

Item # 17

**City of Carson City
Agenda Report**

Date Submitted: 4-28-09

Agenda Date Requested: 5-7-09

Time Requested: 10 minutes

To: Carson City Board of Supervisors

From: Carson City Justice/Municipal Courts

Subject Title: Action to introduce on first reading, an ordinance amending Carson City Municipal Code Title 10 Vehicles and Traffic, Chapter 10.22 Reckless Driving- Persons Under The Influence Of Liquor, Drugs, by adding Section 10.22.028 Device To Prevent Person Who Has Consumed Alcohol From Starting Vehicle: "Device" Defined, adding Section 10.22.029 Device To Prevent Person Who Has Consumed Alcohol From Starting Vehicle: Imposition By Court Order; Installation And Inspection; Exceptions, adding Section 10.22.030 Device To Prevent Person Who Has Consumed Alcohol From Starting Vehicle: Penalties From Tampering With Or Driving Without Device; Probation And Suspension Of Sentence Prohibited; Plea Bargaining Restricted, and other matters properly related thereto.

Staff Summary: In 2007, state law changed allowing courts to order a person to use an ignition interlock driving device if convicted of a D.U.I. if the person had a concentration of alcohol of less than 0.18 in his blood or breath at the time of the arrest. The law also changed to require a court to order a person to install an ignition interlock driving device if he was found to have a concentration of alcohol of 0.18 or greater in his blood or breath at the time of the arrest. This ordinance will allow the municipal/justice courts to impose this condition during sentencing.

Type of Action Requested: (check one)
☐ Resolution ☒ Ordinance
☐ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: I move to introduce on first reading, Bill No. _____, an ordinance amending Carson City Municipal Code Title 10 Vehicles and Traffic, Chapter 10.22 Reckless Driving- Persons Under The Influence Of Liquor, Drugs, by adding Section 10.22.028 Device To Prevent Person Who Has Consumed Alcohol From Starting Vehicle: "Device" Defined, adding Section 10.22.029 Device To Prevent Person Who Has Consumed Alcohol From Starting Vehicle: Imposition By Court Order; Installation And Inspection; Exceptions, adding Section 10.22.030 Device To Prevent Person Who Has Consumed Alcohol From Starting Vehicle: Penalties From Tampering With Or Driving Without Device; Probation And Suspension Of Sentence Prohibited; Plea Bargaining

Restricted, and other matters properly related thereto.

Explanation for Recommended Board Action:

An ignition interlock device is an in-car alcohol breath screening device that prevents a vehicle from starting if it detects a blood alcohol concentration (BAC) over a pre-set limit. The device is located inside the vehicle, near the driver's seat, and is connected to the engine's ignition system.

In 2007, state law changed allowing courts to order a person convicted of a D.U.I. charge to install an ignition interlock driving device prior to obtaining a restricted license, if the person had a concentration of alcohol of less than 0.18 in his blood or breath at the time of the arrest. The law also changed to require a court to order a person convicted of a D.U.I. charge to install an ignition interlock driving device if he was found to have a concentration of alcohol of 0.18 or greater in his blood or breath at the time of the arrest.

Applicable Statute, Code, Policy, Rule or Regulation: NRS 484.3941 to 484.3947

Fiscal Impact: N/A

Funding Source: N/A

Supporting Material: Draft bill

Prepared By: Maxine Cortes, Court Administrator

Reviewed By:



(City Manager)

Date:

4/28/08

Melanie Baykessa
(District Attorney)
Julia Brown
(Finance Director)

Date: 4-28-09

Date: 4-28-09

Board Action Taken:

Motion: _____ 1) _____ Aye/Nay
2) _____

(Vote Recorded By)

1 10.22.028 Device to prevent person who has consumed alcohol from
2 starting vehicle: "Device" defined.

3 10.22.029 Device to prevent person who has consumed alcohol from
4 starting vehicle: Imposition by court order; installation and inspection;
5 exceptions.

6 10.22.030 Device to prevent person who has consumed alcohol from
7 starting vehicle: Penalties for tampering with or driving without device;
8 probation and suspension of sentence prohibited; plea bargaining restricted.

9 **SECTION II:**

10 That Section 10.22.028 of the Carson City Municipal Code is hereby added as follows:

11 10.22.028 Device to prevent person who has consumed alcohol from starting vehicle:
12 "Device" defined.

13 As used in Section 10.22.028 to Section 10.22.030, inclusive, unless the context otherwise
14 requires, "device" means a mechanism that:

15 1. Tests a person's breath to determine the concentration of alcohol in his breath; and

16 2. If the results of the test indicate that the person has a concentration of alcohol of 0.02 or
17 more in his breath, prevents the motor vehicle in which it is installed from starting.

18 **SECTION III:**

19 That Section 10.22.029 of the Carson City Municipal Code is hereby added as follows:

20 10.22.029 Device to prevent person who has consumed alcohol from starting vehicle:
21 Imposition by court order; installation and inspection; exceptions.

22 1. Except as otherwise provided in subsections 2 and 5, a court:

23 (a) May order a person convicted of a violation of Section 10.22.020 that is punishable
24 pursuant to paragraph (a) or (b) of subsection 1 of Section 10.22.021, if the person is found to
25 have had a concentration of alcohol of less than 0.18 in his blood or breath to install at his
26 own expense, for a period of not less than 3 months nor more than 6 months, a device in any
27 motor vehicle which he owns or operates as a condition to obtaining a restricted license
28 pursuant to Nevada Revised Statute 483.490 or as a condition of reinstatement of his driving
 privilege.

(b) Shall order a person convicted of:

(1) A violation of Section 10.22.020 that is punishable pursuant to paragraph (a) or (b) of
 subsection 1 of Section 10.22.021, if the person is found to have had a concentration of
 alcohol of 0.18 or more in his blood or breath to install at his own expense, for a period of not
 less than 12 months nor more than 36 months, a device in any motor vehicle which he owns

1 or operates as a condition to obtaining a restricted license pursuant to Nevada Revised
2 Statute 483.490 or as a condition of reinstatement of his driving privilege.

3 2. A court may provide for an exception to the provisions of subparagraph (1) of paragraph (b)
4 of subsection 1 for a person who is convicted of a violation of Section 10.22.020 that is
5 punishable pursuant to paragraph (a) of subsection 1 of Section 10.22.021, to avoid undue
6 hardship to the person if the court determines that:

7 (a) Requiring the person to install a device in a motor vehicle which the person owns or
8 operates would cause the person to experience an economic hardship; and

9 (b) The person requires the use of the motor vehicle to:

10 (1) Travel to and from work or in the course and scope of his employment;

11 (2) Obtain medicine, food or other necessities or to obtain health care services for himself
12 or another member of his immediate family; or

13 (3) Transport himself or another member of his immediate family to or from school.

14 3. If the court orders a person to install a device pursuant to subsection 1:

15 (a) The court shall immediately prepare and transmit a copy of its order to the Director of
16 the Nevada State Department of Motor Vehicles (hereinafter "Director"). The order must
17 include a statement that a device is required and the specific period for which it is required.
18 The Director shall cause this information to be incorporated into the records of the
19 Department of Motor Vehicles and noted as a restriction on the person's driver's license.

20 (b) The person who is required to install the device shall provide proof of compliance to the
21 Department of Motor Vehicles before he may receive a restricted license or before his driving
22 privilege may be reinstated, as applicable. Each model of a device installed pursuant to this
23 section must have been certified by the Committee on Testing for Intoxication.

24 4. A person whose driving privilege is restricted pursuant to this section shall:

25 (a) If he was ordered to install a device pursuant to paragraph (a) of subsection 1, have the
26 device inspected by the manufacturer of the device or its agent at least one time during the
27 period in which he is required to use the device; or

28 (b) If he was ordered to install a device pursuant to paragraph (b) of subsection 1, have the
29 device inspected by the manufacturer of the device or its agent at least one time each 90
30 days,

31 to determine whether the device is operating properly. An inspection required pursuant to this
32 subsection must be conducted in accordance with regulations adopted pursuant to Nevada
33 Revised Statutes 484.3888. The manufacturer or its agent shall submit a report to the
34 Director indicating whether the device is operating properly and whether it has been tampered
35 with. If the device has been tampered with, the Director shall notify the court that ordered the

1 installation of the device.

2 5. If a person is required to operate a motor vehicle in the course and scope of his
3 employment and the motor vehicle is owned by his employer, the person may operate that
4 vehicle without the installation of a device, if:

5 (a) The employee notifies his employer that the employee's driving privilege has been so
6 restricted; and

7 (b) The employee has proof of that notification in his possession or the notice, or a facsimile
8 copy thereof, is with the motor vehicle.

9 This exemption does not apply to a motor vehicle owned by a business which is all or partly
10 owned or controlled by the person otherwise subject to this section.

11 6. The running of the period during which a person is required to have a device installed
12 pursuant to this section commences when the Department of Motor Vehicles issues a
13 restricted license to him or reinstates his driving privilege and is tolled whenever and for as
14 long as the person is, with regard to a violation of Section 10.22.020 imprisoned, serving a
15 term of residential confinement, confined in a treatment facility, or on probation.

16 7. As used in this section:

17 (a) "Concentration of alcohol of 0.18 or more in his blood or breath" means 0.18 gram or
18 more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his breath.

19 (b) "Concentration of alcohol of less than 0.18 in his blood or breath" means less than 0.18
20 gram of alcohol per 100 milliliters of the blood of a person or per 210 liters of his breath.

21 (c) "Treatment facility" has the meaning ascribed to it in Nevada Revised Statute 484.3793.

22 SECTION IV:

23 That Section 10.22.030 of the Carson City Municipal Code is hereby added as follows:

24 10.22.030 Device to prevent person who has consumed alcohol from starting vehicle;
25 Penalties for tampering with or driving without device; probation and suspension of sentence
26 prohibited; plea bargaining restricted.

27 1. A person required to install a device pursuant to Section 10.22.029 shall not operate a
28 motor vehicle without a device or tamper with the device.

2. A person who violates any provision of subsection 1:

(a) Must have his driving privilege revoked in the manner set forth in subsection 4 of
Nevada Revised Statute 483.460; and

(b) Shall be:

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(1) Punished by imprisonment in jail for not less than 30 days nor more than 6 months; or

(2) Sentenced to a term of not less than 60 days in residential confinement nor more than 6 months, and by a fine of not less than \$500 nor more than \$1,000.

No person who is punished pursuant to this section may be granted probation, and no sentence imposed for such a violation may be suspended. No prosecutor may dismiss a charge of such a violation in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless, in his judgment, the charge is not supported by probable cause or cannot be proved at trial.

SECTION VI:

That no other provisions of Chapter 10.22 are affected by this ordinance.

PROPOSED on _____ (month) _____(day), 2009

PROPOSED by Supervisor _____.

PASSED _____(month) _____(day), 2009.

VOTE:

AYES:

NAYES:

ABSENT:

1 ATTEST:

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4 ALAN GLOVER, Clerk/Recorder

ROBERT L. CROWELL, Mayor

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6 This ordinance shall be in force and effect from and after the ____ day of the month of
7 _____ of the year 2009.
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