1. Working group name:

*Law Enforcement Working Group*

1. Individual sponsor(s):

*Josh Chaney, Deputy, Carson City Sheriff’s Office*

*Brian Sooudi, Assistant City Attorney, City of Reno*

1. Describe the recommendation:

*The working group submits to the Task Force that law enforcement within Nevada is adequately prepared to enforce the laws as it pertains to driving under the influence of marijuana. One area of concern for Law Enforcement across the state is there is no standardized form, as was in the past, for request for Voluntary Testing for Evidence, Blood or Urine.*

*NRS 484C.160 was changed by the Nevada Legislature in 2015 to conform with the U.S. Supreme Court ruling in Missouri v. McNelly (2013) which did away with Nevada’s implied Consent law and required law enforcement to obtain a warrant for a person that refused to submit to a breath or blood test. NRS 484C.160 currently reads as follows (There is pending legislation for 2017 removing marijuana from a controlled substance and making marijuana its own category like intoxicating liquor.):*

***NRS 484C.160  Implied consent to evidentiary test; exemption from blood test; choice of test; when blood test may be requested; when other tests may be used; reasonable force authorized to obtain test in certain circumstances; notification of parent or guardian of minor requested to submit to test.***

*1.  Except as otherwise provided in subsections 4 and 5, any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his or her consent to an evidentiary test of his or her blood, urine, breath or other bodily substance to determine the concentration of alcohol in his or her blood or breath or to determine whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present, if such a test is administered at the request of a police officer having reasonable grounds to believe that the person to be tested was:*

*(a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or with a prohibited substance in his or her blood or urine; or*

*(b) Engaging in any other conduct prohibited by*[*NRS 484C.110*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec110)*,*[*484C.120*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec120)*,*[*484C.130*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec130)*or*[*484C.430*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec430)*.*

*2.  A police officer who requests that a person submit to a test pursuant to subsection 1 shall inform the person that his or her license, permit or privilege to drive will be revoked if he or she fails to submit to the test.*

*3.  If the person to be tested pursuant to subsection 1 is dead or unconscious, the officer shall direct that samples of blood from the person to be tested.*

*4.  Any person who is afflicted with hemophilia or with a heart condition requiring the use of an anticoagulant as determined by a physician is exempt from any blood test which may be required pursuant to this section but must, when appropriate pursuant to the provisions of this section, be required to submit to a breath or urine test.*

*5.  If the concentration of alcohol in the blood or breath of the person to be tested is in issue:*

*(a) Except as otherwise provided in this section, the person may refuse to submit to a blood test if means are reasonably available to perform a breath test.*

*(b) The person may request a blood test, but if means are reasonably available to perform a breath test when the blood test is requested, and the person is subsequently convicted, the person must pay for the cost of the blood test, including the fees and expenses of witnesses whose testimony in court or an administrative hearing is necessary because of the use of the blood test. The expenses of such a witness may be assessed at an hourly rate of not less than:*

*(1) Fifty dollars for travel to and from the place of the proceeding; and*

*(2) One hundred dollars for giving or waiting to give testimony.*

*(c) Except as otherwise provided in*[*NRS 484C.200*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec200)*, not more than three samples of the person’s blood or breath may be taken during the 5-hour period immediately following the time of the initial arrest.*

*6.  If the presence of a controlled substance, chemical, poison, organic solvent or another prohibited substance in the blood or urine of the person is in issue, the officer may request that the person submit to a blood or urine test, or both.*

*7.  Except as otherwise provided in subsections 4 and 6, a police officer shall not request that a person submit to a urine test.*

*8.  If a person to be tested fails to submit to a required test as requested by a police officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was:*

*(a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or with a prohibited substance in his or her blood or urine; or*

*(b) Engaging in any other conduct prohibited by*[*NRS 484C.110*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec110)*,*[*484C.120*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec120)*,*[*484C.130*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec130)*or*[*484C.430*](https://www.leg.state.nv.us/NRS/NRS-484C.html#NRS484CSec430)*,*

* the officer may apply for a warrant or court order directing that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested.*

*9.  If a person who is less than 18 years of age is requested to submit to an evidentiary test pursuant to this section, the officer shall, before testing the person, make a reasonable attempt to notify the parent, guardian or custodian of the person, if known.*

*This working group proposes the following language be implemented statewide:*

*“I have reasonable grounds to believe you were driving or in actual physical control of a motor vehicle while under the influence of alcohol and/or Marijuana and/or controlled substances. You may submit to evidentiary testing. Refusing to submit to evidentiary testing will result in a revocation of your driver’s license/driving privilege by the Nevada Department of Motor Vehicles and I may apply for a search and seizure warrant for the court for evidentiary testing. If the search and seizure warrant is granted by the court, reasonable force may be used to obtain an evidentiary test. You do not have the right to speak with an attorney prior to testing.*

*Will you submit to evidentiary testing?”*

*This reading above is currently what is being used for several agencies located within Washoe County. The term “submit” is used over the term “consent” based on the language used by the Nevada Legislature in NRS 484C.160. Additionally, the version originally had the term “consent”, but through several DMV hearings the Department was not willing to revoke driver licenses because the statute calls for law enforcement to ask the person if they will submit to testing and not consent to testing.*

1. Which guiding principle(s) does this recommendation support?

*Guiding Principle 1 - Promote the health, safety, and well-being of Nevada’s communities*

*Guiding Principle 5 - Begin a discussion between the State and local governments regarding the costs of carrying out Question 2*

*Guiding Principle 6 - Establish regulations that are clear and practical, so that interactions between law enforcement (at the local, state, and federal levels), consumers, and licensees are predictable and understandable.*

1. What provision(s) of Question 2 does this recommendation apply to?

*Section (4) Limitations: Section 1 to Section 18 do not permit any person to engage in and do not prevent the imposition of any civil, criminal, or other penalty for:*

*a. Driving, operating, or being in actual physical control of a vehicle, aircraft, or vessel under power or sail while under the influence of marijuana or while impaired by marijuana.*

1. What issue(s) does the recommendation resolve?

*This issue will resolve standardization of forms for evidentiary testing. Right now across the state there are several variants of this, some of which are not following NRS making it a question to complete or decline a blood or breath test. There is also no language in current forms about the persons driver’s license being revoked it they choose not to complete a test under NRS 484C.160, 484C.210 and 484C.220.*

1. Was there dissent in the group regarding this recommendation? If yes, please provide a summary of the dissenting opinion regarding the recommendation.

*There was dissent by Deputy Public Defender John J. Piro regarding the language used in the implied consent/evidentiary testing warning. There are two specific objections to the language currently suggested. The objections are as follows:*

1. *Specifically, Mr. Piro objects to the word “submit” being used in the warning instead of the word “consent.” Consent is a legal term that is used to determine when a person actually voluntarily agreed or consented to the action being asked them by a law enforcement officer. Whereas, submit does not have the same legal parlance. Moreover, Merriam Webster defines “submit” as follows:*
   1. *As a transitive verb: to yield to governance or authority;*
   2. *As an intransitive verb: to yield oneself to the authority or will of another, to surrender.*

*In contrast, “consent” when dealing with the legal term of art means a knowing and voluntary waiver of rights given freely without force or duress. Thus, the term consent would be better suited to be placed in the warning rather than submit because consent is the actual word used by courts to determine the validity of a waiver of consent. Moreover, law enforcement officers in Las Vegas already carry cards with them that are titled “consent to search” cards.*

1. *A second change is requested regarding making it clear that law enforcement will have the right to get a warrant should a person refuse to consent to having their blood drawn voluntarily.*

*Thus, Mr. Piro suggests that the implied consent/evidentiary testing language be stated thusly:*

*“I have reasonable grounds to believe you were a driver or in actual physical control of a motor vehicle while under the influence of alcohol and/or Marijuana and/or controlled substances.  You may consent to evidentiary testing. If your refuse to consent to the testing, I may apply for a search and seizure warrant for the court to allow evidentiary testing.  If the search and seizure warrant is granted by the court, reasonable force may be used to obtain an evidentiary test.  You do not have the right to speak with an attorney prior to testing. Refusing to consent to evidentiary testing will result in a revocation of your driver’s license/driving privilege by the Nevada Department of Motor Vehicles.*

*Will you consent to evidentiary testing?”*

1. What action(s) will be necessary to adopt the recommendation? Will statute, policy, regulations, etc. need to be addressed?

*A review of the language by the Attorney General’s Office to ensure it is in compliance with Nevada Revised Statute (NRS)*

*Training all jurisdictions in the state on the new change of the request for evidentiary testing*

*Reprinting the DP 45 form currently in use and adding the new language to the back of the*

*new forms as the old DP 45 forms had.*

*Mandate all jurisdictions in the state implement this new language in DUI investigations.*

1. Additional information (cost of implementation, priority according to the recommendations, etc.).

*None*