

SENATE BILL NO. 91—SENATOR MANENDO

PREFILED JANUARY 25, 2011

Referred to Committee on Transportation

SUMMARY—Revises provisions governing driving under the influence. (BDR 43-626)

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; revising provisions governing the participation of an offender in a program of treatment for the abuse of alcohol or drugs; revising provisions governing a court-ordered evaluation to determine whether an offender is an abuser of alcohol or drugs; revising provisions governing the court-ordered installation of a device to prevent an offender from starting his or her motor vehicle; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law allows a person the option of applying to undergo a program of treatment for the abuse of alcohol or drugs in lieu of serving his or her sentence if the person is convicted of a first offense of driving under the influence and had a concentration of alcohol of less than 0.18 in his or her blood or breath. (NRS 484C.320) **Section 3** of this bill allows such a person to choose that option only if the person had a concentration of alcohol of less than 0.15 in his or her blood or breath.

Existing law 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 0.18 or more in his or her blood or breath. (NRS 484C.350) **Section 4** of this bill requires a court to order such an evaluation of such a person if the person had a concentration of alcohol of 0.15 or more in his or her blood or breath.

Existing law requires a court to order a person to attend a program of treatment for the abuse of alcohol or drugs if the person: (1) is convicted of a first offense of driving under the influence and had a concentration of alcohol of 0.18 or more in his or her blood or breath; and (2) is not undergoing voluntary treatment as



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provided in NRS 484C.320. (NRS 484C.400) **Section 5** of this bill requires a court to order such a person to attend such a program of treatment if the person had a concentration of alcohol of 0.15 or more in his or her blood or breath.

Existing law requires a court, under certain circumstances, to order a person to install a device to prevent a person who has consumed alcohol from starting his or her motor vehicle 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 or her blood or breath. (NRS 484C.460) **Section 6** of this bill requires a court to order such a person to install such a device if the person had a concentration of alcohol of 0.15 or more in his or her blood or breath.

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

**Section 1.** NRS 484C.030 is hereby amended to read as follows:

484C.030 “Concentration of alcohol of ~~0.18~~ **0.15** or more in his or her blood or breath” means ~~0.18~~ **0.15** gram or more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

**Sec. 2.** NRS 484C.040 is hereby amended to read as follows:

484C.040 “Concentration of alcohol of less than ~~0.18~~ **0.15** in his or her blood or breath” means less than ~~0.18~~ **0.15** gram of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

**Sec. 3.** NRS 484C.320 is hereby amended to read as follows:

484C.320 1. An offender who is found guilty of a violation of NRS 484C.110 or 484C.120 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484C.400, other than an offender who is found to have a concentration of alcohol of ~~0.18~~ **0.15** or more in his or her blood or breath, may, at that time or any time before the offender 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 or her 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 the offender complete the treatment satisfactorily and that the offender comply with any other condition ordered by the court.

(c) Advise the offender that:

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

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

(3) If the offender completes the treatment satisfactorily, the offender's 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 484C.400, but the conviction must remain on the record of criminal history of the offender.

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 or her failure to be accepted for or complete treatment.

**Sec. 4.** NRS 484C.350 is hereby amended to read as follows:

484C.350 1. If an offender is found guilty of a violation of NRS 484C.110 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484C.400 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 484C.110 or 484C.120 that is punishable pursuant to paragraph (b) of subsection 1 of NRS 484C.400, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4, 5 or 6 to determine whether the offender is an abuser of alcohol or other drugs.

2. If an offender is convicted of a violation of NRS 484C.110 or 484C.120 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484C.400 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 the offender is an abuser of alcohol or other drugs.

3. Except as otherwise provided in subsection 4, 5 or 6, 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, or a clinical alcohol and drug abuse counselor who is licensed, 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



1 to the court concerning the length and type of treatment required for  
2 the offender.

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

10 6. The evaluation of an offender who resides in this State may,  
11 upon approval of the court, be conducted in another state by a  
12 physician or other person who is authorized by the appropriate  
13 governmental agency in that state to conduct such an evaluation if  
14 the location of the physician or other person in the other state is  
15 closer to the residence of the offender than the nearest location in  
16 this State at which an evaluation may be conducted. The offender  
17 shall ensure that the results of the evaluation and the  
18 recommendation concerning the length and type of treatment for the  
19 offender are reported to the court.

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

24 **Sec. 5.** NRS 484C.400 is hereby amended to read as follows:

25 484C.400 1. Unless a greater penalty is provided pursuant to  
26 NRS 484C.430 or 484C.440, and except as otherwise provided in  
27 NRS 484C.410, a person who violates the provisions of NRS  
28 484C.110 or 484C.120:

29 (a) For the first offense within 7 years, is guilty of a  
30 misdemeanor. Unless the person is allowed to undergo treatment as  
31 provided in NRS 484C.320, the court shall:

32 (1) Except as otherwise provided in subparagraph (4) of this  
33 paragraph or subsection 2 of NRS 484C.420, order the person to pay  
34 tuition for an educational course on the abuse of alcohol and  
35 controlled substances approved by the Department and complete the  
36 course within the time specified in the order, and the court shall  
37 notify the Department if the person fails to complete the course  
38 within the specified time;

39 (2) Unless the sentence is reduced pursuant to NRS  
40 484C.320, sentence the person to imprisonment for not less than 2  
41 days nor more than 6 months in jail, or to perform not less than 48  
42 hours, but not more than 96 hours, of community service while  
43 dressed in distinctive garb that identifies the person as having  
44 violated the provisions of NRS 484C.110 or 484C.120;



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

(4) If the person is found to have a concentration of alcohol of ~~[0.18]~~ 0.15 or more in his or her blood or breath, order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Unless the sentence is reduced pursuant to NRS 484C.330, the court shall:

(1) Sentence the person 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 the person not less than \$750 nor more than \$1,000, or order the person to perform an equivalent number of hours of community service while dressed in distinctive garb that identifies the person as having violated the provisions of NRS 484C.110 or 484C.120; and

(3) Order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360.

➤ 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 484C.340, 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. 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. 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. 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 484C.320 or 484C.330 and the suspension of his or her 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.

4. Jail sentences simultaneously imposed pursuant to this section and NRS 482.456, 483.560, 484C.410 or 485.330 must run consecutively.

5. 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.

6. 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.

7. As used in this section, unless the context otherwise requires, "offense" means:

(a) A violation of NRS 484C.110, 484C.120 or 484C.430;

(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 484C.110, 484C.130 or 484C.430; 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).

**Sec. 6.** NRS 484C.460 is hereby amended to read as follows:

484C.460 1. Except as otherwise provided in subsections 2 and 5, a court:

(a) May order a person convicted of a violation of NRS 484C.110 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of NRS 484C.400, if the person is found to have had a concentration of alcohol of less than ~~0.18~~ **0.15** in his or her blood or breath, for a period of not less than 3 months nor more than



1 6 months, to install at his or her own expense a device in any motor  
2 vehicle which the person owns or operates as a condition to  
3 obtaining a restricted license pursuant to NRS 483.490 or as a  
4 condition of reinstatement of the driving privilege of the person.

5 (b) Shall order a person convicted of:

6 (1) A violation of NRS 484C.110 that is punishable pursuant  
7 to paragraph (a) or (b) of subsection 1 of NRS 484C.400, if the  
8 person is found to have had a concentration of alcohol of ~~[0.18]~~ 0.15  
9 or more in his or her blood or breath;

10 (2) A violation of NRS 484C.110 or 484C.120 that is  
11 punishable as a felony pursuant to NRS 484C.400 or 484C.410; or

12 (3) A violation of NRS 484C.130 or 484C.430,  
13 ↪ for a period of not less than 12 months nor more than 36 months,  
14 to install at his or her own expense a device in any motor vehicle  
15 which the person owns or operates as a condition to obtaining a  
16 restricted license pursuant to NRS 483.490 or as a condition of  
17 reinstatement of the driving privilege of the person.

18 2. A court may provide for an exception to the provisions of  
19 subparagraph (1) of paragraph (b) of subsection 1 for a person who  
20 is convicted of a violation of NRS 484C.110 that is punishable  
21 pursuant to paragraph (a) of subsection 1 of NRS 484C.400, to  
22 avoid undue hardship to the person if the court determines that:

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

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

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

29 (2) Obtain medicine, food or other necessities or to obtain  
30 health care services for the person or another member of the  
31 person's immediate family; or

32 (3) Transport the person or another member of the person's  
33 immediate family to or from school.

34 3. If the court orders a person to install a device pursuant to  
35 subsection 1:

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

42 (b) The person who is required to install the device shall provide  
43 proof of compliance to the Department before the person may  
44 receive a restricted license or before the driving privilege of the  
45 person may be reinstated, as applicable. Each model of a device





1 installed pursuant to this section must have been certified by the  
2 Committee on Testing for Intoxication.

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

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

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

13 ➤ to determine whether the device is operating properly. An  
14 inspection required pursuant to this subsection must be conducted in  
15 accordance with regulations adopted pursuant to NRS 484C.480.  
16 The manufacturer or its agent shall submit a report to the Director  
17 indicating whether the device is operating properly and whether it  
18 has been tampered with. If the device has been tampered with, the  
19 Director shall notify the court that ordered the installation of the  
20 device.

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

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

27 (b) The employee has proof of that notification in his or her  
28 possession or the notice, or a facsimile copy thereof, is with the  
29 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 the person or reinstates  
36 the driving privilege of the person and is tolled whenever and for as  
37 long as the person is, with regard to a violation of NRS 484C.110,  
38 484C.120, 484C.130 or 484C.430, imprisoned, serving a term of  
39 residential confinement, confined in a treatment facility, on parole  
40 or on probation.

