

SB 309

SENATE COMMITTEE ON GROWTH
AND INFRASTRUCTURE

BACKGROUND

The Annual Report of the Nevada Judiciary Appendix reported more than 10,000 Driving Under the Influence (DUI) criminal filings in 2024

DUIs continue to be a significant public safety issue

PROPOSED AMENDMENT

Worked together with stakeholders to prioritize
five (5) policy concepts in the proposed
amendment

AMENDMENT

1. Reducing the alcohol evaluation threshold;
2. Adding fentanyl to the list of prohibited per-se substances;
3. Increasing penalties for subsequent DUIs while a person is in a treatment program per NRS 484C.320-.340;
4. Increasing penalties on DUI 2nd offenses; and
5. Removing phlebotomist testimony requirement for blood admissibility.

SECTION 11

ALCOHOL EVALUATIONS

- NRS 484C.350:
 1. If an **offender is found guilty of a violation of NRS 484C.110...**and if the concentration of alcohol in the offender's blood or breath at the time of the offense was ~~0.18~~ **0.16** or more...the court shall, before sentencing the offender, require an evaluation of the offender pursuant...to determine whether the offender has an **alcohol or other substance use disorder**.
- Requires an alcohol evaluation when defendant has double the per-se limit.
- Reduces threshold to **0.16** to apply to longer term alcohol treatment program. (NRS 484C.320)
- Confirming changes in sections 1, 2 9, and 11.

SECTION 5

FENTANYL DUI CASES

- Fentanyl is a synthetic opioid 50 times more potent than heroin and 100 times more potent than morphine.
- 2010 – **0.60%** of DUI drug cases had fentanyl.
 - *11-Year Study of Fentanyl in Driving Under the Influence of Drugs Casework; Ayako Chan-Hosokawa , Jolene J Bierly (2021).*
- 2020 – **12%** of DUI drug cases had fentanyl. (Id.)
- **87%** of blood samples with fentanyl had another drug. (Id.)
- Screening amount to detect fentanyl in blood is **1 ng/ml**.
 - *ANSI Academy Standards Boards for Impaired Driving Investigations (2021).*
- Above **3 ng/ml** is fatal/comatose range.
 - *Therapeutic and toxic blood concentrations of more than 1,1000 drugs and other xenobiotics, Martin Schulz... (Critical Care 2020).*

SECTION 5

FENTANYL AS PER-SE PROHIBITED

- NRS 484C.110 (3): It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway to which the public has access with an amount of any of the following prohibited substances in his or her blood or urine that is equal to or greater than:

<u>Prohibited substance</u>	<u>Urine ng/ml</u>	<u>Blood ng/ml</u>
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Fentanyl	10	1
(e) Heroin	2,000	50

FENTANYL AS PER-SE PROHIBITED

- Section 3 makes confirming change in NRS 484C.080 prohibited substance definition and provides that fentanyl is a “prohibited substance” if the person who uses the substance **has not been issued a valid prescription to use the substance.**
- Section 15 makes fentanyl per-se prohibited while operating a power-driven vessel or sailing vessel under way on the waters of the State.
- Request for per-se prohibition of methlendedioxymethamphetamine has been removed with this amendment.

SECTIONS 12 AND 13

CLOSES SUBSEQUENT DUI LOOPHOLE

- Current NRS provides for enhanced penalties when a subsequent DUI is obtained
- HOWEVER, if a subsequent DUI committed while a person is in one of the DUI specialty courts, we are unable to file the enhanced charge at the time of arrest
 - No judgment of conviction exists in the specialty court case, so there is no conviction to enhance
 - Placed into the specialty court via an order, not a judgement of conviction
- SB 309 allows a prosecutor to enhance a subsequent DUI with an order showing that the offender is in a DUI Specialty Court program

CLOSES SUBSEQUENT DUI LOOPHOLE

- In Section 12, adds:

“If the person is undergoing a program of treatment for an alcohol or other substance use disorder pursuant to NRS 484C.320, 484C.330 or 484C.340 as a result of the offense”

- In Section 13, adds:

“Is undergoing a program of treatment for an alcohol or other substance use disorder pursuant to NRS 484C.340”

SECTION 12

INCREASED 2ND OFFENSE PENALTIES

- Amendment limits revisions to penalties in 484C.400(1)(b):

Unless a greater penalty is provided...a person who violates 484C.110:

(b) For a second offense within 7 years, is guilty of a misdemeanor. Unless the sentence is reduced pursuant to NRS 494C.330, the court shall:

(1) Sentence the person to:

(I) Imprisonment for not less than ~~10~~ 20 days nor more than 6 months in jail; or

(II) Residential confinement for not less than ~~10~~ 20 days nor more than 6 months...

(2) Fine the person not less than \$750 nor more than \$1,000, or order the person to perform an equivalent number of hours in community service; and

(3) Order the person to attend a program of treatment for an alcohol or substance use disorder

SECTION 12

INCREASED 2ND OFFENSE PENALTIES

- Increases minimum jail sentence/residential confinement from 10 days to 20 days. Consistent with the Battery Domestic Violence 2nd offense penalties.
- Aligns with other states (AZ 30-90 days; WA 30-45 days; DE 60 days).
- When defendants are canvassed during their first DUI sentencing they are notified of these increased penalties as a deterrent.
- If defendants avail themselves to DUI specialty court, the jail sentence is oftentimes converted to house arrest with additional therapeutic requirements.
- Per NRS 484C.400(3) this jail time can be served intermittently (on weekends) at the discretion of the judge.

SECTION 38

REPEAL PHLEBOTOMIST TESTIMONY

(Relevant Summary)

- NRS 484C.250 requires:

Blood test administered under DUI statute is not admissible unless:

(a) Blood was withdrawn by a person, other than an arresting officer, who:

- (1) Is a physician, physician assistant, registered nurse, licensed practical nurse, advanced EMT, paramedic or phlebotomist, technician, technologist or assistant employed in a medical laboratory; or
- (2) Has special knowledge, skill, experience, training and education in withdrawing blood in a medically acceptable manner.

SECTION 38

REPEAL PHLEBOTOMIST TESTIMONY

What does this mean?

Nurse/EMT/Phlebotomist has to come in and testify that they are a nurse/EMT/phlebotomist and know how to withdraw blood.

Most times they have no independent recollection of this blood draw.

- Less convictions.
- Burden without a benefit.
- Drain on healthcare workers.

SECTION 38

REPEAL PHLEBOTOMIST TESTIMONY

Is this permitted?

- **Yes.** This is a statutory obligation not a constitutional one.
- Pennsylvania addressed in Commonwealth v. Shaffer 40 A.3d 1250, and found that defendant's Confrontation Clause rights were satisfied without calling the phlebotomist in a DUI prosecution. The lab analyst, an expert witness, can testify to the accuracy of the results and testing method.
- Officer can make pertinent observations: time of blood draw, non-alcoholic swab was used, inversion of blood vial, and lack of tampering.

SECTION 38

REPEAL PHLEBOTOMIST TESTIMONY

Will phlebotomists still be called at trial?

- **Yes.** Nothing prohibits the phlebotomist from being subpoenaed to trial.
- There may be cases where the prosecution will still call the phlebotomist, particularly in DUI investigations where an officer may not have made all the pertinent observations.
- Defense can also issue subpoenas for their presence at trial.
- It is just no longer mandatory that they be subpoenaed for every trial.

THANK YOU

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