

EXEMPT
(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT

A.B. 559

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

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

6 3. This section does not preclude:

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

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

12 483.462 1. ~~[A peace officer who has received the result of]~~ **If**
13 **subsection 1 of NRS 484.379 does not apply and** a test given pursuant to
14 NRS 484.382 or 484.383 ~~[which]~~ indicates that a person **who is** less than
15 21 years of age to whom the test was given had 0.02 or more but less than
16 0.10 percent by weight of alcohol in his blood , **the peace officer who**
17 **receives the result of the test** shall prepare a written certificate indicating
18 whether the peace officer:

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

21 (b) Served an order of suspension on the person pursuant to subsection
22 2; and

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

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

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

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

31 (c) Advise the person of his right to:

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

33 (2) Have a temporary license;

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

38 (e) Transmit to the department:

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

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

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

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

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

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

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

17 (a) Explain the grounds for the suspension;

18 (b) Indicate the period of the suspension;

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

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

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

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

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

35 1. *Per 100 milliliters of his blood; or*

36 2. *Per 210 liters of his breath.*

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

40 1. *Per 100 milliliters of his blood; or*

41 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 injury to another and who:*

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

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

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

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

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

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

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

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

33 ~~—2. It is unlawful for any]~~

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

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

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

40 (b) *Is* under the combined influence of intoxicating liquor and a
41 controlled substance ~~[, or any person who inhales,]~~ ; *or*

42 (c) *Inhales,* ingests, applies or otherwise uses any chemical, poison or
43 organic solvent, or any compound or combination of any of these, to a

1 degree which renders him incapable of safely driving or exercising actual
2 physical control of a vehicle ~~{to drive or be in actual physical control of a~~
3 ~~vehicle on a highway or on premises to which the public has access.}~~,
4 **shall be punished as provided in NRS 484.3792.** The fact that any person
5 charged with a violation of this subsection is or has been entitled to use that
6 drug under the laws of this state is not a defense against any charge of
7 violating this subsection.

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

18 **Sec. 9.** NRS 484.37943 is hereby amended to read as follows:

19 484.37943 1. If a person is found guilty of a first violation ~~{1}~~ **of NRS**
20 **484.379**, if the weight of alcohol in the defendant's blood at the time of the
21 offense was ~~{0.18}~~ **0.12** percent or more, or any second violation of NRS
22 484.379 within 7 years, the court shall, before sentencing the offender,
23 require an evaluation of the offender pursuant to subsection 3, 4 or 5 to
24 determine whether he is an abuser of alcohol or other drugs.

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

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

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

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

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

41 who shall report to the court the results of the evaluation and make a
42 recommendation to the court concerning the length and type of treatment
43 required for the offender.

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

7 5. The evaluation of an offender who resides in another state may,
8 upon approval of the court, be conducted in the state where the offender
9 resides by a physician or other person who is authorized by the appropriate
10 governmental agency in that state to conduct such an evaluation. The
11 offender shall ensure that the results of the evaluation and the
12 recommendation concerning the length and type of treatment for the
13 offender are reported to the court.

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

18 **Sec. 10.** NRS 484.3795 is hereby amended to read as follows:

19 484.3795 1. A person who:

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

21 (b) Has ~~10.10~~ **0.08** percent or more by weight of alcohol in his blood;

22 (c) Is found by measurement within 2 hours after driving or being in
23 actual physical control of a vehicle to have ~~10.10~~ **0.08** percent or more by
24 weight of alcohol in his blood;

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

27 (e) Inhales, ingests, applies or otherwise uses any chemical, poison or
28 organic solvent, or any compound or combination of any of these, to a
29 degree which renders him incapable of safely driving or exercising actual
30 physical control of a vehicle,

31 and does any act or neglects any duty imposed by law while driving or in
32 actual physical control of any vehicle on or off the highways of this state, if
33 the act or neglect of duty proximately causes the death of, or substantial
34 bodily harm to, a person other than himself, is guilty of a category B felony
35 and shall be punished by imprisonment in the state prison for a minimum
36 term of not less than 2 years and a maximum term of not more than 20
37 years and ~~must~~ **shall** be further punished by a fine of not less than \$2,000
38 nor more than \$5,000. A person so imprisoned must, insofar as practicable,
39 be segregated from offenders whose crimes were violent and, insofar as
40 practicable, be assigned to an institution or facility of minimum security.

41 2. A prosecuting attorney shall not dismiss a charge of violating the
42 provisions of subsection 1 in exchange for a plea of guilty, guilty but
43 mentally ill or nolo contendere to a lesser charge or for any other reason

1 unless he knows or it is obvious that the charge is not supported by
2 probable cause or cannot be proved at the time of trial. A sentence imposed
3 pursuant to subsection 1 ~~{may}~~ **must** not be suspended ~~{nor may}~~ **and**
4 probation **must not** be granted.

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

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

18 **Sec. 11.** NRS 484.384 is hereby amended to read as follows:

19 484.384 1. If the result of a test given ~~{under}~~ **pursuant to** NRS
20 484.382 or 484.383 shows that a person ~~{had 0.10 percent or more by~~
21 ~~weight of alcohol in his blood at the time of the test,}~~ **violated subsection 1**
22 **or subsection 2 of NRS 484.379**, his license, permit or privilege to drive
23 must be revoked as provided in NRS 484.385 and he is not eligible for a
24 license, permit or privilege for a period of 90 days.

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

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

35 **Sec. 12.** NRS 484.385 is hereby amended to read as follows:

36 484.385 1. As agent for the department, the officer who obtained the
37 result of a test given pursuant to NRS 484.382 or 484.383 shall
38 immediately serve an order of revocation of the license, permit or privilege
39 to drive on a person who ~~{has 0.10 percent or more by weight of alcohol in~~
40 ~~his blood}~~ **violates subsection 1 or subsection 2 of NRS 484.379** or **who**
41 has a detectable amount of a controlled substance in his system, if that
42 person is present, and shall seize his license or permit to drive. ~~{The}~~

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

11 ~~[2.]~~ **3.** When a police officer has served an order of revocation of a
12 driver's license, permit or privilege on a person pursuant to subsection 1, or
13 later receives the result of an evidentiary test which indicates that a person,
14 not then present, ~~had 0.10 percent or more by weight of alcohol in his~~
15 ~~blood~~ **violated subsection 1 or subsection 2 of NRS 484.379** or had a
16 detectable amount of a controlled substance in his system, the officer shall
17 immediately prepare and transmit to the department, together with the
18 seized license or permit and a copy of the result of the test, a written
19 certificate that he had reasonable grounds to believe that the person had
20 been driving or in actual physical control of a vehicle ~~[with 0.10 percent or~~
21 ~~more by weight of alcohol in his blood]~~ **in violation of subsection 1 or**
22 **subsection 2 of NRS 484.379** or with a detectable amount of a controlled
23 substance in his system, as determined by a chemical test. The certificate
24 must also indicate whether the officer served an order of revocation on the
25 person and whether he issued the person a temporary license.

26 ~~[3.]~~ **4.** The department, upon receipt of ~~[such]~~ a certificate for which an
27 order of revocation has not been served, after examining the certificate and
28 copy of the result of the chemical test, if any, and finding that revocation is
29 proper, shall issue an order revoking the person's license, permit or
30 privilege to drive by mailing the order to the person at his last known
31 address. The order must indicate the grounds for the revocation and the
32 period during which the person is not eligible for a license, permit or
33 privilege to drive and state that the person has a right to administrative and
34 judicial review of the revocation and to have a temporary license. The order
35 of revocation becomes effective 5 days after mailing.

36 ~~[4.]~~ **5.** Notice of an order of revocation and notice of the affirmation of
37 a prior order of revocation or the cancellation of a temporary license
38 provided in NRS 484.387 is sufficient if it is mailed to the person's last
39 known address as shown by any application for a license. The date of
40 mailing may be proved by the certificate of any officer or employee of the
41 department, specifying the time of mailing the notice. The notice is
42 presumed to have been received upon the expiration of 5 days after it is
43 deposited, postage prepaid, in the United States mail.

1 ~~15.1~~ 6. As used in this section, “controlled substance” means any of the
2 following substances for which a valid prescription has not been issued to
3 the consumer:

- 4 (a) Amphetamine;
- 5 (b) Benzoylecgonine;
- 6 (c) Cocaine;
- 7 (d) Heroin;
- 8 (e) Lysergic acid diethylamide;
- 9 (f) Mecloqualone;
- 10 (g) Mescaline;
- 11 (h) Methamphetamine;
- 12 (i) Methaqualone;
- 13 (j) Monoacetylmorphine;
- 14 (k) Phencyclidine;
- 15 (l) N-ethylamphetamine;
- 16 (m) N, N-dimethylamphetamine;
- 17 (n) 2, 5-dimethoxyamphetamine;
- 18 (o) 3, 4-methylenedioxyamphetamine;
- 19 (p) 3, 4, 5-trimethoxyamphetamine;
- 20 (q) 4-bromo-2, 5-dimethoxyamphetamine;
- 21 (r) 4-methoxyamphetamine;
- 22 (s) 4-methyl-2, 5-dimethoxyamphetamine;
- 23 (t) 5-dimethoxy-alpha-methylphenethylamine; or
- 24 (u) 5-methoxy-3, 4-methylenedioxyamphetamine,

25 if the substance is classified in schedule I or II pursuant to NRS 453.166 or
26 453.176 at the time the substance is consumed.

27 **Sec. 13.** NRS 484.387 is hereby amended to read as follows:

28 484.387 1. At any time while a person is not eligible for a license,
29 permit or privilege to drive following an order of revocation issued
30 pursuant to NRS 484.385, he may request in writing a hearing by the
31 department to review the order of revocation, but he is only entitled to one
32 hearing. The hearing must be conducted within 15 days after receipt of the
33 request, or as soon thereafter as is practicable, in the county where the
34 requester resides unless the parties agree otherwise. The director or his
35 agent may issue subpoenas for the attendance of witnesses and the
36 production of relevant books and papers and may require a reexamination
37 of the requester. The department shall issue an additional temporary license
38 for a period which is sufficient to complete the administrative review.

39 2. The scope of the hearing must be limited to the issue of whether the
40 person, at the time of the test, had ~~10.10 percent or more by weight of~~

41 ~~alcohol in his blood~~ **violated subsection 1 or subsection 2 of NRS**

42 **484.379** or **had** a detectable amount of a controlled substance in his system.

1 Upon an affirmative finding on this issue, the department shall affirm the
2 order of revocation. Otherwise, the order of revocation must be rescinded.

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

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

14 **Sec. 14.** NRS 484.791 is hereby amended to read as follows:

15 484.791 1. Any peace officer may, without a warrant, arrest a person
16 if the officer has reasonable cause for believing that the person has
17 committed any of the following offenses:

18 (a) Homicide by vehicle;

19 (b) Driving or being in actual physical control of a vehicle while under
20 the influence of intoxicating liquor or ~~{with 0.10 percent or more by weight~~
21 ~~of alcohol in his blood;}~~ *in violation of subsection 1 or subsection 2 of*
22 *NRS 484.379;*

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

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

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

36 (f) Reckless driving;

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

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

42 2. ~~{Whenever any}~~ *If a* person is arrested as authorized in this section ,
43 he must be taken without unnecessary delay before the proper magistrate as

1 specified in NRS 484.803, except that in the case of either of the offenses
2 designated in paragraphs (e) and (f) a peace officer has the same discretion
3 as is provided in other cases in NRS 484.795.

4 **Sec. 15.** Chapter 488 of NRS is hereby amended by adding thereto the
5 provisions set forth as sections 16, 17 and 18 of this act.

6 **Sec. 16.** *As used in NRS 488.405, 488.410 and 488.420 and sections*
7 *16, 17 and 18 of this act, unless the context otherwise requires, the words*
8 *and terms defined in NRS 488.405 and sections 17 and 18 of this act*
9 *have the meanings ascribed to them in those sections.*

10 **Sec. 17.** *The phrase "at least 0.08 percent, but less than 0.10*
11 *percent, by weight of alcohol in his blood" means a concentration of*
12 *alcohol in the blood or breath of a person of at least 0.08 gram, but less*
13 *than 0.10 gram, by weight of alcohol:*

14 1. *Per 100 milliliters of his blood; or*

15 2. *Per 210 liters of his breath.*

16 **Sec. 18.** *The phrase "0.08 percent or more by weight of alcohol in*
17 *his blood" means a concentration of alcohol in the blood or breath of a*
18 *person of 0.08 gram or more by weight of alcohol:*

19 1. *Per 100 milliliters of his blood; or*

20 2. *Per 210 liters of his breath.*

21 **Sec. 19.** NRS 488.405 is hereby amended to read as follows:

22 488.405 ~~[As used in NRS 488.410 and 488.420, the]~~ **The** phrase "0.10
23 percent or more by weight of alcohol in his blood" ~~[includes]~~ **means** a
24 concentration of alcohol in the blood or breath of a person of 0.10 gram or
25 more by weight of alcohol:

26 1. *Per 100 milliliters of his blood; or*

27 2. *Per 210 liters of his breath.*

28 **Sec. 20.** NRS 488.410 is hereby amended to read as follows:

29 488.410 1. ~~[It is unlawful for any person]~~ **Unless a greater penalty is**
30 **provided pursuant to NRS 488.420, a person who operates or is in actual**
31 **physical control of a vessel under power or sail on the waters of this state**
32 **and causes injury to another and who:**

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

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

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

42 (a) *Is under the influence of intoxicating liquor;*

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

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

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

~~2. It is unlawful for any person~~

~~is guilty of a misdemeanor.~~

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

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

(b) Is under the combined influence of intoxicating liquor and a controlled substance; 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 operating or exercising actual physical control of a vessel under power or sail,

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

~~3.~~

~~is guilty of a misdemeanor.~~

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 operating or being in actual physical control of the vessel, 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. 21. NRS 488.420 is hereby amended to read as follows:

488.420 1. A person who:

(a) Is under the influence of intoxicating liquor;

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

(c) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel under power or sail to have ~~0.10~~ **0.08** percent or more by weight of alcohol in his blood;

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

(e) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a

1 degree which renders him incapable of safely operating or being in actual
2 physical control of a vessel under power or sail,
3 and does any act or neglects any duty imposed by law while operating or
4 being in actual physical control of any vessel under power or sail, if the act
5 or neglect of duty proximately causes the death of, or substantial bodily
6 harm to, a person other than himself, is guilty of a category B felony and
7 shall be punished by imprisonment in the state prison for a minimum term
8 of not less than 2 years and a maximum term of not more than 20 years and
9 shall be further punished by a fine of not less than \$2,000 nor more than
10 \$5,000. A person so imprisoned must, insofar as practicable, be segregated
11 from offenders whose crimes were violent and, insofar as practicable, be
12 assigned to an institution or facility of minimum security.

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

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

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

32 **Sec. 22.** NRS 209.392 is hereby amended to read as follows:

33 209.392 1. Except as otherwise provided in NRS 209.3925 and
34 209.429, the director may, at the request of an offender who is eligible for
35 residential confinement pursuant to the standards adopted by the director
36 pursuant to subsection 3 and who has:

- 37 (a) Established a position of employment in the community;
38 (b) Enrolled in a program for education or rehabilitation; or
39 (c) Demonstrated an ability to pay for all or part of the costs of his
40 confinement and to meet any existing obligation for restitution to any
41 victim of his crime,
42 assign the offender to the custody of the division of parole and probation of
43 the department of motor vehicles and public safety to serve a term of

1 residential confinement, pursuant to NRS 213.380, for not longer than the
2 remainder of his sentence.

3 2. Upon receiving a request to serve a term of residential confinement
4 from an eligible offender, the director shall notify the division of parole and
5 probation. If any victim of a crime committed by the offender has, pursuant
6 to subsection 3 of NRS 213.130, requested to be notified of an application
7 for parole and has provided a current address, the division of parole and
8 probation shall notify the victim of the offender's request and advise the
9 victim that he may submit documents regarding the request to the division
10 of parole and probation. If a current address has not been provided as
11 required by subsection 3 of NRS 213.130, the division of parole and
12 probation must not be held responsible if such notification is not received
13 by the victim. All personal information, including, but not limited to, a
14 current or former address, which pertains to a victim and which is received
15 by the division of parole and probation pursuant to this subsection is
16 confidential.

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

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

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

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

27 (d) Has ever been convicted of:

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

30 (2) A sexual offense;

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

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

36 (g) Has not made an effort in good faith to participate in or to complete
37 any educational or vocational program or any program of treatment, as
38 ordered by the director,

39 is not eligible for assignment to the custody of the division of parole and
40 probation to serve a term of residential confinement pursuant to this
41 section.

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

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

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

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

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

16 (b) For the purposes of NRS 209.341, an assignment to a facility of the
17 department,

18 except that the offender is not entitled to obtain any benefits or to
19 participate in any programs provided to offenders in the custody of the
20 department.

21 6. An offender does not have a right to be assigned to the custody of
22 the division of parole and probation pursuant to this section, or to remain in
23 that custody after such an assignment, and it is not intended that the
24 provisions of this section or of NRS 213.371 to 213.410, inclusive, create
25 any right or interest in liberty or property or establish a basis for any cause
26 of action against the state, its political subdivisions, agencies, boards,
27 commissions, departments, officers or employees.

28 **Sec. 23.** The amendatory provisions of this act do not apply to
29 offenses that were committed before October 1, 1999.