

ASSEMBLY BILL NO. 500—ASSEMBLYMEN CEGAVSKE, GIBBONS, HETTRICK, HUMKE, CHOWNING, DE BRAGA, MORTENSON, CLABORN, GUSTAVSON, ANGLE, MCCLAIN, KOIVISTO, TIFFANY, ANDERSON, PARKS, MANENDO, VON TOBEL, OHRENSCHALL, PRICE, LESLIE, BROWER, NOLAN, BEERS, BUCKLEY, PERKINS AND CARPENTER

MARCH 12, 1999

Referred to Committee on Judiciary

SUMMARY—Requires court to order persons convicted of second offense of driving under influence of intoxicating liquor or controlled substance within 7 years to attend program of treatment for abuse of alcohol or drugs. (BDR 43-1407)

FISCAL NOTE: Effect on Local Government: No.
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 second offense of driving under the influence of intoxicating liquor or a controlled substance within 7 years to 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;
11 (2) Unless the sentence is reduced pursuant to NRS 484.37937,
12 sentence him to imprisonment for not less than 2 days nor more than 6

1 months in jail, or to perform 96 hours of work for the community while
2 dressed in distinctive garb that identifies him as having violated the
3 provisions of NRS 484.379; and

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

5 (b) For a second offense within 7 years, is guilty of a misdemeanor.
6 Unless the sentence is reduced pursuant to NRS 484.3794, the court ~~is~~:

7 ~~—(1) Shall sentence~~ shall:

8 (1) Sentence him to:

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

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

14 (2) ~~{Shall fine}~~ Fine him not less than \$500 nor more than \$1,000;

15 (3) ~~{Shall order}~~ Order him to perform not less than 100 hours, but
16 not more than 200 hours, of work for the community while dressed in
17 distinctive garb that identifies him as having violated the provisions of
18 NRS 484.379, unless the court finds that extenuating circumstances exist;
19 and

20 (4) ~~{May order}~~ Order him to attend a program of treatment for the
21 abuse of alcohol or drugs pursuant to the provisions of NRS 484.37945.

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

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

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

42 3. A person convicted of violating the provisions of NRS 484.379
43 must not be released on probation, and a sentence imposed for violating

1 those provisions must not be suspended except, as provided in NRS 4.373,
2 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that
3 exceeds the mandatory minimum. A prosecuting attorney shall not dismiss
4 a charge of violating the provisions of NRS 484.379 in exchange for a plea
5 of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for
6 any other reason unless he knows or it is obvious that the charge is not
7 supported by probable cause or cannot be proved at the time of trial.

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

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

22 6. If the person who violated the provisions of NRS 484.379 possesses
23 a driver's license issued by a state other than the State of Nevada and does
24 not reside in the State of Nevada, in carrying out the provisions of
25 subparagraph (1) of paragraph (a) or (b) of subsection 1, the court shall:

26 (a) Order the person to pay tuition for and submit evidence of
27 completion of an educational course on the abuse of alcohol and controlled
28 substances approved by a governmental agency of the state of his residence
29 within the time specified in the order; or

30 (b) Order him to complete an educational course by correspondence on
31 the abuse of alcohol and controlled substances approved by the department
32 within the time specified in the order,
33 and the court shall notify the department if the person fails to complete the
34 assigned course within the specified time.

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

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

1 **Sec. 2.** NRS 484.37945 is hereby amended to read as follows:
2 484.37945 1. ~~When a program of treatment is ordered pursuant to~~
3 ~~paragraph (b) of subsection 1 of NRS 484.3792, the~~ A court shall place
4 ~~the~~ *an* offender *who is ordered to attend a program of treatment*
5 *pursuant to paragraph (b) of subsection 1 of NRS 484.3792* under the
6 clinical supervision of a treatment facility, ~~for treatment for not less than~~
7 ~~30 days nor more than 6 months,~~ in accordance with the report submitted
8 to the court pursuant to subsection 3, 4 or 5 of NRS 484.37943. The court
9 may:
10 (a) Order the offender confined in a treatment facility, then release the
11 offender for supervised aftercare in the community; or
12 (b) Release the offender for treatment in the community,
13 for the period of supervision ordered by the court.
14 2. The court shall:
15 (a) Require the treatment facility to submit monthly progress reports on
16 the treatment of an offender pursuant to this section; and
17 (b) Order the offender, to the extent of his financial resources, to pay
18 any charges for his treatment pursuant to this section. If the offender does
19 not have the financial resources to pay all of those charges, the court shall,
20 to the extent possible, arrange for the offender to obtain his treatment from
21 a treatment facility that receives a sufficient amount of federal or state
22 money to offset the remainder of the charges.
23 3. A treatment facility is not liable for any damages to person or
24 property caused by a person who drives while under the influence of
25 intoxicating liquor or a controlled substance after the treatment facility has
26 certified to his successful completion of a program of treatment ordered
27 pursuant to paragraph (b) of subsection 1 of NRS 484.3792.
28 **Sec. 3.** The amendatory provisions of this act do not apply to offenses
29 that were committed before October 1, 1999.