructions that were followed to the letter. The intervenor filed a second appeal against that decision. The court directed the NTA to start over. The applicant ended up with more vehicles approved than there would have been if there had never been an intervenor. That is the only case where the decision by the NTA was reversed.

Chair Hammond:

How many cases requested judicial review?

Mr. MacKay:

There were 21 cases.

Chair Hammond:

Out of 21 cases that requested judicial review, only one was overturned. We will close the hearing on S.B. 376 and open the hearing on S.B. 245.

SENATE BILL 245: Revises provisions concerning drivers of vehicles involved in accidents resulting in bodily injury to or the death of a person. (BDR 43-558)

Senator Mark A. Manendo (Senatorial District No. 21):

The crime commonly referred to as leaving the scene is defined in NRS 484E.010 as failing to comply with the duty to stop at the scene of an accident/crash involving death, injury or personal injury. The current penalty for that crime is 2 to 15 years in prison with probation as an option. Oftentimes, the charge is dismissed in a plea bargain.

I submit for your consideration S.B. 245, which amends this inequity by mirroring the penalties for driving under the influence causing death or serious bodily harm. Rarely a week goes by, sometimes only days, without some horrific crash involving a person who chooses to flee the scene after causing this level of carnage. Oftentimes, these offenders flee the scene due to having warrants or alcohol or other drugs onboard.

Leaving the scene, if caught, will allow the driver a more stringent penalty. This unconscionable criminal behavior is not uncommon and is not limited to Clark County. There have been media accounts of this issue in Henderson, Fernley, Carson City, Reno, Sparks, Boulder City and Pahrump. Today we have victims, law enforcement and other concerned citizens to provide testimony in support of S.B. 245.

I have been asked to read a letter from Jesse Lujan on behalf of the family of Robert Lee Lujan:

Thank you for allowing me to enter testimony about the facts and circumstances surrounding the death of my father, and the prison sentence the suspect was given in this incident.

My father Robert, 57 years of age, was killed on July 20, 2014, just 9 days prior to his fifty-eighth birthday. He was a father, a husband, a "Papa," a son and a brother to 9 siblings; a nephew and an uncle with more than 170 nieces and nephews. He was working on the roadway for his own business Lujan Saw Cutting, on Sahara, near Arville. My father was cutting an asphalt patch in the roadway with a 1,000 pound walk-behind saw, when he was struck and killed by a DUI driver. There was less than 1 foot needing to be cut when he was struck. A 20- to 30-second lapse might have made a difference. My father was killed on impact; however, his body was thrown 70 feet from the point of impact. I was assured by detectives that he was killed instantly; however, being an 18-year police officer, with more than my share of witnessing death of all kinds, I doubt this was the case. The driver then fled the scene on foot, only to be followed by witnesses to the crash, who led Las Vegas Metropolitan Police Department (LVMPD) officers to the suspect. My father was left on the roadway to die like a dog while the suspect simply ran away.

Over 150 people attended a vigil held for him the next night with over 500 people attending his funeral. To say he was loved by so many people would not do him justice.

The suspect in the case was sentenced to the maximum limits the law currently allows, 6 to 15 years for leaving the scene of a crash

causing death, and 8 to 20 years for the DUI causing death. These sentences were allowed to run concurrent.

I am in full support of making the statutes mirror each other, and raising the maximum limit of time served to 20 years.

I am very grateful you are allowing me to express my thoughts on this bill. I do not understand why DUI drivers who kill innocent people are given breaks. The plea deal the suspect got was basically a two for one. Why are they allowed to have concurrent sentences and potentially only do 8 years in prison?

My father, like so many other innocent people are not given breaks. There are no do overs, no good-byes, no more holidays or graduations or milestone life events that people take for granted, and they simply stop in the blink of an eye. There are no letters from home, care packages to be sent, and the only visitation is at a graveside with the biggest questions simply being "why"?

Why is it if a person commits a robbery and a person dies, they are charged with murder? Why is a crime involving property and death given a larger penalty? Although robbery is seen as a property crime, is not every innocent victim robbed of their life? The families are robbed and victimized again and again, day after day, at any given moment. The average DUI driver commits the offense 80 times before they are caught the first time. That means they make the choice to get behind the wheel 80 times knowing their actions could change their lives and the lives of those they victimize.

Thank you Senator Manendo for spearheading this effort to change the laws and increase penalties. Nothing anyone can do will ever bring back my father, but you and other lawmakers have the power to make people stop and think about their actions if the penalties are harsh enough.

My family does not want blood-hungry justice, 100 years behind bars or an eye for an eye. We simply want peace, the peace of knowing that just maybe the patriarch of our family did not die in

vain, and because of you and through my words, other families will have peace in knowing they are just a little safer on the roads.

I was honored to read this letter on behalf of the Lujan family.

Brian Rutledge (Deputy District Attorney, District Attorney, Clark County):

The point of the duty to stop at the scene of the accident statute, what we call leaving the scene, is to encourage people involved in a crash injuring other individuals to stay at the scene to assist the injured, to call for help and be there so law enforcement can reconstruct what happened and help the victims.

Unfortunately, the way the penalties are structured encourages people to flee the scene. We had a case last year receiving media attention where an individual who had been drinking all day long backed over two men working at a car wash. The driver ran over the men and fled the scene. Even though we have reports about his drinking, instead of facing two counts of felony DUI, for causing substantial bodily harm to these individuals, he is facing only one single count of leaving the scene with lesser penalties.

We have the case of Manuel and Gwendolyn Diaz who were in their car on the Clark County Route 215 in Las Vegas at a slow pace because traffic was backed up at the exit for the Red Rock Casino. An individual advanced at a very high rate of speed and plowed into their car. Mr. Diaz was killed and his wife was seriously injured and is injured to this day. She will carry the injuries from the crash for a lifetime and she watched her husband die. There were many other injuries from this crash.

The driver looked at all of the injuries and did not call 911. Instead, he ran into a nearby neighborhood and hid in people's backyards for 8 hours before emerging. By the time he came out of hiding, we were unable to proceed against any DUI charges. The driver would have faced a DUI death and 2 DUI with substantial bodily harm charges, but because he hid for 8 hours while the intoxicants cleared his system, we were unable to charge him with those counts and he faced one single count of leaving the scene of an accident.

We had a case where Michael Grubbs was pushing his granddaughter in a stroller, when a vehicle left the road, went into the desert and ran him over, killing him. The driver left the scene leaving the grandfather to die; other people stopped to tend to the injuries of the baby who, fortunately, lived. Instead of

facing two counts of DUI, the driver faces one count of leaving the scene of an accident. Why do we think she was impaired? She had prior DUI arrests and convictions and because she left and did not come to the police station until she had engaged a lawyer. A week had passed; she only faced a charge of leaving the scene of an accident.

The point of amending the statute would be to change three issues. The first change would be to make the penalty mirror the felony DUI. The charge would be 2 to 20 years with no probation rather than 2 to 15 years with probation.

The second would be for the driver to be punished separately for each victim who suffered bodily injury or death. This would eliminate crashes like Mr. and Mrs. Diaz experienced, where the driver killed someone and maimed many others but only faced one count by fleeing the scene. This law gives the driver every reason to flee because it produces a lesser sentence. The driver in this case was a professional man who knew exactly what he was doing when he fled the scene.

The argument: what if a driver went to a bar and a policeman who did not like the person followed him or her to the bar, waited until he or she began drinking and then arrested him or her. There is a provision for DUI cases that if alcohol is found in the system within 2 hours of arrest and the person can show he or she was drinking after the crime, it is considered reasonable; however, that argument is being used by those fleeing the crash.

Angel Velasquez was an 18-year-old Metro Explorer, a young man with a promising future who was killed by an impaired driver who fled the scene of the crash. Five hours elapsed before the police could find the driver. When they did find the driver, he was drunk but claimed he was drinking after the crash. He said he was so upset about running over and killing someone that he left in order to get drunk. Currently, that is a valid defense, and the State would have to prove him wrong, which is virtually impossible. The last portion for change should say: if people flee the scene, they cannot avail themselves of that defense claim of drinking after the crash.

I know the public defenders proposed an additional amendment requiring there to be proximate cause to the accident; however, that would actually gut the statute and make it worse. For instance, we had a case where a pedestrian, Charles Hayden, was struck by a man who left a bar where he had been

drinking for hours. We do not know when the pedestrian was actually struck and sent flying into the bushes, because the driver left the scene. No one found the injured man for 2 hours and by that time he was dead.

The leaving-the-scene statute is designed to prevent the scenario where the driver left the scene instead of providing aid to the victim who died. We cannot prosecute this driver for felony DUI, even though we know he had been drinking, because by the time he was arrested there was no longer any evidence. We have to prove every element beyond a reasonable doubt.

If the public defender's proposed amendment and proximate cause were added, we would not be able to prosecute the driver for leaving the scene of the crash. There is no way we can prove beyond a reasonable doubt who was the proximate cause of the crash because the person left the scene. When a driver leaves the scene, much of the evidence is destroyed.

In every case of leaving the scene of a crash where we catch the driver within a reasonable time period, we gather evidence and find the driver left the scene because he or she was impaired. It was a case of driving under the influence. We are seeing more and more DUI incidents and people making a rational choice to flee the scene. Under the existing statute, leaving the scene allows the driver to face a lesser penalty. That person may get away with it entirely, but even if caught will face a much lower penalty.

We have cases where the driver looked at the injured people and made a conscious decision to run and hide in other people's backyards for 8 hours until the alcohol was no longer in his or her system to escape an impairment charge. We support S.B. 245 so drivers will no longer flee the scenes for lesser charges, and we support making the penalties consistent.

Chair Hammond:

Typically, we do not encounter this subject matter in the Senate Committee on Transportation. Can you tell me why we have the ability to plead a case or plea bargain?

Mr. Rutledge:

Having the ability to plea bargain comes from a problem with the case. For instance, I was the prosecutor on the case where Mr. Lujan was killed. The reason for the plea agreement was because the driver successfully fled the

scene and was gone for a significant period of time. When the driver was found, he was hiding in an apartment complex dumpster and calling someone on the telephone. The call he was making was not 911.

The long delay in finding the driver seriously impacted our ability to proceed on the DUI count. If the driver had stayed at the scene, we would have proceeded with just the count of DUI, and we would have had a better case. By fleeing the scene, the driver made it difficult for us to proceed on the DUI. At the time he was caught, the driver pled to the DUI as long as we offered concurrent sentences on the count of leaving the scene of the accident. If the driver had successfully evaded law enforcement for another couple of hours we might not have been able to proceed on the DUI at all.

Chair Hammond:

You use leaving the scene of an accident as a tool to help achieve convictions when there may not be enough evidence. Are you asking for no probation to be offered? Is there another statute where we deny probation? If so, under what circumstances? Can you provide the Committee with some examples?

Mr. Rutledge:

There are dozens of statutes that do not allow probation. The judge is not restricted. We are trying to make this sentence exactly the same as felony DUI. On a felony DUI where the driver has caused substantial bodily harm or death, it is 2 to 20 years with no probation. The judge could give someone as little as 2 to 5 years in prison or as many as 8 to 20 years in prison under those statutes, but the judge cannot give them probation in lieu of zero days in prison.

The reason we want there to be no probation is to make it match the DUI statutes. If there is still an option of probation, then there is still a reason to flee the scene of the accident. If a driver is drunk and hurts someone, the minimum sentence is prison for 2 years. People know what the sentence is because we have been educating them through Stop DUI and Mothers Against Drunk Driving. We have done a good job of educating the public that if a person causes substantial bodily harm while driving drunk, a prison sentence is an incentive not to drive drunk. If the driver flees the scene of that drunk driving accident in order to avoid prison, it is too great an incentive to provide for people.

Chair Hammond:

If a potential DUI driver leaves the scene of an accident and later goes to a bar to drink and he or she is caught there, the people state they were upset by the crash and began drinking afterward. You do not have a case when the driver says the drinking began after the accident. Are you requiring the driver to prove his or her innocence rather than having to prove his or her guilt? Does this type of thing occur often?

Mr. Rutledge:

The driver does not have to prove innocence under the statute. There is a provision under NRS 484C.430 section 1, subsection 1 allowing an affirmative defense. It is allowed even if we have proven the elements of the crime, including that the driver is over the legal limit within 2 hours of driving. There is an affirmative defense the driver can put in place that says the reason I am over the limit is because I was drinking after I was driving. With this amendment, if a person flees the scene of an accident, the person cannot use that affirmative defense. It is another tool that says there is no benefit to fleeing the scene of the crash. A person who does not flee the scene can still benefit from the affirmative defense, but there is no benefit from fleeing the scene.

Ms. Johnson:

In the bill, a new subsection 4 has been added to section 1. Does your proposed amendment augment or replace that language?

Mr. Rutledge:

The proposed amendment will replace it.

John T. Jones, Jr. (Nevada District Attorneys' Association):

Our intent is for the proposed amendment ([Exhibit F](#)) to replace S.B. 245. We are here in support of S.B. 245 and have provided some proposed amended language. Our main point is that there is currently an incentive in the statute to leave the scene of an accident, especially if the driver is intoxicated.

I understand this could cast a net that would include people who were not intoxicated and for one reason or the other left the scene. This is the reason we are asking for the no discretion provision to be removed. This would still provide the ability to allow leniency for those who were not intoxicated when they left the scene. There are instances where a 19-year-old left school and we can prove that person was at school and the accident was right after school. The

chances are that this young adult was not intoxicated when he or she left the scene. In that case, with the no discretion amendment, we would not be able to reduce that charge if it is provable. However, with that language we could provide leniency for that young adult. The bill we are asking you to put forward would include the language in our proposed amendment, [Exhibit F](#).

Senator Farley:

Why is the crime of leaving the scene much greater than being drunk? Committing a crime is committing a crime.

Mr. Jones:

Are you saying the crime of leaving the scene should have a greater penalty than DUI?

Senator Farley:

Yes, because it will stop. The driver leaves because of knowing the need to get out of the area. Maybe if that person knows leaving will be far worse than taking a DUI test, maybe that person would not leave. Maybe if the teenager from school knew that would make it harder on him or herself if they left, they might stay.

Mr. Jones:

I appreciate your statement, but it is a policy decision for this Committee to make. The Nevada District Attorneys' Association is saying not to incentivize leaving the scene, which this statute currently does. Our organization will be happy just putting DUI and leaving the scene on the same level. If you would like to enhance leaving the scene, that is the prerogative of the Committee.

Chair Hammond:

I have some concerns because there are occasions where someone hits another vehicle and does not know if something was hit because it was dark and late at night. A person stumbled out on the road and the driver thought he or she might have hit a curb and keeps driving. Now that person is facing a devastating sentence equivalent to a DUI conviction.

Mr. Jones:

That is a good example and one of the reasons why our association feels discretion is important. In situations such as you mentioned, we can provide leniency through negotiations.

Senator Farley:

Is that up to your organization or a judge hearing the case? I would think once the judge heard the case, he or she could use discretion. Why are we having discretion? I cannot see how you can stop the problem.

Mr. Jones:

Negotiations between the defense and the district attorney's office occur in 98 percent to 99 percent of all cases. The vast majority of cases are handled through negotiations. Based on information that indicates 1 percent to 2 percent of cases actually proceed to trial, we are asking for discretion. The district attorneys are already exercising discretion in the majority of cases.

Bruce Nelson (Deputy District Attorney, District Attorney, Clark County):

The law currently requires the State to prove the person knew or should have known of being in a collision before that person can be charged with leaving the scene. About 20 years ago, there was a case where a truck driver ran over a little boy on a bicycle. The truck was so heavy in comparison to the bicycle that the driver never knew he hit anyone and he was not charged with leaving the scene. He could not be charged because he was unaware it had happened.

Senator Farley:

Can that be the first step? Could the second step be because it was blatantly obvious the driver knew what he or she was doing and left the scene? It all becomes equivalent that the driver left the scene of a crime.

Mr. Nelson:

Sometimes there is a situation where the person will argue of not knowing that anyone was hit and we point out that the victim hit the windshield. It is obvious the driver would know of hitting somebody. The driver will still argue that he or she did not know someone was hit. If the driver knows he or she was involved in a collision, he or she must stay at the scene. If the driver does not know of being involved in a collision, he or she cannot be charged with the crime of leaving the scene.

Senator Farley:

In the negotiations, can you say it must be clearly evident the driver was involved in a collision? Then it must be clearly evident the driver intentionally left the scene? If people knew that leaving the scene of the accident carried a

harsher sentence than being charged with DUI, they would no longer leave the scene.

Chair Hammond:

The examples provided to the Committee are circumstances where it can be proven the driver left the scene and he or she can be charged with that count. I have been involved in two collisions and neither was my fault. In both cases I was struck by a garbage truck or a tow truck. The driver of the garbage truck thought he heard something, but had no idea he had struck my vehicle. I can see how you would have to prove the driver was aware of the collision.

Mr. Callaway:

We believe this closes a loophole in the law that does incentivize people to leave the scene of an accident and we are in support of S.B. 245.

Bob Roshak (Nevada Sheriffs' and Chiefs' Association):

We also stand in support of S.B. 245. As a former fatal-accident and hit-and-run investigator, I am happy to see the portion making it clear if there were five people in the vehicle with bodily injury, the driver would be charged with five different counts.

Sandy Heverly (Executive Director, STOP DUI):

I want to thank Senator Manendo for sponsoring S.B. 245 on behalf of STOP DUI and the thousands of innocent DUI and leaving the scene victims we represent.

In our opinion, leaving the scene when death and or injury results is nothing less than a willful, cowardly, despicable and heinous act and should be addressed with much harsher penalties as prescribed in this bill.

As a victim advocate, I have worked with thousands of traffic crash victims in Nevada and across the Country over the last 30-plus years. I have seen firsthand those who have suffered additional victimization due to the offender leaving the scene. Hit-and-run victims struggle with how someone could abandon their loved one laying injured or dying and not render any semblance of aid or human compassion.

How can someone do that? It is really beyond most human comprehension. Try to imagine anyone you love and care about in that scenario, injured, alone, terrified and helpless.

I have certainly not come to terms with the experience of the alcohol impaired driver who chose to run, leaving my four seriously injured children, my husband and myself broken and bleeding, and my critically injured mother to burn alive. That was more than 30 years ago; however, that horrific scene remains as vivid today as it was then.

So many crash victims have expressed their heartache and frustration to me with this situation. Learning the charge for this inhumane behavior was dismissed or the offender was given probation exacerbated their victimization on many levels. So many have said if only, if only that person would have stayed and called for help or tried to render some semblance of aid, maybe, just maybe the injuries my loved ones sustained would not have escalated and they could have possibly survived.

Last year, rarely a week went by that we did not hear of one or more of these horrific crashes with the perpetrator choosing to flee, and it saddens me to say it continues to be the norm rather than the exception.

Oftentimes we learn later the suspect had warrants, been drinking and/or using other drugs and chose to run, leaving his or her victim or victims, men, women and children helpless, hoping to avoid the harsher penalties for felony DUI, and if found, is arrested and charged under the current statute which permits plea bargaining and or probation. We believe the sanctions in the current statute inadequately address the severity of this crime, and that is why S.B. 245 is before you today. We also believe the lack of significant penalties for this crime encourages this behavior.

Crash victims, the public, law enforcement, emergency responders, local and State representatives, and our media friends who cover these crimes are sickened and disgusted by these offenders being afforded such leniency.

In conclusion, please know we clearly understand this Committee does not have the ability to legislate a moral conscience to these imposters of humanity who choose to leave victims to suffer and die in the streets without so much as a call to 911. However, you certainly have the authority to raise the bar of

accountability with more stringent sanctions for those who do not possess that simple level of human decency, and we encourage you to do so. STOP DUI respectfully requests your favorable consideration for S.B. 245.

Louis Desalvio (Laborers Union Local 872):

I am representing the Laborers Union and my deceased sister, Marilyn Rouse. Mrs. Rouse was a sister, daughter, mother and grandmother. Her life was abruptly taken from us on November 7, 2014, by Selena Gonzalez-Gascon. The picture I am holding was taken just 45 minutes before she was struck and killed.

I apologize for the bright colors and the unorthodox attire I have chosen to wear before you today; however, I wear it to show support for Mrs. Rouse and to provide a visual to this Committee of the bright colors she wore the night she was killed. The only difference between us is my attire is just a sweatshirt and her outfit was full body color.

Miss Gascon not only struck Mrs. Rouse, but according to witnesses at the scene, attempted to leave the accident in her vehicle. The district attorney's office representative stated Miss Gascon hit Mrs. Rouse at a speed upwards of 60 miles per hour on a side street construction zone. The impact was so harsh and severe that Mrs. Rouse was first pinned to the front of the vehicle before being thrown several yards away.

At this point, Miss Gascon continued to drive 500 yards, 5 football fields away, before a quick thinking construction worker used a front loader to block her path.

Even 3 hours after Miss Gascon's incarceration, her defense attorney argued that her blood was drawn an hour after the allotted time allowed by law. The report showed Miss Gascon was still three times over the legal limit.

After numerous court appearances both by family and Miss Gascon, she cut a deal on March 4, 2015. The district attorney's office agreed to allow Miss Gascon to plead guilty to felony DUI; however, the charge of leaving the scene was pleaded away. According to court testimony, Miss Gascon will plead guilty on March 31, 2015 to felony DUI with the result of death, minus the charge of leaving the scene.

Like all firefighters and police officers, our fellow construction workers provide the roads and infrastructure you and I enjoy within this great State. Lezlee's Law was the first step to combat an ever-growing problem in construction zones. As you can see, it does not have the teeth these men and women need to remain protected.

Firefighters have a breathing apparatus to perform their duties and police officers have bulletproof vests. My fellow brothers and sisters in the construction industry and the public look forward to the passage of S.B. 245. This is another way to convey to the public that should someone make the choice to make a bad decision, and put others in harm's way, he or she will be held accountable. Leaving the scene of an accident that causes the death of another human being should not be a reward for a lighter sentence or less time. In fact, leaving the scene should be detrimental to one's freedom.

Eric Spratley (Sheriffs' Office, Washoe County):

We are in support of S.B. 245 as written and with the proposed amendment from the district attorneys' office.

Scott Gilles (City of Reno):

The City of Reno supports S.B. 245 both as written and with the proposed amendment. We hope this has the effect of removing the potential and illegal incentive for drivers who have been drinking to flee the scene.

Charles Powell (Nevada Highway Patrol, Department of Public Safety):

The Nevada Highway Patrol supports S.B. 245.

Robin Wynkoop:

I am here to support S.B. 245. On July 7, my mother and another woman were sitting in a bus stop shelter waiting for a bus. That morning Steven Murray was driving under the influence of prescription drugs. He crashed into the bus shelter flipping his truck and pinning my mom up against the bus shelter and chopping off the other woman's legs. The other woman was a witness to see Steven Murray get out of his truck and walk away. There were other people there to apprehend him until the police showed up. My mother was taken to Sunrise Hospital where she later passed away.

Although Steven Murray was sentenced for felony DUI, it is frustrating to learn he would not be held accountable for not calling 911 or rendering aid to my

mom or other victims. He was not injured and tried to leave the scene. A coward leaving his victims helpless and maimed. If he would have tried to help my mom, she might be alive. I struggle with this every day. I ask you to vote in favor of S.B. 245.

Laurel Stadler (Northern Nevada DUI Task Force):

I am here in support of S.B. 245. It is important to put some semblance of victim justice in the criminal justice system. This bill goes a long way to achieving that.

Kelly Martinez (City of Las Vegas):

The City of Las Vegas lends its support for S.B. 245.

Matt Richardson (Nevada Association of Public Safety Officers):

More than 1,400 members of law enforcement officers throughout the State stand in support of S.B. 245.

Sean Sullivan (Public Defender's Office, Washoe County):

We are in opposition to S.B. 245. We are appreciative that all stakeholders were willing to meet and hear our concerns. We are sympathetic to the testimony from victims who may have lost loved ones. What I do want to address is the information contained in our memorandum ([Exhibit G](#)) and the concerns we have with S.B. 245. We are okay with making the penalties comparable to DUI causing substantial bodily harm or death and raising the penalty to 2 years and up to 20 years. This would give an offender a potential incarceration at the Department of Corrections. We are opposed to making the sentence non-probation-eligible for a number of reasons.

We are also opposed to taking away the discretion of the district attorney to negotiate these cases. A number of cases have different facts and circumstances. I handled my first case of leaving the scene of an accident felony matter last year wherein the gentleman was not the cause of the accident. It was clear the gentleman did not cause the accident, but he was the second car in line of a multiple car accident. There were three cars involved and unfortunately, he chose to flee the scene. He knew he was involved in an accident, but did not realize he had caused any injuries and panicked and fled the scene.

I think there is a premise that the proponents of the bill are all focusing on the DUI or alcohol-related cases. Some of the cases are not DUI related. If the bill goes into effect, it will cast a wide net and will capture those persons who may be young and impetuous who panic. There could even be immigration consequences for them leaving the scene. Oftentimes, drivers make a horrible decision to flee or leave the scene, but it may not be alcohol related.

The driver could be an 18-year-old who just received his or her license and glanced at a cell phone or engaged with the cell phone while driving and causes or is involved in an accident. The driver does not realize it caused substantial bodily harm or bodily injury and he or she flees the scene because of being young and impetuous. We simply do not want to cast a net so wide that we capture those types of situations.

Looking at the way the law is constructed, it talks about a driver of any vehicle involved in an accident that results in bodily injury. Bodily injury is not readily defined within the NRS. We would prefer the definition of substantial bodily harm which is what was heard today pursuant to the definition under NRS 0.060:

“Substantial bodily harm” defined. Unless the context otherwise requires, “substantial bodily harm” means: 1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or 2. Prolonged physical pain.

The fact that bodily injury is not readily defined in the NRS could include a number of things when somebody is involved in a vehicular accident, hopefully that person wearing a seat belt. The seat belt locks up and a person can receive significant bruising from just having the seatbelt lock up. A person can receive cuts and scrapes from flying broken glass. All of these scenarios could cause bodily injury under the statute but not necessarily substantial bodily harm. We think there should be a definition for substantial bodily harm.

We also believe the driver should be the proximate cause of the injury. Being involved is simply not enough, the person should have caused the accident, fled the scene and caused substantial bodily harm. All of these cases have a different set of facts and circumstances. The district attorneys need to be

allowed to have prosecutorial discretion to review the facts and circumstances and decide what is in the best interest of justice. That is the reason the majority of the cases are decided through a plea bargain. I ask the Committee to consider our proposed amendments.

Senator Farley:

Is leaving the scene of an accident a crime?

Mr. Sullivan:

I understand if a driver leaves the scene of an accident and the only damage is to property it is a misdemeanor. If the driver leaves the scene of an accident where injury is involved, that is a felony.

Senator Farley:

You mentioned there was a level of substantial bodily harm.

Mr. Sullivan:

Bodily injury as it is constructed within leaving the scene of the accident involving bodily injury is not necessarily defined within the NRS. We could have a scenario like a multiple vehicle pileup where there is a driver that is just involved but did not cause the accident. There is bodily injury involved that is not defined in the NRS if he or she flees the scene and is charged with a felony with 2 up to 15 years. We are saying the driver should be the proximate cause of the accident and he or she should have caused substantial bodily harm.

Senator Farley:

There needs to be additional discussion. If I caused an accident, I would be pretty upset. I can understand the panic, but drivers have to be responsible and constantly allowing all of this leeway and excuses for why people make poor choices does not sit well. I would like to be a part of any further discussion regarding this subject.

Mr. Sullivan:

I am not condoning the actions of drivers who panic or flee the scene. I am trying to provide this Committee with an explanation as to why some drivers may flee the scene. It seemed the testimony was geared toward DUIs and there are other reasons people will flee the scene. We do have young drivers and undocumented drivers who may leave the scene. Some driver may make a horrible mistake, panic and leave the scene, but it is not DUI-related.

Chair Hammond:

Does the proposed amendment take away the ability to plead a case whatsoever?

Mr. Sullivan:

The proposed amendment will eliminate discretion for the district attorney to enter into the plea bargain process.

Chair Hammond:

There were overtures toward an idea that there is a graduated penalty system if a driver leaves the scene and there is only property damage and then later on if there is bodily harm or injury. Is there room to apply a graduated penalty if the driver leaves the scene of the accident involving a death or bodily harm?

Mr. Sullivan:

I am always open to discussing a graduated penalty scheme or any other option to get at what we are really trying to capture with this bill. I would be happy to work with the proponents of the bill if there is interest in doing so.

Chair Hammond:

The intent of the bill is to provide an incentive for drivers to stay at the scene of the accident and provide assistance to those with bodily injury.

Steve Yeager (Public Defender's Office, Clark County):

Senate Bill 245 has a good intent and I have provided the Committee with some additional information in a memorandum ([Exhibit H](#)). We do not want to give intoxicated or impaired people an incentive to leave the scene of an accident. Everyone seems to agree with that statement so the question is, How do we get there and does this bill do it?

The main issue we have with the bill is it seems to be based on the assumption that every driver who leaves the scene of an accident must have been impaired. That is not true in every case but we can agree it is true in most cases. What do we do with the example provided by Mr. Sullivan where the individual was not impaired, but left the scene? The bill needs to be crafted in such a way to reach those offenders that we are going after.

Currently, leaving the scene of an accident is a Category B felony if there is injury and it is 2 to 15 years in prison. Some of the examples we heard are

awful and it sounds like some of those offenders were given long prison sentences. I did not hear of anyone receiving probation. In a situation where a driver leaves the scene and there is serious injury or death, judges routinely give prison sentences. That is probably the default rather than probation. When we have a situation where the individual was crashed into and then hit another vehicle and the injuries in the accident were superficial injuries, we want probation to be an option for that individual to make sure we are not giving him or her a mandatory prison sentence.

In our State, we have done an excellent job of educating the public about DUI. I have been in situations where friends are telling friends, do not drive intoxicated it is not worth the risk. Take a taxi. There is a campaign of knowledge and we would be wise to do something similar in this arena. Folks do not know about the penalties for leaving the scene of an accident. Nobody intends to get into an accident when driving and then leave the scene. It is more a spur of the moment decision. Somewhere in our DUI campaign if we could educate the public that there are also serious consequences to leaving the scene of an accident, we might raise that consciousness and achieve the deterrent value we are seeking.

Senator Manendo:

Erin Breen was present to testify on this bill but had to leave. She has subsequently provided her written testimony ([Exhibit I](#)). If the district attorneys and public defenders could get together and talk about what they heard in this hearing, we may be able to find a place to meet and go over some solutions prior to bringing the bill back to Committee for a work session. What if an individual is the victim of the accident and leaves the scene, but the individual who caused the accident is actually injured, who would you charge? What would happen to the victim if he or she leaves the scene?

Mr. Rutledge:

Under our amendment there is no change to the statute, we are just changing the penalties. Some of the proposals made by the public defenders would actually change the statute and the entire scheme. Nothing the bill does as currently written or with the proposed amendment from the District Attorneys' Association would change the law as it is today. The proposed amendment changes the penalties to match the DUI. If someone is involved in an accident where there is bodily injury, the person cannot flee the scene. There are already provisions in the statute for the victim going to get medical attention; or another

person taking the injured person to get medical attention, these scenarios are covered in the existing statute. We are not trying to change the law in Nevada, but we are trying to change the penalties so we do not encourage people to leave the scene.

Senator Manendo:

There may be a scenario where a victim leaves the scene and we want to ensure the victim is not penalized.

Leonard Marshall (Las Vegas Metropolitan Police Department):

I supervise the hit-and-run squad, the detectives who investigate these hit-and-run cases. We heard testimony about some horrendous accidents involving death and serious bodily injury. We have over 100 hit-and-run cases a month and thousands of hit-and-run accidents a year. When the people are questioned, we let them know it is a hit-and-run investigation which is a minor offense if the driver comes clean and takes the ticket. Quite often the drivers will do that. We also use the follow-up question, why did you run. Most often, it is because the person is intoxicated or there are warrants for arrest. In those scenarios, the drivers are not receiving a pass for being drunk.

Senator Manendo:

What if there is a case where the victim actually gets out of the car to take off running or drives away? The victim was the person hit in the crash.

Mr. Rutledge:

A person cannot injure himself, be the cause of the accident and leave the scene of his own accident. The statute ensures there has to be a different person who has been injured in the accident. When someone leaves the scene and another person is injured, we do not go into who was at fault at the time. A driver cannot hit someone with their vehicle decide it was the other person's fault and leave the scene and leave the person to die. The statute says if there is an accident and someone else is injured, the person must stay and make sure the victim receives medical attention. Fault of the accident is not yet determined, but people must stay at the scene.

Chair Hammond:

The amendment only increased the penalty. We are not creating new law. If anybody leaves the scene, will these new penalties apply?

Mr. Rutledge:

It must be the driver of a vehicle involved in the crash, and there must be someone injured. The driver must stay.

Mr. Marshall:

The victim is not going to leave because he or she wants to be compensated for being a victim. The people who are up to no good are the ones who flee crashes.

Chair Hammond:

What if the person who was struck had been drinking and impaired in some fashion, so he or she left the scene? This driver does not look around to see if anyone was injured and then leaves the scene. Can this person be charged with these increased penalties?

Mr. Rutledge:

Only if there was an additional person injured. If the driver was the only person injured, they could not be charged with anything.

Senator Manendo:

We certainly do not want the person who was struck and may be injured and disillusioned with things to walk or drive away although this is the person who was hit. We do not want the victim to be penalized, but we may find out this person was the victim when the police conduct their investigation.

Mr. Rutledge:

There are a number of different statutes and lots of case law built up in this area, all designed to ensure these laws only apply to the correct people. This proposed amendment would not change the law in any fashion. The amended language would not make anyone who is not guilty today, guilty after S.B. 245 passes. All this changes, if someone is guilty under the statute, the penalty matches the DUI. It will not cause any additional people to be guilty for the crime.

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Chair Hammond:

Could you provide the Committee members with a written explanation?

There being no further business to come before the Committee, I will adjourn the meeting at 10:27 a.m.

RESPECTFULLY SUBMITTED:

Martha Barnes,
Committee Secretary

APPROVED BY:

Senator Scott Hammond, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	2		Agenda
	B	9		Attendance Roster
S.B. 142	C	6	Megan Comlossy	Work session document
S.B. 229	D	1	Megan Comlossy	Work session document
S.B. 263	E	3	Megan Comlossy	Work session document
S.B. 245	F	2	John T. Jones	Proposed amendment
S.B. 245	G	1	Sean Sullivan	Proposed amendment
S.B. 245	H	5	Steve Yeager	Memorandum
S.B. 245	I	2	Senator Mark A. Manendo	Written testimony from Erin Breen