

ASSEMBLY BILL NO. 21—ASSEMBLYWOMAN CEGAVSKE

PREFILED JANUARY 17, 2001

Referred to Concurrent Committees on Judiciary
and Ways and Means

SUMMARY—Requires court to order person convicted of second offense of driving under influence of intoxicating liquor or controlled substance within 7 years to attend program of treatment for abuse of alcohol or drugs. (BDR 43-868)

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 traffic laws; requiring a court to order a person who is convicted of a second offense of driving under the influence of intoxicating liquor or a controlled substance within 7 years to attend a program of treatment for the abuse of alcohol or drugs; increasing the amount of time that such a person may be placed under the clinical supervision of a treatment facility; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 484.3792 is hereby amended to read as follows:
- 2 484.3792 1. A person who violates the provisions of NRS 484.379:
- 3 (a) For the first offense within 7 years, is guilty of a misdemeanor.
- 4 Unless he is allowed to undergo treatment as provided in NRS 484.37937,
- 5 the court shall:
- 6 (1) Except as otherwise provided in subsection 6, order him to pay
- 7 tuition for an educational course on the abuse of alcohol and controlled
- 8 substances approved by the department and complete the course within the
- 9 time specified in the order, and the court shall notify the department if he
- 10 fails to complete the course within the specified time;
- 11 (2) Unless the sentence is reduced pursuant to NRS 484.37937,
- 12 sentence him to imprisonment for not less than 2 days nor more than 6
- 13 months in jail, or to perform not less than 48 hours, but not more than 96
- 14 hours, of work for the community while dressed in distinctive garb that
- 15 identifies him as having violated the provisions of NRS 484.379; and
- 16 (3) Fine him not less than \$400 nor more than \$1,000.



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

3 ~~(1) Shall sentence~~ shall:

4 (1) Sentence him to:

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

7 (II) Residential confinement for not less than 10 days nor more
8 than 6 months, in the manner provided in NRS 4.376 to 4.3766, inclusive,
9 or 5.0755 to 5.078, inclusive;

10 (2) ~~Shall fine~~ Fine him not less than \$750 nor more than \$1,000;

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

16 (4) ~~May order~~ Order him to attend a program of treatment for the
17 abuse of alcohol or drugs pursuant to the provisions of
18 NRS 484.37945.

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

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

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

39 3. A person convicted of violating the provisions of NRS 484.379
40 must not be released on probation, and a sentence imposed for violating
41 those provisions must not be suspended except, as provided in NRS 4.373,
42 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that
43 exceeds the mandatory minimum. A prosecuting attorney shall not dismiss
44 a charge of violating the provisions of NRS 484.379 in exchange for a plea
45 of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for
46 any other reason unless he knows or it is obvious that the charge is not
47 supported by probable cause or cannot be proved at the time of trial.

48 4. A term of confinement imposed pursuant to the provisions of this
49 section may be served intermittently at the discretion of the judge or justice



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1 of the peace, except that a person who is convicted of a second or
2 subsequent offense within 7 years must be confined for at least one
3 segment of not less than 48 consecutive hours. This discretion must be
4 exercised after considering all the circumstances surrounding the offense,
5 and the family and employment of the offender, but any sentence of 30
6 days or less must be served within 6 months after the date of conviction or,
7 if the offender was sentenced pursuant to NRS 484.37937 or 484.3794 and
8 the suspension of his sentence was revoked, within 6 months after the date
9 of revocation. Any time for which the offender is confined must consist of
10 not less than 24 consecutive hours.

11 5. Jail sentences simultaneously imposed pursuant to this section and
12 NRS 482.456, 483.560 or 485.330 must run consecutively.

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

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

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

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

30 8. As used in this section, unless the context otherwise requires,
31 "offense" means:

32 (a) A violation of NRS 484.379 or 484.3795;

33 (b) A homicide resulting from driving or being in actual physical
34 control of a vehicle while under the influence of intoxicating liquor or a
35 controlled substance or resulting from any other conduct prohibited by
36 NRS 484.379 or 484.3795; or

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

39 **Sec. 2.** NRS 484.37945 is hereby amended to read as follows:

40 484.37945 1. When a program of treatment is ordered pursuant to
41 paragraph (b) of subsection 1 of NRS 484.3792, the court shall place the
42 offender under the clinical supervision of a treatment facility for treatment
43 for *a period* not ~~less than 30 days nor more than 6 months,~~ *to exceed one*
44 *year*, in accordance with the report submitted to the court pursuant to
45 subsection 3, 4 or 5 of NRS 484.37943. The court ~~may~~ *shall*:

46 (a) Order the offender confined in a treatment facility, then release the
47 offender for supervised aftercare in the community; or

48 (b) Release the offender for treatment in the community,
49 for the period of supervision ordered by the court.



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1 2. The court shall:

2 (a) Require the treatment facility to submit monthly progress reports on
3 the treatment of an offender pursuant to this section; and

4 (b) Order the offender, to the extent of his financial resources, to pay
5 any charges for his treatment pursuant to this section. If the offender does
6 not have the financial resources to pay all those charges, the court shall, to
7 the extent possible, arrange for the offender to obtain his treatment from a
8 treatment facility that receives a sufficient amount of federal or state
9 money to offset the remainder of the charges.

10 3. A treatment facility is not liable for any damages to person or
11 property caused by a person who:

12 (a) Drives, operates or is in actual physical control of a vehicle or a
13 vessel under power or sail while under the influence of intoxicating liquor
14 or a controlled substance; or

15 (b) Engages in any other conduct prohibited by NRS 484.379,
16 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420 or a law
17 of any other jurisdiction that prohibits the same or similar conduct,
18 after the treatment facility has certified to his successful completion of a
19 program of treatment ordered pursuant to paragraph (b) of subsection 1 of
20 NRS 484.3792.

21 **Sec. 3.** The amendatory provisions of this act do not apply to offenses
22 committed before October 1, 2001.

