

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Eighty-first Session
May 28, 2021**

The Senate Committee on Judiciary was called to order by Chair Melanie Scheible at 1:11 p.m. on Friday, May 28, 2021, Online and in Room 2135 of the Legislative Building, Carson City, Nevada. [Exhibit A](#) is the Agenda. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Melanie Scheible, Chair
Senator James Ohrenschall
Senator Dallas Harris
Senator James A. Settelmeyer
Senator Ira Hansen
Senator Keith F. Pickard

COMMITTEE MEMBERS ABSENT:

Senator Nicole J. Cannizzaro, Vice Chair (Excused)

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nicolas Anthony, Counsel
Pat Devereux, Committee Secretary

OTHERS PRESENT:

Amy Davey, Administrator, Office of Traffic Safety, Department of Public Safety
Sean Sever, Administrator, Division of Management Services and Programs, Department of Motor Vehicles
Zach Cord, Management Analyst, Department of Motor Vehicles
Danielle Hafeman, Coordinator, Ignition Interlock Program, Office of Traffic Safety, Department of Public Safety
Kendra Bertschy, Deputy Public Defender, Washoe County Public Defender's Office

John Piro, Chief Deputy Public Defender, Clark County Public Defender's Office
Jim Hoffman, Nevada Attorneys for Criminal Justice

CHAIR SCHEIBLE:

We will open the hearing on Assembly Bill (A.B.) 427.

ASSEMBLY BILL 427 (1st Reprint): Revises various provisions relating to driving under the influence of alcohol or a prohibited substance. (BDR 43-373)

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

You have my introductory remarks ([Exhibit B](#)) on A.B. 427. The bill would strengthen Nevada's DUI programs and laws by bringing us back into compliance with federal requirements for repeat DUI offenders. Noncompliance has impacted federal highway funding in the State.

The bill corrects language in A.B. No. 222 of the 80th Session, A.B. No. 236 of the 80th Session and A.B. No. 316 of the 80th Session to allow Nevada to comply with federal DUI sentencing, drug and alcohol testing, driving restrictions and criminal records requirements. You have a noncompliance letter ([Exhibit C](#)) from the National Highway Traffic Safety Administration (NHTSA) laying out its review of A.B. No. 222 of the 80th Session, A.B. No. 236 of the 80th Session and A.B. No. 316 of the 80th Session. The NHTSA found that the bills' provisions do not comport with federal requirements.

Assembly Bill No. 222 of the 80th Session and A.B. No. 236 of the 80th Session allowed for sealing of DUI records before the minimum five-year required period described in Title 23 CFR section 1275. In A.B. No. 316 of the 80th Session, second and third-offense DUI offenders are allowed a restricted driver's license without also requiring an ignition interlock device (IID) if the driver is in the Department of Public Safety's (DPS) 24/7 Sobriety Program.

The Nevada Department of Transportation federal highway funds are subject to a penalty transfer of highway construction funds into other programs. In the first year of the penalty transfer, \$8 million was required to be transferred to funds designated for traffic safety programs.

Assembly Bill 427 also addresses the need for proper oversight of IIDs. Senate Bill No. 259 of the 79th Session established an IID requirement for

DUI offenders while allowing them to retain their driver's licenses. Since 2017, we have learned a lot about the proper, effective and responsible way other states handle IID programs. Program participants are ensured of a fair and efficient usage process and follow-through if there are issues with program compliance or vendor service.

Section 11 of A.B. 427 would designate DPS as the agency to adopt regulations for proper oversight of vendors, including collecting fees to cover IID program costs. The DPS would only collect fees from vendors, not program participants, which is a common practice in other states. Nevada has approximately 3,800 IIDs installed. However, there are no statutory regulations in place to ensure best practices are being followed.

The Department of Motor Vehicles (DMV) has requested changes to language in A.B. 427 to align its licensure practices with *Nevada Revised Statutes* (NRS). Specifically, DMV would like to clean up provisions causing issues with effective programming of restricted driver's licenses and time frames for IID requirements. We received a letter of support for A.B. 427 from the Coalition of Ignition Interlock Manufacturers.

SEAN SEVER (Administrator, Division of Management Services and Programs, Department of Motor Vehicles):

You have my introductory comments ([Exhibit D](#)) and proposed amendments to A.B. 427. Sections of the bill per [Exhibit D](#) would simplify DMV administrative hearing processes and clarify NRS language to make the IID program more understandable.

SENATOR PICKARD:

How do the requested DMV changes correspond to criminal or other cases? Does DMV wait for drivers' criminal cases to be resolved or are they concurrent with DMV hearings?

ZACH CORD (Management Analyst, Department of Motor Vehicles):

The DMV administrative process is concurrent with criminal trials. If a driver is pulled over for DUI and tests positive for an illegal per se breath alcohol concentration (BAC), after his or her conviction, he or she goes through the DMV process and makes up the rest of his or her punishment.

SENATOR PICKARD:

What if a driver is not convicted or instead makes a plea offer? Is it handled similarly to a civil proceeding in which offered pleas are not allowed as evidence of a per se violation that requires a separate evidentiary hearing? Will simplifying NRS change that process?

MR. CORD:

I do not know.

SENATOR PICKARD:

I practice civil law, which is where these issues usually arise. If a driver's license is revoked or suspended, does that become evidence? Would A.B. 427 create an end run around the offered plea? Section 5, subsection 1, paragraph (b), subparagraph (2) talks about "Failure to stop and render aid as required pursuant to the laws of this State." I did not think NRS requires anyone to aid someone else as a Good Samaritan.

MS. DAVEY:

I do not know if that is in other places in NRS.

SENATOR PICKARD:

I know NRS is indemnifying a person who causes additional injury while attempting aid before the arrival of first responders. If the bill creates new policy, I want to be sure that is clear. I will not support the undoing of Good Samaritan protection.

CHAIR SCHEIBLE:

There is a State criminal law requiring anyone involved in a vehicle accident to render aid.

NICOLAS ANTHONY (Counsel):

The Chair is referring to NRS 484E.030. While the language in section 5, subsection 1, paragraph (b), subparagraph (2) of A.B. 427 looks new, it was simply moved from page 7, line 1 of the bill.

SENATOR SETTELMAYER:

If you are at-fault in a vehicle accident, you must render aid. If someone hits you, you do not necessarily have to render aid. If you have training and a

license in a medical procedure like cardiopulmonary resuscitation, you must render aid.

Does A.B. 427 change the IID procedure so DUI offenders only have to blow into it twice daily, not every time they drive? If so, what is the reasoning? There are only two companies in our State that manufacture IIDs. Would the bill allow for more vendors to participate in the market?

Ms. DAVEY:

Assembly Bill 427 provides for two types of DUI treatment programs: the 24/7 Sobriety Program and the IID program. The latter requires people to blow into the device every time they start their vehicles. The twice-daily testing that Senator Settelmeyer referred to is the 24/7 Sobriety Program established in the Eightieth Session. It uses a different, twice-daily test.

DANIELLE HAFEMAN (Coordinator, Ignition Interlock Program, Office of Traffic Safety, Department of Public Safety):

There are 11 vendors of IIDs certified to operate in Nevada and 30 waiting to do so.

SENATOR SETTELMEYER:

There are only two main national manufacturers of devices approved for our State. Are there 11 different testing entities here?

Ms. HAFEMAN:

Yes.

SENATOR SETTELMEYER:

Sadly, I have met individuals who have had too many DUIs due to alcohol or other substances and must wear a SCRAM bracelet that monitors compliance 100 percent of the time. Why must they also have the additional expense of an IID?

Ms. HAFEMAN:

Assembly Bill 427 is an attempt to separate out the two BAC monitoring methods in NRS. If a person does not wear a SCRAM bracelet, he or she must breathe into an IID when starting a vehicle. Regardless of which of the two programs they are using in postconviction, they must post 185 days after any license revocation and have the vehicle IID. During that period, they may

have the device removed and enter the restricted-license 24/7 Sobriety Program that allows them to wear the bracelet and be tested twice daily.

SENATOR SETTELMAYER:

It does not matter what DPS wants; 100 percent of the time, the judge orders people to wear SCRAM bracelets sometimes after two or three DUIs. In a situation like that, why are we also requiring offenders to cover the additional expense of an IID? Sometimes, NRS provisions do not matter to judges.

MS. HAFEMAN:

No matter what the judge does, DPS will honor it. If the judge convicts but does not require an IID, we will not enforce its use. The only time the offender would use an IID is the first time he or she wants to drive in the revocation period. Often, that is before offenders go to court.

CHAIR SCHEIBLE:

In sections 33 and 34 of A.B. 427, the language changes regarding conviction records sealing and would apply a seven-year minimum. It does not change the mechanics of records sealing, right?

MR. ANTHONY:

Yes. The language would clarify records cannot be sealed before seven years for violations of NRS 200.485 for domestic violence and NRS 484C for DUI.

CHAIR SCHEIBLE:

Is that the intent of the bill sponsors?

MS. DAVEY:

Noncompliance with DUI laws is called the respect period.

SENATOR PICKARD:

I want to ensure when we are trying to protect the children of DUI offenders, we do not make it difficult for families appearing before family courts.

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

Our office is in neutral on A.B. 427. You have our proposed amendment ([Exhibit E](#)). In section 7, subsection 9, we would strike:

A person who is required to install an ignition interlock device pursuant to NRS 484C.210 or NRS 484C.460 shall install the device not later than 14 days after the date on which the order was issued.

In practice, this is not done. We are concerned people are required to install IIDs too soon as the devices are costly. Sometimes, it takes people years to install them, or they decide to stop driving entirely.

In section 20, subsection 4, paragraph (c), subparagraph (2), the court may order offenders to go to a residential treatment facility. We would add "outpatient treatment in the community," which would not be counted as an alternative to confinement. In section 28, subsection 1, we would keep the time frame during which IIDs must be used. This would not jeopardize receipt of federal highway grant money.

JOHN PIRO (Chief Deputy Public Defender, Clark County Public Defender's Office):

Our office is also in neutral on A.B. 427. While we know the bill is necessary to keep the State in compliance with federal law, even if the proposed amendment, [Exhibit E](#), were not adopted, we would still be neutral.

CHAIR SCHEIBLE:

For a first DUI conviction, an IID must be used for 185 days; after that, it is between 1 and 3 years. Assembly Bill 427 would require IIDs for the second violation for one year and subsequent violations for three years. Is that correct?

MS. BERTSCHY:

The bill would increase the IID duration, which we believe is unnecessary according to federal law. We would like to retain the original durations.

CHAIR SCHEIBLE:

A second offense is already bumped up to the one- to three-year duration. The bill would lower the duration for first offenders and raise it for subsequent offenses.

JIM HOFFMAN (Nevada Attorneys for Criminal Justice):

Subsection 1, paragraph (a) of NRS 484C.460 states IID's must be installed "except as otherwise provided in paragraph (b), a violation of paragraph (a), (b) or (c) of subsection 1 or paragraph (b) of subsection 2 of NRS 484C.110 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of NRS 484C.400." This covers first and subsequent offenses. A first or second offense DUI is 185 days; subsequent offenses are 12 to 36 months. We would not change that as it does not jeopardize the federal funding.

As per existing language, you do not have to install an IID if your DUI conviction does not involve alcohol. Ignition interlock devices only pick up alcohol on breath, not cannabis or prescription drugs. Assembly Bill 427 would change that to cover convictions for other substances, which we feel is unnecessary. It does not improve public safety; it simply imposes a financial burden on offenders. Other states such as Arizona, Arkansas and New York do not require IIDs for nonalcohol DUIs but still receive federal grants.

Ms. DAVEY:

The DPS does not agree with the final part of the proposed amendment, Exhibit E, concerning second violations. We worked with NHTSA for months on the language of A.B. 427 so are reticent to make the proposed changes.

Ms. HAFEMAN:

Offenders must install the device to retain the IID privilege. If second-conviction offenders want to drive, they must maintain that privilege for one year under federal law on a restricted or suspended license. Under the DMV administrative action, offenders must use the device for 185 days; if they choose to keep the privilege beyond that, they must keep using it. If offenders ask to go to the 24/7 Sobriety Program, they can apply for a restricted license instead of using the IID. The DPS does not have the IID requirement for nonalcohol DUI.

MR. SEVER:

Apropos of Senator Pickard's question, changes in A.B. 427 will not change the DMV administrative hearing process.

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CHAIR SCHEIBLE:

We will close the hearing on A.B. 427. Seeing no more business before the Senate Committee on Judiciary, we are adjourned at 3:53 p.m.

RESPECTFULLY SUBMITTED:

Pat Devereux,
Committee Secretary

APPROVED BY:

Senator Melanie Scheible, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit Letter	Begins on Page	Witness / Entity	Description
	A	1		Agenda
A.B. 427	B	1	Amy Davey / Department of Public Safety	Introductory Comments
A.B. 427	C	1	Amy Davey / Department of Public Safety	National Highway Traffic Safety Administration Noncompliance Letter
A.B. 427	D	1	Sean Sever / Department of Motor Vehicles	Introductory Comments
A.B. 427	E	1	Kendra Bertschy / Washoe County Public Defender's Office	Proposed Amendment