

JUDICIARY MEMBERS PRESENT:

Chairman Stewart
Vice Chairman Sader
Mr. Thompson
Mr. Price
Mr. Beyer
Mr. Malone
Mrs. Cafferata
Mrs. Ham
Mr. Banner

JUDICIARY MEMBERS ABSENT:

Mr. Chaney
Miss Foley

TRANSPORTATION MEMBERS PRESENT:

Chairman Price
Mr. Beyer
Mrs. Westall
Mr. Polish
Mr. DuBois
Mr. Schofield
Mr. Glover
Mr. Prengaman

TRANSPORTATION MEMBERS ABSENT:

Mr. Mello

GUESTS PRESENT:

See attached EXHIBIT B

Transportation Chairman Price called the meeting to order at 7:10 p.m. He reminded the guests present that the purpose for this additional hearing was to allow those unable to testify at the last hearing to testify tonight. Those individuals were called upon first to testify.

- SB 83: Increases punishment for driving under influence of intoxicants.
- AB 67: Increases penalties for driving while under influence of intoxicating liquor or controlled substance.
- AB 421: Requires impoundment of vehicle while person arrested for driving while intoxicated.

Sharon Alcamo of the Driver's License Division of the Department of Motor Vehicles stated that she was testifying from a neutral position on SB 83, addressing the bill only as it affects the Driver's License Division. SB 83 dramatically increases the penalty for DUI convictions, however, when dealing with the license withdrawal action, in some cases it has increased it and in other cases has decreased it.

Currently on a first DUI, the courts have an opportunity to suspend for a 30 day to one year time period. They also have the opportunity to impose a fine and DMV can issue a restricted driver's license. Normally what occurs is that the license is not suspended because the courts do not make that recommendation. SB 83 increases the penalty for license withdrawal in that it mandatorily suspends the license for 90 days to one year and, in addition, requests that restricted licenses not be issued except in the case of extreme hardships and the individual is in jeopardy of losing their job.

In dealing with the second DUI conviction, there is a decrease in license withdrawal action. The current law indicates that from 1 to 3 years for a second or subsequent DUI conviction, the license is withdrawn for two years. For a second or subsequent DUI conviction occurring from 3 to 7 years after the proceeding, there is a one year license revocation. SB 83 only takes into account convictions occurring within 0 to 3 years. After the three year period, no license withdrawal action is taken. In addition, mandatory revocation has been changed to a suspension. In doing that, the requirement that a certificate of insurance be filed is deleted. That certificate requirement insures that people must maintain for three years liability insurance coverage. This bill eliminates that requirement.

On the third or subsequent DUI conviction, the penalty is imprisonment and the license withdrawal becomes a moot issue since the individual will not be driving anyway. After the three year period, from 3 to 7, there is no penalty with the proposed bill and with the current law there is a one year license revocation and the requirement for a SR 22 filing.

Ms. Alcamo stated another area of concern is when a person elects treatment in lieu of whatever penalty is imposed. Logically, a person is probably going to elect treatment for the second, third, fourth, sixteenth conviction. Under the current drafting of the bill, the courts will not allow DMV to reinstate the license until treatment has been completed. Some treatment programs may last for 1 or 2 years, but many of them last 3 weeks, 1 month, or a 3 day or 1 week period in a detox center.

The last section on page 4 of the bill indicates that if someone elects probation, his license will be revoked forever. Ms. Alcamo felt this to be inconsistent with other statutes. There is a 1 year mandatory revocation for a manslaughter charge, or felony use of a vehicle for habitual violators.

Mr. Price asked for a printed list showing the comparisons between the bill as proposed and the current law in dealing with license withdrawal action. Ms. Alcamo stated she would make that available.

Chairman Price then asked Ms. Alcamo to explain the difference between revocation and suspension and requirements for reinstatement of the license. She stated that a suspension is a temporary action, taken for less severe crimes and offenses. A revocation is considered a permanent action and is usually levied against more severe violations. In order for a license to be reinstated with revocation, Section 485.306 requires that a person must file proof of safety financial responsibility which is a certificate of insurance. That is called an SR 22 and is an established procedure with the insurance companies to make sure the person maintains insurance for a three year period. If the insurance is not maintained for three years, the insurance company notifies DMV and the license is recancelled.

Mr. Malone commented with reference to the permanent revocation that the permanent loss of the license is voluntary and was not meant to be in harmony with the remainder of the law. Ms. Alcamo stated she was aware of that, but commented that forever is a long time. Also, in comparison with the manslaughter one year revocation, it seems rather severe.

Mr. DuBois asked what percent of arrests receive a recommendation for revocation. Ms. Alcamo commented that virtually none are revoked. She estimated about 5%, but indicated that was probably an excessive estimate. She added that with the first offense, the court has discretion in suspending or not suspending a license. After the first offense, there is no discretion and the suspension is mandatory.

Mr. Sader asked if amending to bill to read "revoke" where it says "suspend" would bring the Financial Responsibility Act into play. Ms. Alcamo agreed it would.

Mr. Sader asked if there was any problem with the language which reads that the judge shall direct motor vehicles to suspend or revoke the drivers license. Ms. Alcamo stated there was no problem with the judges indicating that DMV should suspend, especially if mandatory. She added that in many cases of court recommended suspensions where the order requires that the license be suspended for 5 or 10 years, the DMV has no authority to do that by law. As result, DMV must notify the court of the limits of their authority.

Mr. Sader commented that through his experience in Washoe County, when someone elects the 458 program where he is adjudged to be an alcoholic or drug abuser, the average length of the program is 1½ to 3 years and not 3 weeks or 1 week. Once an individual is termed to be an alcoholic, there is obviously a serious social disease. Ms. Alcamo stated that there are programs where the initial treatment is 2 weeks to 1 month with follow-up treatment. However, there may be judges who can construe the language to mean once the individual has completed the initial treatment program, it is completion. Pat Bats clarified for Mr. Sader that New Frontier has a year follow-up program after the initial treatment.

Mr. DuBois asked if there was any estimate on the number of people driving on revoked or suspended licenses. Ms. Alcamo stated there was no way of knowing that. She did indicate that there could be a review done of the number of charges on driving under revocation or suspension.

Mr. Beyer asked for an explanation of the procedure of suspending or revoking a license. Ms. Alcamo indicated that in some cases the court does confiscate the license and in some cases does not. If the court confiscates the license, it normally goes to DMV with the conviction report. If the court does not confiscate the license, DMV sends a confiscation order which requires the drivers license examiners to make three telephone calls to the individual to inform him he has to turn in the license. If the examiners are not successful in reaching the people or the licenses are not turned in, the Highway Patrol will make arrests and confiscate the licenses. She did not know how long this takes but commented it could take as long as a couple of weeks. She added that these people are offered the opportunity of a hearing in accordance with 233(d) (the Administrative Procedures Act), which takes 30 days.

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Mr. Sader asked if the Department of Motor Vehicles could change its regulations to provide that in instances of DUI revocations the license is suspended prior to the hearing time. Ms. Alcamo stated there are 35 to 40 different types of suspensions, revocations and cancellations which have been evaluated by attorneys. Some types of revocations such as manslaughter can allow DMV to summarily suspend the license to be turned into a revocation based on the outcome of the hearing.

Mr. Sader commented that if the law mandated revocation, he would question whether or not due process would be required. Ms. Alcamo stated she had been informed it would be. She added that it is felt and is stated in the Administrative Procedures Act that before you can suspend, revoke, or take any withdrawal of a privilege, a person has to be afforded the opportunity of a hearing. She was told that at that hearing the individual could possibly be trying to resolve mistaken identity, an erroneous conviction, etc. This was the information given her by DMV's counsel.

Mr. Sader suggested that these violations might be taken out of the Administrative Procedures Act by amendment. Mr. Beyer asked if it would be possible to require the judge to confiscate the license in the courtroom. Ms. Alcamo indicated that could be done but the individual would still be offered the opportunity of hearing.

Estelle Latona, a bar owner representing the bar owners, submitted a petition with 1,500 signatures of people from all walks of life who oppose SB 83 in its current context (EXHIBIT A). She stated her people would not oppose a revised bill, but would not support SB 83 as it currently exists. It was her contention that the average social drinker cannot pass the current blood alcohol content law after a few drinks or a few beers. For a first offense under this bill, a mandatory 90 day loss of license, 40 hours of labor and a DUI school in a rural area and state such as Nevada which lacks any means of mass transit, Ms. Latona asked how the alleged offender is to reach the designated area for work or school.

Ms. Latona continued by saying that the people she represents oppose SB 83 because it takes the jurisdiction away from the judiciary and places the law in the hands of the individual law enforcement officer on the streets. It would also create an unconstitutional act by denying the rights of the alleged offender to a trial by a jury of his peers. She commented that one of the Supreme Court Justices now has two DUIs against him on record. If he should have a third conviction, no accidents involved, would the court sentence a Supreme Court Justice to prison for 1 to 6 years for not being able to pass the test currently required by our DUI laws and make a respected gentleman like this a felon?

It was Ms. Latona's comment that lawmakers in this session are proposing excessive bills, restricting the public's rights without the benefit of a vote at the polls. SB 455 would allow police officers to demand a blood test if they suspect a person driving under the influence. AB 421 would allow the impoundment of a driver's auto if suspected of driving under the influence. All of these bills are aimed directly or indirectly at the liquor industry and the social drinker. AB 247 would increase taxes on liquor with the money going for expanded alcohol abuse and treatment programs. If SB 83 or any other of the proposed bills are passed as they are now written, there will not be much money forthcoming from the liquor taxes for these proposed programs since most of the people who drink will either be in jail or unable to drive.

In closing, Ms. Latona noted that most of the lawmakers, including Senators McCorkle, Lamb, Gibson and others who support SB 83 still oppose the gun control law because it won't keep the serious offender from obtaining or using a gun. SB 83 will not keep the habitual drunk driver off the streets unless he is in jail. If he doesn't have a driver's license, it doesn't matter. The habitual drunk driver is going to drive regardless. She stated that a major official from the Nevada Highway Patrol at a recent Transportation Committee hearing stated that three major causes of accidents in the state of Nevada were speeding, failure to yield right-of-way and driver error. The drinking driver was not mentioned.

Ms. Latona stated that the liquor industry people do not like to see the drunken driver on the roads anymore than anyone else, just as they do not like to see the speeder driving on the road. It was her proposal that representatives of all the industries negotiate a workable bill.

To Mr. Sader's question of Ms. Latona's impression of the most onerous provisions of the bill, she stated that the individual unfortunate enough to get 3 DUIs and not really be drunk but not be able to pass the blood alcohol test, never involved in an accident, can be made a felon on the third offense. On the other hand, the speeder or failure to yield or driver error who cause accidents and have never taken a drink are just as guilty.

To a question from Mr. Malone, Ms. Latona stated that under SB 83, going before the judge would be only a formality since the sentences are already set down. There would be no plea bargaining, no suspended sentence, no probation, etc.

Mr. Prengaman commented that the liquor industry should be assisting in setting up substance abuse and treatment programs.

Dan Hansen stated that he resided at 1100 15th Street in Sparks. At least twice a year drunk drivers would crash into his property damaging fences, clotheslines, trees, landscaping, etc. After 9 years his family moved to 645 7th Street and twice there drunk drivers crashed into their family, one demolishing a car just prior to his tenant getting into it, hitting the car so hard that it uprooted a 25 year old peach tree, crashed into the garage and knocked down the fence. Another drunk drove over a corner fire hydrant.

Mr. Hansen continued by saying that by removing the attitude of toleration, drunk driving will be dramatically curtailed. As a result of soft on crime judges, citizens have lost respect for the law. SB 83 has mandated and prescribed penalties for DUI. This is essential in order to stop drunk driving. He added that the lessons of the intolerant laws dealing with drinking drivers in Sweden, England and Japan affirm the fact that tough laws will keep and create respect for the law. As a result, fewer people go to jail, fewer people lose their licenses, fewer families have the bread-winner jailed. This happened not because people stopped drinking, but because they have respect for law and consequently don't drive.

Mr. Hansen felt confiscation of automobiles a very effective method of getting drunks off the road. To first time offenders, Mr. Hansen stated that these are first time caught offenders, having done a lot of drinking and driving before ever getting picked up. It was feeling that the first time caught offender should be severely chastised. He had no sympathy for the 3 year revolving concept back to first time offenders. He suggested that if this were going to be the case that it at least be extended to a 5 year period.

Mr. Hansen recommended that there be more social pressures built into the bill. He suggested that a 3" x 5" mug shot be printed in the local media of the convicted drunk driver, with a title stating "drunk driver" and an article telling of the incident, and further indicating the individual will be picking up cigarette butts from the streets for 5 days. The ad should indicate paid for by the convicted drunk driver.

Steve Dollinger stated he was a prosecutor for the City of Reno for over 3 years, a judge in the Reno Municipal Court for close to 5 years, and is currently a defense attorney. He felt it would be unfair to pass a bill that would not stand constitutional muster and could not stand up in court.

Mr. Dollinger's first concern was the 40 hour work week which resulted in the question of involuntary servitude. He felt it is involuntary servitude. He stated it used to be against the law to sentence someone to 30 days hard labor and felt it just as unconstitutional to sentence someone to 40 hours of physical labor. In the event it were to pass constitutional muster, knowing the number of DUIs that come down, where are the jobs going to come from. He commented that the Clerk's office could use more help, but they would not be able to supply the typewriters for those people let alone the people already working there. He also suggested the training involved and would they be able to do anything that is meaningful. He also raised the question of liability insurance for these people.

Mrs. Westall suggested giving these people a choice between working or paying an outrageous fine. Mr. Dollinger stated it is unconstitutional to say "\$300 or 50 days in jail". He added that a lot of judges are imposing unconstitutional sentences. He cited Tate v. Short, a Texas case which says that is unconstitutional. If the individual refuses to pay a fine, then they can be sent to jail.

Chairman Stewart asked for cases supporting the contention that assignment of work as a means of punishment is unconstitutional. Mr. Dollinger indicated he did not have those with him, but they could be provided. Mr. Stewart commented that a lot of prison programs are work programs. Mr. Dollinger countered that once imprisoned, the individual loses a lot of civil rights. He added that he did not believe a prisoner has to work if he does not want to. To Mr. Stewart's question about probation with the requirement to perform restitution, Mr. Dollinger stated that a municipal and justice court are not allowed to use suspended sentences with probation as the law currently reads. Mr. Stewart then referred to a number of programs in which a judge will suspend a sentence if certain work is performed or certain restitution made. Mr. Dollinger indicated that is voluntary.

Mr. Glover asked what happens when a fine is assessed against someone who has no money. Mr. Dollinger stated that a judge must determine whether a person can afford to pay a fine when sentencing. If he cannot pay a fine, then he is sent to jail. He added that as a judge he could not enforce a statute that required the payment of \$500 or go to jail.

Mr. Malone suggested allowing these individuals to pay over a period of time. Mr. Dollinger stated that some people cannot qualify for time payments and are sent to jail. He added that if the penalty is jail if an individual refuses to pay a fine and the reason for refusal is that the individual does not have the money, then it is unconstitutional to send him to jail.

Mr. Prengaman asked Mr. Dollinger's feelings on the 90 day loss of license and educational requirements. Mr. Dollinger felt educational requirements are good but felt that on a first offense a 90 day loss of license is too harsh without the privilege to drive to work.

Mr. Stewart suggested that the constitution be reviewed to see if the lower courts will be able to enforce this statute.

Mr. Dollinger next addressed the provision regarding no plea bargaining. The bill says that the prosecutor can plea bargain if the decision is reached that there is no probable cause. He asked if that meant no probable cause at the time of arrest or that the prosecutor cannot get the probable cause on at the time of trial due to the lack of witnesses for the prosecution.

Mr. Glover asked about plea bargaining before the actual issuance of a complaint. Mr. Dollinger stated that City Attorneys do not decide whether a complaint is going to be issued, that is done by the law enforcement officer. City Attorneys do not even hear about the case often until the time of trial. District Attorneys however make a decision on a complaint before the arraignment stage.

Mr. DuBois asked about the blood alcohol testing and the difference in effect on individuals of different heights and weights. Mr. Dollinger stated that the heavier person who has eaten more is going to be able to take more drinks before getting to the .100 level. The lighter person will be affected with fewer drinks, but the rate of impairment when either person reaches that level will be comparable. The only difference is the number of drinks required to reach that point. He added that he felt the testing is accurate.

Mr. Dollinger agreed with Senator McCorkle's statement that the statutes should be tougher and the State of Nevada should have a reputation that you do not drink and drive. He felt it necessary to have mandated stiff jail sentences, with the first offender being not so stiff. The second offender on up should be sent to jail. He did comment that jail does not cure their problem. He suggested rehabilitation as an alternative to jail. He felt NRS 458 is an excellent rehabilitation tool, but that the statutes should allow the municipal and justice courts to use that program. He further suggested striking the portion of the statute which requires physicians to get involved, feeling that the state licensed drug and alcohol abuse counselors do an excellent job. He added that the courts should be mandated to keep individuals who elect treatment in the programs for no less than two years.

Mr. Dollinger stated that NRS 458 was an excellent vehicle for rehabilitation through his experience. For those individuals who cannot solve their drinking problems through treatment, jail time should be mandatory.

To Mrs. Westall's question about using psychologists with these individuals, Mr. Dollinger felt it should be someone specifically trained in substance abuse. The substance abuse counselor can determine whether a psychologist should be brought in or in some cases, a medical doctor, to work along side the counselor.

Mr. Prengaman asked what is going to change is a stiff sentence can still be plea bargained away. Mr. Dollinger stated he did not feel that the judges admit their obligations with regard to this problem. He therefore felt that jail sentences should be mandatory. He pointed out that he tried jail sentences for 10 months with first time DUI offenders. He could not get anyone else in the judiciary to go along with it and had to eventually quit the practice of jail sentences. Mr. Sader commented that Mr. Dollinger was easily the toughest judge on DUIs when he was on the bench. He then asked what type of jail sentence Mr. Dollinger would suggest for a first time offender. Mr. Dollinger stated he based it on the person's blood alcohol: .10 - 1 day; .20 - 2 days; refusing the test - 1 day. He added that if the individual is a problem drinker that is not enough time; if a social drinker, booking is probably enough. He felt that jail with a rehabilitation option would be the best deterrent for these individuals, commenting that the social drinker would probably never do it again, but the problem drinker would do it regardless.

Dr. Ron Carducci, a clinical psychologist, stated he has been in private practice in Reno for about 8 years. He stated that he has had three years of direct experience working with the DUI population. He suggested that psychologists be allowed to participate in the diagnosis and agreed that a license for substance abuse counseling be part of that criteria. During his work with drug abusers, there have been 147 DUI offenders who have entered and left the program who were successfully certified as no longer a danger to themselves or others because of alcohol. That is a certification rate of about 32.7%. The expected success for certification nationally according to the American Academy of Judicial Education is about 5%. The percentage of those successfully certified clients who remained free of any further DUIs is over 90%. The average length of stay for the successfully certified offender was a little over 31 weeks or about 8 months. The average stay of the offender who failed to complete the program was 8.7 weeks. At this point there are an additional 66 offenders currently enrolled in Dr. Carducci's program. 40 of those people have been attending for 30 weeks or more. He estimated that 60% of the people currently enrolled

will be successfully certified as people no longer a danger to themselves or others because of alcohol.

Dr. Carducci stated that there is a minimum stay of one year in the program, having been arrived at through experience with these people. He added that it takes 8 to 12 weeks to get through the initial resistance. Over 80% of the 66 clients currently enrolled in the program are drinking rarely, if ever. That means they are all attempting to not drink at all because they have come to recognize that they cannot drink moderately.

Dr. Carducci indicated that the average cost per client, with the client paying himself, is \$10 for group therapy weekly and another group which pays \$25 for group therapy weekly. That is based on their motivation and ability to pay as well as their verbal skill level. He commented that NASAC does an excellent job of referring people to appropriate groups.

Dr. Carducci recommended at page 3, lines 20 and 21, the language read "the violator elects to undergo the treatment for a minimum of one year and pay for examination and treatment. . .".

At lines 16 and 17 he suggested including "licensed substance abuse counselors" along with physicians in accordance with Senator McCorkle's recommendations.

Dr. Carducci felt this bill would make his program more effective for the insincere individuals since it provides that they are first found guilty of a DUI with a large fine, a possibility of up to six months in jail and a six months loss of license. In the event he does not complete the program, he does not get his license back. If an individual is not required by law to attend a program, he will not attend and complete the program.

Dr. Carducci continued by saying that he did not believe punitive law alone will change behavior. His interest lies in addressing the problem which causes the behavior. Using punitive law as a lever and motivator to force people to look at themselves will help to change the behavior. He favors SB 83 for that reason but commented that there are some minor changes which need to be made.

To Mr. Glover's question about where Dr. Carducci's program should come in, Dr. Carducci felt that his program was appropriate anywhere but felt that the first DUI offender should be diagnosed. He commented that a drunk driver generally drives drunk from 15 to 30 times before one DUI conviction. If diagnosed as not having a chronic problem, they should be sent to the DMV education program.

Mr. Thompson asked if Dr. Carducci would refuse someone in his program who could not pay the \$10 or \$25 per week. Dr. Carducci stated that anyone who has a drinking problem is spending a lot more than \$10 a week on his alcohol. If he is not willing to commit himself to \$10 a week, he does not belong in the program.

To Mr. Sader's question, Dr. Carducci stated that a 40 hour public work program would be very effective. If jail time is used as a lever, a threat or an alternative to a therapeutic program, it would be very effective. By itself, without therapy, he did not know how effective it would be. He agreed with Mr. Dollinger that a short time jail term for first offenders would be greatly effective. He added that a revokation of a license would be incredibly powerful and a great motivator. In the order of effectiveness, he ranked the penalties as (1) jail time, (2) revokation of license and (3) physical labor. The most annoying penalty will be the most effective.

Kathie Boeck stated that SB 83 has merits but needs a lot of work done on it. She pointed out that most drinking problems start between the ages of 12 and 16. The serious drinker, usually in the case of an accident, is usually in a black-out. After coming out of a black-out, they do not realize what has happened. She felt that jail is not the answer for this type of person. She further referred to the bill increasing the speed limit and commented that speed kills.

Ms. Boeck stated that it takes 18 months for alcohol to leave the brain, 3 months to leave the body. She agreed with the comments made by Mr. Dollinger.

Vernita Funk stated that her son and his girlfriend were killed two years ago in North Las Vegas. The man who killed them had a .17 blood alcohol and 7 priors, four of which were DUIs, 2 no drivers license, and 1 invalid licensed and had never had insurance in this state. When the man went before the judge 11 months later, his record was clean and was sentenced to serve his days off for one year with a possible review in 6 months. She completely supported SB 83.

William Potts stated he is opposed to aspects of SB 83 regarding the first offender. He felt that if a person is the cause of an accident, maims or does great physical property damage or kills someone, there should be no plea bargaining. He agreed with Mr. Dollinger's comments on the first offender being jailed for one or two days.

Martha Coon, a member of the Governor's Advisory Board on Alcohol and Drug Abuse and a member of the Northern Area Substance Abuse Council (NASAC), stated she has been involved with alcoholics and the disease of alcoholism for about 30 years. She believed that drunken driving is one of the most common and serious problems in this state. She had no quarrel with SB 83's provisions for sentencing and fines except that on the third offense where there is no death or maiming involved, she would not suggest that it be made a felony. Her reasons were that it would make rehabilitation much more difficult and is an ineffective way to treat the problem. If an individual is adjudged a felon, he will not be effectively treated.

She further suggested that all people convicted of DUI should be required to have counseling at the time of each conviction by a licensed alcohol or substance abuse counselor.

Pat Wood, a bar owner, felt that the first time penalties on SB 83 are a little strict but supported the one or two day jail sentence. He did not favor the 40 hour work sentence commenting that it would be hard to enforce with tourists. He felt that 1 to 6 years in prison is a heavy sentence for only three offenses. He added that probation for a first time DUI who kills someone is inconsistent. It was his feeling that the blood content provisions are not adequate to determine whether an individual can operate machinery or vehicles. He suggested a traffic simulator be used. He commented that someone with a .15 blood alcohol can still operate a vehicle better than someone under emotional stress.

Jim Spoo, the Assistant City Attorney for the City of Sparks, stated he has been there about two years and is concerned with prosecuting about 75% of the time, a great many of which are DUI cases. He stated that in October, 1980, the City of Sparks passed a resolution supporting largely the confines of SB 83.

With reference to the language relating to plea bargaining, Mr. Spoo felt there was a great deal of misapprehension about what plea bargaining is and SB 83 does not do away with plea bargaining and should not. He stated that on page 3, subsection 7 describes plea bargaining and is exactly what currently takes place. He commented that he had never been in a position to flip coins over the resolution of any case. The only circumstances in which a case is plea bargained is when the prosecution cannot prove the case because of probable cause or evidentiary problems.

Mr. Spoo felt that SB 83 is a largely good bill. To the first offense and 40 hour work situation, he felt it an infeasible situation practically for a court to enforce and administer.

He stated that the courts have their hands full already and particularly will have their hands full under the alternative alcohol treatment program addressed in subsection 5 of the bill. He suggested it could be effective, provided there are no legal problems with it as mentioned by Judge Dollinger. In reality, it was his opinion that it would cause more problems than it solves. It just imposes another administrative managerial burden upon the court system.

To the educational course, Mr. Spoo stated it is beneficial. He did not feel it should be left as vague as it presently is. It should be run under the current traffic school program which is an effective program already in existence.

Referring to the language at the bottom of page 2, dealing with the offender who has already had his license suspended for some reason, Mr. Spoo stated the reference to a fine is very vague and does not directly authorize a fine. It should specifically authorize a fine for a first time DUI offense. In particular, the fine should be along with jail time as suggested by previous witnesses and should be an alternative or completely in lieu of the 40 hour work week situation.

To page 3, subsection 5, Mr. Spoo stated there is already an existing, effective alcohol treatment program. He suggested simply referring to the 458 program, which is working and which the courts have been utilizing for about 4 years. Establishing a new program under this section will eliminate the effectiveness of the 458 program. He strongly suggested the amendment that a conviction be required before entrance into one of these programs. He referred to AB 404, which accomplishes that purpose and allows the conviction to be set aside if there is successful completion of the program. He did state that the new Section 3 in AB 404 which omits the entire DUI situation from the 458 program would have to be disregarded. Mr. Spoo did agree with the language in Section 5 which requires only one participation in the program in a 5 year period and that it be a mandatory minimum of 1 year as suggested earlier.

At page 3, subsection 6, Mr. Spoo stated there is a nominal situation occurring of a person being convicted of a first time DUI, has his license suspended and is caught driving, not even drunk, he becomes a felon under that paragraph. The person who is caught for the second offense and has not elected an alternative treatment program, even though he may need one, is a misdemeanor or gross misdemeanor. The person who was conscientious enough to elect a treatment program and got caught driving on a suspended license and not even drunk is treated as a felon; whereas, the second time offender who has not elected the program caught driving is not treated as a felon.

Mr. Spoo stated that the intent of the bill is not to make a first or second offender a felon. The language at subsection 6 makes a first time offender a potential felon.

Mr. Spoo continued by saying that the costs of SB '83 are going to be extensive. He foresaw more costs in enforcement, better equipment, and the necessity of plea bargaining, more court time, jury trials in municipal court, more prosecutors and public defenders. There is absolutely no revenue to the municipal courts under the first offense unless the fine language is changed. They are asked to administer the 40 hour work week, an educational course and there is no revenue supporting those new burdens upon the court.

Mr. Spoo commented that he was not sure it was ideal to create a situation on the second offense of having that be a gross misdemeanor. This takes it out of the jurisdiction of the municipal court and the superior courts and district attorneys' offices are burdened with an increased caseload.

He added that he did not favor vehicle confiscation as in AB 421. He suggested it is a good idea on the face of it, but felt it does not hit the offender as directly as some of the language in SB 83.

Mr. Sader asked who runs the traffic schools currently, to which Mr. Spoo responded that they are run generally under the auspices of the city police departments or municipal government.

Chairman Stewart asked if Mr. Spoo's municipal court had authority to have jury trials. Mr. Spoo felt it a debatable question. Currently, the law could be interpreted that there is no such authority. On the other hand, it could be very successfully challenged and that constitutionally, there is absolutely no reason why a person could not demand and receive a jury trial in a municipal court. Mr. Stewart commented that he did not know of any constitutional requirements that a jury trial be had for misdemeanors in a municipal court. Mr. Spoo commented that it is already being allowed in justice court which creates a very thin legal argument for not allowing them in municipal for exactly the same offenses with the same penalties.

Mr. Sader suggested that the reason jury trials do not take place in municipal court is that they are not courts of record and further since a defendant in municipal court has a right to a trial de novo. Mr. Malone felt that the burden on the courts would be only temporary until people saw the results of the bill.

Mr. Polish commented that since there is no punishment or malpractice suits brought against judges, that they can enforce unconstitutional laws or sentences. Mr. Spoo commented that this bill tightens up the parameters within which the judiciary can move and felt it a good idea.

Nick Colonna stated that he had done research on SB 83 as the result of a task assigned him at a Toastmasters function. His research indicated that the laws on the books are definitely sufficient but not being utilized. Under the current laws, a first offender gets a pretty stiff penalty. If mandated as such, the discretion of the judge is taken away and he must assess the penalty. Mr. Colonna suggested that the discretion be left to the judge on the first DUI.

Mr. Colonna commented that people are being penalized under this bill for drinking and pointed out that advertising encourages drinking. He suggested that if this type of advertisement is to be allowed, there should be advertisement to reverse the effect of this subliminal advertising.

Mr. Colonna further suggested making the judiciary responsible for their actions by forming a judicial review committee to review the DUIs yearly and punish the judge for not doing his job.

Mr. Colonna felt three things should be done:

1. Education - massive advertising campaigns. For every liquor sign, there should be a sign for DUI and the penalties.
2. Responsibility - make the liquor industry responsible by advertising the results of alcohol abuse.
3. Accountability.

Bill Wollits, Director of the Northern Area Substance Abuse Council (NASAC), stated that his organization works with a large number of individuals with alcohol problems, perhaps 2,500 a year. As a result, NASAC is aware of the good services in the community. He supported the previous amendment to include utilizing substance abuse counselors rather than just psychologists and physicians.

Mr. Wollits stated that NASAC receives about 20 or more referrals from municipal court per month for DUI. He added that his organization can find help people depending upon their ability to pay; no one is turned away.

Mr. Wollits agreed further that education will help alleviate the DUI problem better than punitive measures. He commented that his organization works with the county health department, with the school system at the high school level, with the curriculum next year with 9th and 10th graders including the entire DUI bill in whatever form it comes out. Along with that there will be information on alcohol's effect on the body and driving. He urged the appropriation of further funds for treatment, education, and other programs with the same energy and zeal that is being expended on dealing with drunk drivers after the fact.

Don Nichols read a letter submitted by Edmund H. Irvin, Pastor of the First Baptist Church, attached as EXHIBIT C.

Janet Smith stated that she is recovering from her fourth surgery resulting from a drunk driving accident a year ago. She favored SB 83 and commented that the suggestion of reviewing judges' decisions on DUI offenders is tantamount of another study which would be too costly. As a victim, she felt that her rights to be protected from another drunk driver have to come before the rights of the drunk driver.

To Chairman Price's question about the disposition of the drunk driver in Ms. Smith's case, she responded that the driver's attitude was that he would spend his jail term in the hospital. The driver failed to report to his probation officer and failed to show in court. As a result, he was sentenced to three years in jail after having his surgery.

Don Nichols testified last, addressing the cost to victims of drunk drivers. Among the items mentioned were time lost as a result of the accident, medical expenses, loss of productivity, welfare costs for victims and the offender's family, and burial costs and attorney's fees. He suggested that getting the drunk off the road will save a lot of money and lives.

Chairman Price concluded the meeting at 10:05 p.m.

Respectfully submitted,


Joy Jan M. Martin
Committee Stenographer

EXHIBIT A

THIS EXHIBIT IS MISSING FROM BOTH THE ORIGINAL
MINUTES AND THE MICROFICHE.

DATE: 4/15/81

GUEST LIST

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	I WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
Lillian Keith		SB 83		
✓ Don Hansen		SB 83		
✓ Jim Spoo	City Atty Off. Sparks	SB 83		
✓ STEVE DOLLINGER			SB 83	
✓ DR Ron Capucci	Psychologist	SB 83		
Janet Smith		SB 83		
Alice Lette	concerned citizen	SB 83		
Adelle Stoddard	professional driver	SB 83		
✓ Verinda Funk	victim	SB 83		
M. Redhouse	concerned citizen	SB 83		
Ray Ceccarilli	victim	SB 83		
Mrs. R. Ceccarilli	victim	SB 83		
Rodney Reymon	Concerned Citizen	SB 83		
Barbara Reymon	"	SB 83		

ASSEMBLY JUDICIARY COMMITTEE

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DATE:

4/15/81

GUEST LIST

PLEASE PRINT YOUR NAME	PLEASE PRINT WHO YOU REPRESENT	WISH TO SPEAK		
		FOR	AGAINST	BILL NO.
Murray D. Cohen	Concerned Citizen		✓	SB 83
* William Potts	Concerned Citizen		x	SB 83
Edouise Cohen	Concerned Citizen		x	SB 83
Mariam Azim	Interim for Helen Foley			
Virginia Hamilton	Concerned Citizen	Yes		SB 83
Opal Hamilton	" "	Yes		SB 83
Bob Wood	" "		✓	SB 83
Don Nichols	Concerned Citizen	X		SB 83
Emelina Dequer	" "		✓	SB 83
W. Dequer	" "		✓	SB 83
Aileen Wood	" "		✓	SB 83
Kathie Boeck	" "		✓	SB 83
DAVE HANSON				

First Baptist Church

1330 FOSTER DRIVE AT HUNTER LAKE DRIVE
MAILING ADDRESS - BOX 786
RENO, NEVADA 89504
PHONE (702) 323-7141

EDMUND H. IRVIN
PASTOR

To be read April 15, 1981, please.

Mr. Chairman and Assemblymen:

My name is Edmund Irvin and I am the pastor of the First Baptist Church of Reno. In that capacity I have the privilege of serving the Ceccarelli family as their minister.

I am concerned about the issue of drunk driving because as a clergyman I become involved in it. After the policeman, after the ambulance attendant, after the hospital personnel, after the coroner, after the mortician, after the attorneys and judges, I am still involved. My duties call for me to preside over the funerals of the victims or to minister to the injured and disabled, and -- equally as important -- to continue in a caring, counseling role with the families who suffer the trauma of innocent suffering and death. Sometimes that counseling involves the enormous financial burden carried by the families; sometimes it involves the emotional stress of trying to make sense out of the cruel absurdities of irresponsible driving. In my twenty-seven years of parish ministry I have been called on many times to comfort the bereaved and console the innocent, but no experience has been more trying

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PASTOR

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than the tragic death of Joan Ceccarelli.

The very nature of my calling demands that I express concern for all persons who are in trouble, but -- speaking candidly yet lovingly -- I am more concerned for the victim of the drunk driver and that victim's family and employer than I am for the perpetrator who voluntarily elects to risk someone's life by drinking and driving.

Of course I am in favor of educational means in addressing the problems incurred by imbibing beverage alcohol. But let it be clear that I am in favor of strong penalties for those who ignore the education or flaunt common sense or who hold human life and health in casual disregard! I believe the penalties included in S.B. 83 fairly shout to our society that we are willing to face the problem with strength and responsibility. The bill shows that we're serious! The least we can do as a society of law is to demonstrate sharply that we believe we have a nightmarish problem that demands a radical stand.

First Baptist Church

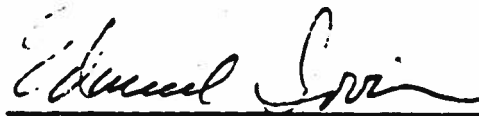
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EDMUND H. IRVIN
PASTOR

3

A thought haunts me: every year two or three persons die from the bite of a mad dog and we take the dog out somewhere and shoot it. Yet every year 25,000 victims are recorded from drunk driving accidents and we generally tell the offender to pay a few dollars as a fine and not to do it again.

None of my immediate family has been hit by a drunk driver -- and I don't want it to happen. Let's get serious about drunk driving! In that regard I offer my support of S. B. 83.



Edmund Irvin