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Northern Nevada DUI Task Force

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7 March 2003

Chairman Bernie Anderson and Members
of the Assembly Judiciary Committee
Nevada Legislature
Carson City, Nevada

Re: AB 34, Once A Felon

Attached please find copies of letters of support from the Washoe County District Attorney's office and Judge Sage, Sparks Municipal Court for the passage of AB 34.

We support this Bill and urge your passage of this legislation.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Holmes", with a long horizontal stroke extending to the right.

Jim Holmes
Chairman

sr/dj

Attachments: 2

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ASSEMBLY JUDICIARY
DATE: 3/7/03 ROOM: 3138 EXHIBIT L
SUBMITTED BY: JIM HOLMES



Washoe County District Attorney

RICHARD A. GAMMICK
DISTRICT ATTORNEY

M E M O R A N D U M

TO: JIM HOLMES, NORTHERN NEVADA DUI TASK FORCE

FROM: ROGER WHOMES
Deputy District Attorney

RE: "ONCE A FELON" DUI LEGISLATION

DATE: March 6, 2003

As we discussed this morning on the phone, the hypothetical question has arisen about the "fairness" of DUI felony legislation.

In other words, members of the legislature are concerned about the fairness of someone becoming a DUI felon (by either getting 3 DUIs in a 7 year period or a DUI involving death or substantial bodily harm), early in life, and then leading a clean lifestyle for years.

Then, at an advanced age, the hypothetical person receives another DUI conviction, which would otherwise be a misdemeanor. Because of the proposed "once a felon" legislation, that DUI would be handled as a felony.

Under the "once a felon, always a felon" legislation, the question arises if it is "fair" to make this very recent DUI a felony after a long period of good citizenship.

In answer to that question, the law allows that a person can petition a court to seal his or her records of a felony conviction pursuant to the authority of NRS 179.245.

My reading of the statute is that a convicted DUI offender falls into a category A or B felony (as the penalty for a 3rd time DUI is up to six (6) years in prison, and death or substantial harm is up to twenty (20) years).

Thus, a person could petition a court to seal his or her felony DUI record after fifteen (15) years have passed. NRS 179.245(1)(a).

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By applying for and having his or her records for a felony DUI conviction sealed after 15 years, a person can lawfully escape the "once a felon, always a felon" possible felony penalty for a subsequent DUI conviction much later in life.

I hope this information is helpful. Please let me know if I can be of further assistance. Thank you for your continued work on this very important subject.

Sincerely,

RICHARD A. GAMMICK
District Attorney

By 
ROGER WHOMES
Deputy District Attorney



JUDGE LARRY G. SAGE
MUNICIPAL COURT DEPARTMENT 2

MEMORANDUM

TO: Whom It May Concern

FROM: Judge Larry G. Sage
Sparks Municipal Court

DATE: 6 Mar '03

RE: AB No. 34

I support the passage and implementation of AB 34 providing that once a person has been convicted of a felony for operating a vehicle or vessel under the influence of alcohol or a controlled substance, any subsequent such violation is treated as a felony.

As I understand the bill, it does not affect current/existing legislation regarding the ability for ex-felons to qualify for sealing of felony records. I also understand that any such subsequent violation would be a category B felony, subject to the existing felony/misdemeanor record sealing statutes.

This seems fair and reasonable as the subsequent conviction, after felony, involves the same weapon of choice (substances) as the original charge. A passage of time should not deter the illegal use of substances, whether the substance, itself, is legal or illegal. Deterrence is best achieved by the use of the felony category enhancement. We do it for the use of weapons, inherently dangerous, why not for the inherently dangerous use of substances (alcohol & controlled substances) on a basis in excess of occasionally?

A majority of persons convicted of DUI are not driving under the influence for the first time. It is simply the first time that they have been caught. This includes many of those with a passage of time between their convictions.

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Memo

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Also, if the **progressive, existing** series of minimum punishments in DUI sentencing, along with their progressive mandated treatments, have failed to correct the conduct, it seems ludicrous to start all over with the same, identical lower punishments and treatment requirements that have failed in the past. Without this bill, that is exactly what I'm doing today. I have convicted, 3rd offense DUI defendants appear before me for sentencing on a DUI conviction that has occurred subsequent to their release from prison for the felony DUI sentence but after the passage of the current 7 year window for enhanced DUI sentencing. They appear for a 4th or 5th DUI conviction within 8 or 9 years. The last one or two DUI convictions, after the felony 3rd, are charged and sentenced as misdemeanors. And, their sentence must be exactly as the same sentence they received for DUI convictions numbers one and two. I am sentencing them to the exact same sentence range as they got years earlier and convictions later. How can I possibly address a substance abuse problem without any ability to increase incarceration, treatment, or punishment? They've done prison; jail is not going to give them any concern or fear; jail won't get their attention, not after they've done prison.. A repeated, lower sentence seems a judicial waste of time and resources, as it does nothing to address the underlying substance abuse problem. Prison, however, has at least a chance of getting someone's attention or fear, to get them oriented towards successful treatment, or to at least remove them from the public roadways, for the protection of the public citizens.

Adding to the reasons to support this bill is the inherent, real inability of prosecutors to get a hold of, and get into evidence, a certified copy of a constitutionally valid prior. This is necessary to secure the enhancement of a DUI to a 2nd misdemeanor or a 3rd felony charge. Not only are the priors hard to secure, some that are secured are not constitutionally valid priors (with written waivers of rights, etc.). I have witnessed an **unbelievable percentage** of DUI filed cases get reduced to a lower charge by striking the prior enhancement allegations. The prosecutors are not able to get valid, constitutional or any documents from other courts, wherein the prior conviction entered. Without those documents, the prosecutors are required to reduce the enhanced DUI charge. Current DUI offenders are not even being held to the level of charges that they have allegedly committed or accrued. I have observed 3 FIRST TIME DUI convictions against a defendant in a period of months, as the priors could never be produced or were found to be unconstitutional. This happens virtually ever day in a special jurisdiction court in our State.