

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

**Eightieth Session
March 28, 2019**

The Senate Committee on Growth and Infrastructure was called to order by Vice Chair Chris Brooks at 1:35 p.m. on Thursday, March 28, 2019, 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 Chris Brooks, Vice Chair
Senator Moises Denis
Senator Pat Spearman
Senator Marcia Washington
Senator Joseph P. Hardy
Senator James A. Settelmeyer
Senator Scott Hammond

COMMITTEE MEMBERS ABSENT:

Senator Yvanna D. Cancela, Chair (Excused)

STAFF MEMBERS PRESENT:

Marjorie Paslov Thomas, Committee Policy Analyst
Darcy Johnson, Committee Counsel
Debbie Shope, Committee Secretary

OTHERS PRESENT:

Marcia Fajardo
John T. Jones, Jr., Nevada District Attorneys Association
Eric Bauman, Chief Deputy District Attorney, Clark County District Attorney's Office
Debbie Zelinski, Mothers Against Drunk Driving
Gerard Mager

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Chuck Callaway, Las Vegas Metropolitan Police Department

Isabelle Davis

Illona Mager

John J. Piro, Deputy Public Defender, Clark County Public Defender's Office

Lisa Rasmussen, Nevada Attorneys for Criminal Justice

Kendra Bertschy, Washoe County Public Defender's Office

Amy E. Davey, Administrator, Office of Traffic Safety, Nevada Department of
Public Safety

Ken Martin

Tyson Falk, Tow Operators of Northern Nevada

Alex Walden, Chief Public Information Officer, Department of Motor Vehicles

Sean McDonald, MBA, Administrator, Central Services and Records Division,
Department of Motor Vehicles

VICE CHAIR BROOKS:

We will open the hearing on Senate Bill (S.B.) 297.

SENATE BILL 297: Revises provisions relating to driving or operating a vessel under the influence of alcohol or a prohibited substance. (BDR 43-1013)

SENATOR SCOTT HAMMOND (Senatorial District No. 18):

I am here to present S.B. 297 for your consideration. Senate Bill 297 makes various changes relating to driving or operating a vehicle or vessel under the influence of alcohol or a prohibited substance. In general, it extends time periods for determining unlawful activities. It increases penalties for such violations. To explain these changes, I will compare what is in law now to the changes offered in the bill.

Existing law makes it unlawful for a person to have a blood alcohol level of 0.08 or more in his or her blood or breath within 2 hours after driving or physically controlling a vehicle or vessel. In S.B. 297 it will increase that time period from 2 to 3 hours. Those can be found in sections 3, 4, 5, 8, 10, 11 and 12. I will give you just the changes.

The law provides that a person who commits certain unlawful acts relating to driving or operating a vehicle or vessel while impaired by alcohol or a prohibited substance multiple times within seven years, is subjected to increased penalties. This bill extends that period of time from seven to ten years.

The law states that a first offense for driving or operating a vehicle or vessel while impaired by alcohol or a prohibited substance is a misdemeanor. It is punishable by not less than 2 days in jail and a minimum fine of \$400. This bill increases the minimum jail time to 30 days and the minimum fine to \$600.

The law provides that a second offense for driving or operating a vehicle or vessel while impaired by alcohol or a prohibited substance is a misdemeanor. It is punishable by not less than ten days and no more than six months in jail or a residential confinement. This bill makes a second offense a gross misdemeanor, which is punishable by not less than 6 months nor more than 364 days in jail or a residential confinement.

Making this offense a gross misdemeanor takes it outside the existing jurisdiction of the municipal and justice courts. Similar provisions regarding residential confinement are added to the district court chapter of *Nevada Revised Statutes* (NRS) in Sections 14 through 18 of the bill. Conforming changes are made in sections 19, 20 and 24.

Existing law provides that when a person commits vehicular homicide or homicide by vessel it is a Category A felony. Number one, when the person drives or operates a vehicle or a vessel while impaired by alcohol or a prohibited substance. Number two, it proximately causes the death of another person while driving or operating such a vehicle or vessel. Number three, has been previously convicted of at least three offenses concerning driving or operating a vessel while impaired by alcohol or a prohibited substance.

This bill removes the requirements that a person have three such prior offenses in order to commit vehicular homicide.

Existing law provides that a person is guilty of a Category B felony if the person drives or operates a vehicle or vessel while impaired by alcohol or a prohibited substance. It is also through the acts or neglect of that person causing the death or substantial bodily harm to another while operating the vehicle.

This bill removes the reference to death in this section of the law. By moving the requirement for at least three offenses to be vehicular homicide or homicide by vessel, it makes any death considered vehicular homicide or homicide by vessel.

The reason for presenting this bill is because of Ms. Marsha Fajardo. In the second week of the 79th Session in 2017, her son was struck by a driver who was impaired. It happened on Durango Drive and El Capitan Way in Las Vegas. She brought the language for this bill to my attention along with Assemblyman Roberts and Assemblywoman Munk, as we live in her district. We thought the merits of the bill speak for themselves.

It is a crime when you feel it is preventable. We have to condition people to not get into vehicles after they have been drinking. We believe these are common sense measures we can make, to accomplish this.

MARCIA FAJARDO:

I am here today to share my son's story. It is my hope that it will resonate and will help in your decision to pass S.B. 297 in honor of his name. I refer to it as Jaelan's Law.

In February 2017, my son was on his way to school. He was stopped at a stoplight when a drunk driver drove into his car and killed him. As a normal and typical teenager, all my son wanted to do that day was to go to school. He wanted to get an education and make himself a better person, to be with his friends and enjoy high school. A selfish and irresponsible drunk driver took that away from him.

On the morning of February 9, 2017 my daughter and I were about to leave the house when my phone rang. It was about 8:00 in the morning and it was the principal at Shadow Ridge High School where my son attended school.

He informed me that Jaelan was involved in a car crash and was taken to the University Medical Center (UMC) trauma center. I started panicking and asked myself how he could end up at the UMC Trauma Center when he was only going to school that morning.

When I spoke to the doctor at UMC by phone, he would not disclose Jaelan's condition. Instead he told me to come to the hospital, not to rush, bring family members and not drive. I sensed from the tone of his voice Jaelan had died. My mind told me he was dead, but my heart was hoping he would still be alive.

On our way to the hospital, my daughter Googled the accident and found an accident on Farm Road and Durango Drive and started crying. I asked her if it

was Jaelan's crash and she said that a teenager was killed, but it did not mention a name so it must not have been him.

When we arrived at UMC, I was so distraught that we ended up in the wrong area and was told to go to the other side of the hospital. My daughter and I arrived at the front desk. I introduced myself and asked to see Jaelan. Instead of showing me where my son was, we were told to go to a private room and wait. We sat and waited until a group of people which included doctors, nurses, coroners and social workers walked in.

I do not remember what the doctor said. I do not remember the doctor's name and face. All I heard was that Jaelan had a severe brain injury and his heart stopped beating. The coroner asked if I wanted to see him.

When I walked into the secluded room in trauma, I saw Jaelan's lifeless body lying on the bed. I will never forget that sight and the smell. He was covered from his neck down with a white sheet and all I could see was his head and face. I did not even recognize his face. First I thought it was not Jaelan. He still had a tube in his mouth and there was a towel full of blood at the back of his head. There was dried blood and bruises all over his face. His eyes were not completely shut. I kissed his eyes trying to close them. I kissed him all over his face hoping he would wake up and get up.

Jaelan was a loving, affectionate and sweet boy. The night before Jaelan was killed, he hugged me tight while I was sitting on the couch. He asked me to love and kiss him. He grabbed my arms and wrapped them around him. His head was on my chest like he was listening to my heart beat. If I only knew that would be the last time, I would have hugged him all night. When I turned off the lights that night I told Jaelan goodnight and he said, "goodnight mom." That was the last time I heard his voice.

Now any time I sit on my couch at home, there is no more Jaelan to bug or annoy me or ask me for love and kisses. A selfish and irresponsible drunk driver took that away from me.

Jaelan was an exceptional student and hardworking individual. He cared about his education and always aimed for an A grade. He would get upset if he received a B grade. He was only a sophomore when he was killed. He was receiving letters from different colleges inviting him to apply. To this date, I still

receive letters for him. It makes me sad every time we check the mail and there is a letter for him from a college or university.

When he played soccer in high school he received the most improved player award. It was because he worked hard, practiced every day and made himself a better player. Jaelan had big dreams and was very focused on what he wanted in life. He had a beautiful smile and infectious laugh.

He would have been 18 years old and graduating from high school in May of this year. At this time of year, we would have been preparing for prom, graduation and college. Instead I am here talking about his death and pleading for a tougher driving under the influence (DUI) law. My world and my life changed since Jaelan passed away. The thought of not being able to see, smell, hear and talk to him again brings me so much sorrow and pain.

My house feels empty. Jaelan is no longer there and it is quiet. I do not hear his laugh or his jokes any more. I have kept all his dirty clothes in his hamper, still unwashed. Whenever I want to smell him, I go to his room and smell his dirty clothes, his scent is slowly fading. His room is untouched. His sheets are unwashed, all his belongings are still there.

His cell phone service is still on. I do not have the courage to disconnect it. I want to look at my phone and still see his number and face in my contact list. Sometimes I call his number even though I know he will not pick up, just to hear his voice from his voicemail.

I still have the red bag from the hospital containing the clothing he was wearing the day of the crash, in his closet unopened. I was told his clothing was soaked in his own blood.

What happened to my son and other DUI victims is not an accident and it is preventable. There is never a good reason to drive impaired. There are plenty of ride alternatives. There is Uber, Lyft and taxis.

The person who murdered Jaelan was convicted of multiple DUIs. He had no valid license and attended programs ordered by the court, to help him rehabilitate himself. But those things did not help. He continued to offend until he killed my son. He was out free and was able to acquire a vehicle.

Why was he not put in jail on his previous offenses? If he was incarcerated maybe this tragedy could have been prevented. Partial punishments were previously given to him. If we have a tougher DUI law with strict and harsher punishments, it will deter people from offending and reoffending.

What happened to Jaelan could happen to anyone. It could happen to you, to your own children and family, to your friends and community. If you vote no and reject this bill and another child is killed by an impaired driver, what would you say to yourself? What would you say to this child's mother and family and to the community? You have an opportunity to stop and prevent this. Let us send a positive message to our community that we care about their safety and the safety of their children. I ask each of you to vote for S.B. 297 in honor of Jaelan.

JOHN T. JONES, JR. (Nevada District Attorneys Association):

The Nevada District Attorneys Association is in support of S.B. 297, also known as Jaelan's Law. Unfortunately, testimony like Ms. Fajardo's is all too common in this State. In Clark County we have developed a specialty unit that deals specifically with DUIs. In Las Vegas our Team Chief of our DUI unit, Eric Bauman is here to continue our testimony on the bill.

ERIC BAUMAN (Chief Deputy District Attorney, Clark County District Attorney's Office):

I am the Chief of the vehicular crimes unit with our office. I prosecuted the individual who took Jaelan's life. This bill would show that our State has begun to take this problem seriously. I would like to divide it up into three rough sections and discuss them individually.

First, sections 3, 4, 5 and 8 deal with the blood draw requirements in DUI alcohol cases. At the present time we have to establish that a person is 0.08 or more within 2 hours of driving time. This bill would change that to three hours. It would make prosecuting these cases easier for us. Frequently officers have to get search warrants to get blood draws. This is a time-consuming process. Often times there are cases in rural areas where individuals need to be transported to a phlebotomist. We bump up against the two hour limit quite regularly. Sometimes that is the single greatest reason why we are unsuccessful in prosecuting DUI cases.

Section 2 covers the first and second offense DUI changes to the penalties. With the first and second offenses, the penalty phases are what I would constitute as inconveniences to the offender. There are fines and classes, which can now be satisfied online, and sometimes short driver's license suspensions.

Senate Bill 297 would be changing the law to make more significant penalties; things that can alter a person's behavior. On a first offense it is mandatory they serve 30 days in jail. That is the kind of thing that will get someone's attention. It would make them think twice about engaging in this kind of behavior in the future.

Section 3 is an important section of the law which would be separated out. As of now, DUI causing substantial bodily harm and DUI causing death are punishable under the same statute. They are punished within a range of 2 to 20 years. I think it is important and a long time coming, we separate those two offenses.

We would keep DUI causing substantial bodily harm punishable by a non-probation range of 2 to 20 years. Then DUI causing death to a charge of vehicular homicide. This raises the punishment level for taking someone's life in a DUI offense to the 10 to 25 years, or 10 to life with the current vehicular homicide.

This puts us toward the higher range nationally and it would show that Nevada takes DUI seriously. I would argue in favor of passage of the bill.

SENATOR HARDY:

How many people do we have in jail or prison now who would have been affected by greater than ten years?

MR. BAUMAN:

The number of people currently serving in prison who would have received a harsher sentence under this law, I do not know. I can get that information and let you know.

DEBBIE ZELINSKI (Mothers Against Drunk Driving):

It is an honor to work with the committed coalition of Legislators and traffic safety planners to eliminate this 100 percent preventable crime. It is a violent crime with the drunk and drugged driving. I am thrilled about the proposal for

the two to three hour increased time limit for getting blood or breath samples. I believe this will be valuable for our law enforcement. There are times an arrest may not be made because the draw or breath test was five to ten minutes later than the two hour allowable limit.

Extending the period of time from seven to ten years is another area that is important. I conduct the Victims Impact Panel (VIP) in the Sparks area on a monthly basis. We always ask people how many DUIs they have had. It is amazing the times we hear that, "well I have two, but the second is after the seven years." If we increase it to the ten year, we can capture more.

Increasing the term of imprisonment or residential confinement to not less than 6 months not more than 364 days, the offender will hopefully seek counseling or treatment. That can possibly help them with their behaviors that make them re-offend.

We need stricter laws against offenders and not allow loopholes for attorneys to jump through to allow their clients ways to dodge paying for their offenses. I deal with victims on a daily basis who feel the laws are there to protect the offenders and not the victims. They feel like they are being re-victimized.

My daughter was also killed by a drunk driver in 1992. At that time, drunk or drugged driving was not considered a crime. It was considered an accident. It was not an accident then and it is not an accident today. You as lawmakers have made substantial strides so that victims do not become more victimized by the laws that are currently in place.

I have heard that this bill is considered aggressive. I do not believe that is so. I believe it is a start to change laws so that offenders are strongly punished. This bill may not completely stop offenders, but it is a step in the right direction. It has also been argued that the bill would allow the offender to have a jury trial. Let them go before the citizens where they live. Let them hear the horrendous cases caused by individuals who should be sent to jail for their selfish actions. I support the passing of this bill.

GERARD MAGER:

I am the parent of a 17 year old who was killed in a DUI crash involving marijuana in 1996. My wife and I were involved with getting the current DUI law for marijuana, the two nanogram, five nanogram law passed in 2001. Our

son was born on Christmas Day and was killed on Valentine's Day. We are serving a life sentence, unlike the people who commit these crimes. For my wife, it was her only child and she will never get over it as will I.

I am supporting this bill but have a couple of questions concerning the area of penalties. In the vessel section it states that homicide committed while operating a vessel is a Category A felony. The penalties are life in prison with the possibility of parole, with a minimum of ten years. But in the driving section, that is not in there, and it should be. It does not show any changes to that section in there from the vessel section.

It is on page 10, line 8 it states "Proximately causes the death of another person while driving or in actual physical control of a vehicle on or off the highways of this State," that is where it ends. There is no penalty in there. That needs to be corrected.

I had a concern with the change from two to three hours, but if the district attorneys say they are going to get more convictions, then I support that. I was concerned if they went to three hours for the draw, some of the people's levels would drop below the per se law. We would lose those convictions, but will defer to the district attorneys on that.

I like the idea of a gross misdemeanor in the second conviction. I am concerned that if they do that, someone will plea it down or not get a conviction for it, then we do not have a record of a second offense. This will give them another chance to have a third or succeeding, which does become a felony. They could get an extra DUI out of this, but if the district attorneys are satisfied they can handle this and want to do these jury trials, then I will stay with their choices. I am in support of the bill, but definitely would like to see the penalty section corrected.

DARCY JOHNSON:

The Category A felony language does exist. It is just in a different section. Vehicular homicide is punished in the vehicle section identical to the vessel section. It is just structured differently within the chapter. It is in NRS 484C.440.

CHUCK CALLAWAY (Las Vegas Metropolitan Police Department):

The Las Vegas Metropolitan Police Department is here in full support of this bill.

ISABELLE DAVIS:

I am one of Jaelan's friends. I am all for S.B. 297. I was at school the day that I heard Jaelan had passed away and it broke my heart to hear it. On February 9, 2017, Jaelan Fajardo at the age of 16 was taken from us.

Every day almost 30 people in the United States die from drunk driving crashes. That is 1 person every 48 minutes in 2017. Yes, this has fallen by a third in the last three decades. This claims the lives of at least 10,000 people per year. It is said that one-third of all traffic crash fatalities in the United States involve drunk drivers with blood alcohol content of 0.08 or higher. In 2017, there were approximately 10,874 very preventable crashes. For a 10 year period, 2006 to 2016, more than 10,000 died every year in a drunk driving crash.

The tight enforcement of these drunk driving laws since 1980 have reduced alcohol impaired crash fatalities to 29 percent of all crash fatalities. The total number of traffic fatalities in 2017 was 37,133.

I spoke with my mother who works for the city jail and was informed of a scary but real life truth about how drunk drivers are treated. Every hour at least three people are arrested for drunk driving, many of whom can barely stand or walk through the doors. They usually spend less than 24 hours in jail and at the most spend 15 minutes. They are released on their own recognizance. If it is a drug related DUI they are not mandatorily held there for 24 hours. Both can kill someone, but only one is taken more seriously.

We are here to be the voice that Jaelan does not have any more. Senate Bill 297 is his voice.

Our judges have a program they send drunk drivers through. It needs to be better constructed. As long as those individuals pay their fines and follow what they have been told to do, their DUIs are reduced to reckless driving. Why are they allowed to get a slap on the wrist on something they could have prevented?

This is why I am in favor of S.B. 297. Two long years of pain and hurt just because one person thought they were okay to drive impaired. Bartenders have taught to limit how many drinks they sell people, yet we still have moments like these. Moments we cannot get back. Life is easy to give and just as easy to take away.

Please help us to reach an outcome that helps us, not just those who have lost a loved one, but for those who go through the pain and question, "why them?" I just want Jaelan to be at peace and know that we did this for him.

ILLONA MAGER:

I lost my only child 23 years ago in a car crash involving tetrahydrocannabinol. I volunteer with Northern Nevada Mothers Against Drunk Drivers, Stop DUI and Northern Nevada DUI Task Force for these past 23 years. I do VIPs, I speak in Fallon, Fernley, Carson City and Reno. I support this bill and feel it is very important.

JOHN J. PIRO (Deputy Public Defender, Clark County Public Defender):

It is never easy to come up in opposition on bills like these, it is a difficult issue. I will say that we do take DUIs seriously and to comment on Mr. Bauman's point, he said raising this would put us toward the higher range nationally. It means we would be out of the range with everywhere else in the country.

The Department of Justice has looked at deterrents and have determined that harsh penalties and increasing penalties do not increase deterrents. What does increase deterrents is swift sanctions.

I will let the Committee know there is a bill that is being heard in the Assembly right now, Assembly Bill (A.B.) 316, which Assemblywoman Tolles is sponsoring. That is going to be the DUI 24/7 Sobriety Program. It was studied by the Research and Development (RAND) Corporation and had good results. That is an evidence-based reform that actually has deterrent abilities because of the swift sanctions that are attached to that program.

ASSEMBLY BILL 316: Revises provisions relating to driving under the influence of alcohol or a prohibited substance. (BDR 43-312)

The changes brought about with this bill by raising the penalties are not evidence backed, when we talk about deterrents. No one testifying in support of the bill spoke about how increasing these penalties have been shown to stop, lower or change things. There is no data or statistics reported.

What happens when we want to fix some of our problems, we keep using the same hammer of increasing penalties with no data showing that increasing the penalties is fixing the problems.

As far as the per say time limit from two to three hours, the Supreme Court recognized in the case *Missouri v. McNeely* in 2013 that telephonic search warrants are actually fast and useful. I do not believe that the rural jurisdictions lack cell phones. We always talk about the rural jurisdictions as if it is a place where no technology exists whatsoever.

There are plenty of people in our community who get DUIs. I am not saying it is okay, but we are talking about judges, lawyers, teachers and legislators who have received DUIs in their lifetime. Increasing that first penalty to 30 days means the person will lose their job, their livelihood, their housing, have their utilities shut off, lose their phones, lose all of their material possessions and maybe lose custody of the children. If that is a policy decision that the Legislature wants to make, it is on this Legislative body to do so.

When we talk about lawyers and loopholes, I will say that the Constitution is not a loophole and due process is not a loophole. Our founders wrote those things into our Constitution when forming the Country because we needed those protections. It was not to give more protections to a person who committed the crime; it is a recognition that when you strip rights from somebody who is guilty you also strip rights from the rest of us who are not guilty. Those rights were placed in the Constitution to protect all of us, not just the guilty.

There are some other concerns with the bill and that is why the Clark County Public Defender's Office is in opposition to the bill. The look back period of ten years is also problematic in this. If you can think about yourself ten years ago, are you the same person today that you were ten years ago? I do not think so; I think there are significant changes.

When we look at the seven years, what we are trying to do is penalize people who had the opportunity to get help, but never utilized those tools. What we may catch is the person who has been living good for most of their time and then relapsed. That is what we may wrap up with the ten years look back provision.

Those are some of our concerns with this bill. I want to thank Senator Hammond for meeting with us and I am sorry for those families that have lost children due to impaired drivers.

LISA RASMUSSEN (Nevada Attorneys for Criminal Justice):

I first want to say my heart goes out to the people who have been victimized by impaired drivers. In particular Jaelan's mother, and I am sorry for everyone who has testified here today who has lost someone.

I think it is important that you understand that our job as attorneys, as Mr. Piro said, is not to help our clients dodge consequences. It may be unpopular, but our job as criminal defense lawyers is to serve an important check and balance on our criminal justice system. It is also to make sure the prosecutors are not making allegations that may not be entirely true and to see that justice is done.

It is always uncomfortable to be in this position where it feels that we are a killjoy against what I know is well-intended legislation. I understand why this bill was brought forward and appreciate Senator Hammond for doing so. However, I have concerns. I will go through some of the specifics.

One issue is that the increase to the ten year period makes some sense. The problem is thousands of people have already pled to DUIs in this State. They have signed a waiver that they understood if they committed another offense within seven years it could have enhanced penalties. No one told them that they are on notice and the period could be increased to ten years.

We have an inevitable result problem that would be applicable to people who have pled guilty before this. I believe it could be handled with an amendment that would not apply it retroactively. But I do not know if there is an appetite for that. That is a serious concern, nobody is on notice and it is a matter of due process.

With regard to the ten years, I do not know if there is any first-hand evidence that shows that this increase in period is going to help. I can tell you as a practitioner I have never had someone who has come to me with a DUI case, where I looked at it and said, "whew, thank God your last one was eight years ago."

The reality is most of them are within a year or at most five. People who are repeat DUI offenders are most commonly reoffending within a year, sometimes while their other case is still pending. It may be within three to four years and five years maximum.

I am trying to look for areas where we can work with the bill sponsor and the intent with the bill. I do not have any particular issue with making a second DUI a gross misdemeanor, but have an issue with the minimum penalties. Thirty days mandatory minimum on first DUI would take Nevada completely outside of any penalty imposed by any other state across the country. There is no other state that does anything like that. Every other state has penalties of up to a year, unlike ours which is up to six months.

I have been coming before Committees in this Legislature on behalf of Nevada Attorneys for Criminal Justice since 2003. Every session there is a bill to increase penalties for DUI and to add other requirements and factors. Almost all of that legislation has been adopted. We have added requirements for victim's impact panel, for coroner's classes, we have increased fines and added Secure Continuous Remote Alcohol Monitoring bracelets.

With the last session we added the ignition interlock device for everyone who is just arrested, not even convicted of a DUI, including first time DUIs. The paint is barely dry on that. That bill for the interlock device just went into effect on October 1, 2017. We have not even given you, the Legislative body, the opportunity to see if this is working and see if it is decreasing DUIs.

This is so extreme it is untenable. Thirty days for a first time DUI is off the chart. Six months for a second DUI is high, but I do not have as much complaint about that as I do with the 30 days for a first DUI.

Moving it from a Category B to a Category A felony is a concern. The Category A felonies are what is reserved for some sex offenses and murders. Category A felonies are reserved for the most severe serious felonies in our society and for a reason. They reflect intent and malice and an intent to do harm. Every DUI death is a tragedy. However, there is never an intent in a DUI homicide or vehicular manslaughter case where someone says, "I am going to drive drunk and I hope I kill someone."

That just does not happen. The decision to drive while drinking is a bad decision, but it never culminates or begins with a decision to do harm to someone. In the rare cases where it does, it is charged as a murder by the district attorney's office.

There are cases where people have killed someone with their vehicle and are charged with murder with the use of a deadly weapon; the weapon being the vehicle. Those are already charged as Category A felonies and the district attorney's office has the ability to do that.

There is no evidence that making this a Category A felony with a life sentence is going to address the problem.

It would be fine to separate the statute out to where you have the bodily harm in one piece of the statute and the DUI resulting in death in another statute. Making it this Category A felony with 10 to 25 and 10 to life is too extreme. I am willing to talk with Senator Hammond to see if we could reach some middle ground on this bill, but that is my opposition.

KENDRA BERTSCHY (Washoe County Public Defender's Office):

The Washoe County Public Defender's Office wants to echo the statements of my colleagues. I also want to provide the Committee with some additional information regarding the RAND study.

The 24/7 Sobriety Program is something that is currently being implemented in Washoe County. In 2017, there were approximately 243 participants in that program. Of those, 99.74 percent of the tests that were administered to participants were negative for all controlled substances. Not specifically for alcohol, but they also tested for drugs as well. So the compliance rates are stunning with that program. With that I would just insert those statements made by Mr. Piro.

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

Senator Hammond contacted our office for some data related to DUI fatal crashes in Nevada. That data have been provided and I am available if you have any questions about DUI fatal crashes in Nevada.

SENATOR HAMMOND:

I will work with the opposition to the bill as it is important. There were a lot of facts and figures used with the last three testifiers. I know Mr. Bauman in Las Vegas does this for a living. There are a couple of these that he could clear up.

MR. BAUMAN:

The statement about rural jurisdictions, I was not referring to the impossibility of the people in rural jurisdictions to get search warrants. I was mentioning the fact that in rural jurisdictions, people are arrested and have to be transported a distance to get to a phlebotomist to have blood drawn. That can be time consuming and push cases over the two hour limit.

As far as the comment that most people get their arrests in rapid succession, I have been prosecuting DUI cases for 22 years and that is simply not the case.

SENATOR HAMMOND:

Most of us do change over time. Ten years is a long period. But if you do happen to get another DUI in nine or nine and a half years, I guess it proves that you have not changed much. It does need to go on the record and it does have to contribute to that character that demonstrates who you are.

I was a teacher for 16 years and one of the things I realized was the students usually modify their behavior according to you as a teacher. If you believe in having that strict discipline in your class, you can be that teacher and can still be fun. The kids know that if you are going to have a test on a certain day, they had better expect a test on that day. If you are a teacher who says he is going to have a test on Thursday, but they can talk him out of it, they are going to modify their behavior.

Having penalties early we might be able to modify their behavior. We are trying to get to those people who start to develop those bad habits. I know that the opposition mentioned many devises that are evidence based, and there are many alternatives, like Uber, Lyft and others. Those can be used instead of making that choice to drink. Nobody chooses to hurt someone, but they get behind that wheel and that choice is removed. The consequences are there for their actions.

VICE CHAIR BROOKS:

We will close the hearing on S.B. 297. We will now open the hearing on S.B. 379.

SENATE BILL 379: Revises provisions relating to electronic gates that provide access for vehicular traffic. (BDR 35-1047)

SENATOR HAMMOND:

Senate Bill 379 provides that any gate operated by electrical power and provides access for vehicular traffic, must comply with Underwriters Laboratories, (UL) Inc. If the gate is installed on or after October 1, 2019, it must meet the most recent edition of the UL Standard for Safety 325.

The UL 325 standard is a nationally recognized industry standard which sets forth criteria for the safe operation of new powered vehicular gates. Included in the UL 325 standard are entrapment, protection options, specifications for audible alarms, printed warning labels and requirements for the guarding and screening of gate components. Pedestrian gates are not included in the UL 325 standard.

The UL 325 standard was first published in 1973 by the UL, which has developed safety standards related to the design and manufacture of consumer products for over a 100 years.

Gate operators are required to have two independent means of obstruction sensing. These must be monitored for presence and operation prior to each gate cycle.

In an effort to protect the public and increase safety, the Legislature passed legislation in 1999 which made the UL 325 standard mandatory in Nevada. There have been several updates to the standard in the past 20 years. To address these and future updates, S.B. 379 requires gate operators that provide access for vehicular traffic to use the most current UL 325 standard. This will comply with the most recent edition of the UL 325 standard.

KEN MARTIN:

I am a licensed door and gate contractor in Las Vegas. I also sit on the national UL 325 Standards Technical Panel. Nevada is known nationally as a great supporter of safety.

In 1999, former Senator William O'Donnell sponsored the original bill because his wife had been involved in a serious injury accident. He felt it could have been prevented if there were safety devices in place.

The purpose of the UL 325 standard is to make safety devices on automatic gates mandatory. It is specified in the International Building Code (IBC), which the State and municipalities have adopted.

The NRS specifies the UL 325 standard effective March 1, 2000. I pointed out to Senator Hammond there have been many additions to that standard since that time. He sponsored this bill to bring it up to date and bring it into harmony with the IBC. The IBC does not specify an addition of the standard. It just specifies it will comply with the UL 325 standard.

I am here in support of this bill for myself, not representing any organization and encourage you to vote for it.

VICE CHAIR BROOKS:

We will close the bill on S.B. 379. We will open the hearing on S.B. 394.

SENATE BILL 394: Revises provisions relating to rules of the road. (BDR 43-826)

SENATOR MOISES DENIS (Senatorial District No. 2):

I am presenting S.B. 394 which relates to traffic laws. Each legislative session we approve new laws, as well as amend existing ones. Educating the public about new rules of the road ensures that our roads and communities are safe.

There was a bill passed in 2017 regarding putting license plates on scooters. I now see scooters that have license plates on them. I have also seen those that do not have a license plate on the scooter and am thinking they do not know the law.

I remember one day as I was heading downtown toward the freeway. One of these scooters passed by me. I noticed the scooter ride into the lane to get on the freeway and it went up onto the freeway. This is a scooter that moves 35 miles per hour; I could tell because he had the plate on it. I was actually afraid for this person because it is not safe for a scooter to be on the freeway. The law states scooters that are driving that speed cannot be on the freeway.

I went to a safety forum that was being held. They were discussing different options that could make our roads safer. When a person needs to get a driver's

license, they have to take a written examination that they know the laws. Then they do a driving skills test.

For the rest of their lives they do not have to take another test on the laws. They do not have to take a driver's skills test again, unless their driver's license is revoked or suspended.

I was trying to think of a way that we could make information available to drivers so they could be aware of changes that have been made to the laws. As we drive down the roadway, we all see people in their vehicles driving and talking on their cell phones, yet that law passed ten years or more ago.

I had an idea that perhaps when you renew your driver's license you could go online and take a test. It would then let you review all the new laws. However, that might be a little too hard to do and cost a lot of money.

I came up with this concept. Senate Bill 394 requires the Department of Motor Vehicles (DMV) to prepare and disseminate information to the public regarding new and amended traffic laws. This information must be provided on the DMV internet website in the manner designed to inform and educate the public about new and changed traffic laws.

The DMV may also disseminate this information in any other manner deemed appropriate. It may include any information provided to a person who is applying for the initial issuance of a driver's license or instruction permit. Other similar information may be mailed or sent via electronic communication to a licensed driver or an owner of a registered motor vehicle. The DMV may consult with the Office of Traffic Safety of the Department of Public Safety in carrying out these requirements.

Basically, it requires the DMV to put together all the laws we pass concerning motor vehicles, make it available on their website and provide a link. It gives the DMV other ways of getting information to the drivers so they are aware of these laws that have been changed.

SENATOR SETTELMAYER:

This could get people trained, such as if there are two lanes of traffic, which lane they should be driving in. What are we going to do with the laws that we passed that require *Nevada Administrative Code* to be put into effect? There are

times the DMV needs more time to get these programs and license plates up and working due to circumstances. We may have passed the law this Session, but it may take a year or two before a particular law goes into effect. What are your thoughts on how we are going to do that?

SENATOR DENIS:

I believe the intent is to make sure that the driver gets the information to make them a safer driver and to be able to follow the law. In some cases, DMV could post the law even though it is still a pending regulation, but in some cases it may need to wait until the regulation is done.

The intent is to make this information available to drivers. The DMV has the ability to do that. This puts it all in one place, giving an opportunity to remind ourselves that we need to inform the public.

SENATOR SETTELMAYER:

Sometimes I wish we had more weighted questions on the driver's license test. With certain questions if it is not answered correctly, it is an automatic failure.

TYSON FALK (Tow Operators of Northern Nevada):

I just want to be on record for support. There are a lot of laws that change relative to road safety. Our truck drivers are out on the road and it is important for people to know what the laws are and that they are changing.

ALEX WALDEN (Chief Public Information Officer, Department of Motor Vehicles):

The DMV is neutral on this bill because we already do a significant amount of education to consumers. The DMV has our driver's handbook. We are modernizing it and update it throughout the year. We work with the Office of Traffic Safety in conjunction with the Strategic Highway Safety Plan and the Nevada Executive Committee on Traffic Safety to promote all of the laws.

VICE CHAIR BROOKS:

We will close the hearing on S.B. 394 and open the hearing on S.B. 356.

SENATE BILL 356: Authorizes the registration of certain retired military vehicles.
(BDR 43-280)

SENATOR HAMMOND:

I had a constituent contact me and was having difficulty registering his half-track military vehicle. It is not something everyone drives and not something he drives every day. He wants to preserve it as more of a historical museum on wheels. He uses this in parades and other special events.

His frustration is with the DMV and I would like to be that bridge between the DMV and angry constituents. The DMV does a great job, but they are what we call the bureaucracy. They get used to doing one thing and do that one thing well. They live in that box. I tried to explain that to my constituent.

What I realized is DMV needs to create another box to work in. That box would be to help the people who are trying to preserve a piece of history, so they can demonstrate to others how the half-track works.

That is the reason for S.B. 356. What S.B. 356 does is require the DMV to prepare and issue special license plates for retired military vehicles that are at least 20 years old, on receipt of 25 applications. The owner of the vehicle will be required to pay an initial \$25 fee for such plates and a \$10 fee for a renewal sticker.

After the initial fee of \$25 and annual renewal fee of \$10, there is no annual registration fees and governmental services tax imposed if the owner of the vehicle submits an affidavit. The affidavit indicates the vehicle will (1) only be used for exhibitions, parades, charitable events, fund raisers or similar activities, (2) is safe to be operated on the highways of this State and (3) will be at least 20 years old on the date of the application for the special license plates.

A retired military vehicle may not be operated on the highways of the State unless the vehicle complies with certain requirements regarding size, weight and load. The tires on the vehicle must meet certain tire pressure requirements and if the vehicle has tracks, those be covered with a band to protect the highway from damage.

Finally S.B. 356 makes other various changes, including removing "retired military vehicle" from the definition of foreign vehicle. This removes the inspection requirement authorizing the holder of a Class A non-commercial driver's license to operate a retired military vehicle regardless of the vehicle weight. It exempts the special license plates authorized in this bill from certain

requirements, such as a recommendation from the Commission on Special License Plates as other special license plates require. The bill will exempt military vehicles from certain emissions testing requirements.

VICE CHAIR BROOKS:

Is there a limitation on miles that it can travel in a year on the affidavit process? I can envision a scenario where you could do a parade or special event every day as a business. I see a business in downtown Las Vegas has military vehicles that take tourists out and about and use them for entertainment purposes. Would this scenario fit that?

SENATOR HAMMOND:

There are no restrictions on it because the affidavit states you will only be operating these for certain types of events. Sometimes it is getting that vehicle to the event. Many of the vehicles we are talking about are road-worthy and have no problems getting around. With many of these vehicles, they put them on trailers if they do an event further away. These are just show vehicles and we did not limit the miles, because it is inherent in the fact that they will only be using them at special events.

SENATOR DENIS:

Have you anticipated how many of these special license plates would be needed?

SENATOR HAMMOND:

I do not know, but we have some people in Las Vegas from one of the clubs who may be in the audience to answer how many there are in the State. Based on the two times I have been in parades now with the clubs, I am going to estimate 50 to 60 vehicles. Some of these people have multiple special vehicles. Some are being restored and can only drive one at a time in a parade. We could be talking up to 100 of these special vehicles.

SENATOR DENIS:

This is a one-time fee? You get the plate and then you do not have to renew it every year, correct?

SENATOR HAMMOND:

I believe you are correct, and I think that was in my remarks. It is a \$25 fee and a \$10 renewal sticker. However, there is no registration fee or governmental services tax every year.

SENATOR DENIS:

Is the renewal an annual renewal?

SENATOR HAMMOND:

Yes.

SENATOR HARDY:

Do any of these vehicles have a functional odometer?

SENATOR HAMMOND:

Yes, I have been in a few that do have functional odometers. I cannot speak about all of these vehicles.

SEAN McDONALD (Administrator, Central Services and Records Division, Department of Motor Vehicles):

The DMV is here in a neutral position. I had an opportunity to meet with Senator Hammond and had one request. The DMV would like to extend the implementation date to January 1, 2020. That would give us enough time to outline the regulations in the bill. It gives the DMV time to work on the design and test work that is required to manufacture the new license plates for these vehicles.

SENATOR DENIS:

Does the fee cover the cost of designing and manufacturing the plates even if you do not have to produce a lot of them?

MR. McDONALD:

Yes, it would supply the funds that we would use to supplement the special plate fund.

SENATOR SETTELMAYER:

I assume that part of this bill is to establish a better protocol for these rather unique vehicles. It reminds me of when we had to have discussions with DMV

about implements of husbandry for registering with special license plates. Will this allow you a streamlined process?

MR. McDONALD:

Yes. Part of the benefit is the way the bill is drafted is having that regulatory ability. On passage we would have those discussions prior to implementation on January 1, 2020. At that point, what is decided could be finalized into internal policy and make it Departmentwide.

SENATOR HAMMOND:

I want to thank Mr. McDonald and everyone at DMV. The DMV is good at this, and I appreciate your question Senator Settlemeyer, because it is exactly what we want. This is a great start, because now these vehicles will have a designation and people will know. It is also a chance for the DMV to create a new box and start regulations.

Every time one of these people with these type of vehicles go to the DMV it will not be such a hardship. We are streamlining it, and DMV has been good about talking through this as we try to preserve history.

SENATOR WASHINGTON:

Can these special vehicles be stored in your neighborhood? We do not want them to become a blight to the community. I know it is similar to a souvenir. Is there a limit as to how many you can acquire?

SENATOR HAMMOND:

There are limitations that are more geographic. If you are in Clark County with zoning regulations, you cannot have the vehicle or the parts to the vehicle all over your property. If you are in a rural area, the regulations are not as strict and some of these people own several of these and are trying to restore them. Most of the limitations exist in only Clark or Washoe Counties.

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VICE CHAIR BROOKS:

We will close the hearing on S.B. 356 and there being no further business, the meeting is adjourned at 2:59 p.m.

RESPECTFULLY SUBMITTED:

Debbie Shope,
Committee Secretary

APPROVED BY:

Senator Chris Brooks, Vice Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit / # of pages		Witness / Entity	Description
	A	1		Agenda
	B	5		Attendance Roster