

**STATE OF NEVADA SUBSTANCE ABUSE WORKING GROUP
IMPAIRED DRIVING SUB-COMMITTEE**

MINUTES OF MEETING

March 14, 2014

Sub-Committee Members Present

Linda Lang, Chair

Karl Nieberlein, Sparks Police Department

Rory Planeta, Chief, Carson City Alternative Sentencing (Retired)

John Johansen, Nevada Department of Public Safety, Office of Traffic Safety

Linda Finch, MADD

Gary Rubenstein, Substance Abuse Counselor

Members appearing via video conference:

Bruce Nelson, Clark County District Attorney's Office

Sub-Committee Members Absent

Peter Mansky, M.D., Director Nevada Professionals Assistance Program

Attorney General's Office Staff Present

Henna Rasul, Senior Deputy Attorney General

Heather Cooney, Legal Secretary II

Members of the Public Present

Ben West, DPS Office of Traffic Safety

Aaron Fleisher, SCRAM of California

1. Call to order and roll call of members.

Linda Lang, Chair, called the meeting to order at 9:00 a.m. and took a roll call of members. A quorum of the members was present.

2. Public Comments.

Aaron Fleisher suggested that the subcommittee consider 24/7 Sobriety Program as a future agenda item. He offered his agency's support to the committee in support of the 24/7 type of program initiative. Mr. Fleisher stated they are working closely with NHTSA, and are currently in North Dakota, South Dakota, and Montana. To the extent that the committee is interested in pursuing a pilot program, he would be willing to contact some stakeholders to come out and present to the committee.

3. Review of the 2011-2013 Nevada Strategic Highway Safety Plan – Impaired Driving

John Johansen made the following presentation:

The Strategic Highway Safety Plan is a U.S. Department of Transportation program and works with the Department of Transportation within the states.

There are three levels to the Plan. The Nevada Executive Committee on Traffic Safety (NECTS) establishes SHSP policies and procedures and provides support and assistance to specific SHSP strategies. Membership is primarily department heads, i.e. Health and Humans Services, NDOT, DPS, DMV and others. They are the voting body that approves the plan.

The second level is the Technical Working Group. They act as a resource and sounding board for the Critical Emphasis Area Teams. NSHSP has chosen six primary areas to concentrate on. The ones that Nevada has been working on are:

- Impaired driving
- Seat belts
- Lane departures
- Intersections
- Pedestrians

There is a CEA working specifically on those five areas and report to the Technical Working Group as a soundboard and for feedback. The final recommendations are approved by and implemented by NECTS. CEA's meet quarterly, Data Teams were created to manage the numbers.

Most effective campaigns typically use both enforcement and media. Each works on their own but when used together they are extremely effective. The Strategic Communications Alliance was formed to insure that everyone is using the same message and statistics and brings together all the media efforts from all the different areas so that they are the same.

NHTSA requires a stand alone Impaired Driving Group to qualify for the new 405D funding for impaired driving. Our CEA on Impaired Driving has been approved as our statewide impaired driving group for NHTSA.

The Impaired Driving Plan has program management and strategic planning, prevention, the criminal justice system, communication program, screening, assessment, treatment and rehabilitation as their main components.

The Statewide Impaired Driving Taskforce has identified the following objectives:

- Objective 1 – Reduce impaired driving fatalities from 2008 baseline of 123 to 99 by December 31, 2015.
- Objective 2 – Reduce impaired driving serious injuries from 2008 baseline of 295 to 237 by December 31, 2015.

To achieve these objectives the Taskforce seeks to increase the number of high-visibility DUI programs, enhance programs on impaired driving for young drivers, and reduce the number of repeat DUI offenders.

Strategy No. 1 includes increasing support among law enforcement agencies for high-visibility DUI enforcement programs, increasing earned media coverage of law enforcement, encourage law enforcement agencies to set up impaired driving reporting programs, encourage other law enforcement agencies to conduct refresher training programs on sobriety-testing and determine high-crash locations/corridors for impaired driving.

Strategy No. 2 addresses impaired driving by young drivers which includes enhancing DUI education within existing safe driving programs and conducting pilot Cops in Shops and Compliance Check programs to reduce youth access to alcohol.

Strategy No. 3 repeat offender strategies include supporting a stronger ignition interlock law by providing information and data that shows effectiveness, supporting mandatory evaluation of all DUI offenders including first time offenders and establishing a Court Monitoring Research Program for misdemeanor DUI offenders.

The Strategic Communications Alliance is part of Nevada's Strategic Highway Safety Plan and has been working on the Joining Forces Campaign to provide statewide traffic safety messages, from preventing drunken driving to promoting seatbelt use. The messages are seen throughout Nevada on Nevada Department of Transportation (NDOT) digital highway signs, Nevada Office of Traffic Safety public service announcements and other venues.

Every four years we ask NHTSA to come out and do an assessment on program areas such as pedestrians, motorcycles, impaired driving, seat belts etc. An assessment is conducted by a group of five people, experts in their field, who come in and talk to various members representing Nevada. The NHTSA committee then provides a list of priority recommendations including the following:

- Representation of the military and tribal communities on State task forces and commissions;
- Support of Traffic Records Coordinating Committee initiatives;
- Provide resources for and coordinate local effort to enforce responsible alcohol service ordinances and policies utilizing the Gaming Control Board for enforcement;

- Transportation alternatives – not enabling excessive drinking;
- Provide Drug Impairment Training for Educational Professional (DITEP) for school personnel;
- Educate elected officials to engage them to identify and enact effective legislation;
- Expand the development of Nevada law enforcement electronic reporting systems;
- Establish a committee of prosecutors to develop strategies for prosecution;
- Hire a State Traffic Safety Resource Prosecutor;
- Work with the Courts to use court data more effectively;
- Evaluate ignition interlock legislation to support improved legislation;
- Enact legislation that defines officers' reports as prima facie evidence for administrative hearings;
- Establish standard, validated, culturally and developmentally appropriate evaluation protocols and instruments for all drivers charged with DUI;
- Require completion of treatment as condition of returned driving privileges;
- Conduct evaluation of assessment, monitoring and treatment systems and services for DUI offenders;
- Develop DUI tracking system.

Mr. Johansen added that there is a financial disincentive to going after drug charges because when a driver blows a test beyond the legal alcohol limit as the driver can be convicted on the alcohol alone and the minimum fee for a basic screening drug test is \$75-\$100.

There is an additional charge for determining how much of the drug was found. In addition, certain drugs need to be sent out of state for testing, which would necessitate bringing the lab technician to Nevada to testify. The cost is prohibitive and prevents the case from being prosecuted. We need to have our labs test for a broader spectrum of drugs.

4. Discussion of recommendation of the Impaired Driving Technical Assessment – 2011

Chairperson Lang stated this agenda item had already been addressed in the presentation for Agenda Item No. 3.

Gary Rubenstein asked for a comparison between DWI and DUI. Mr. Johansen responded that they were the same.

Chairperson Lang commented that the EUDL funding mentioned in the 2013 Nevada Impaired Driving Strategic Plan is gone although the Enforcing Underage Drinking Laws Coordinator has extended the funding at least through 2015. This loss of funds is going to create a huge gap for many of these strategies.

Chairperson Lang also stated that every coalition in the state except for Clark County has responsible alcohol server training. They have attempted to make the training self-sustainable, by charging fees which go into the coalition funds specifically to fund EUDL activities.

Mr. Johansen stated that Frontier and Nye County Coalitions have applied for very specific grants, which are helping to fund the server training, specifically entering of the data. The Nye Communities Coalition also has some money to work on an impaired driving campaign and seat belt campaign.

Linda Finch stated MADD is working with the Inter-Tribal Council on a youth conference that they hold every year, which is for all the tribes in the state. The other program they are working on is The Power of Parents. Ms. Finch stated they are already working with the Paiute Tribe. They have created their own committee which will be an affiliate of MADD. Ms. Finch further stated she would like to see some tribal representation on this committee.

MS Finch added that MADD has for years had a court monitoring system that gathers the information from the actual sentence, but it is very limited in Nevada. It is in Carson City, Virginia City, and Dayton. The information is fed into a data base in Texas.

5. Discussion of alternative strategies to reduce recidivism.

Rory Planeta stated that the specialty courts have very formalized programs that include evaluations and monitoring, testing, treatment and AA meetings. At the misdemeanor level there isn't as much. If the party got a second DUI often they would be placed on formal probation but without all the conditions. Sometimes an interlock or no alcohol or drug clause but nothing was done during their probation except for some home visits which might include testing.

Mr. Planeta stated that Judge Tatro had asked him to look into the Sober 24/7 program, which is the South Dakota model. SCRAM, the parent company has been a partner in this based on a rural model which requires alcohol breath testing twice daily for a determined period of time. SCRAM's research showed that ninety days was the threshold for modifying behavior. Mr. Planeta proposed that the committee recommend a 24/7 style program here. He stated that SCRAM has offered to help with NHTSA and with finding funding. He suggested three potential areas for pilot programs might be Carson City, Clark County and perhaps Elko. The 24/7 program has been very successful in the states that have adopted it. Mr. Planeta added he has been pushing for a misdemeanor DUI court but funding is a problem.

Chairperson Lang asked if the misdemeanor DUI court would be part of the 24/7 program or a separate strategy. Mr. Planeta responded that it could be the same depending on the jurisdiction. It would be up to the Court to decide.

Mr. Johansen added that Nevada is part of Region 8 for NHTSA, which consists of North Dakota, South Dakota, Wyoming, Colorado, Utah and Nevada. The two states that have proven the 24/7 happen to be Region 8 states. Montana has a couple of counties with pilot programs as well as Wyoming. Mr. Johansen stated he personally believes that 24/7 programs work best in rural states. It would be very difficult for Clark County booking if everyone had to go there for testing and usually the testing location is a booking facility. There are issues with transition to an urban setting although it is possible. A PBT or evidentiary tester would work. Recidivism could be addressed at every opportunity. There would be a before trial opportunity because 24/7 is a condition of bail, for example.

Mr. Johansen further commented that the interlock is another option. It prevents you from driving but does not necessarily prevent you from drinking. Interlocks are fairly sophisticated but the easiest way around it is to simply drive someone else's car. Every strategy has a hole in it. The transdermal patches, or bracelets measuring the alcohol present through excretions in the skin are an alternative but results are not read for a couple of weeks so again, you have a delayed response.

The question really is what is the administrative costs, how can we set it up, and the problems with urban versus rural. There really isn't any difference if a driver is picked up for impaired driving DUI-1 or a DUI felony, the sanctions would work. As far as the specialty court the only difference between programs for misdemeanor and felony is that under Nevada statutes a misdemeanor has a 1-3 year requirement and a felony has 3-5. The program is essentially identical.

Gary Rubenstein stated that most of his clients come from the specialty courts. He explained that without an evaluation it is hard to tell what the purpose is. An evaluation can determine the difference between someone who is chemically dependent and someone who might be sociopathic. He added they have people who get deals from attorneys and people with high BAC's who have reckless and careless short term programs because the system saw some personal reason to give them consideration.

Mr. Rubenstein added, according to the work I am doing with the Washoe County School District, 29% of the students say that it's not good to drink and drive but admit to having done it. I am seeing an increase in marijuana driving. I'm concerned about the values, beliefs and attitudes of our students. They tell me it's not cool to drink and drive but it's ok to smoke and drive. I'm also seeing more and more older folks with DUI's involving prescribed medication.

Mr. Rubenstein stated the evaluation is meaningful in that people get the appropriate treatment response and consequences. The majority of my folks have had more than two DUIs. We continue to ask, what went wrong with the first one? Intellectually, they knew it was wrong but they thought they'd be smart enough to not do it again. There are also medical treatments to keep people from drinking including Camprol, an acamprosate and disulfiram which is Antabuse.

Linda Finch commented that MADD does a lot of interactive communication with the offenders. They frequently share that they don't take the first one seriously and what they received on Level 1 was worthless.

John Johansen stated that in Nevada the definition of a high BAC is 1.8. The guidelines for a substance abusing driver who really has a problem is 1.5 or above. He added that they have tried to get the 1.8 down to 1.5 but have not been successful.

Rory Planeta added that he believed the reporting for the transdermal unit is the next day and that the portable breath test machines report seconds after a test. Linda Finch stated this was also true for the interlock.

Mr. Johansen stated that another issue was cost and who pays? He added that he believes the offender should pay.

Bruce Nelson stated that in Clark County if the offender is represented by a public defender the Court assumes the offender is indigent. The figures for Clark County are 3-4 dollars per day for interlock. SCRAM or transdermal is 10 dollars per day. Generally the offender is ordered to pay however the judges in Clark County do use a sliding scale and waive payment if the offender is truly indigent. The finding of indigence is very liberal in favor of the offender.

Mr. Johansen stated that with regard to recidivism the Las Vegas Justice Court reports that in 2012 there 149 graduates with 13 reoffenders which is an 87% rate. In 2013 there were 91 graduates with 3 reoffenders. So long term programs work very well even at the felony levels. Recidivism rates 2 years after completion are still running at 10% +/- . Offenders who did not go through the program have a recidivism rate of 27 – 32 %. The drop in recidivism for other alcohol related crimes such as domestic violence is similar.

Gary Rubenstein stated that three months is a minimum for intervening in someone's pattern of inappropriate behavior but longer is better. He added that we also have to work with community attitudes citing gas stations that are allowed to sell alcohol while we tell them not to drink and drive?

Aaron Fleisher stated that in South Dakota the 24/7 was established in 2005. Preliminary research recently conducted by RAND Corporation regarding recidivism found a 12% reduction in DUI recidivism. They also found a 9% reduction in domestic violence recidivism which was an unintended result.

John Johansen added that the 24/7 program is the only type of program that seems to have a substantial impact on recidivism. I believe it is the constant monitoring and the potential for instantaneous consequence.

Rory Planeta moved to make a presentation to the SAWG re the 24/7 program. John Johansen seconded the motion. It passed unanimously.

6. Discussion of possible legislative items during the 2015 Legislative session.

Linda Finch commented that MADD is going to pursue legislation in support of the interlock system. They want interlocks for everyone who gets a DUI. It's already a law in 21 states.

Rory Planeta would like to find someone who would sponsor a bill that would require evaluations.

Bruce Nelson commented that there would need to be several bills to change our implied consent laws and other laws as a result of decisions by the United States Supreme Court and the Nevada Supreme Court. There is a BDR being drafted to change the implied consent laws to re-impose licensing sanctions if you refuse to take a test. There is a legal question right now about whether the police can order a person to take a test based on a Supreme Court Decision in *McNeely v. Missouri*. There was also a recent decision by the Nevada Supreme Court throwing out the statute that allowed us to use nurse's affidavits in lieu of having the nurse appear. This is something we will need to address legislatively. We're also working on a statute to set up electronic warrants, so if we do have to get a search warrant or blood draw we don't have to go through the telephonic process. Also the current law says that a blood test within two hours of driving with a .08 establishes guilt. We need to consider extending that to three hours because of the requirement now to get a warrant. There is a BDR currently regarding implied consent. The other issues will have to be items that are going to have to be addressed

John Johansen asked if the results of the Newcomer decision in the Nevada Supreme Court has the possibility of changing how you would have to word some of these proposed BDRs?

Bruce responded potentially yes. The Newcomer case is set to be argued May 6th in Carson City. I'll be defending the case on behalf of the State. The case that we're taking it up on essentially declared the implied consent law unconstitutional. We'll have to get some guidance from the Supreme Court.

Chairperson Lang asked if they would be looking for someone to sponsor the implied consent BDR. Mr. Nelson responded the Attorney General's Office would be doing the proposal. When I respond to their request for information I will include some of these other issues to see if they would be interested.

Chairperson Lang asked what the group would like to see with regard to evaluations.

Rory Planeta responded that in his experience the last seven years with evaluations he has found that drinking starts around 11 or 12 years old. This is the kind of information a judge needs to know. Although it may be the offender's first DUI, it's just that, the first time he got caught. Everybody who has been arrested needs a substance abuse

evaluation. A good evaluation also includes recommendations to help the judge figure out what kind of program the offender needs to be steered toward.

Gary Rubenstein added that the evaluation needs to include social issues, maturation, development skills etc. The assessment needs to identify not just the level of risk, but also the level of concern. Some people are in denial about the nature of their problem. A good evaluation makes it easy to respond to the needs of the individual as well as protecting the community.

John Johansen commented that it would be helpful if when a judge hands down a decision they can refrain from saying level 1, level 2 etc., because the treatment changes as they go along. If the offender is sentenced as a "2", that's the treatment they are going to get.

Karl Nieberlein stated that from a law enforcement perspective, I cannot stress the importance of an evaluation on each and every arrest. We test thousands of people and the driver could be a raging alcoholic and just happens to get caught when they are a .12. If this is the first DUI, you will not get a meaningful, appropriate, uniform evaluation. The offender will pay the fine and his behavior will return to what it was before. This creates a revolving door. By getting them meaningful treatment they can change their lives and mitigate their behaviors so we will not be dealing with them in the future.

Rory Planeta added defense attorneys know where to send their clients to get a better evaluation for them, not a meaningful evaluation.

Chairperson Lang stated that at the next meeting she would work with some of the members to do a presentation to the SAWG on these legislative issues.

Chairperson Lang asked for recommendations to fill this committee.

Karl Nieberlein recommended someone from the specialty court so we could have someone who could provide some expertise from that perspective.

John Johansen added that Sheila Leslie from the Reno Specialty Court would be excellent as she is an ex-legislator and an expert with both treatment and evaluations. Mr. Johansen also recommended Judge Pearson, Reno Justice Court and Ron Peeples, the program coordinator for the district level felony court. In the South there is Tom Stewart from the Justice Court. Rory Planeta suggested EJ Maldonado with the Western Regional Drug Court in Carson City.

Linda Finch suggested Monty Williams. Chairperson Lang stated that Mr. Williams was with the Statewide Native American Coalition and asked the group if they wanted her to research if there was someone affiliated with the Tribal Courts that might be interested. Richard Varner's name was also brought up. Linda Finch added that Monty Williams has affiliations with all the tribes whereas someone from the tribal court would only have

the expertise from that specific court, as all the tribal courts are different. Rory offered to speak with Mr. Varner.

Jan Johansen suggested trying to find someone from Nellis, active military. It was noted that it needs to be someone who was stationary, probably a medical officer.

7. Comments from the Working Group

John Johansen stated his concern that we are in a silo of impaired driving, when we are really just part of a substance abuse group. Things that work for impaired driving should in fact work for a lot of different issues in substance abuse. Recidivism rates show the other substance abuse driven crimes being reduced by treating impaired driving.

Rory Planeta commented that those people who are arrested for DUIs do not consider themselves criminals. That has to do with how we adjudicate them. The ideas need to change from judges on down. We are arresting them, they are criminals, and they have committed a violation of law. That's why we need these evaluations right away.

8. Discussion regarding future agenda items and future meeting dates.

Chairperson Lang suggested they meet in approximately 60 days in an effort to be prepared for the legislature.

9. Public Comment.

Aaron Fleisher commented that recently California passes a law that they have a whole list of possible DUI categories. So now they can track commercial driver's license DUIs, drug and alcohol combos, etc.

10. Adjournment. Meeting was adjourned at 10:35 a.m.