

ASSEMBLY BILL NO. 407—COMMITTEE ON JUDICIARY

MARCH 5, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning punishment for first violation within 7 years of driving under influence of alcohol or controlled substance. (BDR 43-1259)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

AN ACT relating to traffic laws; requiring a court to order a person who is convicted of a first violation within 7 years of driving under the influence of alcohol or a controlled substance to undergo an evaluation and attend a program of treatment for the abuse of alcohol or drugs; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 484.3792 is hereby amended to read as follows:
- 2 484.3792 1. A person who violates the provisions of NRS 484.379:
- 3 (a) For the first offense within 7 years, is guilty of a misdemeanor.
- 4 Unless he is allowed to undergo treatment as provided in NRS 484.37937,
- 5 the court shall:
- 6 (1) ~~{Except as otherwise provided in subsection 6, order him to pay~~
- 7 ~~tuition for an educational course on the abuse of alcohol and controlled~~
- 8 ~~substances approved by the department and complete the course within the~~
- 9 ~~time specified in the order, and the court shall notify the department if he~~
- 10 ~~fails to complete the course within the specified time;}~~ **Order him to attend**
- 11 **a program of treatment for the abuse of alcohol or drugs pursuant to the**
- 12 **provisions of NRS 484.37945;**
- 13 (2) Unless the sentence is reduced pursuant to NRS 484.37937,
- 14 sentence him to imprisonment for not less than 2 days nor more than 6
- 15 months in jail, or to perform 96 hours of work for the community while
- 16 dressed in distinctive garb that identifies him as having violated the
- 17 provisions of NRS 484.379; and

1 (3) Fine him not less than \$200 nor more than \$1,000.

2 (b) For a second offense within 7 years, is guilty of a misdemeanor.

3 Unless the sentence is reduced pursuant to NRS 484.3794, the court:

4 (1) Shall sentence him to:

5 (I) Imprisonment for not less than 10 days nor more than 6 months
6 in jail; or

7 (II) Residential confinement for not less than 10 days nor more
8 than 6 months, in the manner provided in NRS 4.376 to 4.3768, inclusive,
9 or 5.0755 to 5.078, inclusive;

10 (2) Shall fine him not less than \$500 nor more than \$1,000;

11 (3) Shall order him to perform not less than 100 hours, but not more
12 than 200 hours, of work for the community while dressed in distinctive
13 garb that identifies him as having violated the provisions of NRS 484.379,
14 unless the court finds that extenuating circumstances exist; and

15 (4) May order him to attend a program of treatment for the abuse of
16 alcohol or drugs pursuant to the provisions of NRS 484.37945.

17 A person who willfully fails or refuses to complete successfully a term of
18 residential confinement or a program of treatment ordered pursuant to this
19 paragraph is guilty of a misdemeanor.

20 (c) For a third or subsequent offense within 7 years, is guilty of a
21 category B felony and shall be punished by imprisonment in the state
22 prison for a minimum term of not less than 1 year and a maximum term of
23 not more than 6 years, and shall be further punished by a fine of not less
24 than \$2,000 nor more than \$5,000. An offender so imprisoned must,
25 insofar as practicable, be segregated from offenders whose crimes were
26 violent and, insofar as practicable, be assigned to an institution or facility
27 of minimum security.

28 2. An offense that occurred within 7 years immediately preceding the
29 date of the principal offense or after the principal offense constitutes a
30 prior offense for the purposes of this section when evidenced by a
31 conviction, without regard to the sequence of the offenses and convictions.
32 The facts concerning a prior offense must be alleged in the complaint,
33 indictment or information, must not be read to the jury or proved at trial
34 but must be proved at the time of sentencing and, if the principal offense is
35 alleged to be a felony, must also be shown at the preliminary examination
36 or presented to the grand jury.

37 3. A person convicted of violating the provisions of NRS 484.379
38 must not be released on probation, and a sentence imposed for violating
39 those provisions must not be suspended except, as provided in NRS 4.373,
40 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that
41 exceeds the mandatory minimum. A prosecuting attorney shall not dismiss
42 a charge of violating the provisions of NRS 484.379 in exchange for a plea
43 of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for

1 any other reason unless he knows or it is obvious that the charge is not
2 supported by probable cause or cannot be proved at the time of trial.

3 4. A term of confinement imposed pursuant to the provisions of this
4 section may be served intermittently at the discretion of the judge or justice
5 of the peace, except that a person who is convicted of a second or
6 subsequent offense within 7 years must be confined for at least one
7 segment of not less than 48 consecutive hours. This discretion must be
8 exercised after considering all the circumstances surrounding the offense,
9 and the family and employment of the offender, but any sentence of 30
10 days or less must be served within 6 months after the date of conviction or,
11 if the offender was sentenced pursuant to NRS 484.37937 or 484.3794 and
12 the suspension of his sentence was revoked, within 6 months after the date
13 of revocation. Any time for which the offender is confined must consist of
14 not less than 24 consecutive hours.

15 5. Jail sentences simultaneously imposed pursuant to this section and
16 NRS 483.560 or 485.330 must run consecutively.

17 6. If the person who violated the provisions of NRS 484.379 possesses
18 a driver's license issued by a state other than the State of Nevada and does
19 not reside in the State of Nevada, in carrying out the provisions of
20 subparagraph (1) of paragraph (a) or (b) of subsection 1, the court shall ~~[-~~
21 ~~-(a) Order]~~ **order** the person to pay tuition for and submit evidence of
22 completion of an educational course on the abuse of alcohol and controlled
23 substances approved by a governmental agency of the state of his residence
24 within the time specified in the order, ~~[- or~~
25 ~~-(b) Order him to complete an educational course by correspondence on~~
26 ~~the abuse of alcohol and controlled substances approved by the department~~
27 ~~within the time specified in the order,]~~ and the court shall notify the
28 department if the person fails to complete the assigned course within the
29 specified time.

30 7. If the defendant was transporting a person who is less than 15 years
31 of age in the motor vehicle at the time of the violation, the court shall
32 consider that fact as an aggravating factor in determining the sentence of
33 the defendant.

34 8. As used in this section, unless the context otherwise requires,
35 "offense" means a violation of NRS 484.379 or 484.3795 or a homicide
36 resulting from the driving of a vehicle while under the influence of
37 intoxicating liquor or a controlled substance, or the violation of a law of
38 any other jurisdiction that prohibits the same or similar conduct.

39 **Sec. 2.** NRS 484.37943 is hereby amended to read as follows:

40 484.37943 1. If a person is ~~[found guilty]~~ **convicted** of a first
41 violation ~~[- if the weight of alcohol in the defendant's blood at the time of~~
42 ~~the offense was 0.18 percent or more, or any]~~ **of NRS 484.379 within 7**
43 **years or a** second violation of NRS 484.379 within 7 years, the court shall,

1 before sentencing the offender, require an evaluation of the offender
2 pursuant to subsection ~~{3, 4 or 5}~~ 2, 3 or 4 to determine whether he is an
3 abuser of alcohol or other drugs.

4 2. ~~{If a person is convicted of a first violation of NRS 484.379 and he~~
5 ~~is under 21 years of age at the time of the violation, the court shall, before~~
6 ~~sentencing the offender, require an evaluation of the offender pursuant to~~
7 ~~subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or~~
8 ~~other drugs.~~

9 ~~—3.}~~ Except as otherwise provided in subsection ~~{4 or 5,}~~ 3 or 4, the
10 evaluation of an offender pursuant to this section must be conducted at an
11 evaluation center by:

12 (a) A counselor certified to make that evaluation by the bureau of
13 alcohol and drug abuse of the rehabilitation division of the department of
14 employment, training and rehabilitation;

15 (b) A physician certified to make that evaluation by the board of
16 medical examiners; or

17 (c) A person who is approved to make that evaluation by the bureau of
18 alcohol and drug abuse of the rehabilitation division of the department of
19 employment, training and rehabilitation,
20 who shall report to the court the results of the evaluation and make a
21 recommendation to the court concerning the length and type of treatment
22 required for the offender.

23 ~~{4.}~~ 3. The evaluation of an offender who resides more than 30 miles
24 from an evaluation center may be conducted outside an evaluation center
25 by a person who has the qualifications set forth in subsection ~~{3.}~~ 2. The
26 person who conducts the evaluation shall report to the court the results of
27 the evaluation and make a recommendation to the court concerning the
28 length and type of treatment required for the offender.

29 ~~{5.}~~ 4. The evaluation of an offender who resides in another state may,
30 upon approval of the court, be conducted in the state where the offender
31 resides by a physician or other person who is authorized by the appropriate
32 governmental agency in that state to conduct such an evaluation. The
33 offender shall ensure that the results of the evaluation and the
34 recommendation concerning the length and type of treatment for the
35 offender are reported to the court.

36 ~~{6.}~~ 5. An offender who is evaluated pursuant to this section shall pay
37 the cost of the evaluation. An evaluation center or a person who conducts
38 an evaluation in this state outside an evaluation center shall not charge an
39 offender more than \$100 for the evaluation.

40 **Sec. 3.** NRS 484.37945 is hereby amended to read as follows:

41 484.37945 1. When a program of treatment is ordered pursuant to
42 paragraph (a) or (b) of subsection 1 of NRS 484.3792, the court shall place
43 the offender under the clinical supervision of a treatment facility for

1 treatment for not less than 30 days nor more than 6 months, in accordance
2 with the report submitted to the court pursuant to subsection ~~[3, 4 or 5]~~ 2, 3
3 **or 4** of NRS 484.37943. The court may:

4 (a) Order the offender confined in a treatment facility, then release the
5 offender for supervised aftercare in the community; or

6 (b) Release the offender for treatment in the community,
7 for the period of supervision ordered by the court.

8 2. The court shall:

9 (a) Require the treatment facility to submit monthly progress reports on
10 the treatment of an offender pursuant to this section; and

11 (b) Order the offender, to the extent of his financial resources, to pay
12 any charges for his treatment pursuant to this section. If the offender does
13 not have the financial resources to pay all ~~to~~ those charges, the court
14 shall, to the extent possible, arrange for the offender to obtain his treatment
15 from a treatment facility that receives a sufficient amount of federal or
16 state money to offset the remainder of the charges.

17 3. A treatment facility is not liable for any damages to person or
18 property caused by a person who drives while under the influence of
19 intoxicating liquor or a controlled substance after the treatment facility has
20 certified to his successful completion of a program of treatment ordered
21 pursuant to paragraph **(a) or** (b) of subsection 1 of NRS 484.3792.

22 **Sec. 4.** The amendatory provisions of this act do not apply to offenses
23 committed before October 1, 1999.