

Assembly Bill No. 421—Assemblymen Conklin, Anderson, Manendo, McCleary, Allen, Carpenter, Gerhardt, Horne, Mabey, Mortenson, Ocegueda and Seale

CHAPTER.....

AN ACT relating to substances causing impairment; providing that once a person has been convicted of a felony for operating §a vehicle or vessel while under the influence of alcohol or a controlled substance, any subsequent violation is treated as a felony; 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 483.460 is hereby amended to read as follows:
483.460 1. Except as otherwise provided by specific statute, the Department shall revoke the license, permit or privilege of any driver upon receiving a record of his conviction of any of the following offenses, when that conviction has become final, and the driver is not eligible for a license, 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~~ *violation of NRS 484.379 ~~[-]~~ that is punishable as a felony pursuant to NRS 484.3792.*

(3) A violation of NRS 484.3795 or a homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484.379 or 484.3795.

➡ 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]~~ violation of NRS 484.379 *that is punishable pursuant to paragraph (b) of subsection 1 of NRS 484.3792* and 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]~~ violation of NRS 484.379 ~~[]~~ *that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792*.

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 a ~~[first violation within 7 years]~~ violation of NRS 484.379 *that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792* has been permitted to enter a program of treatment pursuant to NRS 484.37937, 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.

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

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

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

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

6. In addition to any other requirements set forth by specific statute, if the Department is notified that a court has ordered the revocation, suspension or delay in the issuance of a license pursuant to title 5 of NRS, NRS 176.064 or 206.330, chapter 484 of NRS or any other provision of law, the Department shall take such actions as are necessary to carry out the court's order.

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

Sec. 2. NRS 483.490 is hereby amended to read as follows:

483.490 1. Except as otherwise provided in this section, after a driver's license has been suspended or revoked for an offense other than a ~~[second violation within 7 years]~~ *violation* of NRS 484.379 *that is punishable pursuant to paragraph (b) of subsection 1 of NRS 484.3792*, and one-half of the period during which the driver is not eligible for a license has expired, the Department may, unless the statute authorizing the suspension prohibits the issuance of a restricted license, issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle:

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

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

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

2. A person who has been ordered to install a device in a motor vehicle pursuant to NRS 484.3943:

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

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

(1) After at least 1 year of the period during which he is not eligible for a license, if he was convicted of:

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

(II) A ~~[third or subsequent violation within 7 years]~~ *violation* of NRS 484.379 ~~[.]~~ *that is punishable as a felony pursuant to NRS 484.3792;*

(2) After at least 180 days of the period during which he is not eligible for a license, if he was convicted of a violation of subsection 2 of NRS 484.377; or

(3) After at least 45 days of the period during which he is not eligible for a license, if he was convicted of a ~~[first violation within 7 years]~~ *violation* of NRS 484.379 ~~[.]~~ *that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792.*

3. If the Department has received a copy of an order requiring a person to install a device in a motor vehicle pursuant to NRS 484.3943, the Department shall not issue a restricted driver's license

to such a person pursuant to this section unless the applicant has submitted proof of compliance with the order and subsection 2.

4. After a driver's license has been revoked or suspended pursuant to title 5 of NRS, the Department may issue a restricted driver's license to an applicant permitting the applicant to drive a motor vehicle:

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

(b) If applicable, to and from school.

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

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

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

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

6. A driver who violates a condition of a restricted license issued pursuant to subsection 1 or by another jurisdiction is guilty of a misdemeanor and, if the license of the driver was suspended or revoked for:

(a) A violation of NRS 484.379, 484.3795 or 484.384;

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

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

↳ the driver shall be punished in the manner provided pursuant to subsection 2 of NRS 483.560.

7. The periods of suspensions and revocations required pursuant to this chapter and NRS 484.384 must run consecutively, except as otherwise provided in NRS 483.465 and 483.475, when the suspensions must run concurrently.

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

Sec. 3. NRS 484.3792 is hereby amended to read as follows:

484.3792 1. Unless a greater penalty is provided pursuant to NRS 484.3795 ~~and~~ *and except as otherwise provided in subsection 2*, a person who violates the provisions of NRS 484.379:

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

(1) Except as otherwise provided in subparagraph (4) or subsection ~~[6.]~~ 7, order him to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the Department and complete the course within the time specified in the order, and the court shall notify the Department if he fails to complete the course within the specified time;

(2) Unless the sentence is reduced pursuant to NRS 484.37937, sentence him to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform not less than 48 hours, but not more than 96 hours, of community service while dressed in distinctive garb that identifies him as having violated the provisions of NRS 484.379;

(3) Fine him not less than \$400 nor more than \$1,000; and

(4) If he is found to have a concentration of alcohol of 0.18 or more in his blood or breath, order him to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484.37945.

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

(1) Sentence him to:

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

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

(2) Fine him not less than \$750 nor more than \$1,000, or order him to perform an equivalent number of hours of community service while dressed in distinctive garb that identifies him as having violated the provisions of NRS 484.379; and

(3) Order him to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484.37945.

➤ A person who willfully fails or refuses to complete successfully a term of residential confinement or a program of treatment ordered pursuant to this ~~[subsection]~~ **paragraph** is guilty of a misdemeanor.

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

2. ~~[An]~~ **A person who has previously been convicted of:**

(a) A violation of NRS 484.379 that is punishable as a felony pursuant to paragraph (c) of subsection 1;

(b) A violation of NRS 484.3795;

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

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

↪ and who violates the provisions of NRS 484.379 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000. An offender so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

3. *Except as otherwise provided in this subsection, an* offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. *An offense which is listed in paragraphs (a) to (d), inclusive, of subsection 2 that occurred on any date preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard for the sequence of the offenses and convictions.* The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

~~3.~~ **4.** A person convicted of violating the provisions of NRS 484.379 must not be released on probation, and a sentence imposed for violating those provisions must not be suspended except, as provided in NRS 4.373, 5.055, 484.37937 and 484.3794, that portion of the sentence imposed that exceeds the mandatory minimum. A prosecuting attorney shall not dismiss a charge of violating the provisions of NRS 484.379 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

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

~~[5-]~~ 6. Jail sentences simultaneously imposed pursuant to this section and NRS 482.456, 483.560 or 485.330 must run consecutively.

~~[6-]~~ 7. If the person who violated the provisions of NRS 484.379 possesses a driver's license issued by a state other than the State of Nevada and does not reside in the State of Nevada, in carrying out the provisions of subparagraph (1) of paragraph (a) of subsection 1, the court shall:

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

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

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

~~[8-]~~ 9. As used in this section, unless the context otherwise requires:

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

(b) "Offense" means:

(1) A violation of NRS 484.379 or 484.3795;

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

(3) A violation of a law of any other jurisdiction that prohibits the same or similar conduct as set forth in subparagraph (1) or (2).

Sec. 4. NRS 484.37937 is hereby amended to read as follows:

484.37937 1. ~~[Except as otherwise provided in subsection 2, a person]~~ *An offender* who is found guilty of a ~~[first]~~ violation of NRS 484.379 ~~[.] that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792,~~ other than ~~[a person]~~ *an offender* who is found to have a concentration of alcohol of 0.18 or more in his blood or breath, may, at that time or any time before he is sentenced, apply to the court to undergo a program of treatment for alcoholism or drug abuse which is certified by the Health Division of the Department of Human Resources for at least 6 months. The court shall authorize that treatment if:

(a) The ~~[person]~~ *offender* is diagnosed as an alcoholic or abuser of drugs by:

(1) An alcohol and drug abuse counselor who is licensed or certified pursuant to chapter 641C of NRS to make that diagnosis; or

(2) A physician who is certified to make that diagnosis by the Board of Medical Examiners;

(b) ~~[He]~~ *The offender* agrees to pay the cost of the treatment to the extent of his financial resources; and

(c) ~~[He]~~ *The offender* has served or will serve a term of imprisonment in jail of 1 day, or has performed or will perform 24 hours of community service.

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

~~—(a) A violation of NRS 484.3795;~~

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

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

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

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

~~[5-]~~ 3. At the hearing on the application for treatment, the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter upon affidavits and other information before the court.

~~[6-]~~ 4. If the court grants an application for treatment, the court shall:

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

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

(c) Advise the offender that:

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

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

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

~~[7-]~~ 5. The court shall administer the program of treatment pursuant to the procedures provided in NRS 458.320 and 458.330, except that the court:

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

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

~~[8-]~~ 6. The court shall notify the Department, on a form approved by the Department, upon granting the application of the offender for treatment and his failure to be accepted for or complete treatment.

Sec. 5. NRS 484.3794 is hereby amended to read as follows:

484.3794 1. ~~[Except as otherwise provided in subsection 2, a person]~~ *An offender* who is found guilty of a ~~[second]~~ violation of NRS 484.379 ~~[within 7 years]~~ *that is punishable pursuant to*

paragraph (b) of subsection 1 of NRS 484.3792 may, at that time or any time before he is sentenced, apply to the court to undergo a program of treatment for alcoholism or drug abuse which is certified by the Health Division of the Department of Human Resources for at least 1 year if:

(a) ~~[He]~~ *The offender* is diagnosed as an alcoholic or abuser of drugs by:

(1) An alcohol and drug abuse counselor who is licensed or certified pursuant to chapter 641C of NRS to make that diagnosis; or

(2) A physician who is certified to make that diagnosis by the Board of Medical Examiners;

(b) ~~[He]~~ *The offender* agrees to pay the costs of the treatment to the extent of his financial resources; and

(c) ~~[He]~~ *The offender* has served or will serve a term of imprisonment in jail of 5 days ~~[]~~ and , if required pursuant to NRS 484.3792, has performed or will perform not less than one-half of the hours of community service.

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

~~—(a) A violation of NRS 484.3795;~~

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

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

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

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

~~[5.]~~ 3. At the hearing on the application for treatment, the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter upon affidavits and other information before the court.

~~[6.]~~ 4. If the court determines that an application for treatment should be granted, the court shall:

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

(b) Suspend the sentence of the offender for not more than 3 years upon the condition that the offender be accepted for treatment

by a treatment facility, that he complete the treatment satisfactorily and that he comply with any other condition ordered by the court.

(c) Advise the offender that:

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

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

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

~~[7-]~~ 5. The court shall administer the program of treatment pursuant to the procedures provided in NRS 458.320 and 458.330, except that the court:

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

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

~~[8-]~~ 6. The court shall notify the Department, on a form approved by the Department, upon granting the application of the offender for treatment and his failure to be accepted for or complete treatment.

Sec. 6. NRS 484.37943 is hereby amended to read as follows:

484.37943 1. If ~~[a person]~~ *an offender* is found guilty of a ~~[first violation,]~~ *violation of NRS 484.379 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792* and if the concentration of alcohol in the ~~[defendant's]~~ *offender's* blood or breath at the time of the offense was 0.18 or more, or ~~[any second]~~ *if an offender is found guilty of a* violation of NRS 484.379 ~~[within 7 years,]~~ *that is punishable pursuant to paragraph (b) of subsection 1 of NRS 484.3792*, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or other drugs.

2. If ~~[a person]~~ *an offender* is convicted of a ~~[first]~~ violation of NRS 484.379 *that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792* and ~~[he]~~ *if the offender* is under 21 years of age at the time of the violation, the court shall, before

sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4 or 5 to determine whether he is an abuser of alcohol or other drugs.

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

(a) An alcohol and drug abuse counselor who is licensed or certified pursuant to chapter 641C of NRS to make that evaluation; or

(b) A physician who is certified to make that evaluation by the Board of Medical Examiners,

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

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

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

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

Sec. 7. NRS 484.3796 is hereby amended to read as follows:

484.3796 1. Before sentencing an offender ~~[pursuant to]~~ *for a violation of NRS 484.379 that is punishable as a felony pursuant to NRS 484.3792 or a violation of NRS 484.3795*, ~~[or paragraph (c) of subsection 1 of NRS 484.3792.]~~ the court shall require that the offender be evaluated to determine whether he is an abuser of alcohol or drugs and whether he can be treated successfully for his condition.

2. The evaluation must be conducted by:

(a) An alcohol and drug abuse counselor who is licensed or certified pursuant to chapter 641C of NRS to make such an evaluation;

(b) A physician who is certified to make such an evaluation by the Board of Medical Examiners; or

(c) A psychologist who is certified to make such an evaluation by the Board of Psychological Examiners.

3. The alcohol and drug abuse counselor, physician or psychologist who conducts the evaluation shall immediately forward the results of the evaluation to the Director of the Department of Corrections.

Sec. 8. NRS 484.3943 is hereby amended to read as follows:

484.3943 1. Except as otherwise provided in subsection 5, a court:

(a) May order a person convicted of a ~~[first]~~ violation of NRS 484.379 ~~[]~~ *that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792* for a period of not less than 3 months nor more than 6 months; and

(b) Shall order a person convicted of a ~~[third or subsequent]~~ violation of NRS 484.379 *that is punishable as a felony pursuant to NRS 484.3792* or a violation of NRS 484.3795, for a period of not less than 12 months nor more than 36 months,

➤ to install at his own expense a device in any motor vehicle which he owns or operates as a condition to obtaining a restricted license pursuant to subsection 3 of NRS 483.490.

2. A court may order a person convicted of a violation of NRS 484.379 or 484.3795, for a period determined by the court, to install at his own expense a device in any motor vehicle which he owns or operates as a condition of reinstatement of his driving privilege.

3. If the court orders a person to install a device pursuant to subsection 1 or 2:

(a) The court shall immediately prepare and transmit a copy of its order to the Director. The order must include a statement that a device is required and the specific period for which it is required. The Director shall cause this information to be incorporated into the records of the Department and noted as a restriction on the person's driver's license.

(b) The person who is required to install the device shall provide proof of compliance to the Department before he may receive a restricted license or before his driving privilege may be reinstated, as applicable. Each model of a device installed pursuant to this section must have been certified by the Committee on Testing for Intoxication.

4. A person whose driving privilege is restricted pursuant to this section shall:

(a) If he was ordered to install a device pursuant to paragraph (a) of subsection 1, have the device inspected by the manufacturer of the device or its agent at least one time during the period in which he is required to use the device; or

(b) If he was ordered to install a device pursuant to paragraph (b) of subsection 1, have the device inspected by the manufacturer of the device or its agent at least one time each 90 days,

➡ to determine whether the device is operating properly. An inspection required pursuant to this subsection must be conducted in accordance with regulations adopted pursuant to NRS 484.3888. The manufacturer or its agent shall submit a report to the Director indicating whether the device is operating properly and whether it has been tampered with. If the device has been tampered with, the Director shall notify the court that ordered the installation of the device.

5. If a person is required to operate a motor vehicle in the course and scope of his employment and the motor vehicle is owned by his employer, the person may operate that vehicle without the installation of a device, if:

(a) The employee notifies his employer that the employee's driving privilege has been so restricted; and

(b) The employee has proof of that notification in his possession or the notice, or a facsimile copy thereof, is with the motor vehicle.

➡ This exemption does not apply to a motor vehicle owned by a business which is all or partly owned or controlled by the person otherwise subject to this section.

Sec. 9. Chapter 488 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A person who violates the provisions of NRS 488.410 and who has previously been convicted of a violation of NRS 488.420 or a violation of the law of any other jurisdiction that prohibits the same or similar conduct as set forth in NRS 488.420 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000. An offender so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. The facts concerning a prior violation of NRS 488.420 must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing.

3. A prosecuting attorney shall not dismiss a charge of violating the provisions of NRS 488.410 against a person previously convicted of violating NRS 488.420 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of

trial. A sentence imposed pursuant to subsection 1 must not be suspended, and probation must not be granted.

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

Sec. 10. NRS 488.410 is hereby amended to read as follows:

488.410 1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor;

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

(c) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel to have a concentration of alcohol of 0.08 or more in his blood or breath,

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

2. It is unlawful for any person who:

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

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

(c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely operating or exercising actual physical control of a vessel under power or sail,

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

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

Prohibited substance	Urine	Blood
	Nanograms per milliliter	Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Marijuana	10	2
(h) Marijuana metabolite	15	5

(i) Methamphetamine	500	100
(j) Phencyclidine	25	10

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

5. Except as otherwise provided in section 9 of this act, a person who violates the provisions of this section is guilty of a misdemeanor.

Sec. 11. NRS 488.430 is hereby amended to read as follows:

488.430 1. Before sentencing a defendant pursuant to NRS 488.420 ~~§~~ ***or section 9 of this act***, the court shall require that the defendant be evaluated to determine whether he is an abuser of alcohol or drugs and whether he can be treated successfully for his condition.

2. The evaluation must be conducted by:

(a) An alcohol and drug abuse counselor who is licensed or certified pursuant to chapter 641C of NRS to make such an evaluation;

(b) A physician who is certified to make such an evaluation by the Board of Medical Examiners; or

(c) A psychologist who is certified to make such an evaluation by the Board of Psychological Examiners.

3. The alcohol and drug abuse counselor, physician or psychologist who conducts the evaluation shall immediately forward the results of the evaluation to the Director of the Department of Corrections.

Sec. 12. NRS 209.425 is hereby amended to read as follows:

209.425 1. The Director shall, with the approval of the Board, establish a program for the treatment of an abuser of alcohol or drugs who is imprisoned ***for a violation of NRS 484.379 that is punishable as a felony*** pursuant to ~~§~~ ~~paragraph (c) of subsection 1 of~~ NRS 484.3792 ***or a violation of NRS 484.3795***. The program must include an initial period of intensive mental and physical rehabilitation in a facility of the Department, followed by regular sessions of education, counseling and any other necessary or desirable treatment.

2. The Director may, upon the request of the offender after the initial period of rehabilitation, allow the offender to earn wages

under any other program established by the Department if the offender assigns to the Department any wages he earns under such a program. The Director may deduct from the wages of the offender an amount determined by the Director, with the approval of the Board, to:

(a) Offset the costs, as reflected in the budget of the Department, to maintain the offender in a facility or institution of the Department and in the program of treatment established pursuant to this section; and

(b) Meet any existing obligation of the offender for the support of his family or restitution to any victim of his crime.

Sec. 13. NRS 209.481 is hereby amended to read as follows:

209.481 1. The Director shall not assign any prisoner to an institution or facility of minimum security if the prisoner:

(a) Except as otherwise provided in NRS 484.3792 , ~~and~~ 484.3795, *488.420 and section 9 of this act*, is not eligible for parole or release from prison within a reasonable period;

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

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

(d) Has been convicted of a sexual offense;

(e) Has committed an act of serious violence during the previous year; or

(f) Has attempted to escape or has escaped from an institution of the Department.

2. The Director shall, by regulation, establish procedures for classifying and selecting qualified prisoners.

Sec. 14. The amendatory provisions of this act apply to offenses committed before October 1, 2005, for the purpose of determining whether a person is subject to the provisions of subsection 2 of NRS 484.3792, as amended by this act, or subsection 1 of section 9 of this act.

