

ASSEMBLY BILL NO. 210—ASSEMBLYMAN MANENDO

FEBRUARY 20, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing driving under the influence. (BDR 43-871)

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.

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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 driving under the influence; reducing the concentration of alcohol required for attendance of a program of treatment for the abuse of alcohol or drugs; reducing the concentration of alcohol required for mandatory court-ordered evaluations; reducing the concentration of alcohol required for court-ordered installation of a device to prevent a person from starting his motor vehicle; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 3 of this bill revises existing law, which requires a person to attend a program of treatment for the abuse of alcohol or drugs if the person is convicted of a first offense of driving under the influence and had a concentration of alcohol of 0.18 or more in his blood or breath, by reducing the required concentration of alcohol to 0.15. (NRS 484.3792)

Section 4 of this bill revises existing law, which prohibits a person from applying to attend a program of treatment for the abuse of alcohol or drugs in lieu of serving his sentence if the person is convicted of a first offense of driving under the influence and had a concentration of alcohol of 0.18 or more in his blood or breath, by reducing the required concentration of alcohol to 0.15. (NRS 484.37937)

Section 5 of this bill requires a court to order an evaluation to determine whether a person is an abuser of alcohol or other drugs if the person is convicted of a first offense of driving under the influence and had a concentration of alcohol of 0.15 or more in his blood or breath. (NRS 484.37943)

Section 6 of this bill revises existing law, which authorizes or requires a court to order a person to install a device to prevent a person who has consumed alcohol from starting his motor vehicle if the person is convicted of a first offense of



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18 driving under the influence and had a concentration of alcohol of 0.18 or more in
19 his blood or breath, by reducing the required concentration of alcohol to 0.15.
20 (NRS 484.3943)

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

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

3 *The phrase "concentration of alcohol of 0.15 or more in his*
4 *blood or breath" means 0.15 gram or more of alcohol per 100*
5 *milliliters of the blood of a person or per 210 liters of his breath.*

6 **Sec. 2.** NRS 484.013 is hereby amended to read as follows:

7 484.013 As used in this chapter, unless the context otherwise
8 requires, the words and terms defined in NRS 484.014 to 484.217,
9 inclusive, *and section 1 of this act* have the meanings ascribed to
10 them in those sections.

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

12 484.3792 1. Unless a greater penalty is provided pursuant to
13 NRS 484.3795 or 484.37955, and except as otherwise provided in
14 subsection 2, a person who violates the provisions of NRS 484.379
15 or 484.379778:

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

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

25 (2) Unless the sentence is reduced pursuant to NRS
26 484.37937, sentence him to imprisonment for not less than 2 days
27 nor more than 6 months in jail, or to perform not less than 48 hours,
28 but not more than 96 hours, of community service while dressed in
29 distinctive garb that identifies him as having violated the provisions
30 of NRS 484.379 or 484.379778;

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

32 (4) If he is found to have a concentration of alcohol of ~~0.18~~
33 *0.15* or more in his blood or breath, order him to attend a program of
34 treatment for the abuse of alcohol or drugs pursuant to the
35 provisions of NRS 484.37945.

36 (b) For a second offense within 7 years, is guilty of a
37 misdemeanor. Unless the sentence is reduced pursuant to NRS
38 484.3794, the court shall:



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(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 or 484.379778; 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) Except as otherwise provided in NRS 484.37941, 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. An offender 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 or 484.379778 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;

(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); or

(e) A violation of NRS 484.379 or 484.379778 that is punishable pursuant to paragraph (b) of subsection 1 of this section that was reduced from a felony pursuant to NRS 484.37941,

➤ and who violates the provisions of NRS 484.379 or 484.379778 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



1 than \$5,000. An offender so imprisoned must, insofar as practicable,
2 be segregated from offenders whose crimes were violent and,
3 insofar as practicable, be assigned to an institution or facility of
4 minimum security.

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

20 4. A person convicted of violating the provisions of NRS
21 484.379 or 484.379778 must not be released on probation, and a
22 sentence imposed for violating those provisions must not be
23 suspended except, as provided in NRS 4.373, 5.055, 484.37937,
24 484.3794 and 484.37941, that portion of the sentence imposed that
25 exceeds the mandatory minimum. A prosecuting attorney shall not
26 dismiss a charge of violating the provisions of NRS 484.379 or
27 484.379778 in exchange for a plea of guilty, guilty but mentally ill
28 or nolo contendere to a lesser charge or for any other reason unless
29 he knows or it is obvious that the charge is not supported by
30 probable cause or cannot be proved at the time of trial.

31 5. A term of confinement imposed pursuant to the provisions
32 of this section may be served intermittently at the discretion of the
33 judge or justice of the peace, except that a person who is convicted
34 of a second or subsequent offense within 7 years must be confined
35 for at least one segment of not less than 48 consecutive hours. This
36 discretion must be exercised after considering all the circumstances
37 surrounding the offense, and the family and employment of the
38 offender, but any sentence of 30 days or less must be served within
39 6 months after the date of conviction or, if the offender was
40 sentenced pursuant to NRS 484.37937 or 484.3794 and the
41 suspension of his sentence was revoked, within 6 months after the
42 date of revocation. Any time for which the offender is confined
43 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 or 484.379778 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 confinement, confined in a treatment facility, on parole or on probation must be excluded.

10. 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, 484.3795 or 484.379778;

(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, 484.3795 or 484.37955; 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).

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



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

1. An offender who is found guilty of a violation of NRS 484.379 or 484.379778 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792, other than an offender who is found to have a concentration of alcohol of ~~{0.18}~~ **0.15** 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 Health and Human Services for at least 6 months. The court shall authorize that treatment 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, or a clinical alcohol and drug abuse counselor who is licensed, 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) The offender agrees to pay the cost of the treatment to the extent of his financial resources; and

(c) 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 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.

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.

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:



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(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 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.

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.

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 484.37943 is hereby amended to read as follows:

484.37943 1. If an offender is found guilty of a 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 offender's blood or breath at the time of the offense was ~~0.18~~ **0.15** or more, or if an offender is found guilty of a violation of NRS 484.379 or 484.379778 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, 5 or 6 to determine whether he is an abuser of alcohol or other drugs.

2. If an offender is convicted of a violation of NRS 484.379 or 484.379778 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484.3792 and 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, 5 or 6 to determine whether he is an abuser of alcohol or other drugs.



1 3. Except as otherwise provided in subsection 4, 5 or 6, the
2 evaluation of an offender pursuant to this section must be conducted
3 at an evaluation center by:

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

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

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

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

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

27 6. The evaluation of an offender who resides in this State may,
28 upon approval of the court, be conducted in another state by a
29 physician or other person who is authorized by the appropriate
30 governmental agency in that state to conduct such an evaluation if
31 the location of the physician or other person in the other state is
32 closer to the residence of the offender than the nearest location in
33 this State at which an evaluation may be conducted. The offender
34 shall ensure that the results of the evaluation and the
35 recommendation concerning the length and type of treatment for the
36 offender are reported to the court.

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

41 **Sec. 6.** NRS 484.3943 is hereby amended to read as follows:

42 484.3943 1. Except as otherwise provided in subsections 2
43 and 5, a court:

44 (a) May order a person convicted of a violation of NRS 484.379
45 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of



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1 NRS 484.3792, if the person is found to have had a concentration of
2 alcohol of less than ~~{0.18}~~ 0.15 in his blood or breath, for a period of
3 not less than 3 months nor more than 6 months, to install at his own
4 expense a device in any motor vehicle which he owns or operates as
5 a condition to obtaining a restricted license pursuant to NRS
6 483.490 or as a condition of reinstatement of his driving privilege.

7 (b) Shall order a person convicted of:

8 (1) A violation of NRS 484.379 that is punishable pursuant
9 to paragraph (a) or (b) of subsection 1 of NRS 484.3792, if the
10 person is found to have had a concentration of alcohol of ~~{0.18}~~ 0.15
11 or more in his blood or breath;

12 (2) A violation of NRS 484.379 or 484.379778 that is
13 punishable as a felony pursuant to NRS 484.3792; or

14 (3) A violation of NRS 484.3795 or 484.37955,
15 ➔ for a period of not less than 12 months nor more than 36 months,
16 to install at his own expense a device in any motor vehicle which he
17 owns or operates as a condition to obtaining a restricted license
18 pursuant to NRS 483.490 or as a condition of reinstatement of his
19 driving privilege.

20 2. A court may provide for an exception to the provisions of
21 subparagraph (1) of paragraph (b) of subsection 1 for a person who
22 is convicted of a violation of NRS 484.379 that is punishable
23 pursuant to paragraph (a) of subsection 1 of NRS 484.3792, to avoid
24 undue hardship to the person if the court determines that:

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

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

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

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

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

36 3. If the court orders a person to install a device pursuant to
37 subsection 1:

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

44 (b) The person who is required to install the device shall provide
45 proof of compliance to the Department before he may receive a



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1 restricted license or before his driving privilege may be reinstated,
2 as applicable. Each model of a device installed pursuant to this
3 section must have been certified by the Committee on Testing for
4 Intoxication.

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

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

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

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

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

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

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

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

33 6. The running of the period during which a person is required
34 to have a device installed pursuant to this section commences when
35 the Department issues a restricted license to him or reinstates his
36 driving privilege and is tolled whenever and for as long as the
37 person is, with regard to a violation of NRS 484.379, 484.3795,
38 484.37955 or 484.379778, imprisoned, serving a term of residential
39 confinement, confined in a treatment facility, on parole or on
40 probation.

41 7. As used in this section:

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



1 ~~—(b)}~~ “Concentration of alcohol of less than ~~{0.18}~~ **0.15** in his
2 blood or breath” means less than ~~{0.18}~~ **0.15** gram of alcohol per
3 100 milliliters of the blood of a person or per 210 liters of his breath.
4 ~~{(e)}~~ **(b)** “Treatment facility” has the meaning ascribed to it in
5 NRS 484.3793.

