

ASSEMBLY BILL NO. 559—ASSEMBLYMEN MANENDO, GUSTAVSON, CLABORN, ANGLE, MCCLAIN, KOIVISTO, LESLIE, CARPENTER, ANDERSON, SEGERBLOM, CHOWNING, PRICE, MORTENSON, WILLIAMS, GIBBONS, PARKS, BERMAN, LEE, FREEMAN, THOMAS, OHRENSCHALL AND EVANS

MARCH 15, 1999

Referred to Concurrent Committees on Judiciary
and Ways and Means

SUMMARY—Revises provisions governing operation of motor vehicle or vessel while under influence of intoxicating liquor or controlled substance. (BDR 43-1564)

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 ~~for omitted material~~ is material to be omitted.

AN ACT relating to driving under the influence of alcohol or a controlled substance; providing penalties for the operation of a vehicle or vessel by a person with 0.08 percent or more by weight of alcohol in his blood if the operation causes damage to the property of another or injury to another; revising the provisions governing when a court is required to order an evaluation to determine if a person is an abuser of alcohol or drugs; increasing the penalty for driving under the influence of intoxicating liquor or a controlled substance; 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 483.461 is hereby amended to read as follows:
2 483.461 1. If ***subsection 1 of NRS 484.379 does not apply and*** the
3 result of a test given pursuant to NRS 484.382 or 484.383 shows that a
4 person ***who is*** less than 21 years of age had 0.02 percent or more but less
5 than 0.10 percent by weight of alcohol in his blood at the time of the test,
6 his license, permit or privilege to drive must be suspended for a period of
7 90 days.

2. If a revocation or suspension of a person's license, permit or privilege to drive for a violation of NRS 62.227, 484.379 or 484.3795 follows a suspension ordered pursuant to subsection 1, the department shall:

- (a) Cancel the suspension ordered pursuant to subsection 1; and
- (b) Give the person credit toward the period of revocation or suspension ordered pursuant to NRS 62.227, 484.379 or 484.3795, whichever is applicable, for any period during which the person's license, permit or privilege to drive was suspended pursuant to subsection 1.

3. This section does not preclude:

- (a) The prosecution of a person for a violation of any other provision of law; or
- (b) The suspension or revocation of a person's license, permit or privilege to drive pursuant to any other provision of law.

Sec. 2. NRS 483.462 is hereby amended to read as follows:

483.462 1. ~~[A peace officer who has received the result of]~~ *If subsection 1 of NRS 484.379 does not apply and* a test given pursuant to NRS 484.382 or 484.383 ~~[which]~~ indicates that a person *who is* less than 21 years of age to whom the test was given had 0.02 or more but less than 0.10 percent by weight of alcohol in his blood, *the peace officer who receives the result of the test* shall prepare a written certificate indicating whether the peace officer:

(a) Had reasonable grounds to believe that the person was driving under the influence of alcohol;

(b) Served an order of suspension on the person pursuant to subsection 2; and

(c) Issued the person a temporary license pursuant to subsection 2.

2. If *subsection 1 of NRS 484.379 does not apply and* a person *who is* less than 21 years of age to whom a test is given pursuant to NRS 484.382 or 484.383 is present when a peace officer receives the result of the test and the test indicates that the person has 0.02 or more but less than 0.10 percent by weight of alcohol in his blood, the peace officer shall:

(a) Serve an order of suspension of the license, permit or privilege;

(b) Seize any license or permit of the person;

(c) Advise the person of his right to:

(1) Administrative and judicial review of the suspension; and

(2) Have a temporary license;

(d) If the person requests a temporary license, issue the person a temporary license on a form approved by the department which becomes effective 24 hours after he receives the temporary license and expires 120 hours after it becomes effective; and

(e) Transmit to the department:

(1) Any license or permit seized pursuant to paragraph (b); and

(2) The written certificate which the peace officer is required to prepare pursuant to subsection 1.

3. If *subsection 1 of NRS 484.379 does not apply and* a person *who is* less than 21 years of age to whom a test is given pursuant to NRS 484.382 or 484.383 is not present when a peace officer receives the result of the test and the test indicates that the person has 0.02 or more but less than 0.10 percent by weight of alcohol in his blood, the peace officer shall transmit to the department a copy of the result of the test and the written certificate which the peace officer is required to prepare pursuant to subsection 1.

4. The department, upon receiving a copy of the result of the test and the written certificate transmitted by the peace officer pursuant to subsection 3, shall:

(a) Review the result of the test and the written certificate; and

(b) If the department determines that it is appropriate, issue an order to suspend the license, permit or privilege to drive of the person by mailing the order to the person at his last known address.

5. An order for suspension issued by the department pursuant to subsection 4 must:

(a) Explain the grounds for the suspension;

(b) Indicate the period of the suspension;

(c) Require the person to transmit to the department any license or permit held by the person; and

(d) Explain that the person has a right to administrative and judicial review of the suspension.

6. An order for suspension issued by the department pursuant to subsection 4 is presumed to have been received by the person 5 days after the order is deposited, postage prepaid, in the United States mail by the department. The date of mailing of the order may be shown by a certificate that is prepared by an officer or employee of the department specifying the date of mailing.

Sec. 3. Chapter 484 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 and 5 of this act.

Sec. 4. *The phrase "at least 0.08 percent, but less than 0.10 percent, by weight of alcohol in his blood" means a concentration of alcohol in the blood or breath of a person of at least 0.08 gram, but less than 0.10 gram, by weight of alcohol:*

1. Per 100 milliliters of his blood; or

2. Per 210 liters of his breath.

Sec. 5. *The phrase "0.08 percent or more by weight of alcohol in his blood" means a concentration of alcohol in the blood or breath of a person of 0.08 gram or more by weight of alcohol:*

1. Per 100 milliliters of his blood; or

2. Per 210 liters of his breath.

1 **Sec. 6.** NRS 484.013 is hereby amended to read as follows:

2 484.013 As used in this chapter, unless the context otherwise requires,
3 the words and terms defined in NRS 484.0135 to 484.217, inclusive, *and*
4 *sections 4 and 5 of this act* have the meanings ascribed to them in those
5 sections.

6 **Sec. 7.** NRS 484.0135 is hereby amended to read as follows:

7 484.0135 The phrase "0.10 percent or more by weight of alcohol in his
8 blood" ~~[includes]~~ *means* a concentration of alcohol in the blood or breath
9 of a person of 0.10 gram or more by weight of alcohol:

10 1. Per 100 milliliters of his blood; or

11 2. Per 210 liters of his breath.

12 **Sec. 8.** NRS 484.379 is hereby amended to read as follows:

13 484.379 1. ~~[It is unlawful for any person]~~ *Unless a greater penalty is*
14 *provided pursuant to NRS 484.3795, a person who drives or is in actual*
15 *physical control of a vehicle on a highway or on premises to which the*
16 *public has access and causes damage to the property of another or injury*
17 *to another, or both, and who:*

18 (a) *Has at least 0.08 percent, but less than 0.10 percent, by weight of*
19 *alcohol in his blood; or*

20 (b) *Is found by measurement within 2 hours after driving or being in*
21 *physical control of a vehicle to have 0.08 percent or more by weight of*
22 *alcohol in his blood,*

23 *shall be punished as provided in NRS 484.3792.*

24 2. *Unless a greater penalty is provided pursuant to NRS 484.3795, a*
25 *person who drives or is in actual physical control of a vehicle on a*
26 *highway or on premises to which the public has access* who:

27 (a) Is under the influence of intoxicating liquor;

28 (b) Has 0.10 percent or more by weight of alcohol in his blood; or

29 (c) Is found by measurement within 2 hours after driving or being in
30 actual physical control of a vehicle to have 0.10 percent or more by weight
31 of alcohol in his blood,

32 ~~[to drive or be in actual physical control of a vehicle on a highway or on~~
33 ~~premises to which the public has access.~~

34 ~~—2.— It is unlawful for any]~~

35 *shall be punished as provided in NRS 484.3792.*

36 3. *Unless a greater penalty is provided pursuant to NRS 484.3795, a*
37 *person who drives or is in actual physical control of a vehicle on a*
38 *highway or on premises to which public has access and* who ~~[is an]~~ :

39 (a) *Is a* habitual user of or *who is* under the influence of any controlled
40 substance ~~[, or is]~~ ;

41 (b) *Is* under the combined influence of intoxicating liquor and a

42 controlled substance ~~[, — or — any — person — who — inhales,]~~ ; *or*

(c) *Inhales*, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely driving or exercising actual physical control of a vehicle ~~{to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.}~~, *shall be punished as provided in NRS 484.3792.* The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this state is not a defense against any charge of violating this subsection.

~~{3.}~~ 4. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph ~~{(c)}~~ (b) of subsection 1 *or paragraph (c) of subsection 2* that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood was tested, to cause the alcohol in his blood to equal or exceed ~~{0.10 percent.}~~ *the percentage set forth in the applicable paragraph.* A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.

Sec. 9. NRS 484.3792 is hereby amended to read as follows:

484.3792 1. A person who violates the provisions of NRS 484.379:

(a) For the first offense within 7 years, is guilty of a misdemeanor.

Unless he is allowed to undergo treatment as provided in NRS 484.37937, the court shall:

(1) Except as otherwise provided in subsection 6, order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the department and complete the course within the time specified in the order, and the court shall notify the department if he fails to complete the course within the specified time;

(2) Unless the sentence is reduced pursuant to NRS 484.37937, sentence him to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform 96 hours of work for the community while dressed in distinctive garb that identifies him as having violated the provisions of NRS 484.379; and

(3) Fine him not less than ~~{ \$200 }~~ *\$500* nor more than \$1,000.

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

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

(1) Shall sentence him to:

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

(II) Residential confinement for not less than 10 days nor more than 6 months, in the manner provided in NRS 4.376 to 4.3768, inclusive,

or 5.0755 to 5.078, inclusive;

1 (2) Shall fine him not less than ~~[\$500]~~ \$750 nor more than \$1,000;
2 ~~{and}~~

3 (3) Shall order him to perform ~~{not less than 100 hours, but not more~~
4 ~~than 200 hours,}~~ 200 hours of work for the community while dressed in
5 distinctive garb that identifies him as having violated the provisions of
6 NRS 484.379 ; ~~[-unless the court finds that extenuating circumstances~~
7 ~~exist;}~~ and

8 (4) May order him to attend a program of treatment for the abuse of
9 alcohol or drugs pursuant to the provisions of NRS 484.37945.
10 A person who willfully fails or refuses to complete successfully a term of
11 residential confinement or a program of treatment ordered pursuant to this
12 paragraph is guilty of a misdemeanor.

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

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

30 3. A person convicted of violating the provisions of NRS 484.379
31 must not be released on probation, and a sentence imposed for violating
32 those provisions must not be suspended except, as provided in NRS 4.373,
33 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that
34 exceeds the mandatory minimum. A prosecuting attorney shall not dismiss
35 a charge of violating the provisions of NRS 484.379 in exchange for a plea
36 of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for
37 any other reason unless he knows or it is obvious that the charge is not
38 supported by probable cause or cannot be proved at the time of trial.

39 4. A term of confinement imposed pursuant to the provisions of this
40 section may be served intermittently at the discretion of the judge or justice
41 of the peace, except that a person who is convicted of a second or
42 subsequent offense within 7 years must be confined for at least one
43 segment of not less than 48 consecutive hours. This discretion must be

1 exercised after considering all the circumstances surrounding the offense,
2 and the family and employment of the offender, but any sentence of 30
3 days or less must be served within 6 months after the date of conviction or,
4 if the offender was sentenced pursuant to NRS 484.37937 or 484.3794 and
5 the suspension of his sentence was revoked, within 6 months after the date
6 of revocation. Any time for which the offender is confined must consist of
7 not less than 24 consecutive hours.

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

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

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

18 (b) Order him to complete an educational course by correspondence on
19 the abuse of alcohol and controlled substances approved by the department
20 within the time specified in the order,
21 and the court shall notify the department if the person fails to complete the
22 assigned course within the specified time.

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

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

32 **Sec. 10.** NRS 484.37943 is hereby amended to read as follows:

33 484.37943 1. If a person is found guilty of a first violation ~~H~~ of
34 **NRS 484.379**, if the weight of alcohol in the defendant's blood at the time
35 of the offense was ~~0.18~~ **0.12** percent or more, or any second violation of
36 NRS 484.379 within 7 years, the court shall, before sentencing the
37 offender, require an evaluation of the offender pursuant to subsection 3, 4
38 or 5 to determine whether he is an abuser of alcohol or other drugs.

39 2. If a person is convicted of a first violation of NRS 484.379 and he is
40 under 21 years of age at the time of the violation, the court shall, before
41 sentencing the offender, require an evaluation of the offender pursuant to
42 subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or
43 other

drugs.

1 3. Except as otherwise provided in subsection 4 or 5, the evaluation of
2 an offender pursuant to this section must be conducted at an evaluation
3 center by:

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

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

9 (c) A person who is approved to make that evaluation by the bureau of
10 alcohol and drug abuse of the rehabilitation division of the department of
11 employment, training and rehabilitation,

12 who shall report to the court the results of the evaluation and make a
13 recommendation to the court concerning the length and type of treatment
14 required for the offender.

15 4. The evaluation of an offender who resides more than 30 miles from
16 an evaluation center may be conducted outside an evaluation center by a
17 person who has the qualifications set forth in subsection 3. The person who
18 conducts the evaluation shall report to the court the results of the
19 evaluation and make a recommendation to the court concerning the length
20 and type of treatment required for the offender.

21 5. The evaluation of an offender who resides in another state may,
22 upon approval of the court, be conducted in the state where the offender
23 resides by a physician or other person who is authorized by the appropriate
24 governmental agency in that state to conduct such an evaluation. The
25 offender shall ensure that the results of the evaluation and the
26 recommendation concerning the length and type of treatment for the
27 offender are reported to the court.

28 6. An offender who is evaluated pursuant to this section shall pay the
29 cost of the evaluation. An evaluation center or a person who conducts an
30 evaluation in this state outside an evaluation center shall not charge an
31 offender more than \$100 for the evaluation.

32 **Sec. 11.** NRS 484.3795 is hereby amended to read as follows:

33 484.3795 1. A person who:

34 (a) Is under the influence of intoxicating liquor;

35 (b) Has ~~0.10~~ **0.08** percent or more by weight of alcohol in his blood;

36 (c) Is found by measurement within 2 hours after driving or being in
37 actual physical control of a vehicle to have ~~0.10~~ **0.08** percent or more by
38 weight of alcohol in his blood;

39 (d) Is under the influence of a controlled substance, or under the
40 combined influence of intoxicating liquor and a controlled substance; or

1 (e) Inhales, ingests, applies or otherwise uses any chemical, poison or
2 organic solvent, or any compound or combination of any of these, to a
3 degree which renders him incapable of safely driving or exercising actual
4 physical control of a vehicle,
5 and does any act or neglects any duty imposed by law while driving or in
6 actual physical control of any vehicle on or off the highways of this state,
7 if the act or neglect of duty proximately causes the death of, or substantial
8 bodily harm to, a person other than himself, is guilty of a category B
9 felony and shall be punished by imprisonment in the state prison for a
10 minimum term of not less than 2 years and a maximum term of not more
11 than 20 years and ~~{must}~~ **shall** be further punished by a fine of not less
12 than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar
13 as practicable, be segregated from offenders whose crimes were violent
14 and, insofar as practicable, be assigned to an institution or facility of
15 minimum security.

16 2. A prosecuting attorney shall not dismiss a charge of violating the
17 provisions of subsection 1 in exchange for a plea of guilty, guilty but
18 mentally ill or nolo contendere to a lesser charge or for any other reason
19 unless he knows or it is obvious that the charge is not supported by
20 probable cause or cannot be proved at the time of trial. A sentence imposed
21 pursuant to subsection 1 ~~{may}~~ **must** not be suspended ~~{nor may}~~ **and**
22 probation **must not** be granted.

23 3. If consumption is proven by a preponderance of the evidence, it is
24 an affirmative defense under paragraph (c) of subsection 1 that the
25 defendant consumed a sufficient quantity of alcohol after driving or being
26 in actual physical control of the vehicle, and before his blood was tested, to
27 cause the alcohol in his blood to equal or exceed ~~{0.10}~~ **0.08** percent. A
28 defendant who intends to offer this defense at a trial or preliminary hearing
29 must, not less than 14 days before the trial or hearing or at such other time
30 as the court may direct, file and serve on the prosecuting attorney a written
31 notice of that intent.

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

36 **Sec. 12.** NRS 484.384 is hereby amended to read as follows:

37 484.384 1. If the result of a test given ~~{under}~~ **pursuant to** NRS
38 484.382 or 484.383 shows that a person ~~{had 0.10 percent or more by~~
39 ~~weight of alcohol in his blood at the time of the test,}~~ **violated subsection 1**
40 **or subsection 2 of NRS 484.379,** his license, permit or privilege to drive
41 must be revoked as provided in NRS 484.385 and he is not eligible for a
42 license, permit or privilege for a period of 90 days.

2. If a revocation of a person's license, permit or privilege to drive ~~under~~ pursuant to NRS 62.227 or 483.460 follows a revocation ~~under subsection 1 which was based on his having 0.10 percent or more by weight of alcohol in his blood,~~ pursuant to subsection 1 that was based upon a violation of subsection 1 or subsection 2 of NRS 484.379, the department shall cancel the revocation under that subsection and give the person credit for any period during which he was not eligible for a license, permit or privilege.

3. Periods of ineligibility for a license, permit or privilege to drive which are imposed pursuant to this section must run consecutively.

Sec. 13. NRS 484.385 is hereby amended to read as follows:

484.385 1. As agent for the department, the officer who obtained the result of a test given pursuant to NRS 484.382 or 484.383 shall immediately serve an order of revocation of the license, permit or privilege to drive on a person who ~~has 0.10 percent or more by weight of alcohol in his blood~~ violates subsection 1 or subsection 2 of NRS 484.379 or who has a detectable amount of a controlled substance in his system, if that person is present, and shall seize his license or permit to drive. ~~The~~

2. *After an officer serves an order of revocation of a driver's license, permit or privilege to drive on a person pursuant to subsection 1, the officer shall then advise ~~him~~ the person served of his right to administrative and judicial review of the revocation and to have a temporary license, and shall issue him a temporary license on a form approved by the department if he requests one. ~~[-which]~~ Such a temporary license is effective for only 7 days including the date of issuance. The officer shall immediately transmit the person's license or permit to the department along with the written certificate required by subsection ~~[-]~~ 3.*

~~[-]~~ 3. When a police officer has served an order of revocation of a driver's license, permit or privilege on a person pursuant to subsection 1, or later receives the result of an evidentiary test which indicates that a person, not then present, ~~had 0.10 percent or more by weight of alcohol in his blood~~ violated subsection 1 or subsection 2 of NRS 484.379 or had a detectable amount of a controlled substance in his system, the officer shall immediately prepare and transmit to the department, together with the seized license or permit and a copy of the result of the test, a written certificate that he had reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle ~~[with 0.10 percent or more by weight of alcohol in his blood]~~ in violation of subsection 1 or subsection 2 of NRS 484.379 or with a detectable amount of a controlled substance in his system, as determined by a chemical test. The certificate must also indicate whether the officer served an order of revocation on the person and whether he issued the person a temporary license.

1 ~~[3.]~~ 4. The department, upon receipt of ~~[such]~~ a certificate for which
2 an order of revocation has not been served, after examining the certificate
3 and copy of the result of the chemical test, if any, and finding that
4 revocation is proper, shall issue an order revoking the person's license,
5 permit or privilege to drive by mailing the order to the person at his last
6 known address. The order must indicate the grounds for the revocation and
7 the period during which the person is not eligible for a license, permit or
8 privilege to drive and state that the person has a right to administrative and
9 judicial review of the revocation and to have a temporary license. The
10 order of revocation becomes effective 5 days after mailing.

11 ~~[4.]~~ 5. Notice of an order of revocation and notice of the affirmation of
12 a prior order of revocation or the cancellation of a temporary license
13 provided in NRS 484.387 is sufficient if it is mailed to the person's last
14 known address as shown by any application for a license. The date of
15 mailing may be proved by the certificate of any officer or employee of the
16 department, specifying the time of mailing the notice. The notice is
17 presumed to have been received upon the expiration of 5 days after it is
18 deposited, postage prepaid, in the United States mail.

19 ~~[5.]~~ 6. As used in this section, "controlled substance" means any of the
20 following substances for which a valid prescription has not been issued to
21 the consumer:

- 22 (a) Amphetamine;
- 23 (b) Benzoylecgonine;
- 24 (c) Cocaine;
- 25 (d) Heroin;
- 26 (e) Lysergic acid diethylamide;
- 27 (f) Mecloqualone;
- 28 (g) Mescaline;
- 29 (h) Methamphetamine;
- 30 (i) Methaqualone;
- 31 (j) Monoacetylmorphine;
- 32 (k) Phencyclidine;
- 33 (l) N-ethylamphetamine;
- 34 (m) N, N-dimethylamphetamine;
- 35 (n) 2, 5-dimethoxyamphetamine;
- 36 (o) 3, 4-methylenedioxyamphetamine;
- 37 (p) 3, 4, 5-trimethoxyamphetamine;
- 38 (q) 4-bromo-2, 5-dimethoxyamphetamine;
- 39 (r) 4-methoxyamphetamine;
- 40 (s) 4-methyl-2, 5-dimethoxyamphetamine;
- 41 (t) 5-dimethoxy-alpha-methylphenethylamine; or
- 42 (u) 5-methoxy-3, 4-methylenedioxyamphetamine,

1 if the substance is classified in schedule I or II pursuant to NRS 453.166 or
2 453.176 at the time the substance is consumed.

3 **Sec. 14.** NRS 484.387 is hereby amended to read as follows:

4 484.387 1. At any time while a person is not eligible for a license,
5 permit or privilege to drive following an order of revocation issued
6 pursuant to NRS 484.385, he may request in writing a hearing by the
7 department to review the order of revocation, but he is only entitled to one
8 hearing. The hearing must be conducted within 15 days after receipt of the
9 request, or as soon thereafter as is practicable, in the county where the
10 requester resides unless the parties agree otherwise. The director or his
11 agent may issue subpoenas for the attendance of witnesses and the
12 production of relevant books and papers and may require a reexamination
13 of the requester. The department shall issue an additional temporary
14 license for a period which is sufficient to complete the administrative
15 review.

16 2. The scope of the hearing must be limited to the issue of whether the
17 person, at the time of the test, had ~~10.10 percent or more by weight of~~
18 ~~alcohol in his blood~~ **violated subsection 1 or subsection 2 of NRS**
19 **484.379** or **had** a detectable amount of a controlled substance in his
20 system. Upon an affirmative finding on this issue, the department shall
21 affirm the order of revocation. Otherwise, the order of revocation must be
22 rescinded.

23 3. If, after the hearing, the order of revocation is affirmed, the person
24 whose license, privilege or permit has been revoked is entitled to a review
25 of the same issues in district court in the same manner as provided by
26 chapter 233B of NRS. The court shall notify the department upon the
27 issuance of a stay and the department shall issue an additional temporary
28 license for a period which is sufficient to complete the review.

29 4. If a hearing officer grants a continuance of a hearing at the request
30 of the person whose license was revoked, or a court does so after issuing a
31 stay of the revocation, the officer or court shall notify the department, and
32 the department shall cancel the temporary license and notify the holder by
33 mailing the order of cancellation to his last known address.

34 **Sec. 15.** NRS 484.791 is hereby amended to read as follows:

35 484.791 1. Any peace officer may, without a warrant, arrest a person
36 if the officer has reasonable cause for believing that the person has
37 committed any of the following offenses:

38 (a) Homicide by vehicle;

39 (b) Driving or being in actual physical control of a vehicle while under
40 the influence of intoxicating liquor or ~~with 0.10 percent or more by~~
41 ~~weight of alcohol in his blood;~~ **in violation of subsection 1 or subsection**
42 **2 of NRS 484.379;**

(c) Driving or being in actual physical control of a vehicle while under the influence of any controlled substance, under the combined influence of intoxicating liquor and a controlled substance, or after ingesting, applying or otherwise using any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle;

(d) Failure to stop, give information or render reasonable assistance in the event of an accident resulting in death or personal injuries, as prescribed in NRS 484.219 and 484.223;

(e) Failure to stop or give information in the event of an accident resulting in damage to a vehicle or to other property legally upon or adjacent to a highway, as prescribed in NRS 484.221 and 484.225;

(f) Reckless driving;

(g) Driving a motor vehicle on a highway or on premises to which the public has access at a time when his driver's license has been canceled, revoked or suspended; or

(h) Driving a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him pursuant to NRS 483.490.

2. ~~Whenever any~~ *If a* person is arrested as authorized in this section, he must be taken without unnecessary delay before the proper magistrate as specified in NRS 484.803, except that in the case of either of the offenses designated in paragraphs (e) and (f) a peace officer has the same discretion as is provided in other cases in NRS 484.795.

Sec. 16. Chapter 488 of NRS is hereby amended by adding thereto the provisions set forth as sections 17, 18 and 19 of this act.

Sec. 17. *As used in NRS 488.405, 488.410 and 488.420 and sections 17, 18 and 19 of this act, unless the context otherwise requires, the words and terms defined in NRS 488.405 and sections 18 and 19 of this act have the meanings ascribed to them in those sections.*

Sec. 18. *The phrase "at least 0.08 percent, but less than 0.10 percent, by weight of alcohol in his blood" means a concentration of alcohol in the blood or breath of a person of at least 0.08 gram, but less than 0.10 gram, by weight of alcohol:*

1. Per 100 milliliters of his blood; or

2. Per 210 liters of his breath.

Sec. 19. *The phrase "0.08 percent or more by weight of alcohol in his blood" means a concentration of alcohol in the blood or breath of a person of 0.08 gram or more by weight of alcohol:*

1. Per 100 milliliters of his blood; or

2. Per 210 liters of his breath.

Sec. 20. NRS 488.405 is hereby amended to read as follows:

1 488.405 ~~[As used in NRS 488.410 and 488.420, the]~~ **The** phrase “0.10
2 percent or more by weight of alcohol in his blood” ~~[includes]~~ **means** a
3 concentration of alcohol in the blood or breath of a person of 0.10 gram or
4 more by weight of alcohol:

- 5 1. Per 100 milliliters of his blood; or
- 6 2. Per 210 liters of his breath.

7 **Sec. 21.** NRS 488.410 is hereby amended to read as follows:

8 488.410 1. ~~[It is unlawful for any person]~~ **Unless a greater penalty is**
9 **provided pursuant to NRS 488.420, a person who operates or is in actual**
10 **physical control of a vessel under power or sail on the waters of this state**
11 **and causes damage to the property of another or injury to another, or**
12 **both, and who:**

13 (a) **Has at least 0.08 percent, but less than 0.10 percent, by weight of**
14 **alcohol in his blood; or**

15 (b) **Is found by measurement within 2 hours after operating or being**
16 **in actual physical control of a vessel to have at least 0.08 percent, but less**
17 **than 0.10 percent, by weight of alcohol in his blood,**
18 **is guilty of a misdemeanor.**

19 2. **Unless a greater penalty is provided pursuant to NRS 488.420, a**
20 **person who operates or is in actual physical control of a vessel under**
21 **power or sail on the waters of this state who:**

22 (a) Is under the influence of intoxicating liquor;

23 (b) Has 0.10 percent or more by weight of alcohol in his blood; or

24 (c) Is found by measurement within 2 hours after operating or being in
25 actual physical control of a vessel to have 0.10 percent or more by weight
26 of alcohol in his blood,

27 ~~[to operate or be in actual physical control of a vessel under power or sail~~
28 ~~on the waters of this state.~~

29 ~~—2. It is unlawful for any person]~~
30 **is guilty of a misdemeanor.**

31 3. **Unless a greater penalty is provided pursuant to NRS 488.420, a**
32 **person who operates or is in actual physical control of a vessel under**
33 **power or sail on the waters of this state who:**

34 (a) Is under the influence of any controlled substance;

35 (b) Is under the combined influence of intoxicating liquor and a
36 controlled substance; or

37 (c) Inhales, ingests, applies or otherwise uses any chemical, poison or
38 organic solvent, or any compound or combination of any of these, to a
39 degree which renders him incapable of safely operating or exercising
40 actual physical control of a vessel under power or sail,

41 ~~[to operate or exercise actual physical control of a vessel under power or~~
42 ~~sail on the waters of this state.~~

43 ~~—3.]~~

1 *is guilty of a misdemeanor.*

1 **4.** If consumption is proven by a preponderance of the evidence, it is
2 an affirmative defense under paragraph ~~[(e)] (b)~~ of subsection 1 **or**
3 **paragraph (c) of subsection 2** that the defendant consumed a sufficient
4 quantity of alcohol after operating or being in actual physical control of the
5 vessel, and before his blood was tested, to cause the alcohol in his blood to
6 equal or exceed ~~[0.10 percent.]~~ **the percentage set forth in the applicable**
7 **paragraph.** A defendant who intends to offer this defense at a trial or
8 preliminary hearing must, not less than 14 days before the trial or hearing
9 or at such other time as the court may direct, file and serve on the
10 prosecuting attorney a written notice of that intent.

11 **Sec. 22.** NRS 488.420 is hereby amended to read as follows:

12 **488.420** 1. A person who:

13 (a) Is under the influence of intoxicating liquor;
14 (b) Has ~~[0.10]~~ **0.08** percent or more by weight of alcohol in his blood;
15 (c) Is found by measurement within 2 hours after operating or being in
16 actual physical control of a vessel under power or sail to have ~~[0.10]~~ **0.08**
17 percent or more by weight of alcohol in his blood;
18 (d) Is under the influence of a controlled substance, or under the
19 combined influence of intoxicating liquor and a controlled substance; or
20 (e) Inhales, ingests, applies or otherwise uses any chemical, poison or
21 organic solvent, or any compound or combination of any of these, to a
22 degree which renders him incapable of safely operating or being in actual
23 physical control of a vessel under power or sail,
24 and does any act or neglects any duty imposed by law while operating or
25 being in actual physical control of any vessel under power or sail, if the act
26 or neglect of duty proximately causes the death of, or substantial bodily
27 harm to, a person other than himself, is guilty of a category B felony and
28 shall be punished by imprisonment in the state prison for a minimum term
29 of not less than 2 years and a maximum term of not more than 20 years and
30 shall be further punished by a fine of not less than \$2,000 nor more than
31 \$5,000. A person so imprisoned must, insofar as practicable, be segregated
32 from offenders whose crimes were violent and, insofar as practicable, be
33 assigned to an institution or facility of minimum security.

34 2. A prosecuting attorney shall not dismiss a charge of violating the
35 provisions of subsection 1 in exchange for a plea of guilty, guilty but
36 mentally ill or nolo contendere to a lesser charge or for any other reason
37 unless he knows or it is obvious that the charge is not supported by
38 probable cause or cannot be proved at the time of trial. A sentence imposed
39 pursuant to subsection 1 must not be suspended, and probation must not be
40 granted.

1 3. If consumption is proven by a preponderance of the evidence, it is
2 an affirmative defense under paragraph (c) of subsection 1 that the
3 defendant consumed a sufficient quantity of alcohol after operating or
4 being in actual physical control of the vessel under power or sail, and
5 before his blood was tested, to cause the alcohol in his blood to equal or
6 exceed ~~0.10~~ 0.08 percent. A defendant who intends to offer this defense
7 at a trial or preliminary hearing must, not less than 14 days before the trial
8 or hearing or at such other time as the court may direct, file and serve on
9 the prosecuting attorney a written notice of that intent.

10 4. If a person less than 15 years of age was in the vessel at the time of
11 the defendant's violation, the court shall consider that fact as an
12 aggravating factor in determining the sentence of the defendant.

13 **Sec. 23.** NRS 209.392 is hereby amended to read as follows:

14 209.392 1. Except as otherwise provided in NRS 209.3925 and
15 209.429, the director may, at the request of an offender who is eligible for
16 residential confinement pursuant to the standards adopted by the director
17 pursuant to subsection 3 and who has:

18 (a) Established a position of employment in the community;
19 (b) Enrolled in a program for education or rehabilitation; or
20 (c) Demonstrated an ability to pay for all or part of the costs of his
21 confinement and to meet any existing obligation for restitution to any
22 victim of his crime,
23 assign the offender to the custody of the division of parole and probation
24 of the department of motor vehicles and public safety to serve a term of
25 residential confinement, pursuant to NRS 213.380, for not longer than the
26 remainder of his sentence.

27 2. Upon receiving a request to serve a term of residential confinement
28 from an eligible offender, the director shall notify the division of parole
29 and probation. If any victim of a crime committed by the offender has,
30 pursuant to subsection 3 of NRS 213.130, requested to be notified of an
31 application for parole and has provided a current address, the division of
32 parole and probation shall notify the victim of the offender's request and
33 advise the victim that he may submit documents regarding the request to
34 the division of parole and probation. If a current address has not been
35 provided as required by subsection 3 of NRS 213.130, the division of
36 parole and probation must not be held responsible if such notification is
37 not received by the victim. All personal information, including, but not
38 limited to, a current or former address, which pertains to a victim and
39 which is received by the division of parole and probation pursuant to this
40 subsection is confidential.

1 3. The director, after consulting with the division of parole and
2 probation, shall adopt, by regulation, standards providing which offenders
3 are eligible for residential confinement. The standards adopted by the
4 director must provide that an offender who:

5 (a) Is not eligible for parole or release from prison within a reasonable
6 period;

7 (b) Has recently committed a serious infraction of the rules of an
8 institution or facility of the department;

9 (c) Has not performed the duties assigned to him in a faithful and
10 orderly manner;

11 (d) Has ever been convicted of:

12 (1) Any crime involving the use or threatened use of force or
13 violence against the victim; or

14 (2) A sexual offense;

15 (e) Has more than one prior conviction for any felony in this state or
16 any offense in another state that would be a felony if committed in this
17 state, not including a violation of NRS ~~484.3792~~ 484.379 or 484.3795;

18 (f) Has escaped or attempted to escape from any jail or correctional
19 institution for adults; or

20 (g) Has not made an effort in good faith to participate in or to complete
21 any educational or vocational program or any program of treatment, as
22 ordered by the director,
23 is not eligible for assignment to the custody of the division of parole and
24 probation to serve a term of residential confinement pursuant to this
25 section.

26 4. If an offender assigned to the custody of the division of parole and
27 probation pursuant to this section escapes or violates any of the terms or
28 conditions of his residential confinement:

29 (a) The division of parole and probation may, pursuant to the procedure
30 set forth in NRS 213.410, return the offender to the custody of the
31 department.

32 (b) The offender forfeits all or part of the credits for good behavior
33 earned by him before the escape or violation, as determined by the
34 director. The director may provide for a forfeiture of credits pursuant to
35 this paragraph only after proof of the offense and notice to the offender,
36 and may restore credits forfeited for such reasons as he considers proper.
37 The decision of the director regarding such a forfeiture is final.

38 5. The assignment of an offender to the custody of the division of
39 parole and probation pursuant to this section shall be deemed:

40 (a) A continuation of his imprisonment and not a release on parole; and

1 (b) For the purposes of NRS 209.341, an assignment to a facility of the
2 department,
3 except that the offender is not entitled to obtain any benefits or to
4 participate in any programs provided to offenders in the custody of the
5 department.
6 6. An offender does not have a right to be assigned to the custody of
7 the division of parole and probation pursuant to this section, or to remain
8 in that custody after such an assignment, and it is not intended that the
9 provisions of this section or of NRS 213.371 to 213.410, inclusive, create
10 any right or interest in liberty or property or establish a basis for any cause
11 of action against the state, its political subdivisions, agencies, boards,
12 commissions, departments, officers or employees.
13 **Sec. 24.** The amendatory provisions of this act do not apply to
14 offenses that were committed before October 1, 1999.

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