

ASSEMBLY BILL NO. 166—ASSEMBLYMEN MANENDO, ANDERSON,  
CLABORN, GIBBONS, BUCKLEY, FREEMAN, KOIVISTO, LEE,  
MCCLAIN, MORTENSON, PARKS, PRICE, SMITH AND WILLIAMS

FEBRUARY 15, 2001

Referred to Concurrent Committees on Judiciary  
and Ways and Means

SUMMARY—Reduces concentration of alcohol that may be present in blood or breath of  
person while operating vehicle or vessel. (BDR 43-142)

FISCAL NOTE: Effect on Local Government: Yes.  
Effect on the State: 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 driving under the influence of alcohol or a controlled substance; reducing  
the concentration of alcohol that may be present in the blood or breath of a person  
while operating a vehicle or vessel; 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 483.045 is hereby amended to read as follows:  
2     483.045 The phrase “concentration of alcohol of 0.02 or more but less  
3     than ~~0.10~~ *0.08* in his blood or breath” means 0.02 gram or more but less  
4     than ~~0.10~~ *0.08* gram of alcohol per 100 milliliters of the blood of a person  
5     or per 210 liters of his breath.  
6     **Sec. 2.** NRS 483.461 is hereby amended to read as follows:  
7     483.461 1. If the result of a test given pursuant to NRS 484.382 or  
8     484.383 shows that a person less than 21 years of age had a concentration  
9     of alcohol of 0.02 or more but less than ~~0.10~~ *0.08* in his blood or breath at  
10    the time of the test, his license, permit or privilege to drive must be  
11    suspended for a period of 90 days.  
12    2. If a revocation or suspension of a person’s license, permit or  
13    privilege to drive for a violation of NRS 62.227, 484.379 or 484.3795  
14    follows a suspension ordered pursuant to subsection 1, the department  
15    shall:  
16    (a) Cancel the suspension ordered pursuant to subsection 1; and  
17    (b) Give the person credit toward the period of revocation or suspension  
18    ordered pursuant to NRS 62.227, 484.379 or 484.3795, whichever is



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1 applicable, for any period during which the person's license, permit or  
2 privilege to drive was suspended pursuant to subsection 1.

3 3. This section does not preclude:

4 (a) The prosecution of a person for a violation of any other provision of  
5 law; or

6 (b) The suspension or revocation of a person's license, permit or  
7 privilege to drive pursuant to any other provision of law.

8 **Sec. 3.** NRS 483.462 is hereby amended to read as follows:

9 483.462 1. A peace officer who has received the result of a test given  
10 pursuant to NRS 484.382 or 484.383 which indicates that a person less  
11 than 21 years of age to whom the test was given had a concentration of  
12 alcohol of 0.02 or more but less than ~~0.10~~ **0.08** in his blood or breath shall  
13 prepare a written certificate indicating whether the peace officer:

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

16 (b) Served an order of suspension on the person pursuant to subsection  
17 2; and

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

19 2. If a person less than 21 years of age to whom a test is given  
20 pursuant to NRS 484.382 or 484.383 is present when a peace officer  
21 receives the result of the test and the test indicates that the person has a  
22 concentration of alcohol of 0.02 or more but less than ~~0.10~~ **0.08** in his  
23 blood or breath, the peace officer shall:

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

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

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

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

28 (2) Have a temporary license;

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

33 (e) Transmit to the department:

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

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

37 3. If a person less than 21 years of age to whom a test is given  
38 pursuant to NRS 484.382 or 484.383 is not present when a peace officer  
39 receives the result of the test and the test indicates that the person has a  
40 concentration of alcohol of 0.02 or more but less than ~~0.10~~ **0.08** in his  
41 blood or breath, the peace officer shall transmit to the department a copy of  
42 the result of the test and the written certificate which the peace officer is  
43 required to prepare pursuant to subsection 1.

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

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



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

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

- 6 (a) Explain the grounds for the suspension;  
7 (b) Indicate the period of the suspension;  
8 (c) Require the person to transmit to the department any license or  
9 permit held by the person; and  
10 (d) Explain that the person has a right to administrative and judicial  
11 review of the suspension.

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

18 **Sec. 4.** NRS 483.463 is hereby amended to read as follows:

19 483.463 1. At any time during which the license, permit or privilege  
20 to drive is suspended pursuant to NRS 483.462, the person may request in  
21 writing a hearing by the department to review the order of suspension. A  
22 person is entitled to only one administrative hearing pursuant to this  
23 section.

24 2. Unless the parties agree otherwise, the hearing must be conducted  
25 within 15 days after receipt of the request or as soon thereafter as is  
26 practicable in the county in which the requester resides.

27 3. The director or his agent may:

- 28 (a) Issue subpoenas for:  
29 (1) The attendance of witnesses at the hearing; and  
30 (2) The production of relevant books and papers; and  
31 (b) Require a reexamination of the requester.

32 4. The scope of the hearing must be limited to the issues of whether  
33 the person, at the time of the test:

- 34 (a) Was less than 21 years of age; and  
35 (b) Had a concentration of alcohol of 0.02 or more but less than ~~0.10~~  
36 **0.08** in his blood or breath.

37 5. The department shall issue the person a temporary license for a  
38 period that is sufficient to complete the administrative hearing.

39 6. Upon an affirmative finding on the issues listed in subsection 4, the  
40 department shall affirm the order of suspension. Otherwise, the order of  
41 suspension must be rescinded.

42 7. If the order of suspension is affirmed by the department, the person  
43 is entitled to judicial review of the issues listed in subsection 4 in the  
44 manner provided in chapter 233B of NRS.

45 8. The court shall notify the department upon issuing a stay. Upon  
46 receiving such notice, the department shall issue an additional temporary  
47 license for a period that is sufficient to complete the judicial review.

48 9. The hearing officer or the court shall notify the department if the  
49 hearing officer grants a continuance of the administrative hearing or the



1 court grants a continuance after issuing a stay of the suspension. Upon  
2 receiving such notice, the department shall cancel any temporary license  
3 granted pursuant to this section and notify the holder by mailing an order  
4 of cancellation to the last known address of the holder.

5 **Sec. 5.** NRS 484.038 is hereby amended to read as follows:

6 484.038 The phrase "concentration of alcohol of ~~10.10~~ 0.08 or more in  
7 his blood or breath" means ~~10.10~~ 0.08 gram or more of alcohol per 100  
8 milliliters of the blood of a person or per 210 liters of his breath.

9 **Sec. 6.** NRS 484.379 is hereby amended to read as follows:

10 484.379 1. It is unlawful for any person who:

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

12 (b) Has a concentration of alcohol of ~~10.10~~ 0.08 or more in his blood or  
13 breath; or

14 (c) Is found by measurement within 2 hours after driving or being in  
15 actual physical control of a vehicle to have a concentration of alcohol of  
16 ~~10.10~~ 0.08 or more in his blood or breath,  
17 to drive or be in actual physical control of a vehicle on a highway or on  
18 premises to which the public has access.

19 2. It is unlawful for any person who:

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

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

23 (c) Inhales, ingests, applies or otherwise uses any chemical, poison or  
24 organic solvent, or any compound or combination of any of these, to a  
25 degree which renders him incapable of safely driving or exercising actual  
26 physical control of a vehicle,

27 to drive or be in actual physical control of a vehicle on a highway or on  
28 premises to which the public has access. The fact that any person charged  
29 with a violation of this subsection is or has been entitled to use that drug  
30 under the laws of this state is not a defense against any charge of violating  
31 this subsection.

32 3. It is unlawful for any person to drive or be in actual physical control  
33 of a vehicle on a highway or on premises to which the public has access  
34 with an amount of a prohibited substance in his blood or urine that is equal  
35 to or greater than:

| 36 Prohibited substance           | Urine<br>Nanograms per<br>milliliter | Blood<br>Nanograms per<br>milliliter |
|-----------------------------------|--------------------------------------|--------------------------------------|
| 37                                |                                      |                                      |
| 38                                |                                      |                                      |
| 39 (a) Amphetamine                | 500                                  | 100                                  |
| 40 (b) Cocaine                    | 150                                  | 50                                   |
| 41 (c) Cocaine metabolite         | 150                                  | 50                                   |
| 42 (d) Heroin                     | 2,000                                | 50                                   |
| 43 (e) Heroin metabolite:         |                                      |                                      |
| 44 (1) Morphine                   | 2,000                                | 50                                   |
| 45 (2) 6-monoacetyl morphine      | 10                                   | 10                                   |
| 46 (f) Lysergic acid diethylamide | 25                                   | 10                                   |
| 47 (g) Marijuana                  | 10                                   | 2                                    |



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|   |                          |     |     |
|---|--------------------------|-----|-----|
| 1 | (h) Marijuana metabolite | 15  | 5   |
| 2 | (i) Methamphetamine      | 500 | 100 |
| 3 | (j) Phencyclidine        | 25  | 10  |

4 4. If consumption is proven by a preponderance of the evidence, it is  
5 an affirmative defense under paragraph (c) of subsection 1 that the  
6 defendant consumed a sufficient quantity of alcohol after driving or being  
7 in actual physical control of the vehicle, and before his blood or breath was  
8 tested, to cause him to have a concentration of alcohol of ~~10-101~~ 0.08 or  
9 more in his blood or breath. A defendant who intends to offer this defense  
10 at a trial or preliminary hearing must, not less than 14 days before the trial  
11 or hearing or at such other time as the court may direct, file and serve on  
12 the prosecuting attorney a written notice of that intent.

13 **Sec. 7.** NRS 484.3795 is hereby amended to read as follows:

14 484.3795 1. A person who:

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

16 (b) Has a concentration of alcohol of ~~10-101~~ 0.08 or more in his blood or  
17 breath;

18 (c) Is found by measurement within 2 hours after driving or being in  
19 actual physical control of a vehicle to have a concentration of alcohol of  
20 ~~10-101~~ 0.08 or more in his blood or breath;

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

23 (e) Inhales, ingests, applies or otherwise uses any chemical, poison or  
24 organic solvent, or any compound or combination of any of these, to a  
25 degree which renders him incapable of safely driving or exercising actual  
26 physical control of a vehicle; or

27 (f) Has a prohibited substance in his blood or urine in an amount that is  
28 equal to or greater than the amount set forth in subsection 3 of NRS  
29 484.379,

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

40 2. A prosecuting attorney shall not dismiss a charge of violating the  
41 provisions of subsection 1 in exchange for a plea of guilty, guilty but  
42 mentally ill or nolo contendere to a lesser charge or for any other reason  
43 unless he knows or it is obvious that the charge is not supported by  
44 probable cause or cannot be proved at the time of trial. A sentence imposed  
45 pursuant to subsection 1 may not be suspended nor may probation be  
46 granted.

47 3. If consumption is proven by a preponderance of the evidence, it is  
48 an affirmative defense under paragraph (c) of subsection 1 that the  
49 defendant consumed a sufficient quantity of alcohol after driving or being



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1 in actual physical control of the vehicle, and before his blood or breath was  
2 tested, to cause him to have a concentration of alcohol of ~~10.10~~ 0.08 or  
3 more in his blood or breath. A defendant who intends to offer this defense  
4 at a trial or preliminary hearing must, not less than 14 days before the trial  
5 or hearing or at such other time as the court may direct, file and serve on  
6 the prosecuting attorney a written notice of that intent.

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

11 **Sec. 8.** NRS 484.384 is hereby amended to read as follows:

12 484.384 1. If the result of a test given under NRS 484.382 or  
13 484.383 shows that a person had a concentration of alcohol of ~~10.10~~ 0.08  
14 or more in his blood or breath at the time of the test, his license, permit or  
15 privilege to drive must be revoked as provided in NRS 484.385 and he is  
16 not eligible for a license, permit or privilege for a period of 90 days.

17 2. If a revocation of a person's license, permit or privilege to drive  
18 under NRS 62.227 or 483.460 follows a revocation under subsection 1  
19 which was based on his having a concentration of alcohol of ~~10.10~~ 0.08 or  
20 more in his blood or breath, the department shall cancel the revocation  
21 under that subsection and give the person credit for any period during  
22 which he was not eligible for a license, permit or privilege.

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

25 **Sec. 9.** NRS 484.385 is hereby amended to read as follows:

26 484.385 1. As agent for the department, the officer who obtained the  
27 result of a test given pursuant to NRS 484.382 or 484.383 shall  
28 immediately serve an order of revocation of the license, permit or privilege  
29 to drive on a person who has a concentration of alcohol of ~~10.10~~ 0.08 or  
30 more in his blood or breath or has a detectable amount of a prohibited  
31 substance in his blood or urine, if that person is present, and shall seize his  
32 license or permit to drive. The officer shall then advise him of his right to  
33 administrative and judicial review of the revocation and to have a  
34 temporary license, and shall issue him a temporary license on a form  
35 approved by the department if he requests one, which is effective for only 7  
36 days including the date of issuance. The officer shall immediately transmit  
37 the person's license or permit to the department along with the written  
38 certificate required by subsection 2.

39 2. When a police officer has served an order of revocation of a driver's  
40 license, permit or privilege on a person pursuant to subsection 1, or later  
41 receives the result of an evidentiary test which indicates that a person, not  
42 then present, had a concentration of alcohol of ~~10.10~~ 0.08 or more in his  
43 blood or breath or had a detectable amount of a prohibited substance in his  
44 blood or urine, the officer shall immediately prepare and transmit to the  
45 department, together with the seized license or permit and a copy of the  
46 result of the test, a written certificate that he had reasonable grounds to  
47 believe that the person had been driving or in actual physical control of a  
48 vehicle with a concentration of alcohol of ~~10.10~~ 0.08 or more in his blood  
49 or breath or with a detectable amount of a prohibited substance in his blood



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1 or urine, as determined by a chemical test. The certificate must also  
2 indicate whether the officer served an order of revocation on the person  
3 and whether he issued the person a temporary license.

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

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

22 **Sec. 10.** NRS 484.387 is hereby amended to read as follows:

23 484.387 1. At any time while a person is not eligible for a license,  
24 permit or privilege to drive following an order of revocation issued  
25 pursuant to NRS 484.385, he may request in writing a hearing by the  
26 department to review the order of revocation, but he is only entitled to one  
27 hearing. The hearing must be conducted within 15 days after receipt of the  
28 request, or as soon thereafter as is practicable, in the county where the  
29 requester resides unless the parties agree otherwise. The director or his  
30 agent may issue subpoenas for the attendance of witnesses and the  
31 production of relevant books and papers and may require a reexamination  
32 of the requester. The department shall issue an additional temporary license  
33 for a period which is sufficient to complete the administrative review.

34 2. The scope of the hearing must be limited to the issue of whether the  
35 person, at the time of the test, had a concentration of alcohol of ~~10.10~~ 0.08  
36 or more in his blood or breath or a detectable amount of a prohibited  
37 substance in his blood or urine. Upon an affirmative finding on this issue,  
38 the department shall affirm the order of revocation. Otherwise, the order of  
39 revocation must be rescinded.

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

46 4. If a hearing officer grants a continuance of a hearing at the request  
47 of the person whose license was revoked, or a court does so after issuing a  
48 stay of the revocation, the officer or court shall notify the department, and



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1 the department shall cancel the temporary license and notify the holder by  
2 mailing the order of cancellation to his last known address.

3 **Sec. 11.** NRS 488.405 is hereby amended to read as follows:

4 488.405 As used in NRS 488.410 and 488.420, the phrase  
5 "concentration of alcohol of ~~10.10~~ 0.08 or more in his blood or breath"  
6 means ~~10.10~~ 0.08 gram or more per 100 milliliters of the blood of a person  
7 or per 210 liters of his breath.

8 **Sec. 12.** NRS 488.410 is hereby amended to read as follows:

9 488.410 1. It is unlawful for any person who:

10 (a) Is under the influence of intoxicating liquor;  
11 (b) Has a concentration of alcohol of ~~10.10~~ 0.08 or more in his blood or  
12 breath; or

13 (c) Is found by measurement within 2 hours after operating or being in  
14 actual physical control of a vessel to have a concentration of alcohol of  
15 ~~10.10~~ 0.08 or more in his blood or breath,  
16 to operate or be in actual physical control of a vessel under power or sail  
17 on the waters of this state.

18 2. It is unlawful for any person who:

19 (a) Is under the influence of a controlled substance;  
20 (b) Is under the combined influence of intoxicating liquor and a  
21 controlled substance; or

22 (c) Inhales, ingests, applies or otherwise uses any chemical, poison or  
23 organic solvent, or any compound or combination of any of these, to a  
24 degree which renders him incapable of safely operating or exercising actual  
25 physical control of a vessel under power or sail,  
26 to operate or be in actual physical control of a vessel under power or sail  
27 on the waters of this state.

28 3. It is unlawful for any person to operate or be in actual physical  
29 control of a vessel under power or sail on the waters of this state with an  
30 amount of a prohibited substance in his blood or urine that is equal to or  
31 greater than:

| 32 Prohibited substance           | Urine<br>Nanograms per<br>milliliter | Blood<br>Nanograms per<br>milliliter |
|-----------------------------------|--------------------------------------|--------------------------------------|
| 33                                |                                      |                                      |
| 34                                |                                      |                                      |
| 35 (a) Amphetamine                | 500                                  | 100                                  |
| 36 (b) Cocaine                    | 150                                  | 50                                   |
| 37 (c) Cocaine metabolite         | 150                                  | 50                                   |
| 38 (d) Heroin                     | 2,000                                | 50                                   |
| 39 (e) Heroin metabolite:         |                                      |                                      |
| 40 (1) Morphine                   | 2,000                                | 50                                   |
| 41 (2) 6-monoacetyl morphine      | 10                                   | 10                                   |
| 42 (f) Lysergic acid diethylamide | 25                                   | 10                                   |
| 43 (g) Marijuana                  | 10                                   | 2                                    |
| 44 (h) Marijuana metabolite       | 15                                   | 5                                    |
| 45 (i) Methamphetamine            | 500                                  | 100                                  |
| 46 (j) Phencyclidine              | 25                                   | 10                                   |

47 4. If consumption is proven by a preponderance of the evidence, it is  
48 an affirmative defense under paragraph (c) of subsection 1 that the  
49 defendant consumed a sufficient quantity of alcohol after operating or



1 being in actual physical control of the vessel, and before his blood was  
2 tested, to cause him to have a concentration of ~~0.10~~ 0.08 or more of  
3 alcohol in his blood or breath. A defendant who intends to offer this  
4 defense at a trial or preliminary hearing must, not less than 14 days before  
5 the trial or hearing or at such other time as the court may direct, file and  
6 serve on the prosecuting attorney a written notice of that intent.

7 **Sec. 13.** NRS 488.420 is hereby amended to read as follows:

8 488.420 1. A person who:

- 9 (a) Is under the influence of intoxicating liquor;  
10 (b) Has a concentration of alcohol of ~~0.10~~ 0.08 or more in his blood or  
11 breath;  
12 (c) Is found by measurement within 2 hours after operating or being in  
13 actual physical control of a vessel under power or sail to have a  
14 concentration of alcohol of ~~0.10~~ 0.08 or more in his blood or breath;  
15 (d) Is under the influence of a controlled substance or is under the  
16 combined influence of intoxicating liquor and a controlled substance;  
17 (e) Inhales, ingests, applies or otherwise uses any chemical, poison or  
18 organic solvent, or any compound or combination of any of these, to a  
19 degree which renders him incapable of safely operating or being in actual  
20 physical control of a vessel under power or sail; or

21 (f) Has a prohibited substance in his blood or urine in an amount that is  
22 equal to or greater than the amount set forth in subsection 3 of NRS  
23 488.410,

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.

41 3. If consumption is proven by a preponderance of the evidence, it is  
42 an affirmative defense under paragraph (c) of subsection 1 that the  
43 defendant consumed a sufficient quantity of alcohol after operating or  
44 being in actual physical control of the vessel under power or sail, and  
45 before his blood was tested, to cause him to have a concentration of alcohol  
46 of ~~0.10~~ 0.08 or more in his blood or breath. A defendant who intends to  
47 offer this defense at a trial or preliminary hearing must, not less than 14  
48 days before the trial or hearing or at such other time as the court may



1 direct, file and serve on the prosecuting attorney a written notice of that  
2 intent.

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

6 **Sec. 14.** NRS 202.257 is hereby amended to read as follows:

7 202.257 1. It is unlawful for a person who:

8 (a) Has a concentration of alcohol of 0.10 or more in his blood or  
9 breath; or

10 (b) Is under the influence of any controlled substance, or is under the  
11 combined influence of intoxicating liquor and a controlled substance, or  
12 any person who inhales, ingests, applies or otherwise uses any chemical,  
13 poison or organic solvent, or any compound or combination of any of  
14 these, to a degree which renders him incapable of safely exercising actual  
15 physical control of a firearm,  
16 to have in his actual physical possession any firearm. This prohibition does  
17 not apply to the actual physical possession of a firearm by a person who  
18 was within his personal residence and had the firearm in his possession  
19 solely for self-defense.

20 2. Any evidentiary test to determine whether a person has violated the  
21 provisions of subsection 1 must be administered in the same manner as an  
22 evidentiary test that is administered pursuant to NRS 484.383 to 484.3947,  
23 inclusive, except that submission to the evidentiary test is required of any  
24 person who is directed by a police officer to submit to the test. If a person  
25 to be tested fails to submit to a required test as directed by a police officer,  
26 the officer may direct that reasonable force be used to the extent necessary  
27 to obtain the samples of blood from the person to be tested, if the officer  
28 has reasonable cause to believe that the person to be tested was in violation  
29 of this section.

30 3. Any person who violates the provisions of subsection 1 is guilty of a  
31 misdemeanor.

32 4. A firearm is subject to forfeiture pursuant to NRS 179.1156 to  
33 179.119, inclusive, only if, during the violation of subsection 1, the firearm  
34 is brandished, aimed or otherwise handled by the person in a manner which  
35 endangered others.

36 5. As used in this section, the phrase "concentration of alcohol of 0.10  
37 or more in his blood or breath" ~~has the meaning ascribed to it in NRS~~  
38 ~~484.038.~~ *means 0.10 gram or more of alcohol per 100 milliliters of the*  
39 *blood of a person or per 210 liters of his breath.*

40 **Sec. 15.** 1. The amendatory provisions of this act do not apply to  
41 offenses committed before October 1, 2001.

