

ASSEMBLY BILL NO. 579—ASSEMBLYMAN BROWER

MARCH 15, 1999

Referred to Committee on Judiciary

SUMMARY—Makes all prior offenses count in determining penalty for subsequent offenses of driving under influence of intoxicating liquor or controlled substance regardless of when prior offenses occurred. (BDR 43-1276)

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

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

AN ACT relating to motor vehicles; making all prior offenses count in determining the penalty for subsequent offenses of driving under the influence of intoxicating liquor or a controlled substance regardless of when the prior offenses occurred; and providing other matters properly relating thereto.

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

Section 1. NRS 483.330 is hereby amended to read as follows:
483.330 1. The department may require every applicant for a driver's license, including a commercial driver's license issued pursuant to NRS 483.900 to 483.940, inclusive, to submit to an examination. The examination may include:

- (a) A test of the applicant's ability to understand official devices used to control traffic;
- (b) A test of his knowledge of practices for safe driving and the traffic laws of this state;
- (c) Except as otherwise provided in subsection 2, a test of his eyesight; and
- (d) Except as otherwise provided in subsection 3, an actual demonstration of his ability to exercise ordinary and reasonable control in the operation of a motor vehicle of the type or class of vehicle for which he is licensed.

1 The examination may also include such further physical and mental
2 examination as the department finds necessary to determine the applicant's
3 fitness to drive a motor vehicle safely upon the highways.

4 2. The department may provide by regulation for the acceptance of a
5 report from an ophthalmologist, optician or optometrist in lieu of an eye
6 test by a driver's license examiner.

7 3. If the department establishes a type or classification of driver's
8 license to operate a motor vehicle of a type which is not normally available
9 to examine an applicant's ability to exercise ordinary and reasonable
10 control of such a vehicle, the department may, by regulation, provide for
11 the acceptance of an affidavit from a:

12 (a) Past, present or prospective employer of the applicant; or

13 (b) Local joint apprenticeship committee which had jurisdiction over
14 the training or testing, or both, of the applicant,
15 in lieu of an actual demonstration.

16 4. The department may waive an examination pursuant to subsection 1
17 for a person applying for a Nevada driver's license who possesses a valid
18 driver's license of the same type or class issued by another jurisdiction
19 unless that person:

20 (a) Has not attained 25 years of age;

21 (b) Has had his license or privilege to drive a motor vehicle suspended,
22 revoked or canceled or has been otherwise disqualified from driving during
23 the immediately preceding 4 years;

24 (c) ~~Has~~ **Previously has** been convicted of the offense of driving a
25 motor vehicle while under the influence of an intoxicating liquor, a
26 controlled substance, a chemical poison or an organic solvent, ~~during the~~
27 ~~immediately preceding 7 years,~~ or the violation of a law which prohibits
28 the same or similar conduct;

29 (d) Has restrictions to his driver's license which the department must
30 reevaluate to ensure the safe driving of a motor vehicle by that person;

31 (e) Has had three or more convictions of moving traffic violations on
32 his driving record during the immediately preceding 4 years; or

33 (f) Has been convicted of any of the offenses related to the use or
34 operation of a motor vehicle which must be reported pursuant to the
35 provisions of Parts 1325 and 1327 of Title 23 of the Code of Federal
36 Regulations relating to the National Driver Register Problem Driver
37 Pointer System during the immediately preceding 4 years.

38 **Sec. 2.** NRS 483.460 is hereby amended to read as follows:

39 483.460 1. Except as otherwise provided by statute, the department
40 shall revoke the license, permit or privilege of any driver upon receiving a
41 record of his conviction of any of the following offenses, when that
42 conviction has become final, and the driver is not eligible for a license,
43 permit or privilege to drive for the period indicated:

(a) For a period of 3 years if the offense is:

(1) A violation of subsection 2 of NRS 484.377.

(2) A third or subsequent violation ~~within 7 years~~ of NRS 484.379.

(3) A violation of NRS 484.3795 or homicide resulting from driving a vehicle while under the influence of intoxicating liquor or a controlled substance.

The period during which such a driver is not eligible for a license, permit or privilege to drive must be set aside during any period of imprisonment and the period of revocation must resume upon completion of the period of imprisonment or when the person is placed on residential confinement.

(b) For a period of 1 year if the offense is:

(1) Any other manslaughter resulting from the driving of a motor vehicle or felony in the commission of which a motor vehicle is used, including the unlawful taking of a motor vehicle.

(2) Failure to stop and render aid as required pursuant to the laws of this state in the event of a motor vehicle accident resulting in the death or bodily injury of another.

(3) Perjury or the making of a false affidavit or statement under oath to the department pursuant to NRS 483.010 to 483.630, inclusive, or pursuant to any other law relating to the ownership or driving of motor vehicles.

(4) Conviction, or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months.

(5) A second violation ~~within 7 years~~ of NRS 484.379 and, except as otherwise provided in subsection 2 of NRS 483.490, the driver is not eligible for a restricted license during any of that period.

(6) A violation of NRS 484.348.

(c) For a period of 90 days, if the offense is a first violation ~~within 7 years~~ of NRS 484.379.

2. The department shall revoke the license, permit or privilege of a driver convicted of violating NRS 484.379 who fails to complete the educational course on the use of alcohol and controlled substances within the time ordered by the court and shall add a period of 90 days during which the driver is not eligible for a license, permit or privilege to drive.

3. When the department is notified by a court that a person who has been convicted of violating NRS 484.379 has been permitted to enter a program of treatment pursuant to NRS 484.37937 or 484.3794, the department shall reduce by one-half the period during which he is not eligible for a license, permit or privilege to drive, but shall restore that reduction in time if notified that he was not accepted for or failed to complete the treatment.

1 4. The department shall revoke the license, permit or privilege to drive
2 of a person who is required to install a device pursuant to NRS 484.3943
3 but who operates a motor vehicle without such a device:

4 (a) For 3 years, if it is his first such offense during the period of
5 required use of the device.

6 (b) For 5 years, if it is his second such offense during the period of
7 required use of the device.

8 5. A driver whose license, permit or privilege is revoked pursuant to
9 subsection 4 is not eligible for a restricted license during the period set
10 forth in paragraph (a) or (b) of that subsection, whichever is applicable.

11 6. When the department is notified that a court has:

12 (a) Pursuant to paragraph (h) of subsection 1 of NRS 62.211, NRS
13 62.224, 62.2255, 62.226 or 62.228, ordered the suspension or delay in the
14 issuance of a child's license;

15 (b) Pursuant to NRS 206.330, ordered the suspension or delay in the
16 issuance of a person's license; or

17 (c) Pursuant to NRS 62.227, ordered the revocation of a child's license,
18 the department shall take such actions as are necessary to carry out the
19 court's order.

20 7. As used in this section, "device" has the meaning ascribed to it in
21 NRS 484.3941.

22 **Sec. 3.** NRS 483.490 is hereby amended to read as follows:

23 483.490 1. Except as otherwise provided in this section, after a
24 driver's license has been suspended or revoked for an offense other than a
25 second violation ~~[within 7 years]~~ of NRS 484.379 and one-half of the
26 period during which the driver is not eligible for a license has expired, the
27 department may, unless the statute authorizing the suspension prohibits the
28 issuance of a restricted license, issue a restricted driver's license to an
29 applicant permitting the applicant to drive a motor vehicle:

30 (a) To and from work or in the course of his work, or both; or

31 (b) To acquire supplies of medicine or food or receive regularly
32 scheduled medical care for himself or a member of his immediate
33 family.

34 Before a restricted license may be issued, the applicant must submit
35 sufficient documentary evidence to satisfy the department that a severe
36 hardship exists because the applicant has no alternative means of
37 transportation and that the severe hardship outweighs the risk to the public
38 if he is issued a restricted license.

39 2. A person who has been ordered to install a device in a motor vehicle
40 which he owns or operates pursuant to NRS 484.3943:

41 (a) Shall install the device not later than 21 days after the date on which
42 the order was issued; and

43 (b) May not receive a restricted license pursuant to this section until:

1 (1) After at least 180 days of the period during which he is not
2 eligible for a license, if he was convicted of a violation of subsection 2 of
3 NRS 484.377, a violation of NRS 484.3795 or homicide resulting from
4 driving a vehicle while under the influence of intoxicating liquor or a
5 controlled substance or if he was convicted of a third violation ~~[within 7~~
6 ~~years]~~ of NRS 484.379;

7 (2) After at least 90 days of the period during which he is not eligible
8 for a license, if he was convicted of a second violation ~~[within 7 years]~~ of
9 NRS 484.379; or

10 (3) After at least 45 days of the period during which he is not eligible
11 for a license, if he was convicted of a first violation ~~[within 7 years]~~ of
12 NRS 484.379.

13 3. If the department has received a copy of an order requiring a person
14 to install a device in a motor vehicle which he owns or operates pursuant to
15 NRS 484.3943, the department shall not issue a restricted driver's license
16 to such a person pursuant to this section unless the applicant has submitted
17 proof of compliance with the order and subsection 2.

18 4. After a driver's license has been revoked pursuant to subsection 1 of
19 NRS 62.227 or suspended pursuant to paragraph (h) of subsection 1 of
20 NRS 62.211, NRS 62.224, 62.2255, 62.226 or 62.228, the department may
21 issue a restricted driver's license to an applicant permitting the applicant to
22 drive a motor vehicle:

23 (a) If applicable, to and from work or in the course of his work, or both;
24 and

25 (b) If applicable, to and from school.

26 5. After a driver's license has been suspended pursuant to NRS
27 483.443, the department may issue a restricted driver's license to an
28 applicant permitting the applicant to drive a motor vehicle:

29 (a) If applicable, to and from work or in the course of his work, or both;

30 (b) To receive regularly scheduled medical care for himself or a
31 member of his immediate family; and

32 (c) If applicable, as necessary to exercise a court-ordered right to visit a
33 child.

34 6. A driver who violates a condition of a restricted license issued
35 pursuant to subsection 1 or by another jurisdiction is guilty of a
36 misdemeanor, and if his license was suspended or revoked for a violation
37 of NRS 484.379, 484.3795, 484.384 or a homicide resulting from driving a
38 vehicle while under the influence of intoxicating liquor or a controlled
39 substance, or the violation of a law of any other jurisdiction which
40 prohibits the same conduct, he shall be punished in the manner provided
41 pursuant to subsection 2 of NRS 483.560.

42 7. The periods of suspensions and revocations required pursuant to this
43 chapter and NRS 484.384 must run consecutively, except as otherwise

1 provided in NRS 483.465 and 483.475, when the suspensions must run
2 concurrently.

3 8. Whenever the department suspends or revokes a license, the period
4 of suspension, or of ineligibility for a license after the revocation, begins
5 upon the effective date of the revocation or suspension as contained in the
6 notice thereof.

7 **Sec. 4.** NRS 484.3792 is hereby amended to read as follows:

8 484.3792 1. A person who violates the provisions of NRS 484.379:

9 (a) For the first offense, ~~[within 7 years,]~~ is guilty of a misdemeanor.
10 Unless he is allowed to undergo treatment as provided in NRS 484.37937,
11 the court shall:

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

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

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

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

25 (1) Shall sentence him to:

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

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

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

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

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

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

41 (c) For a third or subsequent offense, ~~[within 7 years,]~~ is guilty of a
42 category B felony and shall be punished by imprisonment in the state
43 prison for a minimum term of not less than 1 year and a maximum term of

1 not more than 6 years, and shall be further punished by a fine of not less
2 than \$2,000 nor more than \$5,000. An offender so imprisoned must,
3 insofar as practicable, be segregated from offenders whose crimes were
4 violent and, insofar as practicable, be assigned to an institution or facility
5 of minimum security.

6 2. An offense that occurred ~~[within 7 years immediately preceding]~~
7 *before* the date of the principal offense or after the principal offense
8 constitutes a prior offense for the purposes of this section when evidenced
9 by a conviction, without regard to the sequence of the offenses and
10 convictions. The facts concerning a prior offense must be alleged in the
11 complaint, indictment or information, must not be read to the jury or
12 proved at trial but must be proved at the time of sentencing and, if the
13 principal offense is alleged to be a felony, must also be shown at the
14 preliminary examination or presented to the grand jury.

15 3. A person convicted of violating the provisions of NRS 484.379
16 must not be released on probation, and a sentence imposed for violating
17 those provisions must not be suspended except, as provided in NRS 4.373,
18 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that
19 exceeds the mandatory minimum. A prosecuting attorney shall not dismiss
20 a charge of violating the provisions of NRS 484.379 in exchange for a plea
21 of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for
22 any other reason unless he knows or it is obvious that the charge is not
23 supported by probable cause or cannot be proved at the time of trial.

24 4. A term of confinement imposed pursuant to the provisions of this
25 section may be served intermittently at the discretion of the judge or justice
26 of the peace, except that a person who is convicted of a second or
27 subsequent offense ~~[within 7 years]~~ must be confined for at least one
28 segment of not less than 48 consecutive hours. This discretion must be
29 exercised after considering all the circumstances surrounding the offense,
30 and the family and employment of the offender, but any sentence of 30
31 days or less must be served within 6 months after the date of conviction or,
32 if the offender was sentenced pursuant to NRS 484.37937 or 484.3794 and
33 the suspension of his sentence was revoked, within 6 months after the date
34 of revocation. Any time for which the offender is confined must consist of
35 not less than 24 consecutive hours.

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

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

42 (a) Order the person to pay tuition for and submit evidence of
43 completion of an educational course on the abuse of alcohol and controlled

1 substances approved by a governmental agency of the state of his residence
2 within the time specified in the order; or

3 (b) Order him to complete an educational course by correspondence on
4 the abuse of alcohol and controlled substances approved by the department
5 within the time specified in the order,
6 and the court shall notify the department if the person fails to complete the
7 assigned course within the specified time.

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

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

17 **Sec. 5.** NRS 484.37937 is hereby amended to read as follows:

18 484.37937 1. Except as otherwise provided in subsection 2, a person
19 who is found guilty of a first violation of NRS 484.379 may, at that time or
20 any time before he is sentenced, apply to the court to undergo a program of
21 treatment for alcoholism or drug abuse which is certified by the bureau of
22 alcohol and drug abuse of the rehabilitation division of the department of
23 employment, training and rehabilitation for at least 6 months. The court
24 shall authorize such treatment if:

25 (a) The person is diagnosed as an alcoholic or abuser of drugs by a:

26 (1) Counselor or other person certified to make that diagnosis by the
27 bureau of alcohol and drug abuse of the rehabilitation division of the
28 department of employment, training and rehabilitation; or

29 (2) Physician certified to make that diagnosis by the board of medical
30 examiners;

31 (b) He agrees to pay the cost of the treatment to the extent of his
32 financial resources; and

33 (c) He has served or will serve a term of imprisonment in jail of 1 day,
34 or has performed or will perform 48 hours of work for the community.

35 2. A person may not apply to the court to undergo a program of
36 treatment pursuant to subsection 1 if ~~1, within the immediately preceding 7~~
37 ~~years,~~ **previously** he has been found guilty of:

38 (a) A violation of NRS 484.3795;

39 (b) A homicide resulting from driving a vehicle while under the
40 influence of intoxicating liquor or a controlled substance; or

41 (c) A violation of the law of any other jurisdiction which prohibits the
42 same or similar conduct as set forth in paragraph (a) or (b).

1 3. For the purposes of subsection 1, a violation of the law of any other
2 jurisdiction which prohibits the same or similar conduct as NRS 484.379
3 constitutes a violation of NRS 484.379.

4 4. A prosecuting attorney may, within 10 days after receiving notice of
5 an application for treatment pursuant to this section, request a hearing on
6 the question of whether the offender is eligible to undergo a program of
7 treatment for alcoholism or drug abuse. The court shall order a hearing on
8 the application upon the request of the prosecuting attorney or may order a
9 hearing on its own motion. The hearing must be limited to the question of
10 whether the offender is eligible to undergo such a program of treatment.

11 5. At the hearing on the application for treatment, the prosecuting
12 attorney may present the court with any relevant evidence on the matter. If
13 a hearing is not held, the court shall decide the matter upon affidavits and
14 other information before the court.

15 6. If the court grants an application for treatment, the court shall:

16 (a) Immediately sentence the offender and enter judgment accordingly.

17 (b) Suspend the sentence of the offender for not more than 3 years upon
18 the condition that the offender be accepted for treatment by a treatment
19 facility, that he complete the treatment satisfactorily and that he comply
20 with any other condition ordered by the court.

21 (c) Advise the offender that:

22 (1) If he is accepted for treatment by such a facility, he may be
23 placed under the supervision of the facility for a period not to exceed 3
24 years and during treatment he may be confined in an institution or, at the
25 discretion of the facility, released for treatment or supervised aftercare in
26 the community.

27 (2) If he is not accepted for treatment by such a facility or he fails to
28 complete the treatment satisfactorily, he shall serve the sentence imposed
29 by the court. Any sentence of imprisonment must be reduced by a time
30 equal to that which he served before beginning treatment.

31 (3) If he completes the treatment satisfactorily, his sentence will be
32 reduced to a term of imprisonment which is no longer than that provided
33 for the offense in paragraph (c) of subsection 1 and a fine of not more than
34 the minimum fine provided for the offense in NRS 484.3792, but the
35 conviction must remain on his record of criminal history.

36 7. The court shall administer the program of treatment pursuant to the
37 procedures provided in NRS 458.320 and 458.330, except that the court:

38 (a) Shall not defer the sentence, set aside the conviction or impose
39 conditions upon the election of treatment except as provided in this
40 section.

41 (b) May immediately revoke the suspension of sentence for a violation
42 of any condition of the suspension.

1 8. The court shall notify the department, on a form approved by the
2 department, upon granting the application of the offender for treatment and
3 his failure to be accepted for or complete treatment.

4 **Sec. 6.** NRS 484.3794 is hereby amended to read as follows:

5 484.3794 1. Except as otherwise provided in subsection 2, a person
6 who is found guilty of a second violation of NRS 484.379 ~~[within 7 years]~~
7 may, at that time or any time before he is sentenced, apply to the court to
8 undergo a program of treatment for alcoholism or drug abuse which is
9 certified by the bureau of alcohol and drug abuse of the rehabilitation
10 division of the department of employment, training and rehabilitation for at
11 least 1 year if:

12 (a) He is diagnosed as an alcoholic or abuser of drugs by a:

13 (1) Counselor or other person certified to make that diagnosis by the
14 bureau of alcohol and drug abuse of the rehabilitation division of the
15 department of employment, training and rehabilitation; or

16 (2) Physician certified to make that diagnosis by the board of medical
17 examiners;

18 (b) He agrees to pay the costs of the treatment to the extent of his
19 financial resources; and

20 (c) He has served or will serve a term of imprisonment in jail of 5 days,
21 and if required pursuant to NRS 484.3792, has performed or will perform
22 not less than 50 hours, but not more than 100 hours, of work for the
23 community.

24 2. A person may not apply to the court to undergo a program of
25 treatment pursuant to subsection 1 if ~~[, within the immediately preceding 7~~
26 ~~years.]~~ **previously** he has been found guilty of:

27 (a) A violation of NRS 484.3795;

28 (b) A homicide resulting from driving a vehicle while under the
29 influence of intoxicating liquor or a controlled substance; or

30 (c) A violation of the law of any other jurisdiction which prohibits the
31 same or similar conduct as set forth in paragraph (a) or (b).

32 3. For the purposes of subsection 1, a violation of the law of any other
33 jurisdiction which prohibits the same or similar conduct as NRS 484.379
34 constitutes a violation of NRS 484.379.

35 4. A prosecuting attorney may, within 10 days after receiving notice of
36 an application for treatment pursuant to this section, request a hearing on
37 the matter. The court shall order a hearing on the application upon the
38 request of the prosecuting attorney or may order a hearing on its own
39 motion.

40 5. At the hearing on the application for treatment, the prosecuting
41 attorney may present the court with any relevant evidence on the matter. If
42 a hearing is not held, the court shall decide the matter upon affidavits and
43 other information before the court.

1 6. If the court determines that an application for treatment should be
2 granted, the court shall:

3 (a) Immediately sentence the offender and enter judgment accordingly.

4 (b) Suspend the sentence of the offender for not more than 3 years upon
5 the condition that the offender be accepted for treatment by a treatment
6 facility, that he complete the treatment satisfactorily and that he comply
7 with any other condition ordered by the court.

8 (c) Advise the offender that:

9 (1) If he is accepted for treatment by such a facility, he may be
10 placed under the supervision of the facility for a period not to exceed 3
11 years and during treatment he may be confined in an institution or, at the
12 discretion of the facility, released for treatment or supervised aftercare in
13 the community.

14 (2) If he is not accepted for treatment by such a facility or he fails to
15 complete the treatment satisfactorily, he shall serve the sentence imposed
16 by the court. Any sentence of imprisonment must be reduced by a time
17 equal to that which he served before beginning treatment.

18 (3) If he completes the treatment satisfactorily, his sentence will be
19 reduced to a term of imprisonment which is no longer than that provided
20 for the offense in paragraph (c) of subsection 1 and a fine of not more than
21 the minimum provided for the offense in NRS 484.3792, but the
22 conviction must remain on his record of criminal history.

23 7. The court shall administer the program of treatment pursuant to the
24 procedures provided in NRS 458.320 and 458.330, except that the court:

25 (a) Shall not defer the sentence, set aside the conviction or impose
26 conditions upon the election of treatment except as provided in this
27 section.

28 (b) May immediately revoke the suspension of sentence for a violation
29 of a condition of the suspension.

30 8. The court shall notify the department, on a form approved by the
31 department, upon granting the application of the offender for treatment and
32 his failure to be accepted for or complete treatment.

33 **Sec. 7.** NRS 484.37943 is hereby amended to read as follows:

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

40 2. If a person is convicted of a first violation of NRS 484.379 and he is
41 under 21 years of age at the time of the violation, the court shall, before
42 sentencing the offender, require an evaluation of the offender pursuant to

1 subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or
2 other drugs.

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

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

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

11 (c) A person who is approved to make that evaluation by the bureau of
12 alcohol and drug abuse of the rehabilitation division of the department of
13 employment, training and rehabilitation,
14 who shall report to the court the results of the evaluation and make a
15 recommendation to the court concerning the length and type of treatment
16 required for the offender.

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

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

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

34 **Sec. 8.** NRS 484.383 is hereby amended to read as follows:

35 484.383 1. Except as otherwise provided in subsections 3 and 4, any
36 person who drives or is in actual physical control of a vehicle on a
37 highway or on premises to which the public has access shall be deemed to
38 have given his consent to an evidentiary test of his blood, urine, breath or
39 other bodily substance for the purpose of determining the alcoholic content
40 of his blood or breath or the presence of a controlled substance when such
41 a test is administered at the direction of a police officer having reasonable
42 grounds to believe that the person to be tested was driving or in actual

1 physical control of a vehicle while under the influence of intoxicating
2 liquor or a controlled substance.

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

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

11 4. If the alcoholic content of the blood or breath of the person to be
12 tested is in issue:

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

16 (b) The person may request a blood test, but if means are reasonably
17 available to perform a breath test when the blood test is requested, and the
18 person is subsequently convicted, he must pay for the cost of the blood
19 test, including the fees and expenses of witnesses in court.

20 (c) A police officer may direct the person to submit to a blood test as set
21 forth in subsection 7 if the officer has reasonable grounds to believe that
22 the person:

23 (1) Caused death or substantial bodily harm to another person as a
24 result of driving or being in actual physical control of a vehicle while
25 under the influence of intoxicating liquor or a controlled substance; or

26 (2) ~~{Has}~~ **Previously has** been convicted ~~{within the previous 7 years}~~
27 of:

28 (I) A violation of NRS 484.379, 484.3795, subsection 2 of NRS
29 488.400, NRS 488.410 or 488.420 or a law of another jurisdiction that
30 prohibits the same or similar conduct; or

31 (II) Any other offense in this state or another jurisdiction in which
32 death or substantial bodily harm to another person resulted from driving,
33 operating or being in actual physical control of a vehicle or a vessel under
34 power or sail while under the influence of intoxicating liquor or a
35 controlled substance.

36 5. If the presence of a controlled substance in the blood of the person
37 is in issue, the officer may direct him to submit to a blood or urine test, or
38 both, in addition to the breath test.

39 6. Except as otherwise provided in subsections 3 and 5, a police officer
40 shall not direct a person to submit to a urine test.

41 7. If a person to be tested fails to submit to a required test as directed
42 by a police officer pursuant to this section and the officer has reasonable
43 grounds to believe that the person to be tested was driving or in actual

1 physical control of a motor vehicle while under the influence of
2 intoxicating liquor or a controlled substance, the officer may direct that
3 reasonable force be used to the extent necessary to obtain samples of blood
4 from the person to be tested. Not more than three such samples may be
5 taken during the 5-hour period immediately following the time of the
6 initial arrest. In such a circumstance, the officer is not required to provide
7 the person with a choice of tests for determining the alcoholic content or
8 presence of a controlled substance in his blood.

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

13 **Sec. 9.** NRS 488.460 is hereby amended to read as follows:

14 488.460 1. Except as otherwise provided in subsections 3 and 4, a
15 person who operates or is in actual physical control of a vessel under
16 power or sail on the waters of this state shall be deemed to have given his
17 consent to an evidentiary test of his blood, urine, breath or other bodily
18 substance for the purpose of determining the alcoholic content of his blood
19 or breath or the presence of a controlled substance when such a test is
20 administered at the direction of a peace officer having reasonable grounds
21 to believe that the person to be tested was operating or in actual physical
22 control of a vessel under power or sail while under the influence of
23 intoxicating liquor or a controlled substance.

24 2. If the person to be tested pursuant to subsection 1 is dead or
25 unconscious, the officer shall direct that samples of blood from the person
26 be tested.

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

32 4. If the alcoholic content of the blood or breath of the person to be
33 tested is in issue:

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

37 (b) The person may request a blood test, but if means are reasonably
38 available to perform a breath test when the blood test is requested, and the
39 person is subsequently convicted, he must pay for the cost of the blood
40 test, including the fees and expenses of witnesses in court.

41 (c) A peace officer may direct the person to submit to a blood test as set
42 forth in subsection 7 if the officer has reasonable grounds to believe that
43 the

person:

1 (1) Caused death or substantial bodily harm to another person as a
2 result of operating or being in actual physical control of a vessel under
3 power or sail while under the influence of intoxicating liquor or a
4 controlled substance; or

5 (2) ~~[Has]~~ *Previously has* been convicted ~~[within the previous 7 years]~~
6 of:

7 (I) A violation of NRS 484.379, 484.3795, subsection 2 of NRS
8 488.400, NRS 488.410 or 488.420 or a law of another jurisdiction that
9 prohibits the same or similar conduct; or

10 (II) Any other offense in this state or another jurisdiction in which
11 death or substantial bodily harm to another person resulted from driving,
12 operating or being in actual physical control of a vehicle or a vessel under
13 power or sail while under the influence of intoxicating liquor or a
14 controlled substance.

15 5. If the presence of a controlled substance in the blood of the person
16 is in issue, the officer may direct him to submit to a blood or urine test, or
17 both, in addition to the breath test.

18 6. Except as otherwise provided in subsections 3 and 5, a peace officer
19 shall not direct a person to submit to a urine test.

20 7. If a person to be tested fails to submit to a required test as directed
21 by a peace officer pursuant to this section and the officer has reasonable
22 grounds to believe that the person to be tested was operating or in actual
23 physical control of a vessel under power or sail while under the influence
24 of intoxicating liquor or a controlled substance, the officer may direct that
25 reasonable force be used to the extent necessary to obtain samples of blood
26 from the person to be tested. Not more than three such samples may be
27 taken during the 5-hour period immediately following the time of the
28 initial arrest. In such a circumstance, the officer is not required to provide
29 the person with a choice of tests for determining the alcoholic content or
30 presence of a controlled substance in his blood.

31 **Sec. 10.** The amendatory provisions of this act do not apply to
32 offenses that were committed before October 1, 1999.