MINUTES OF THE MEETING

JOINT SENATE AND ASSEMBLY COMMITTEES

ON TRANSPORTATION

SIXTY-FIRST SESSION
NEVADA STATE LEGISLATURE
March 2, 1981

SENATE

MEMBERS PRESENT: Senator Blakemore, Chairman
Senator Hernstadt, Vice Chairman
Senator McCorkle
Senator Neal

MEMBERS ABSENT: Senator Bilbray, Excused
Senator Faiss, Excused
Senator Jacobsen, Excused

ASSEMBLY

MEMBERS PRESENT: Mr. Price, Chairman
Mr. Polish, Vice Chairman
Mr. Beyer
Mr. DuBois
Mr. Glover
Mr. Mello
Mr. Prengaman
Mr. Schofield
Mrs. Westall

MEMBERS ABSENT: None

The meeting was called to order at 2:22 p.m. Senator Blakemore was in the Chair. He announced that due to conflicts in scheduling Senators Bilbray, Faiss and Jacobsen would not be in attendance.

He further announced that the purpose of this meeting would be to hear testimony from the judiciary only on SB 83.

SB 83 Increases punishment for driving under influence of intoxicants.

Chairman Blakemore requested that a letter from Thomas R. Davis, Justice of the Peace and Municipal Judge for the Justice Court of Carson Township, be entered into the record. Attached as Exhibit I. Chairman Blakemore also informed the committees that he had received a telephone call from Judge James Kelly of Las Vegas regarding SB 83. Judge Kelly stated that this matter was to be discussed at the upcoming Nevada Judges' Association meeting and that he did not believe they would be able to support it due to the mandatory sentencing provisions. It was their opinion that sentencing should be left to the judge's discretion.

Mike Griffin, District Court Judge, Carson City, Storey County, informed the committees that he was also representing the opinions of Michael E. Fondi, District Court Judge, Carson City and Howard D. McKibben, District Court Judge, Douglas County. He further stated that he was addressing only what the bill would do and not passing judgment as to whether it was good or bad. At the present time, the district court's jurisdiction is for felony drunk driving. Under this measure, a second conviction would be a gross misdemeanor and would put it in the district court, greatly increasing their work load.

However, the biggest problem with this bill is the mandatory sentencing. It allows for no flexibility. By removing probation, you are removing the coersive hammer of the courts. Under present law, probation can be granted and as a condition of that probation the individual involved can be required to achieve certain goals. Should the person fail those goals, he can be brought back to court and made to serve the remainder of his time. Additionally, the third conviction requires a mandatory prison sentence and a fine. Judge Griffin stated that it is very rare to sentence someone to a prison term and a fine; it is usually one or the other inasmuch as it is very difficult to collect a fine from someone in prison.

Senator Hernstadt asked if a person is killed by a car driven by a drunk driver, isn't the crime the same as murder? Shouldn't the punishment be as stiff as if he had used a gun or a knife? The victim is just as dead.

Judge Griffin responded that what makes murder, murder is intent. However, he felt that it was conceivable that the legislature could statutorily create a crime where vehicular homicide had more severe penalties.

Mr. Price stated that in California a judge has been impounding the vehicle of persons convicted of DUI.

Judge Griffin replied that that was something he had considered suggesting to the committees but that he would not want to venture a legal opinion on it. He did feel that perhaps constitutionally, using the same theory of confiscation of vehicles transporting drugs, you could impound the vehicle after a certain number convictions. It was his opinion that this, with a proper amount of publicity, would be more effective in many respects than the mandatory jail sentence.

Senator Hernstadt expressed concern over a third party, such as a car rental agency or lending institution, being hurt by this.

Judge Griffin felt that situation could be addressed statutorily. It would not be the intent of the law to place the burden on anyone but the offender.

Cary Miller, Court Administrator, City of Las Vegas Municipal Court, informed the committees that he was appearing on behalf of the 4 Las Vegas municipal court judges who could not be present this afternoon due to busy court calendars. He stated that they concurred in the intent of this legislation, however there were certain items he wished to discuss.

Mr. Miller expressed concern about restricting the ability to mete out sentences in accordance with the circumstances of the case. When a judge issues a sentence, he looks at several different factors, including:

1) Blood alcohol and field sobriety results. Is a .10 to be dealt with in the same fashion as a .30?
2) Prior record. This is a primary consideration to the judge. Is the individual a repeat offender?
3) Age.
4) Income and economic means. Particularly when it comes to determining between jail time or imposing fines or other penalties such as counseling or educational programs.
5) Personal injury and/or property damage, as it relates to a particular case.

Another general concern of the judges is that the bill does not address a real problem and that is the impaired driver whose blood alcohol level may be below the presumption level of .10.

Mr. Miller went on to discuss some of the specifics of the bill that he felt would cause some problems. With regard to the first offense, there was a question as to who would administer the mandatory 40 hour work program; how it would be monitored and who would absorb the cost. There was also concern about the family and employment problems that may be created in certain cases. On the mandatory education requirement, Mr. Miller questioned who would be responsible for the cost of the program for indigents and transients who do not have the ability to pay. A further problem in that regard is the status of non-DMV courses. The bill indicates that the classes are to be given by the DMV only. He wondered if this would put locally based education and substance abuse programs out of business. And lastly, the suspension of the drivers' license without limited driving privileges could cause problems in emergency situations or with employment.

Making the second offense a gross misdemeanor will transfer jurisdiction from the municipal court to district court. Although this will alleviate the case load for municipal courts, Mr. Miller felt it would break the continuity of either treatment or punishment that might have been given for the first offense. Finally, with regard to the mandatory jail time, Mr. Miller informed the committees that Clark County has a jail population ceiling and that they are concerned about overcrowding.

Mr. Miller presented the following suggestions from the municipal judges:

1) Consider provisions for dealing with the impaired driver; the driver whose blood alcohol level is below the presumed level of .10. Many drinking driver problems are created by individuals who are not legally intoxicated but whose driving is impaired. There is a similar distinction in law now between reckless and careless driving.

2) Raise the maximum fine levy to $750 in misdemeanor courts. This would give the courts a little more bite in terms of being able to levy fines.

3) Grant probationary powers to the misdemeanor courts. This would allow enforcement of sentences given, particulary those requiring attendance in substance abuse programs.

4) Would suggest allowance for limited driving privileges for first time offense. This would take into consideration family or job situations under certain circumstances.

5) Certify locally sponsored substance abuse programs. Las Vegas maintains a court-sponsored and staffed program and they would not like to lose its viability becuase it doesn't not fall under the auspices of the DMV.

6) Establish criteria for gross misdemeanor. The judges are concerned that a second offense may not automatically merit a gross misdemeanor charge. They would like some criteria established in addition to the number of repeat offenses.

7) Mandatory minimums, particularly as it relates to repeat offenders and offenders who have incurred personal injury or property damage.

In conclusion, Mr. Miller stated that the judges appreciated the need to impose stiffer punishment for DUI offenses. However, they would hope to avoid restricting the courts ability to deal with each case on an individual basis or imposing negative social impacts resulting from mandatory programs. He further stated that his judges were willing to work with the committees to provide any feasible alternatives to this problem.

Mr. Glover responded to Mr. Miller's comments by saying that the problem the legislature has is that judges have been too lenient with drunk drivers and that is why this bill is before the committees.

Senator Hernstadt asked if Mr. Miller could provide the committees with statistical information as to the disposition of DUI cases over the last 2 years, with particular emphasis on the past 6 months in light of the upcoming city elections.

Mr. Miller replied that he would provide such information. (to be attached as Exhibit II)

Don Gladstone, Office of the Reno City Attorney and representing the Reno Municipal Judges. He reviewed the following lines and paragraphs:

Page 2, line 7 does not indicate what constitutes a first offense. There needs to be a reference point. A person convicted of DUI prior to the implementation of this bill would have had to know that, at some point in time, the ramifications of this bill could result in a gross misdemeanor or felony charge. The Supreme Court has issued opinions which state that you cannot enhance the punishment of a defendant because of past crimes unless he was represented by an attorney.

Mr. Gladstone also concurred in Mr. Miller's comments regarding certification of locally sponsored substance abuse programs.

Page 2, line 8, following "the court shall sentence," Mr. Gladstone felt that it was written so definitively that they may have precluded the court's ability to fine an individual. He proposed language to the effect that there shall be a fine and, then go on to list other items you wish to make minimums; keeping in mind that the present limit of the municipal court is $500.

Page 2, line 8, there is concern that the required 40 hours of physical labor is unconstitutional. It will not pass two different violations of the federal constitution: involuntary servitude or cruel and unusual punishment.

Senator Blakemore stated that had been addressed by Frank Daykin, Legislative Counsel, LCB, and was found to cause no problems.

Mr. Gladstone replied that was something for some counsel with a defendant to challenge at some point in time. He would like to see a bill that would stand on its own merit and that would be unchallengable on that basis.

Aside from his concern over its constitutionality, the City of Reno anticipates approximately 150 persons would fall into this category. That would require additional administrative staff; each person so sentenced would have to be covered by NIC; and the City would be responsible for health and accidents as well. Also since the bill requires physical labor, the City's liability would be for people ranging in age from 18 year to 80 years and over. That is quite an extensive amount of liability.

Page 2, line 12, subsection (a), the court cannot direct the DMV to suspend a license. DMV can be required, by law, to take such action after a notice of conviction has been forwarded to them but they are not a party to the action.

Page 2, line 20, section 4(a), he concurred with Judge Griffin and Mr. Miller's comments regarding making a second conviction a gross misdemeanor. In district court, they take all criminal matters first and as a defense attorney, Mr. Gladstone stated that he would always ask for a jury trial in a DUI case, thereby guaranteeing a considerable delay. He wanted to emphasize that any delay works to the disadvantage of the prosecutor and the advantage of the defendant.

Page 2, line 17, section (b), if you do agree to the removal of gross misdemeanor for the second conviction, then 30 days in either municipal or county jail would be appropriate. A further consideration is the revenues presently generated from fines in municipal court. These would be lost to the district courts should they gain jurisdiction over second offenses.

Page 2, line 23, suspension of the driver's license. The mandatory revocation of a license would affect the way the current Nevada Implied Consent law is used and that is whether or not someone takes a blood alcohol, breath or urine test. If an individual knows that their license will be suspended automatically for 90 days on a first conviction and 6 months on a second conviction, then it would be to their benefit not to take the test. Mr. Goldstone suggested that if the committees include this language, that they review the consent law and perhaps increase that to automatice suspension of 1 year.

Page 2, paragraph 5 poses a significant problem for out-of-state tourists. Nevada receives reports from California and also from the FBI (NCIC report) listing prior convictions of certain individuals. This could pose an equal protection problem for someone from another state who is arrested in Nevada for DUI, as to what effect the number of DUI's they might have had and their transient nature.

Page 2, line 32, requesting the addition of psycologist or substance abuse counselor to certified physician. It was their opinion that a physician could not possibly review all cases sent to him. Also, most physicians would probably indicate that a person is no longer a danger to themselves or a threat to others because of his use of drugs or alcohol. Mr. Gladstone felt that was probably the stiffest statement you would get from a doctor because of potential liability

Page 2, line 34 appears to be inconsistent with the intent of the bill. It allows the individual to "elect" the program and makes no provision for what should happen if he chooses not to go along with the program. He also suggested that this be tied to NRS 458.300 wherein people participating in alcohol or drug abuse programs do so at their own expense. As presently written, SB 83 does not stipulate who is to pay for the counseling programs. Mr. Gladstone further suggested in regard to what they term the "458" program that a plea be entered prior to going into a counseling program rather than going into the program and then at a later date placing the burden on the city or state to prove their guilt.

Page 3, line 2 indicates probable cause. Mr. Gladstone expressed concern over losing a conviction simply because he could not negotiate with the individual. Many times there will be numerous charges against a person, the most serious of which is a DUI. He will offer to dismiss the other charges for a conviction on the DUI. However, if he were forced to go to trial on that DUI, he may not win.

In conclusion, Mr. Gladstone wanted to emphasize their support for stricter enforcement. He felt there were 3 benefits of the punishments: rehabilitation, neutralization (by simply putting them away for a period of time) and deterrents. One of the problems that must be addressed is what do we want to do to these individuals. When do we want to neutralize them; what really does deter them; and do we want to give these individuals on a first or second conviction an opportunity to rehabilitate themselves. It may be the first time that they have recognized the illness or that they had a problem.

Senator Hernstadt requested the same type of information from Mr. Gladstone that Mr. Miller was to supply for the committees.

Mr. Gladstone responded that he would contact the court administrator for Reno and have that information forwarded. (to be attached as Exhibit III)

There being no further testimony, the meeting was adjourned.

Respectfully submitted,

Cheri Kinsley

Cheri Kinsley, Secretary
Assembly Transportation Committee

AGENDA

Joint Senate and Assembly Committee on Transportation, Room 131.

Day Monday, Date March 2, Time 1:00.

S. B. 83-- Increases punishment for driving under influence of intoxicants. (This meeting is to accept testimony from the judiciary only).

ATTENDANCE ROSTER FORM

COMMITTEE MEETINGS

JOINT SENATE AND ASSEMBLY TRANSPORTATION COMMITTEES

DATE: March 2, 1981

PLEASE PRINT NAME	PLEASE PRINT PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Mike Griffin	Dist Judge, Carson City	882-1996
Mrs Ray Ceccarelli	Reno - Support SB 83	
Ray Ceccarelli	Reno Support SB 83	
Isabel S. Roolse	Reno - Support SB 83	825-4498
JOHN OPPENHEIMER	RENO SUPPORT S.B. 83	826-5100
[illegible]	Nevada [illegible] Assn. [illegible]	882-8758
Don Nichols	Reno - Support SB 83	825-2198
[illegible]	Reno Support SB 83	329-6014
[illegible]	Reno Support S.B-83	329-6014
Murray Cohen	No. Nev Food & Bev. Assn	882-9792
[illegible]	Fallon. Support SB-83	423-6743
Mike [illegible]	Fallon -	423-[illegible]
[illegible]	Fallon. Support SB-83	423-[illegible]
Gordon BRDUDIC	Fallon. Support SB-83	423-[illegible]
Katrina Koskela	Fallon - support S.B.-83	423-[illegible]
Tom [illegible] Scheroblier	Fallon	423-5567
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Jim Hatcher	Bar Owner 302 So. Carson St	883-9433
[illegible]	Carson City, Nev [illegible]	882-1408
Don Gladstone	ASST CITY ATTY CITY OF RENO	785-2050
[illegible]	[illegible]	[illegible]
[illegible]	Reno	[illegible]

ATTENDANCE ROSTER FORM **COMMITTEE MEETINGS**

JOINT SENATE AND ASSEMBLY TRANSPORTATION COMMITTEE

DATE: March 2, 1981

PLEASE PRINT NAME	PLEASE PRINT PLEASE PRINT ORGANIZATION & ADDRESS	PLEASE PRINT TELEPHONE
Susan Beauchamp	self for SB83	849-1391
Lillie Stoddard	self Reno for SB 83	972-8282
Myrtle Biddle	self 1305 Raymond Sparks	358-9367
Opal Hanika	Self yes SB83	882-6609
Charlotte Loiacano	Self yes SB 83	882-1706
[illegible]	[illegible] yes SB 83	[illegible]-3694
Jerre Cleveland	1390 High Chaparral 89511	853-5016 Yes S[illegible]
Diane Irwin	Church Women United - 600 Hunter Ln. Reno, 89509	322-3662
ED IRVIN	1st BAPTIST CHURCH RENO FOR SB83!	
Peggy Martin	P.T.A. 4801 S. Harrison #22 Las Vegas	458-8185
Shelley Chase	Greenbrae PTA	[illegible]-0747
[illegible] McKay	Greenbrae PTA	358-0747
Cheryl [illegible]	[illegible] PTA	[illegible]-8563
Jim Rafferty	Summa Box 14[illegible] LV	733-0127
Cynthia [illegible]	"	"
[illegible]	Dep't of Justice	
C P Etcheverry	NEV LEAGUE of CITIES	882-2121
[illegible]	City of North Las Vegas	882-[illegible]
H. CURTIS	NLC	
Steve Williams	Nevada Bell	789-6980
Pat [illegible]	144 [illegible] - Reno	851-1553

The Justice Court of Carson Township

THOMAS R. DAVIS
Justice of the Peace
Municipal Judge

320 N. CARSON STREET
CARSON CITY, NEVADA 89701
(702) 882-1998

JOAN FETTIC
JERI BAKER
MURIEL SKELLY
Clerks of the Court

March 2, 1981

Honorable Senator Richard Blakemore, Chairman
Committee on Transportation
Nevada State Legislature

Dear Senator Blakemore,

I regret that I am unable to be present at the hearing you have scheduled for 1:00 P.M. March 2nd with reference to S.B. 83 and the penalties for Driving Under the Influence.

I will take license to be brief and outline certain feelings on behalf of the several lower Court judges by stating that; factually:

Such judges have imposed fines and/or occasional jail sentences against individuals convicted of Driving Under the Influence.

That many judges have further instituted programs of substance abuse education (voluntary on the part of the accused, as we have no authority to order a person to attend) which have resulted beneficially to the defendant and the community in as much as very few continue to drink and drive.

That, past legislation setting mandatory penalties, has been totally ineffective i.e. - automatic loss of license for two years - ten days jail automatic as a result of second conviction and threat of a five hundred dollar fine and/or jail sentence of six months.

That, the average citizen hasn't the slightest concept of the penalties as a result of such convictions, particularly the administrative punishment for drivers license and the civil penalty i.e. insurance, and that most accused persons exhibit surprise and consternation that such long range penalties presently exist.

That, further, many of these individuals convicted, continue to drive without consequence or conscience regardless of penalty or subsequent loss to their family - loss of license is not significant because for the most part, people think driving is a right, not a privilege.

EXHIBIT I

That, public awareness has only recently raised its eyebrows in recognition of Driving Under the Influence because of horrible personal tradgedies experienced by a few unfortunate families.

That S.B. 83 provides for penalties which extend far beyond the comprehension of the people as a whole, and further, that no provision in this bill provides for education prior to arrest for Driving Under the Influence.

That, implementation of this bill may liken itself to that of a computer justice system which would mandate an accused to be sentenced without benefit of circumstances in mitigation or reasonable explanation as to what took place at the time of arrest.

That the Nevada Judges' Association deplores the loss of life and limb resulting from those convicted of Driving Under the Influence, but the advocation of jail sentences and maximum fines will not deter the incidence of such offenses so long as the ingestion of alcohol is a socially accepted practice.

That you mandate <u>education</u> as a requisite prior to obtaining a drivers license in this state with specific direction in the curriculum of alcohol awareness.

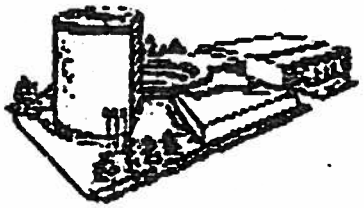
That you channel some of the funds derived from traffic fines now being sent to "education" to a more specific designation such as education of drinking and driving, or "drinking and being."

Yours very truly,

JUDGE THOMAS R. DAVIS
Legislative Committee Member
Nevada Judges Association

200 STEWART AVENUE • LAS VEGAS, NEVADA 89101 • TELEPHONE 702 386-6011

City of Las Vegas



CHIEF JUDGE SEVERIN A. BROWN, DEPT. II
JUDGE DONALD M. MOSLEY, DEPT. I
JUDGE D. FRANCIS HORGAN, DEPT. III
JUDGE A. LORNO PRINCEAU, DEPT. IV
MARY L. MILLER, COURT ADMINISTRATOR
MUNICIPAL COURT 702 386-6011

March 4, 1981

Senator Richard Blakemore
Legislative Building
401 S. Carson St.
Carson City, Nv. 89710

Dear Senator Blakemore:

I appreciated the opportunity to testify before the joint committee on SB83. The DUI problem is complex and all of us in Las Vegas understand how difficult it is to formulate a viable solution. Per your request, I have compiled the DUI statistics for our court during the past six months, including final dispositions. These you will find enclosed.

The primary concern we have with SB83 is the restriction it will place on the judiciary in handing out punishment commensurate with the offense. While we sympathize with the apparent need expressed by many to tighten up the DUI law, we have problems with the bill as proposed. These problems, as I presented them before the committee, are outlined below:

1. Mandatory 40 Hour Work Program on First Offense - Our concern is how and by whom will this program be administered and funded.
2. Mandatory Education Given by DMV on First Offense - We are concerned how this will impact local community based substance abuse programs and if these programs will be certified by DMV.
3. 90 Day License Suspension on First Offense - This will severely impact those whose livelihood depends upon vehicular transportation, possibly increasing welfare and unemployment roles.
4. Second Offense Gross Misdemeanor - This will greatly impact caseload in Justice and Distr Courts and tie up the judicial process.
5. Mandatory Penalties and Jail Time on Repeat Offenses - The social burden this could creat maybe enormous, especially from a fiscal standpoint. Our jails which are already overcrowded will be further aggrevated.

The proposed bill provides little latitude for misdemeanor courts in particular to deal with DUI offenses at their level. If the intent of the committee is to make the penalties for DUI more severe, we suggest the following:

1. Create provisions in the law to penalize the impaired driver whose blood-alcohol level is below the presumption level.
2. Raise the maximum fine levy in misdemeanor courts from $500 to $750.
3. Provide for probationary powers at the Municipal Court level to extend the use of counseling, referral, and local work programs.

EXHIBIT II

4. Recommend license suspensions and DUI education for first-offenders with possibility for restricted driving where determined appropriate by the court.

5. Establish criteria for certain DUI offenses as gross misdemeanors or felonies with appropriate penalties.

We believe that these changes will give the courts increased latitude to deal more stringentl with DUI offenders. We agree with the committee that repeat offenders, those driving on suspended licenses, or those whose offense results in personal injury or property damage should be dealt with severely. If the committee feels that mandatory penalties are appropriate in these cases, we understand the intent. In fact, a separate statute dealing with these offens as distinguished from the noncriminal DUI may be considered.

Please understand that we share your interest to alleviate the DUI problem. We feel that the suggested measures will increase the ability of lower courts to do so. Please share this information with other members of the committee.

Thanks for your time and consideration.

Sincerely,

Larry L. Hiller,
Court Administrator

KLM:kg

Enclosure:

Compiled below are the dispositions of the DUI cases in Municipal Court for the five month period of October, 1980, through February, 1981. These figures are representative of the court record in dealing with DUI.

ACTION	NUMBER	PERCENT
Number of cases found guilty with accompanying jail time and/or fine. (1st offense fines average between $250 to $350.)*	161	60%
Number of cases Bench Warranted for Failure to Appear.	39	15%
Number of cases reduced to lesser offense due to insufficient evidence or recommendation of alcohol counseling agency. (1st offenders only.)*	44	16%
Number of cases dismissed or excused due to lack of evidence or recommendation by the City Attorney.	23	9%
Total Number of Actions	267	100%

*NOTE: Counseling fees incurred by offenders average $150 in addition to court imposed fines.

OFFICE OF THE CITY ATTORNEY

LOUIS S. TEST
City Attorney

CITY HALL
P. O. BOX 1900
RENO, NEVADA 89505

March 12, 1981

Senator Blakemore
Chairman, Committee on Transportation
Nevada State Legislature
Carson City, Nevada

Dear Senator Blakemore and Joint Committee Members:

Thank you for allowing me to speak on behalf of the Reno Municipal Court, the Reno City Attorney's Office and the Sparks City Attorney's office in support of SB83.

As requested, I have summarized my remarks which were generally in regards to specific line items contained in the bill for your review or for potential technical changes which would enhance the overall effect and enforcement of this much needed legislation.

Page 2, line 7 -

I raised the issue of when the first time conviction would start. Both for in-state and particularly out-of-state drivers, we would need certified copies of any prior convictions to know whether or not the Municipal Court has jurisdiction. Furthermore, I represented to you the fact that the Courts have held that you cannot enhance the punishment of a defendant because of things he did in the past unless he was represented by an attorney at the time of his prosecution. That would mean that each defendant must either have an attorney or that a public defender be appointed.

In the City of Reno, a first time offender receives a fine of at least $300 and is almost always assigned to a certified Department of Motor Vehicle School for alcohol or drug abuse, i.e. Community Counseling Services, which costs the defendant $120.

Page 2, line 8 -

"The Court shall sentence. . ." The language and penalties are set forth in such a manner that the Court may be precluded from imposing a fine. I suggested that a monetary fine, keeping in mind the monetary limit of a municipal court, should be included. At the present time that limit is $500. However, a bill has been introduced to raise that limit to $750, and I have included some legal research to support that increase.

Page 2, line 8 -

The work program is probably unconstitutional as both involuntary servitude or cruel and unusual punishment. However, even if it were legal, it would be an administrative nightmare to supervise and enforce and would probably cost the city more money to administer than it receives in fines.

Page 2, line 11 -

We agree and encourage the mandatory school concept by schools approved or certified by the Department of Motor Vehicles.

In Reno we have two schools, the Community Counseling Services and a Traffic Survival School. Which school to attend may be a matter over which the Judge should have some discretion.

Page 2, line 12(a) -

The Court cannot direct the Department of Motor Vehicles to suspend a license. The Department can do so, however, when required by law after a notice of conviction has been forwarded to them by the Court.

Page 2, line 20, 4(a) -

A gross misdemeanor. We fully support the sponsors' conceptual punishment scheme of misdemeanor, gross misdemeanor and felony. However, if a second DUI is made into a gross misdemeanor the case would have to be heard in the District Courts and quite simply, the DUI case load would inundate the District Courts with jury trials.

I cannot stress enough the possible ramifications of the single word "gross." If it were removed, i.e., a second DUI would still be a misdemeanor, then all of the penalties you have set forth could be heard and dealt with in our present Municipal and Justice Courts.

I would also be remiss in not indicating the significant loss of revenue and the burden and cost of sending municipal police officers to the District Court. Furthermore, county jail facilities are already over-burdened in many counties, while municipal facilities should be the proper place for these defendants.

Page 2, line 17(b) -

We are suggesting thirty (30) days in either a municipal or county jail if you agree with our suggestion to change the second DUI to a misdemeanor.

Page 2, line 23 - 4(a) -

Again, a municipal or county jail for fifteen (15) days. In Reno, a second DUI conviction is almost always sentenced to at least $400 and ten (10) or more days in jail.

Page 2, line 23 -

Loss of license for six months -

The Nevada Implied Consent Law needs to be stiffened to at least one (1) year or fewer people will take any test knowing that they are facing a ninety(90) day or six (6) month suspension upon conviction. I understand that a bill to effect this change has been introduced. In regard to this bill, you may want to consider denying a work permit for at least ninety (90) days or more if the person has refused to take the test.

Page 2, line 28 - 4(b) -

Thirty (30) days in municipal or county jail. We agree that there are aggravating circumstances when a driver does not have a valid license.

In the City of Reno, driving on a suspended or revoked license is virtually a mandatory jail sentence of ten (10) days or more.

Paragraph 5 -

This section poses a significant problem with regard to out-of-state drivers. We often have reports from California or the FBI's NCIC computer listing prior convictions. An out-of-state driver would most certainly raise a constitutional equal protection problem as a defense.

Page 2, line 32 -

The requirement for a Certified Physician should also include psychologists and substance abuse counselors. Furthermore, none of the above would certify individuals as requested for liability reasons. More likely, they would indicate that the individual is no longer a danger to themselves or to others because of his use of alcohol or drugs.

Page 2, line 34 -

States that the individual elect treatment. The election of treatment is inconsistent with the intent of the paragraph.

Page 2, line 35 -

Again the Court cannot direct the Department of Motor Vehicles. Rather, the Department should suspend until a certification is received.

Paragraph 6 -

If you change not "less than one (1) year" to six (6) months the municipal and justice courts would have jurisdiction. We certainly do not oppose a maximum fine of $500 (or $750 if our jurisdiction is raised) and a six (6) month jail sentence for a second offense.

Paragraphs 5 and 6 -

These sections are interwoven with the current 458 program of alcohol and drug counseling currently taking place in Reno. SJR 18 would grant lesser courts the authority for probation and would therefore allow the court to take a guilty plea before a person enters a rehabilitation program.

In Reno, a person under the 458 program will almost always incur counseling costs far in excess of the court's limit to a fine of $500. Furthermore, the individual may be required to attend a rehabilitation center in Fallon for two weeks at a cost of approximately $900 to the defendant. Counseling usually lasts at least nine (9) months and the court retains jurisdiction over the individual for three (3) years. Sometimes short jail sentences are part of the counseling requirement.

Section 5 -

The drug abuse program as outlined in the bill would appear to be at public expense. The 458 program mentioned above is paid for by the individual defendant.

Page 3, line 2 -

In addition to requiring probable cause, I would also allow plea bargaining if in the prosecutor's opinion or based on evidentiary facts or problems, the case cannot be proved at the time for trial.

Page 3, Section 2, line 14 -

Absolute and total support that a third charge of driving under the influence be tried as a felony.

Page 3, line 33 -

As above, again adding that the case cannot be proved at the time for trial.

Again, I would like to point out the fact that our District Courts are not equipped to handle the second DUI offender and the fact that appeals would be made to the Supreme Court. That fact and the City's participation in the enforcement and incarceration of offenders understates the need for serious consideration before moving revenue penalties from local jurisdictions who bear the enforcement burden and attendant costs to the state via the District Courts.

Thank you again for the opportunity to present these items to you for your consideration. If you have any further questions, please contact us.

Respectfully,

LOUIS S. TEST
CITY ATTORNEY

BY: Donald E. Gladstone
Donald E. Gladstone
Assistant City Attorney

DEG:iw

Enclosures

STEPHEN H. DOLLINGER
Judge

MICHAEL V. ROTH
Judge

GAYL B. DODGE
Court Administrator

RENO MUNICIPAL COURT

P.O. BOX 1900
RENO, NEVADA 89505

March 6, 1981

RENO MUNICIPAL COURT DRIVING UNDER THE INFLUENCE STATISTICS

CALENDAR YEAR 1980

January 1, 1980 - December 31, 1980:

Beginning Inventory:	350 cases
New cases filed:	1,514
Cases Terminated:	1,185

Normal sentences:

1. First time D.U.I. violation - $300.00 plus Community Counseling Services - Certified by Department of Motor Vehicles. Tuition for CCS is $120.00.

2. Second D.U.I. violation: $400.00 - $500.00 plus 30 to 60 days Reno City Jail.

3. Third (or more) D.U.I.: $500.00 plus 60 days to 180 days Reno City Jail.

Driving on a suspended or revoked license carries a mandatory 10 days sentence in the Reno City Jail.

Gayl B. Dodge
Court Administrator

CITY OF RENO
Inter-Office Memo

March 9, 1981

To: DON E. GLADSTONE, Assistant City Attorney

From: JOHN R. PETTY, Assistant City Attorney

Subject: Right to trial by jury in petty offenses.

Two constitutional provisions unequivocably state a criminal defendant's right to trial by jury. Article III, Section 2 of the Constitution provides that the trial of all crimes, except cases of impeachment, shall be by jury. The Sixth Amendment further states that in all criminal prosecution, the accused shall enjoy the right to a speedy and public trial by an impartial jury. Nevertheless, the Supreme Court has interpreted thses provisions as incorporating the common-law exception for petty offenses, for which non-jury disposition is permissible. See Frank vs. United States, 395 U.S. 147 (1969); District of Columbia v. Clawans, 300 U.S. 617 (1937); Callon v. Wilson, 127 U.S. 540 (1888).

In deciding whether an offense is petty, a Court should properly focus on "objective criteria, chiefly the existing laws and practices in the Nation." Duncan v. Louisiana, 391 U.S. 145, 161 (1968). The authorized penalties for various crimes are such "objective criteria," and are particularly important because they indicate the legislative determination of the crimes' seriousness. See Frank v. United States, supra, 395 U.S. at 148-149 (1969); Duncan vs. Louisiana, supra, 391 U.S. at 159-161.

The usual criminal penalties are fine and imprisonment. As to imprisonment the Supreme Court has drawn the line at six months, in part because 18 U.S.C. §1(3) establishes this maximum period of incarceration as an objective criterion of a "petty offense." See Duncan v. Louisiana, supra; Frank v. United States, supra.

However, in Muniz v. Hoffman, 422 U.S. 454 (1975), the Court declined to adopt 18 U.S.C. §1(3)'s $500.00 maximum as invariable criterion of an offense triable without a jury. Specifically, the Court said:

> "[W]e cannot accept the proposition that a contempt must be considered a serious crime under all circumstances where the punishment is a fine of more than $500, unaccompanied by imprisonment. It is one thing to hold that deprivation of an individual's liberty beyond a six-month term should not be imposed without the protections of a jury trial, but it is quite another to suggest that, regardless of the circumstances, a jury is required where any fine greater than $500 is contemplated. From the standpoint of determining the seriousness of the risk and the extent of the possible deprivation faced by a contemnor, imprisonment and fines are intrinsically different."

Muniz v. Hoffman, supra, 422 U.S. at 477.

The above-quoted language would seem to suggest that the fine amount could be placed, within reason, higher than the current $500 maximum for petty offenses without triggering a right to a jury trial. However, subsequent to the Muniz case at least three Federal Circuit Courts have questioned the extent of the Muniz decision. See: United States v. McAlister, 630 F.2d 772, 772-775 (10th Cir. 1980); United States v. Hamdan, 552 F.2d 276, 279-280 (9th Cir. 1977); and Douglass v. National Realty Corp., 543 F.2d 894, 902 (D.C. Cir. 1976). The Court in McAlister said in part:

> "Despite the suggestive language, we do not believe that Muniz applies in a criminal action against an individual. The Court was clearly discounting the risk of relatively small fines to a large corporation or labor union. 422 U.S. at 477, 95 S.Ct. at 2191 (emphasis added.) Although Muniz apparently authorizes a court to consider the financial impact of a fine on a large organization in determining entitlement to jury trial, requiring a district court to take into account the financial status of an individual defendant would raise exceedingly troublesome issues. A court should not

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condition constitutional rights on individual wealth. See United States v. Hamdan, 552 F.2d 276, 279 (9th Cir. 1977).

United States v. McAlister, supra, 630 F.2d at 774.

The position taken by the Circuit Courts named-above is that until the Supreme Court speaks further, the $500 definition of "petty offense" in 18 U.S.C. §1(3) will serve as the determinant of an individual's right to jury trial.

In the final analysis, the $500 maximum definition of petty offense although still in use, has been accorded no talismanic significance. It is not invariable. However, it does provide an "objective criteria" in determing whether a crime is or is not a "petty offense." If the amount is raised by the legislature it would apparently not be in conflict with any existing Supreme Court decision. However, I would anticipate litigation on the issue. As it stand now it is an open question.

JOHN R. PETTY

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