

ASSEMBLY BILL NO. 315—ASSEMBLYMEN PARKS, MANENDO, ARBERRY,
GIBBONS, OHRENSCHALL, ANDERSON, BACHE, BEERS, BUCKLEY,
CHOWNING, CLABORN, COLLINS, DE BRAGA, FREEMAN,
GIUNCHIGLIANI, GOLDWATER, HETTRICK, KOIVISTO, LEE, LESLIE,
MCCLAIN, MORTENSON, NEIGHBORS, OCEGUERA, PERKINS,
PRICE, SMITH AND WILLIAMS

MARCH 9, 2001

Referred to Committee on Judiciary

SUMMARY—Requires offender convicted of first offense of driving under influence of
intoxicating liquor or controlled substance to attend program of treatment
when concentration of alcohol in blood or breath of offender is 0.18 or
more. (BDR 43-587)

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 an offender convicted of a first offense of driving
under the influence of intoxicating liquor or a controlled substance to attend a
program of treatment for the abuse of alcohol or drugs when the concentration of
alcohol in the blood or breath of the offender is 0.18 or more; providing a
penalty; 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. ~~1A~~ *Unless a greater penalty is provided pursuant to*
3 *NRS 484.3795, a* person who violates the provisions of NRS 484.379:
4 (a) For the first offense within 7 years, is guilty of a misdemeanor.
5 Unless he is allowed to undergo treatment as provided in NRS 484.37937,
6 the court shall:
7 (1) Except as otherwise provided in *subparagraph (4) or* subsection
8 6, order him to pay tuition for an educational course on the abuse of
9 alcohol and controlled substances approved by the department and
10 complete the course within the time specified in the order, and the court
11 shall notify the department if he fails to complete the course within the
12 specified time;



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1 (2) Unless the sentence is reduced pursuant to NRS 484.37937,
2 sentence him to imprisonment for not less than 2 days nor more than 6
3 months in jail, or to perform not less than 48 hours, but not more than 96
4 hours, of work for the community while dressed in distinctive garb that
5 identifies him as having violated the provisions of NRS 484.379; ~~and~~
6 (3) Fine him not less than \$400 nor more than \$1,000 ~~+~~; *and*
7 *(4) If he is found to have a concentration of alcohol of 0.18 or more*
8 *in his blood or breath, order him to attend a program of treatment for the*
9 *abuse of alcohol or drugs pursuant to the provisions of NRS 484.37945.*
10 (b) For a second offense within 7 years, is guilty of a misdemeanor.
11 Unless the sentence is reduced pursuant to NRS 484.3794, the court:
12 (1) Shall sentence him to:
13 (I) Imprisonment for not less than 10 days nor more than 6 months
14 in jail; or
15 (II) Residential confinement for not less than 10 days nor more
16 than 6 months, in the manner provided in NRS 4.376 to 4.3766, inclusive,
17 or 5.0755 to 5.078, inclusive;
18 (2) Shall fine him not less than \$750 nor more than \$1,000;
19 (3) Shall order him to perform not less than 100 hours, but not more
20 than 200 hours, of work for the community while dressed in distinctive
21 garb that identifies him as having violated the provisions of NRS 484.379,
22 unless the court finds that extenuating circumstances exist; and
23 (4) May order him to attend a program of treatment for the abuse of
24 alcohol or drugs pursuant to the provisions of NRS 484.37945.
25 A person who willfully fails or refuses to complete successfully a term of
26 residential confinement or a program of treatment ordered pursuant to this
27 ~~paragraph~~ *subsection* is guilty of a misdemeanor.
28 (c) For a third or subsequent offense within 7 years, is guilty of a
29 category B felony and shall be punished by imprisonment in the state
30 prison for a minimum term of not less than 1 year and a maximum term of
31 not more than 6 years, and shall be further punished by a fine of not less
32 than \$2,000 nor more than \$5,000. An offender so imprisoned must,
33 insofar as practicable, be segregated from offenders whose crimes were
34 violent and, insofar as practicable, be assigned to an institution or facility
35 of minimum security.
36 2. An offense that occurred within 7 years immediately preceding the
37 date of the principal offense or after the principal offense constitutes a prior
38 offense for the purposes of this section when evidenced by a conviction,
39 without regard to the sequence of the offenses and convictions. The facts
40 concerning a prior offense must be alleged in the complaint, indictment or
41 information, must not be read to the jury or proved at trial but must be
42 proved at the time of sentencing and, if the principal offense is alleged to
43 be a felony, must also be shown at the preliminary examination or
44 presented to the grand jury.
45 3. A person convicted of violating the provisions of NRS 484.379
46 must not be released on probation, and a sentence imposed for violating
47 those provisions must not be suspended except, as provided in NRS 4.373,
48 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that
49 exceeds the mandatory minimum. A prosecuting attorney shall not dismiss



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1 a charge of violating the provisions of NRS 484.379 in exchange for a plea
2 of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for
3 any other reason unless he knows or it is obvious that the charge is not
4 supported by probable cause or cannot be proved at the time of trial.

5 4. A term of confinement imposed pursuant to the provisions of this
6 section may be served intermittently at the discretion of the judge or justice
7 of the peace, except that a person who is convicted of a second or
8 subsequent offense within 7 years must be confined for at least one
9 segment of not less than 48 consecutive hours. This discretion must be
10 exercised after considering all the circumstances surrounding the offense,
11 and the family and employment of the offender, but any sentence of 30
12 days or less must be served within 6 months after the date of conviction or,
13 if the offender was sentenced pursuant to NRS 484.37937 or 484.3794 and
14 the suspension of his sentence was revoked, within 6 months after the date
15 of revocation. Any time for which the offender is confined must consist of
16 not less than 24 consecutive hours.

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

19 6. If the person who violated the provisions of NRS 484.379 possesses
20 a driver's license issued by a state other than the State of Nevada and does
21 not reside in the State of Nevada, in carrying out the provisions of
22 subparagraph (1) of paragraph (a) ~~for (b)~~ of subsection 1, the court shall:

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

27 (b) Order him to complete an educational course by correspondence on
28 the abuse of alcohol and controlled substances approved by the department
29 within the time specified in the order,
30 and the court shall notify the department if the person fails to complete the
31 assigned course within the specified time.

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

36 8. As used in this section, unless the context otherwise requires ~~the~~
37 ~~"offense"~~:

38 (a) *"Concentration of alcohol of 0.18 or more in his blood or breath"*
39 *means 0.18 gram or more of alcohol per 100 milliliters of the blood of a*
40 *person or per 210 liters of his breath.*

41 (b) *"Offense"* means:

42 ~~(a)~~ (1) A violation of NRS 484.379 or 484.3795;

43 ~~(b)~~ (2) A homicide resulting from driving or being in actual physical
44 control of a vehicle while under the influence of intoxicating liquor or a
45 controlled substance or resulting from any other conduct prohibited by
46 NRS 484.379 or 484.3795; or

47 ~~(c)~~ (3) A violation of a law of any other jurisdiction that prohibits the
48 same or similar conduct as set forth in paragraph (a) or (b).



1 **Sec. 2.** NRS 484.37937 is hereby amended to read as follows:
2 484.37937 1. Except as otherwise provided in subsection 2, a person
3 who is found guilty of a first violation of NRS 484.379 , *other than a*
4 *person who is found to have a concentration of alcohol of 0.18 or more*
5 *in his blood or breath*, may, at that time or any time before he is sentenced,
6 apply to the court to undergo a program of treatment for alcoholism or drug
7 abuse which is certified by the health division of the department of human
8 resources for at least 6 months. The court shall authorize that treatment if:
9 (a) The person is diagnosed as an alcoholic or abuser of drugs by:
10 (1) An alcohol and drug abuse counselor who is licensed or certified
11 pursuant to chapter 641C of NRS to make that diagnosis; or
12 (2) A physician who is certified to make that diagnosis by the board
13 of medical examiners;
14 (b) He agrees to pay the cost of the treatment to the extent of his
15 financial resources; and
16 (c) He has served or will serve a term of imprisonment in jail of 1 day,
17 or has performed or will perform 48 hours of work for the community.
18 2. A person may not apply to the court to undergo a program of
19 treatment pursuant to subsection 1 if, within the immediately preceding 7
20 years, he has been found guilty of:
21 (a) A violation of NRS 484.3795;
22 (b) A homicide resulting from driving or being in actual physical
23 control of a vehicle while under the influence of intoxicating liquor or a
24 controlled substance or resulting from any other conduct prohibited by
25 NRS 484.379 or 484.3795; or
26 (c) A violation of a law of any other jurisdiction that prohibits the same
27 or similar conduct as set forth in paragraph (a) or (b).
28 3. For the purposes of subsection 1, a violation of a law of any other
29 jurisdiction that prohibits the same or similar conduct as NRS 484.379
30 constitutes a violation of NRS 484.379.
31 4. A prosecuting attorney may, within 10 days after receiving notice of
32 an application for treatment pursuant to this section, request a hearing on
33 the question of whether the offender is eligible to undergo a program of
34 treatment for alcoholism or drug abuse. The court shall order a hearing on
35 the application upon the request of the prosecuting attorney or may order a
36 hearing on its own motion. The hearing must be limited to the question of
37 whether the offender is eligible to undergo such a program of treatment.
38 5. At the hearing on the application for treatment, the prosecuting
39 attorney may present the court with any relevant evidence on the matter. If
40 a hearing is not held, the court shall decide the matter upon affidavits and
41 other information before the court.
42 6. If the court grants an application for treatment, the court shall:
43 (a) Immediately sentence the offender and enter judgment accordingly.
44 (b) Suspend the sentence of the offender for not more than 3 years upon
45 the condition that the offender be accepted for treatment by a treatment
46 facility, that he complete the treatment satisfactorily and that he comply
47 with any other condition ordered by the court.
48 (c) Advise the offender that:



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

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

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

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

17 (a) Shall not defer the sentence, set aside the conviction or impose
18 conditions upon the election of treatment except as otherwise provided in
19 this section.

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

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

25 **Sec. 3.** NRS 484.37945 is hereby amended to read as follows:

26 484.37945 1. When a program of treatment is ordered pursuant to
27 paragraph (a) *or* (b) of subsection 1 of NRS 484.3792, the court shall place
28 the offender under the clinical supervision of a treatment facility for
29 treatment for not less than 30 days nor more than 6 months, in accordance
30 with the report submitted to the court pursuant to subsection 3, 4 or 5 of
31 NRS 484.37943. The court may:

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

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

36 2. The court shall:

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

39 (b) Order the offender, to the extent of his financial resources, to pay
40 any charges for his treatment pursuant to this section. If the offender does
41 not have the financial resources to pay all those charges, the court shall, to
42 the extent possible, arrange for the offender to obtain his treatment from a
43 treatment facility that receives a sufficient amount of federal or state
44 money to offset the remainder of the charges.

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

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



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

7 **Sec. 4.** The amendatory provisions of this act do not apply to offenses
8 committed before October 1, 2001.

