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Transportation and Motor Vehicles; Driving While Under the Influence

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Transportation and Motor Vehicles

Transportation and Motor Vehicles; driving while under the influence

NEV. REV. STAT. §50.335 (repealed); §§484.— (new); §§50.315, 50.325, 172.135, 179.245, 458.260, 458.300, 483.250, 483.460, 483.490, 483.525, 483.560, 484.219, 484.229, 484.259, 484.376, 484.379, 484.3795, 484.381, 484.383, 484.385, 484.387, 484.389, 484.393, 484.777, 484.779, 484.791 (amended).

AB 167 (Sader); 1983 STAT. Ch 426

SB 390 (Committee on Judiciary); 1983 STAT. Ch 597

(Effective May 21, 1983)*

(Effective November 1, 1983)**

Expands drunk driving laws by making it illegal to drive with 0.10 percent alcohol in blood; enhances penalties for first and second offenders; provides for a preliminary breath test; establishes penalties for failure to submit to testing; revises admissible evidence at trial.

Blood-Alcohol Content

Under existing law, it is unlawful for any person to be under the influence of intoxicating liquor¹ or a controlled substance² while driving or in actual physical control of a vehicle³ (hereinafter referred to as driving). Chapter 426 supplements these provisions⁴ by making it illegal to drive on a highway or premises to which the public has access⁵ while (1) having one-tenth of one percent or more by weight of alcohol in the blood⁶ (hereinafter referred to as 0.10 percent), or (2) being

* Sections 2, 3, 4, 5, and 8(2)(3)(4) of Chapter 597 became effective May 21, 1983.

** Sections 4 and 7 of Chapter 597 take effect on November 1, 1983.

1. NEV. REV. STAT. §202.055(3) (definition of intoxicating liquor).

2. *Id.* §453.041 (definition of controlled substance); *see id.* §484.376 (amended by 1983 Nev. Stat. c. 426, §7(1), at 1068) (applies statutory definition of controlled substance to provisions of Chapter 426).

3. *Id.* §§484.217 (definition of vehicle), 484.379(1)-(2) (amended by 1983 Nev. Stat. c. 426, §8, at 1068).

4. *Compare id.* §484.379 (amended by 1983 Nev. Stat. c. 426, §8, at 1068) with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379).

5. 1983 Nev. Stat. c. 426, §1.5, at 1065 (definition of premises to which the public has access).

6. NEV. REV. STAT. §484.379(1)(b) (amended by 1983 Nev. Stat. c. 426, §8(1)(b), at 1068); *see also* *People v. Alfaro*, 144 Cal. App. 3d 683, 192 Cal. Rptr. 178 (1983). The first circuit of the California Court of Appeal has declared that the 0.10 percent provision of California's drunk driving law is unconstitutional. *Id.* *But see* *Burg v. Municipal Court* 144 Cal. App. 3d 169, 192

under the combined influence of intoxicating liquor and a controlled substance.⁷ Under existing law, persons are subject to criminal penalties if they drive under the influence of an intoxicating liquor, a controlled substance, or both (hereinafter referred to as DUI), and cause death or substantial bodily harm⁸ to others.⁹ Chapter 426 also imposes criminal penalties upon persons who cause an accident that results in death or substantial bodily harm and who have 0.10 percent blood alcohol content at the time of the accident.¹⁰

Existing law provides that a person found to have 0.10 percent is presumed to be under the influence of an intoxicating liquor.¹¹ Chapter 426 clarifies this provision¹² by stating that if the results of a chemical analysis show the person's blood to contain 0.10 percent, a presumption exists that the person was under the influence of intoxicating liquor *at the time of the alleged violation*.¹³ Furthermore, in a criminal prosecution for DUI in which the defendant is alleged to have had 0.10 percent, the amount of alcohol shown by a chemical analysis of the blood, urine, breath, or other bodily substance is presumed to be no less than the amount present at the time of the alleged violation.¹⁴

Penalties for DUI

Under prior law, a DUI conviction within *five* years of the present offense was considered a prior offense for purposes of imposing penalties.¹⁵ Chapter 426 extends this time period to *seven* years¹⁶ and estab-

Cal. Rptr. 531 (1983). A second appellate panel of the same circuit has upheld the constitutionality of the 0.10 percent provision. *Id.*

7. NEV. REV. STAT. §484.379(2) (amended by 1983 Nev. Stat. c. 426, §8(2), at 1068).

8. NEV. REV. STAT. §193.015 (definition of substantial bodily harm); *see id.* §484.376 (Chapter 426 adopting the statutory definition of substantial bodily harm).

9. NEV. REV. STAT. §484.3795.

10. *Id.* §484.3795(1) (amended by 1983 Nev. Stat. c. 426, §12(1), at 1073) (provisions apply where an accident occurs on or off the highways of the state); *see also id.* §484.791 (amended by 1983 Nev. Stat. c. 426, §20(1), at 1080). If a police officer has reasonable cause to believe a person was DUI or had 0.10 percent blood alcohol content, the individual may be arrested without a warrant. The crime of 0.10 percent is a separate offense from driving under the influence of intoxicating liquor. *Id.* §484.3795(1) (amended by 1983 Nev. Stat. c. 426, §12(1), at 1073).

11. *Id.* §484.381(2)(c) (amended by 1983 Nev. Stat. c. 426, §13(2)(c), at 1073).

12. *Compare id.* §484.381(2)(c) (amended by 1983 Nev. Stat. c. 426, §13(2)(c), at 1073) with 1977 Nev. Stat. c. 553, §2, at 1370 (amending NEV. REV. STAT. §484.381).

13. *Compare* NEV. REV. STAT. §484.381(2)(c) (amended by 1983 Nev. Stat. c. 426, §13(2)(c), at 1073) with 1977 Nev. Stat. c. 533, §2, at 1370 (amending NEV. REV. STAT. §484.381).

14. NEV. REV. STAT. §484.381(1) (amended by 1983 Nev. Stat. c. 426, §13(1), at 1073). The chemical analysis is of the blood, urine, breath, or other bodily substance. *Id.*

15. 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379(3)-(10)).

16. *Compare* 1983 Nev. Stat. c. 426, §10(2), at 1070 with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379). *See also* 1983 Nev. Stat. c. 426, §35, at 1089 (providing that an offense that occurred on or after July 1, 1976, and is evidenced by a conviction is considered a prior offense for the purposes of this act).

lishes stronger penalties for DUI offenders.¹⁷

A. First Offenders

Prior to the enactment of Chapter 426, a person without a prior DUI conviction was guilty of a misdemeanor upon a first offense and was (1) required to pay for and attend courses on the use and abuse of alcohol and controlled substances,¹⁸ and (2) fined not less than \$100.¹⁹ In addition, the court had discretion to suspend driving privileges and impose a jail sentence of not more than six months.²⁰ Under Chapter 426, the first DUI offense within a seven year period is a misdemeanor and attendance at an educational course is required.²¹ Chapter 426 further requires, however, that the court be informed if the teacher of the course finds that the offender is an abuser of alcohol or controlled substances.²²

Under Chapter 426, a first offender will be assessed a fine of not less than \$200 or more than \$1000,²³ and the court must also (1) impose a jail sentence of at least two days but not more than six months²⁴ or (2) require the offender to perform forty-eight hours of community work while dressed in distinctive garb identifying the person as having violated the drunk driving laws.²⁵ Finally, the Department of Motor Vehicles must revoke²⁶ the license of a first offender for ninety days.²⁷ During this time the offender will not be eligible for a license, permit, or privilege to drive.²⁸

17. Compare 1983 Nev. Stat. c. 426, §10(1), at 1070 with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379).

18. 1983 Nev. Stat. c. 426, §10, at 1070 (incorporating 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379(3))).

19. 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379(3)).

20. *Id.*; see also 1 PAC. L.J. REVIEW OF SELECTED 1981 NEVADA LEGISLATION 157 (1981).

21. Compare 1983 Nev. Stat. c. 426, §10(1)(a)(1), at 1070 with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379).

22. 1983 Nev. Stat. c. 426, §10(1)(a)(3), at 1070.

23. Compare *id.* c. 426, §10(3), at 1070 with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379). See 1983 Nev. Stat. c. 426, §10(1)(a)(3), at 1070.

24. 1983 Nev. Stat. c. 426, §10(1)(a)(2), at 1070.

25. *Id.*

26. NEV. REV. STAT. §484.150 (definition of revocation); see also *id.* §484.385 (amended by 1983 Nev. Stat. c. 426, §15(1), at 1075). The officer shall immediately seize the person's license or permit to drive, serve an order of revocation of the person's license, and advise the person of a right to review. A temporary license must be issued upon request. *Id.*

27. NEV. REV. STAT. §484.460(1)(c) (amended by 1983 Nev. Stat. c. 426, §22(1)(c), at 1081).

28. *Id.* But see NEV. REV. STAT. §483.490(2) (amended by 1983 Nev. Stat. c.426, §23, at 1082). In the event of a severe hardship, the Department of Motor Vehicles may issue a restricted license for a first or third offender during which time the driver is not eligible for a license. *Id.* see *id.*; §484.490(3) (amended by 1983 Nev. Stat. c. 426, §23(3), at 1082) (penalties for drivers who violate a condition of a restricted license); see also *id.* §484.460(2) (amended by 1983 Nev. Stat. c. 426, §22(2), at 1081). The Department of Motor Vehicles must revoke a person's license for failure to complete the education course and impose an additional 90 day period during which the driver is not eligible for a license. *Id.*

B. Second Offenders

Existing law requires the imprisonment of a person convicted of a second DUI offense for not less than ten days or more than six months.²⁹ In addition, the sentence may be served intermittently.³⁰ Chapter 426 limits this option by stating that upon a second or subsequent offense, the convicted offender must serve at least forty-eight consecutive hours as part of the sentence.³¹ Furthermore, Chapter 426 requires (1) the imposition of a fine of not more than \$1,000³² and (2) the revocation of the offender's license for a period of one year.³³ A second offender is not eligible for a restricted license during any portion of this period.³⁴

Existing law provides that a person convicted of DUI for a second violation cannot be released on probation or receive a suspended sentence.³⁵ Chapter 426 expands this provision to include all violations of DUI laws.³⁶ The prosecuting attorney is also prohibited from dismissing a DUI charge in exchange for a plea of guilty to a lesser charge.³⁷ Chapter 426 expands this prohibition against plea bargaining to include all violations of the DUI laws.³⁸

C. Third Offenders

Chapter 426 supplements existing law³⁹ for a third or subsequent violation within seven years by requiring the revocation of the offender's license for three years.⁴⁰ The license will be revoked if (1) a homicide results from DUI, or (2) substantial bodily harm results from reckless

29. 1983 Nev. Stat. c. 426, §10, at 1070 (incorporating 1981 Nev. Stat. c. 755, §5(4), at 1924 (amending NEV. REV. STAT. §484.379)).

30. See 1983 Nev. Stat. c. 426, §10(4), at 1070 (incorporating 1981 Nev. Stat. c. 755, §5(9), at 1924 (amending NEV. REV. STAT. §484.379)).

31. Compare NEV. REV. STAT. §484.379 (amended by 1983 Nev. Stat. c. 426, §10(1)(b), at 1070) with 1983 Nev. Stat. c. 426, §10(4), at 1070.

32. 1983 Nev. Stat. c. 426, §10(1)(b), at 1070. Existing law sets the lower limit at \$500. NEV. REV. STAT. §484.379(4).

33. NEV. REV. STAT. §384.460 (amended by 1983 Nev. Stat. c. 426, §22(1)(b)(5), at 1081).

34. *Id.*, see *id.* §484.460(1)(1).

35. 1983 Nev. Stat. c. 426, §10(3), at 1070 (incorporating 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379)).

36. 1983 Nev. Stat. c. 426, §10(3), at 1070.

37. 1983 Nev. Stat. c. 426, §10(3), at 1070 (incorporating 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379)) (unless the charge is not supported by probable cause).

38. Compare 1983 Nev. Stat. c. 426, §10(3), at 1070 with 1981 Nev. Stat. c. 755, §5(8), at 1924 (amending NEV. REV. STAT. §484.379); see also 1983 Nev. Stat. c. 426, §10(5), at 1070. Any sentences simultaneously imposed for DUI violations must be served consecutively. *Id.*

39. 1983 Nev. Stat. c. 426, §10(1)(c), at 1070 (incorporating 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379)). Imprisonment is not for less than one nor more than six years and the fine is not less than \$2,000 nor more than \$5,000. *Id.*

40. NEV. REV. STAT. §483.460(1)(a) (amended by 1983 Nev. Stat. c. 426, §22(1)(a), at 1081).

driving.⁴¹ Under existing law, a person convicted of DUI can apply to the court for treatment for alcoholism or drug abuse if classified as an alcoholic or an abuser of drugs.⁴² Prior to the enactment of Chapter 426, a person could elect to undergo this treatment after any violation of the DUI provisions.⁴³ Chapter 426, however, prohibits a DUI offender from applying to the court for treatment after the third violation.⁴⁴

Testing

A. Preliminary Test

Under Chapter 426, persons who drive a vehicle on a highway or premises to which the public has access are deemed to have given their implied consent to a preliminary breath test for the purpose of determining the alcohol content of their blood.⁴⁵ This test can be administered under the direction of a police officer who has an articulable suspicion⁴⁶ that the person is DUI.⁴⁷ Chapter 426 further provides that the officer must inform the driver that a failure to submit to the preliminary breath test will result in an immediate revocation of driving privileges.⁴⁸ Moreover, the license will be revoked for a period of ninety days if the results of the test show the person to have 0.10 percent alcohol in the blood.⁴⁹

B. Evidentiary Test

Existing law states that persons driving on a highway have given their implied consent to an evidentiary test⁵⁰ to determine the alcohol content of the blood if the officer has reasonable grounds to believe that

41. *Id.*

42. 1983 Nev. Stat. c. 426, §11(1), at 1072 (incorporating 1981 Nev. Stat. c. 755, §5(6), at 1924 (amending NEV. REV. STAT. §484.379)).

43. 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379).

44. 1983 Nev. Stat. c. 426, §11(1), at 1072; *see also id.* c. 426, §11(2), at 1072 (allows a prosecuting attorney ten days to request a hearing after receiving a notice of an application for treatment).

45. 1983 Nev. Stat. c. 426, §2(1), at 1066.

46. *Stuart v. State*, 94 Nev. 721, 722, 587 P.2d 33, 34 (1978) (description of articulable suspicion).

47. 1983 Nev. Stat. c. 426, §2(1), at 1066 (test administered at the scene of an accident or when the officer stops a vehicle); *see also* 1983 Nev. Stat. c. 597, §§2 - 6, at 1911. Nevada law provides for the creation of a committee on testing for intoxication to determine the devices to be used, the procedures for calibrating the devices, and adopt regulations concerning those who will operate the devices. *Id.*

48. 1983 Nev. Stat. c. 426, §2(2), at 1066 (90 day revocation period). The officer may arrest the person for the purpose of administering an evidentiary test if reasonable grounds exist. *Id.* c. 426, §2(3), at 1066.

49. 1983 Nev. Stat. c. 426, §3(3), at 1066.

50. Prior to the enactment of Chapter 426, the evidentiary test was known as a "chemical test". *Compare* NEV. REV. STAT. §484.383 (amended by 1983 Nev. Stat. c. 426, §14(1), at 1074)

the person is DUI.⁵¹ Chapter 426 broadens the scope of implied consent⁵² to include persons in actual physical control of a vehicle and who drive on premises to which the public has access.⁵³ Under prior law the person had to be arrested before the test could be given.⁵⁴ Chapter 426 abolishes the arrest requirement.⁵⁵

Pursuant to existing law, a person may refuse to submit to (1) an evidentiary blood test if means are reasonably available to perform a breath or urine test or (2) an evidentiary blood or urine test if a breath test can reasonably be performed.⁵⁶ Chapter 426 further provides that if a blood or urine test is requested, the person suspected of DUI must pay the cost of the substituted test if a subsequent conviction results.⁵⁷ In addition, Chapter 426 permits the officer to direct a person whose use of a controlled substance is at issue to submit to a blood or urine test, or both, in addition to the breath test.⁵⁸ No evidentiary test can be given, however, if the DUI suspect refuses to submit to an evidentiary test, unless the officer has reasonable cause to believe that the person caused death or substantial bodily harm to another person.⁵⁹

Under prior law, if a person failed to submit to an evidentiary test, that person's license was subject only to suspension.⁶⁰ Chapter 426 instead provides for a mandatory revocation of the license for one year,⁶¹ but if there has been a prior revocation for refusal to submit to an evidentiary test, the license will be revoked for three years.⁶² Furthermore, Chapter 426 provides that if a person's license is suspended, revoked, or restricted because of a failure to submit to an evidentiary test,

with 1981 Nev. Stat. c. 622, §1, at 1361 (amending NEV. REV. STAT. §484.383) (for consistency, the test is referred to hereinafter as an evidentiary test).

51. NEV. REV. STAT. §484.383(1) (amended by 1983 Nev. Stat. c. 426, §14, at 1074). The evidentiary test is distinguishable from the preliminary test in that the latter is only a breath test and cannot be used as the basis for a conviction. *Id.* See also *Schmerber v. California*, 384 U.S. 757, 765 (1966). The withdrawal of blood from those accused over their objection is admissible evidence and does not violate constitutional rights of due process or self-incrimination. *Id.*

52. Compare NEV. REV. STAT. §484.383 (amended by 1983 Nev. Stat. c. 426, §14(1), at 1074) with 1981 Nev. Stat. c. 622, §1, at 1361 (amending NEV. REV. STAT. §484.383).

53. NEV. REV. STAT. §484.383(1) (amended by 1983 Nev. Stat. c. 426, §14(1), at 1074).

54. 1981 Nev. Stat. c. 622, §1, at 1361 (amending NEV. REV. STAT. §484.383).

55. Compare NEV. REV. STAT. §484.383(1) (amended by 1983 Nev. Stat. c. 426, §14, at 1074) with 1981 Nev. Stat. c. 622, §1(1)(c), at 1361 (amending NEV. REV. STAT. §484.383).

56. NEV. REV. STAT. §484.383(5).

57. *Id.* (amended by 1983 Nev. Stat. c. 426, §14(5), at 1074).

58. *Id.* §484.383(6) (amended by 1983 Nev. Stat. c. 426, §14(7), at 1074).

59. *Id.* §484.383(7) (amended by 1983 Nev. Stat. c. 426, §14(7), at 1074) (officer may use reasonable force to obtain a blood sample).

60. 1981 Nev. Stat. c. 755, §7, at 1927 (amending NEV. REV. STAT. §484.385).

61. 1983 Nev. Stat. c. 426, §3(1), at 1066.

62. *Id.* c. 426, §3(2), at 1066; see also *id.* c. 14, §1, at 18. From February 21, 1983 until May 21, 1983, the officer was only required to inform the driver that refusal to submit to an evidentiary test would result in the suspension of the person's license. *Id.* See also NEV. REV. STAT. §483.460 (amended by 1983 Nev. Stat. c. 426, §25(2), at 1083).

the person must be imprisoned for not less than thirty days or more than six months, and fined not less than \$500 or more than \$1,000.⁶³ If the result of the evidentiary test shows that the person had 0.10 percent, the license must be revoked.⁶⁴ Consequently, the violator will not be eligible for a new license for a period of ninety days.⁶⁵

Revocation Review Hearing

Under existing law, a person whose license has been revoked may request a hearing to review the order of revocation.⁶⁶ Prior law provided that if a request for a hearing was made within the appropriate time, the hearing was to be conducted within sixty days.⁶⁷ Chapter 426 stipulates that a written request for a hearing may be made *anytime* during the period of revocation, but the individual will be entitled to only one hearing.⁶⁸ The hearing must be conducted within fifteen days⁶⁹ and the Department of Motor Vehicles must issue a temporary license pending a decision.⁷⁰ Prior law limited the scope of the hearing to whether the officer had reasonable grounds to believe the person (1) was DUI, (2) had been arrested, or (3) had refused to submit to a test.⁷¹ Under Chapter 426, the scope of the hearing is limited to whether or not the person failed to submit to a test or had 0.10 percent alcohol in the blood at the time of the test.⁷²

Admissibility of Evidence

Although Chapter 426 provides that the results of a preliminary test cannot be used in a criminal action,⁷³ evidence of a person's refusal to submit to a preliminary or evidentiary test is admissible.⁷⁴ The results of the evidentiary test are admissible only if documented evidence shows that the law enforcement agency maintained the testing device as required.⁷⁵

63. NEV. REV. STAT. §484.219(3) (amended by 1983 Nev. Stat. c. 426, §4(3), at 1067.

64. 1983 Nev. Stat. c. 426, §3(3), at 1066.

65. *Id.*

66. NEV. REV. STAT. §484.387.

67. 1981 Nev. Stat. c. 43, §10, at 85 (amending NEV. REV. STAT. §484.387).

68. NEV. REV. STAT. §484.387 (amended by 1983 Nev. Stat. c. 426, §16(1), at 1077).

69. *Id.*

70. *Id.*

71. 1981 Nev. Stat. c. 43, §10, at 85 (amending NEV. REV. STAT. §484.387).

72. Compare NEV. REV. STAT. §484.387 (amended by 1983 Nev. Stat. c. 426, §16(2), at 1077) with 1981 Nev. Stat. c. 43, §10, at 85 (amending NEV. REV. STAT. §484.387).

73. 1983 Nev. Stat. c. 426, §2(4), at 1066.

74. NEV. REV. STAT. §484.389(1) (amended by 1983 Nev. Stat. c. 426, §17(1), at 1078); see also NEV. REV. STAT. §484.389(2) (amended by 1983 Nev. Stat. c. 426, §17(2), at 1078). A court may not exclude evidence of an evidentiary test or failure to submit thereto if the officer substantially complied with the procedural requirements. *Id.*

75. *Id.* §484.389(4) (amended by 1983 Nev. Stat. c. 597, §7(4), at 1914).

Prior to the enactment of Chapter 426, only the testimony of an expert on alcohol in blood could be admitted for the purpose of proving the identity of the person from whom the blood was drawn.⁷⁶ Under Chapter 597 the affidavit⁷⁷ of any person who draws a sample of blood for the purpose of analysis is admissible for this purpose.⁷⁸

Conclusion

Chapter 426 establishes a new crime of driving with 0.10 percent.⁷⁹ The penalties for a DUI violation have been increased by (1) extending the time period for considering prior convictions,⁸⁰ (2) imposing mandatory jail sentences,⁸¹ (3) providing for the summary revocation of a person's driver's license for a first offense,⁸² and (4) increasing fines.⁸³ With the enactment of Chapter 426, persons are deemed to have impliedly consented to both preliminary and evidentiary tests for the purpose of determining the alcohol content in their blood.⁸⁴ Finally, Chapter 426 revises the procedures for revocation of a driver's license.⁸⁵

COMMENT

Statutes that make it a crime to drive with 0.10 percent alcohol in the blood have recently been challenged in the courts.⁸⁶ Specifically, the 0.10 percent provision could be declared void for vagueness since drivers are unable to determine how much alcohol they can consume before they reach 0.10 percent.⁸⁷ In the event, however, the 0.10 provision is held constitutionally infirm, existing law provides an alternative provision that enables a conviction for DUI based upon a *presumption* that the driver is DUI if a chemical test shows a 0.10 percent blood

76. 1975 Nev. Stat. c. 431, §1 at 647 (amending NEV. REV. STAT. §50.315).

77. See 1983 Nev. Stat. c. 597, §8(7), at 1914 (amending NEV. REV. STAT. §50.315) (committee on testing for intoxication shall adopt regulations prescribing the form of affidavits).

78. NEV. REV. STAT. §50.315 (amended by 1983 Nev. Stat. c. 597, §8(5), at 1915).

79. NEV. REV. STAT. §484.379 (amended by 1983 Nev. Stat. c. 426, §8(1)(b), at 1068).

80. Compare 1983 Nev. Stat. c. 426, §10, at 1070 with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.379).

81. 1983 Nev. Stat. c. 426, §10(1)(a), at 1070.

82. NEV. REV. STAT. §484.460 (amended by 1983 Nev. Stat. c. 426, §22(1)(c), at 1081).

83. Compare 1983 Nev. Stat. c. 426, §10, at 1070 with 1981 Nev. Stat. c. 755, §5, at 1924 (amending NEV. REV. STAT. §484.37).

84. See 1983 Nev. Stat. c. 426, §2, at 1066 (preliminary test); NEV. REV. STAT. §484.383 (amended by 1983 Nev. Stat. c. 426, §14, at 1074) (evidentiary test).

85. See NEV. REV. STAT. §484.387 (amended by 1983 Nev. Stat. c. 426, §16, at 1077).

86. See *State v. Franco*, 96 Wash. 2d 816, 824, 639 P.2d 1320, 1324 (1983) (statute upheld); *Roberts v. State*, 329 So. 2d 296, 297 (1976) (statute upheld).

87. See, e.g. *People v. Alfaro*, 144 Cal. App. 3d 683, 691, 192 Cal. Rptr. 178, 182 (1983). But see *Burg v. Municipal Court*, 144 Cal. App. 3d 169, 174, 192 Cal. Rptr. 531, 534 (1983).

alcohol content.⁸⁸

In addition, the validity of blood alcohol testing has recently been questioned.⁸⁹ Some experts assert that blood alcohol content may actually increase *after* an accident or arrest.⁹⁰ Consequently, a person not legally intoxicated at the time of the alleged violation may reach that level during the period of delay before the evidentiary test.⁹¹

Constitutional issues may also be raised by provisions of Chapter 426 that require first-time DUI offenders to wear distinctive garb⁹² while performing work for the community.⁹³ Under existing case law, an individual's personal appearance is protected by the due process clause⁹⁴ and a restriction on that right may violate personal liberties.⁹⁵ For these restrictions to be valid, there must be a legitimate state interest that is reasonably related to the regulation.⁹⁶ Therefore, this provision of Chapter 426 must be sufficiently tailored to justify the interest of the state in punishing drunk drivers.⁹⁷

88. NEV. REV. STAT. §484.381(2)(c)(amended by 1983 Nev. Stat. c. 426, §13(2)(c), at 1073); see also Comment, *Under the Influence of California's New Drunk Driving Law: Is the Drunk Driver's Presumption of Innocence on the Rocks?* 10 PEPPERDINE L. REV. 91, 98 (1982).

89. See Fitzgerald and Hume, *The Single Chemical Test for Intoxication: A Challenge to Admissibility*, 66 MASS. L.J. 23 (1981); see also NEV. REV. STAT. §484.385 (amended by 1983 Nev. Stat. c. 426, §15, at 1075) (procedure for evidentiary testing).

90. Fitzgerald and Hume, *supra* note 89, at 31.

91. *Id.*; see also NEV. REV. STAT. §484.381 (amended by 1983 Nev. Stat. c. 426, §13(1), at 1073) (amount of alcohol shown by a chemical analysis presumed to be no less than the amount present at the time of the alleged violation).

92. 1983 Nev. Stat. c. 426, §10(1)(a)(2), at 1070 (distinctive garb requirement).

93. See *infra* notes 94-95 and accompanying text.

94. See U.S. CONST. amend. XIV; NEV. CONST. art. I, §8; see also *Dwen v. Barry*, 483 F.2d 1126, 1130 (1973).

95. See *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); see, e.g., *Burgin v. Henderson*, 536 F.2d 501, 504 (1976) (balancing a person's free exercise of religion in wearing a prayer hat against the possibility of concealed weapons).

96. See L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 891-92 (1978).

97. See *id.*

Transportation and Motor Vehicles; child passenger seat restraints

NEV. REV. STAT. §484.— (new).

AB 307 (Swain); 1983 STAT. Ch 589

Chapter 589 expressly establishes requirements for the use of federally approved child passenger seat restraints.¹ In addition, Chapter 589

1. 49 C.F.R. §571.213 (1982) (establishes federal standards for child seat restraints); 1983 Nev. Stat. c. 589, §1, at 1888; see also *id.* c. 589, §1(3), at 1888 (providing that a violation shall not be considered a moving traffic violation under NEV. REV. STAT. §483.470); 1983 Nev. Stat. c. 589,