

Amendment No. 266

Senate Amendment to Senate Bill No. 277

(BDR 43-888)

Proposed by: Senate Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold* is newly added transitory language.

KEL/BAW



Date: 4/18/2007

S.B. No. 277—Authorizes the court to assign certain offenders to a program of treatment for certain offenses. (BDR 43-888)



SENATE BILL NO. 277—SENATORS WIENER, AMODEI, CARE,
HORSFORD, MCGINNESS AND WASHINGTON

MARCH 13, 2007

Referred to Committee on Transportation and Homeland Security

SUMMARY—Authorizes the court to assign certain offenders to a program of treatment for certain offenses. (BDR 43-888)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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; authorizing the court to order certain offenders who plead guilty or nolo contendere to a third offense of driving under the influence of intoxicating liquor or a controlled substance to a program for the treatment of alcoholism or drug abuse; revising certain penalties for driving under the influence of intoxicating liquor or a controlled substance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law allows an offender who is found guilty of a first or second violation of driving under the influence of intoxicating liquor or a controlled substance to apply to the court to attend a certified program of treatment for alcoholism or drug abuse. (NRS 484.3792, 484.37937, 484.3794) Upon successful completion of the program, the court will reduce the sentence of the offender. (NRS 484.37937, 484.3794) However, no treatment option or reduced sentence is authorized for a third offense, which is a felony offense. (NRS 484.3792) This bill authorizes the court to order an offender who enters a plea of guilty or nolo contendere to a third-offense violation of driving under the influence of intoxicating liquor or a controlled substance to a program of treatment for a minimum of 3 years and to suspend the offender's sentence until the program of treatment is completed. If the offender successfully completes the program of treatment, his conviction will be reduced to a second-offense violation of driving under the influence of intoxicating liquor or a controlled substance, which is a misdemeanor. Thus, for the purposes of employment, civil rights, licensing or any other public or private purpose, the conviction would be reflected as a misdemeanor. However, the conviction would stand as a prior felony conviction for the purpose of any additional penalties that may be imposed for subsequent offenses for driving under the influence of intoxicating liquor or a controlled substance.

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

Section 1. Chapter 484 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An offender who enters a plea of guilty or nolo contendere to a violation of NRS 484.379 that is punishable pursuant to paragraph (c) of subsection 1 of NRS 484.3792 may, at the time he enters his plea, ~~provided that the prosecuting attorney agrees,~~ 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 Health and Human Services for at least 3 years if:

(a) 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; and

(b) The offender agrees to pay the costs of the treatment to the extent of his financial resources.

➤ An alcohol and drug abuse counselor or a physician who diagnoses an offender as an alcoholic or abuser of drugs shall make a report and recommendation to the court concerning the length and type of treatment required for the offender.

2. 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.

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 and other information before the court.

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 5 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 5 years and during treatment he may be confined in an institution or, at the discretion of the treatment facility, released for treatment or supervised aftercare in the community.

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

(3) If he completes the treatment satisfactorily:

(I) The court shall vacate his sentence of imprisonment and reduce his conviction from a violation of paragraph (c) of subsection 1 of NRS 484.3792 to a violation of paragraph (b) of subsection 1 of NRS 484.3792.

(II) Such a conviction shall be deemed a misdemeanor for all public purposes, except that the conviction must remain on his record of criminal

1 *history as a felony and shall be deemed a prior felony conviction for purposes of*
2 *enhancement under subsection 2 of NRS 484.3792.*

3 *5. The court shall administer the program of treatment pursuant to the*
4 *procedures provided in NRS 458.320 and 458.330, except that the court:*

5 *(a) Shall not defer the sentence or set aside the conviction upon the election*
6 *of treatment, except as otherwise provided in this section; and*

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

9 *6. To participate in a program of treatment, the offender must meet the*
10 *following conditions, including, without limitation:*

11 *(a) The offender shall serve a minimum of 6 months of residential*
12 *confinement pursuant to NRS 4.376 to 4.3766, inclusive;*

13 *(b) The offender shall have installed, at his own expense, a device pursuant*
14 *to NRS 484.3943 for a period of not less than 12 months which may be extended*
15 *at the discretion of the court;*

16 *(c) The offender may not drive any vehicle which is not equipped with a*
17 *device pursuant to NRS 484.3943;*

18 *(d) At the discretion of the court or treatment facility, the offender may be*
19 *subject to periodic testing for the use of alcohol or controlled substances while*
20 *participating in a program of treatment; and*

21 *(e) Any other conditions that the court deems necessary.*

22 *7. An offender may not apply to the court to undergo a program of*
23 *treatment for alcoholism or drug abuse pursuant to this section if he has*
24 *previously applied to receive treatment pursuant to this section or if he has*
25 *previously been convicted of:*

26 *(a) A violation of NRS 484.3795;*

27 *(b) A violation of NRS 484.37955;*

28 *(c) A homicide resulting from driving or being in actual physical control of a*
29 *vehicle while under the influence of intoxicating liquor or a controlled substance*
30 *or resulting from any other conduct prohibited by NRS 484.379, 484.3795 or*
31 *484.37955;*

32 *(d) A violation of paragraph (c) of subsection 1 of NRS 484.3792;*

33 *(e) A violation of subsection 2 of NRS 484.3792; or*

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

36 *8. As used in this section, "treatment facility" has the meaning ascribed to it*
37 *in NRS 484.3793.*

38 **Sec. 2.** NRS 484.3792 is hereby amended to read as follows:

39 484.3792 1. Unless a greater penalty is provided pursuant to NRS 484.3795
40 or 484.37955, and except as otherwise provided in subsection 2, a person who
41 violates the provisions of NRS 484.379:

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

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

49 (2) Unless the sentence is reduced pursuant to NRS 484.37937, sentence
50 him to imprisonment for not less than 2 days nor more than 6 months in jail, or to
51 perform not less than 48 hours, but not more than 96 hours, of community service
52 while dressed in distinctive garb that identifies him as having violated the
53 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 paragraph is guilty of a misdemeanor.

(c) ~~For~~ *Except as otherwise provided in section 1 of this act, for* a third 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. *The court may order the offender to attend a program of treatment for the abuse of alcohol or drugs pursuant to section 1 of this act.* An offender ~~for~~ *who is* imprisoned *pursuant to the provisions of this paragraph* 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. Unless a greater penalty is provided in NRS 484.37955, 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, 484.3795 or 484.37955; ~~for~~

(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) ~~for~~ *; or*

(e) *A misdemeanor that was reduced from a felony after successful completion of a program of treatment as set forth in section 1 of this act,*

➤ 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 to 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.

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, *and section 1 of this act*, 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.

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, *or section 1 of this act*, 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.

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

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.

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.

9. For the purpose of determining whether one offense occurs within 7 years of another offense, any period of time between the two offenses during which, for any such offense, the offender is imprisoned, serving a term of residential

1 confinement, confined in a treatment facility, on parole or on probation must be
2 excluded.

3 10. As used in this section, unless the context otherwise requires:

4 (a) "Concentration of alcohol of 0.18 or more in his blood or breath" means
5 0.18 gram or more of alcohol per 100 milliliters of the blood of a person or per 210
6 liters of his breath.

7 (b) "Offense" means:

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

9 (2) A homicide resulting from driving or being in actual physical control of
10 a vehicle while under the influence of intoxicating liquor or a controlled substance
11 or resulting from any other conduct prohibited by NRS 484.379, 484.3795 or
12 484.37955; or

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

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

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

17 484.37945 1. When a program of treatment is ordered pursuant to paragraph
18 (a) or (b) of subsection 1 of NRS 484.3792, *or section 1 of this act*, the court shall
19 place the offender under the clinical supervision of a treatment facility for treatment
20 for a period not to exceed 1 year, in accordance with the report submitted to the
21 court pursuant to subsection 3, 4, 5 or 6 of NRS 484.37943 *or section 1 of this*
22 *act*. The court shall:

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

25 (b) Release the offender for treatment in the community,
26 ➤ for the period of supervision ordered by the court.

27 2. The court shall:

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

30 (b) Order the offender, to the extent of his financial resources, to pay any
31 charges for his treatment pursuant to this section. If the offender does not have the
32 financial resources to pay all those charges, the court shall, to the extent possible,
33 arrange for the offender to obtain his treatment from a treatment facility that
34 receives a sufficient amount of federal or state money to offset the remainder of the
35 charges.

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

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

41 (b) Engages in any other conduct prohibited by NRS 484.379, 484.3795,
42 484.37955, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425 or a
43 law of any other jurisdiction that prohibits the same or similar conduct,

44 ➤ after the treatment facility has certified to his successful completion of a
45 program of treatment ordered pursuant to paragraph (a) or (b) of subsection 1 of
46 NRS 484.3792 *or section 1 of this act*.

47 **Sec. 4.** NRS 484.37947 is hereby amended to read as follows:

48 484.37947 The provisions of NRS 484.37943 and 484.37945, *and section 1*
49 *of this act* do not prohibit a court from:

50 1. Requiring an evaluation pursuant to NRS 484.37943 to be conducted by an
51 evaluation center that is administered by a private company if the company meets
52 the standards of the State Board of Health pursuant to NRS 484.37935; or

- 1 2. Ordering the offender to attend a program of treatment that is administered
- 2 by a private company.
- 3 **Sec. 5.** This act becomes effective on July 1, 2007.