

ASSEMBLY BILL NO. 550—COMMITTEE ON JUDICIARY

MARCH 29, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning offenses involving use of intoxicating liquor and controlled substances. (BDR 43-832)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

~

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

AN ACT relating to crimes; revising the provisions governing when one offense involving the use of intoxicating liquor and controlled substances occurs within 7 years of another offense; making admissible in certain criminal proceedings the results of blood tests administered by phlebotomists or persons with special knowledge, skill, training or education in withdrawing blood in a medically acceptable manner; making mandatory the use of ignition interlock devices by persons convicted of certain offenses; limiting the admissibility of certain affidavits or declarations in certain criminal proceedings; 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
2 follows:
3 484.3792 1. Unless a greater penalty is provided pursuant to
4 NRS 484.3795, a person who violates the provisions of
5 NRS 484.379:



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

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

10 (2) Unless the sentence is reduced pursuant to NRS
11 484.37937, sentence him to imprisonment for not less than 2 days
12 nor more than 6 months in jail, or to perform not less than 48 hours,
13 but not more than 96 hours, of community service while dressed in
14 distinctive garb that identifies him as having violated the provisions
15 of NRS 484.379;

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

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

21 (b) For a second offense within 7 years, is guilty of a
22 misdemeanor. Unless the sentence is reduced pursuant to NRS
23 484.3794, the court shall:

24 (1) Sentence him to:

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

27 (II) Residential confinement for not less than 10 days nor
28 more than 6 months, in the manner provided in NRS 4.376 to
29 4.3766, inclusive, or 5.0755 to 5.078, inclusive;

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

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

36 ➤ A person who willfully fails or refuses to complete successfully a
37 term of residential confinement or a program of treatment ordered
38 pursuant to this subsection is guilty of a misdemeanor.

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



1 practicable, be assigned to an institution or facility of minimum
2 security.

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

13 3. A person convicted of violating the provisions of NRS
14 484.379 must not be released on probation, and a sentence imposed
15 for violating those provisions must not be suspended except, as
16 provided in NRS 4.373, 5.055, 484.37937 and 484.3794, that
17 portion of the sentence imposed that exceeds the mandatory
18 minimum. A prosecuting attorney shall not dismiss a charge of
19 violating the provisions of NRS 484.379 in exchange for a plea of
20 guilty or nolo contendere to a lesser charge or for any other reason
21 unless he knows or it is obvious that the charge is not supported by
22 probable cause or cannot be proved at the time of trial.

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

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

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

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



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

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

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

12 8. *For the purpose of determining whether one offense*
13 *occurs within 7 years of another offense, any period of time*
14 *between the two offenses during which, for any such offense, the*
15 *offender is imprisoned, serving a term of residential confinement,*
16 *confined in a treatment facility, on parole or on probation must be*
17 *excluded.*

18 9. As used in this section, unless the context otherwise
19 requires:

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

23 (b) "Offense" means:

24 (1) A violation of NRS 484.379 or 484.3795;

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

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

32 (c) *"Treatment facility" has the meaning ascribed to it in*
33 *NRS 484.3793.*

34 **Sec. 2.** NRS 484.393 is hereby amended to read as follows:

35 484.393 1. The results of any blood test administered under
36 the provisions of NRS 484.383 or 484.391 are not admissible in any
37 hearing or criminal action arising out of acts alleged to have been
38 committed by a person who was driving or in actual physical control
39 of a vehicle while under the influence of intoxicating liquor or a
40 controlled substance or who was engaging in any other conduct
41 prohibited by NRS 484.379 or 484.3795 unless:

42 (a) The blood tested was withdrawn by a *person, other than an*
43 *arresting officer, who:*

44 (1) *Is licensed, registered or certified as a* physician,
45 physician assistant, registered nurse, licensed practical nurse,



1 emergency medical technician or a *phlebotomist*, technician,
2 technologist or assistant employed in a medical laboratory; *or*

3 *(2) Has special knowledge, skill, experience, training or*
4 *education in withdrawing blood in a medically acceptable manner,*
5 *including, without limitation, a person qualified as an expert on*
6 *that subject in a court of competent jurisdiction or a person who*
7 *has completed a course of instruction described in subsection 2 of*
8 *NRS 652.127; and*

9 (b) The test was performed on whole blood, except if the sample
10 was clotted when it was received by the laboratory, the test may be
11 performed on blood serum or plasma. ~~and~~

12 ~~—(c) The person who withdrew the blood was authorized to do so~~
13 ~~by the appropriate medical licensing or certifying agency.]~~

14 2. The limitation contained in paragraph (a) of subsection 1
15 does not apply to the taking of a chemical test of the urine, breath or
16 other bodily substance.

17 3. No person listed in paragraph (a) of subsection 1 incurs any
18 civil or criminal liability as a result of the administering of a blood
19 test when requested by a police officer or the person to be tested to
20 administer the test.

21 **Sec. 3.** NRS 484.3943 is hereby amended to read as follows:

22 484.3943 1. Except as otherwise provided in ~~[subsection]~~
23 *subsections 2 and 5*, a court:

24 (a) May order a person convicted of a first *or second* violation
25 of NRS 484.379 ~~if~~ *if the person is found to have had a*
26 *concentration of alcohol of less than 0.18 in his blood or breath,*
27 for a period of not less than 3 months nor more than 6 months ~~and~~
28 *and*, *to install at his own expense a device in any motor vehicle*
29 *which he owns or operates as a condition to obtaining a restricted*
30 *license pursuant to NRS 483.490 or as a condition of*
31 *reinstatement of his driving privilege.*

32 (b) Shall order a person convicted of ~~if~~ :

33 *(1) A first or second violation of NRS 484.379 if the person*
34 *is found to have had a concentration of alcohol of 0.18 or more in*
35 *his blood or breath;*

36 *(2) A third or subsequent violation of NRS 484.379 ~~or a~~ ;*
37 *or*

38 *(3) A violation of NRS 484.3795,*
39 *for a period of not less than 12 months nor more than 36 months,*
40 *to install at his own expense a device in any motor vehicle which he*
41 *owns or operates as a condition to obtaining a restricted license*
42 *pursuant to ~~[subsection 3 of]~~ NRS 483.490 ~~or~~ or as a condition of*
43 *reinstatement of his driving privilege.*

44 2. A court may ~~order a person convicted of a violation of NRS~~
45 ~~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.]~~

provide for an exception to the provisions of subparagraph (1) of paragraph (b) of subsection 1 for a person who is convicted of a first violation of NRS 484.379 to avoid undue hardship to the person if the court determines that:

(a) Requiring the person to install a device in a motor vehicle which the person owns or operates would cause the person to experience an economic hardship; and

(b) The person requires the use of the motor vehicle to:

(1) Travel to and from work or in the course and scope of his employment;

(2) Obtain medicine, food or other necessities or to obtain health care services for himself or another member of his immediate family; or

(3) Transport himself or another member of his immediate family to or from school.

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



1 has been tampered with. If the device has been tampered with, the
2 Director shall notify the court that ordered the installation of the
3 device.

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

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

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

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

15 6. *The running of the period during which a person is*
16 *required to have a device installed pursuant to this section*
17 *commences when the Department issues a restricted license to him*
18 *or reinstates his driving privilege and is tolled whenever and for as*
19 *long as the person is, with regard to a violation of NRS 484.379 or*
20 *484.3795, imprisoned, serving a term of residential confinement,*
21 *confined in a treatment facility, on parole or on probation.*

22 7. *As used in this section:*

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

26 (b) *"Concentration of alcohol of less than 0.18 in his blood or*
27 *breath" means less than 0.18 gram of alcohol per 100 milliliters of*
28 *the blood of a person or per 210 liters of his breath.*

29 (c) *"Treatment facility" has the meaning ascribed to it in*
30 *NRS 484.3793.*

31 **Sec. 4.** NRS 488.500 is hereby amended to read as follows:

32 488.500 1. The results of any blood test administered under
33 the provisions of NRS 488.460 or 488.490 are not admissible in any
34 criminal action arising out of acts alleged to have been committed
35 by a person who was operating or in actual physical control of a
36 vessel under power or sail while under the influence of intoxicating
37 liquor or a controlled substance or who was engaging in any other
38 conduct prohibited by NRS 488.410 or 488.420 unless:

39 (a) The blood tested was withdrawn by a *person, other than an*
40 *arresting officer, who:*

41 (1) *Is licensed, registered or certified as a* physician,
42 registered nurse, licensed practical nurse, emergency medical
43 technician or a *phlebotomist*, technician, technologist or assistant
44 employed in a medical laboratory; *or*



1 (2) *Has special knowledge, skill, experience, training or*
2 *education in withdrawing blood in a medically acceptable manner,*
3 *including, without limitation, a person qualified as an expert on*
4 *that subject in a court of competent jurisdiction or a person who*
5 *has completed a course of instruction described in subsection 2 of*
6 *NRS 652.127; and*

7 (b) The test was performed on whole blood, except if the sample
8 was clotted when it was received by the laboratory, the test may be
9 performed on blood serum or plasma. ~~[-; and~~

10 ~~—(c) The person who withdrew the blood was authorized to do so~~
11 ~~by the appropriate licensing or certifying agency.]~~

12 2. The limitation contained in paragraph (a) of subsection 1
13 does not apply to the taking of a chemical test of the urine, breath or
14 other bodily substance.

15 3. No person listed in paragraph (a) of subsection 1 incurs any
16 civil or criminal liability as a result of the administering of a blood
17 test when requested by a peace officer or the person to be tested to
18 administer the test.

19 **Sec. 5.** NRS 50.315 is hereby amended to read as follows:

20 50.315 1. ~~[Except as otherwise provided in subsections 6 and~~
21 ~~7, the] The~~ affidavit or declaration of a person is admissible in
22 evidence in any ~~[criminal]~~ *grand jury hearing, preliminary hearing*
23 or administrative proceeding to prove:

24 (a) That the affiant or declarant has been certified by the
25 Director of the Department of Public Safety as being competent to
26 operate devices of a type certified by the Committee on Testing for
27 Intoxication as accurate and reliable for testing a person's breath to
28 determine the concentration of alcohol in his breath;

29 (b) The identity of a person from whom the affiant or declarant
30 obtained a sample of breath; and

31 (c) That the affiant or declarant tested the sample using a device
32 of a type so certified and that the device was functioning properly.

33 2. ~~[Except as otherwise provided in subsections 6 and 7, the]~~
34 *The* affidavit or declaration of a person who prepared a chemical
35 solution or gas that has been used in calibrating a device for testing
36 another's breath to determine the concentration of alcohol in his
37 breath is admissible in evidence in any ~~[criminal]~~ *grand jury*
38 *hearing, preliminary hearing* or administrative proceeding to
39 prove:

40 (a) The occupation of the affiant or declarant; and

41 (b) That the solution or gas has the chemical composition
42 necessary for accurately calibrating it.

43 3. ~~[Except as otherwise provided in subsections 6 and 7, the]~~
44 *The* affidavit or declaration of a person who calibrates a device for
45 testing another's breath to determine the concentration of alcohol in



1 his breath is admissible in evidence in any ~~criminal~~ *grand jury*
2 *hearing, preliminary hearing* or administrative proceeding to
3 prove:

4 (a) The occupation of the affiant or declarant;

5 (b) That on a specified date the affiant or declarant calibrated the
6 device at a named law enforcement agency by using the procedures
7 and equipment prescribed in the regulations of the Committee on
8 Testing for Intoxication;

9 (c) That the calibration was performed within the period
10 required by the Committee's regulations; and

11 (d) Upon completing the calibration of the device, it was
12 operating properly.

13 4. ~~{Except as otherwise provided in subsections 6 and 7, the}~~
14 *The* affidavit or declaration made under the penalty of perjury of a
15 person who withdraws a sample of blood from another for analysis
16 by an expert as set forth in NRS 50.320 is admissible in any
17 ~~criminal~~ *grand jury hearing, preliminary hearing* or
18 administrative proceeding to prove:

19 (a) The occupation of the affiant or declarant;

20 (b) The identity of the person from whom the affiant or
21 declarant withdrew the sample;

22 (c) The fact that the affiant or declarant kept the sample in his
23 sole custody or control and in substantially the same condition as
24 when he first obtained it until delivering it to another; and

25 (d) The identity of the person to whom the affiant or declarant
26 delivered it.

27 5. ~~{Except as otherwise provided in subsections 6 and 7, the}~~
28 *The* affidavit or declaration of a person who receives from another a
29 sample of blood or urine or other tangible evidence that is alleged to
30 contain alcohol or a controlled substance, chemical, poison, organic
31 solvent or another prohibited substance may be admitted in any
32 ~~criminal~~ *grand jury hearing, preliminary hearing or* civil or
33 administrative proceeding to prove:

34 (a) The occupation of the affiant or declarant;

35 (b) The fact that the affiant or declarant received a sample or
36 other evidence from another person and kept it in his sole custody or
37 control in substantially the same condition as when he first received
38 it until delivering it to another; and

39 (c) The identity of the person to whom the affiant or declarant
40 delivered it.

41 6. ~~{If, at or before the time of the trial, the defendant}~~
42 ~~establishes that:~~

43 ~~—(a) There is a substantial and bona fide dispute regarding the~~
44 ~~facts in the affidavit or declaration; and~~



~~(b) It is in the best interests of justice that the witness who signed the affidavit or declaration be cross examined;~~

~~the court may order the prosecution to produce the witness and may continue the trial for any time the court deems reasonably necessary to receive such testimony. The time within which a trial is required is extended by the time of the continuance.~~

~~7. During any trial in which the defendant has been accused of committing a felony, the defendant may object in writing to admitting into evidence an affidavit or declaration described in this section. If the defendant makes such an objection, the court shall not admit the affidavit or declaration into evidence and the prosecution may cause the person to testify in court to any information contained in the affidavit or declaration.~~

~~8.] The Committee on Testing for Intoxication shall adopt regulations prescribing the form of the affidavits and declarations described in this section.~~

Sec. 6. NRS 50.320 is hereby amended to read as follows:

50.320 1. The affidavit or declaration of a chemist and any other person who has qualified in the district court of any county to testify as an expert witness regarding the presence in the breath, blood or urine of a person of alcohol, a controlled substance, or a chemical, poison, organic solvent or another prohibited substance, or the identity or quantity of a controlled substance alleged to have been in the possession of a person, which is submitted to prove:

(a) The quantity of the purported controlled substance; or

(b) The concentration of alcohol or the presence or absence of a controlled substance, chemical, poison, organic solvent or another prohibited substance, as the case may be,

is admissible in the manner provided in this section.

2. An affidavit or declaration which is submitted to prove any fact set forth in subsection 1 must be admitted into evidence when submitted during any administrative proceeding, preliminary hearing or hearing before a grand jury. The court shall not sustain any objection to the admission of such an affidavit or declaration.

~~3. [The defendant may object in writing to admitting into evidence an affidavit or declaration submitted to prove any fact set forth in subsection 1 during his trial. If the defendant makes such an objection, the court shall not admit the affidavit or declaration into evidence and the prosecution may cause the person to testify in court to any information contained in the affidavit or declaration.~~

~~4.] The Committee on Testing for Intoxication shall adopt regulations prescribing the form of the affidavits and declarations described in this section.~~



Sec. 7. NRS 50.325 is hereby amended to read as follows:

50.325 1. If a person is charged with an offense listed in subsection 4, and it is necessary to prove:

(a) The existence of any alcohol;

(b) The quantity of a controlled substance; or

(c) The existence or identity of a controlled substance, chemical, poison, organic solvent or another prohibited substance,

the prosecuting attorney may request that the affidavit or declaration of an expert or other person described in NRS 50.315 and 50.320 be admitted into evidence at the ~~trial or~~ preliminary hearing *or hearing before a grand jury* concerning the offense.

~~[Except as otherwise provided in NRS 50.315 and 50.320, the affidavit or declaration must be admitted into evidence.~~

~~2. If the request is to have the affidavit or declaration admitted into evidence at a preliminary hearing or hearing before a grand jury, the]~~

2. The affidavit or declaration must be admitted into evidence upon submission. ~~[If the request is to have the affidavit or declaration admitted into evidence at trial, the request must be:~~

~~—(a) Made at least 10 days before the date set for the trial;~~

~~—(b) Sent to the defendant's counsel and to the defendant, by registered or certified mail by the prosecuting attorney; and~~

~~—(c) Accompanied by a copy of the affidavit or declaration and the name, address and telephone number of the affiant or declarant.]~~

3. The provisions of this section do not prohibit either party from producing any witness to offer testimony at ~~trial.]~~ *a preliminary hearing or hearing before a grand jury.*

4. The provisions of this section apply to any of the following offenses:

(a) An offense punishable pursuant to NRS 202.257, 455A.170, 455B.080, 493.130 or 639.283.

(b) An offense punishable pursuant to chapter 453, 484 or 488 of NRS.

(c) A homicide resulting from driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420.

(d) Any other offense for which it is necessary to prove, as an element of the offense:

(1) The existence of any alcohol;

(2) The quantity of a controlled substance; or



- 1 (3) The existence or identity of a controlled substance,
- 2 chemical, poison, organic solvent or another prohibited substance.

③⑩

