

Amendment No. 38

Assembly Amendment to Assembly Bill No. 67	(BDR 4-151)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

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

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

WBD/BJF



Date: 4/7/2015

A.B. No. 67—Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)



ASSEMBLY BILL NO. 67—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

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 public safety; revising provisions governing the admission into evidence of certain affidavits and declarations in certain criminal proceedings; revising provisions governing the administration of certain tests for the presence of alcohol, controlled substances and prohibited substances; ~~providing for~~ **revising provisions concerning** the revocation of the license, permit or privilege to drive; ~~for a person who fails to submit to certain tests for the presence of alcohol, controlled substances and prohibited substances under certain circumstances; revising provisions concerning operating or being in actual physical control of a vessel;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law makes it unlawful for a person to drive, operate or be in actual physical control of a vehicle or vessel while under the influence of intoxicating liquor or a controlled substance, or both. (NRS 484C.110, 484C.120, 488.410) **Sections 9 and 20** of this bill define the term "under the influence" for the purposes of existing law relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of intoxicating liquor or a controlled substance, or both.

Existing law allows the affidavits and declarations of certain persons to be admitted as evidence during a criminal proceeding to prove certain facts relating to the testing of the blood, breath or urine of a defendant to determine the presence or concentration of alcohol or certain other substances. In a felony trial, if the defendant objects in writing to the admission of such affidavits or declarations, the court must not admit the affidavit or declaration into evidence and the prosecution may cause the witness to testify at trial concerning the information contained in the affidavit or declaration. A defendant in a misdemeanor trial, however, must also establish that: (1) there is a substantial and bona fide dispute between the prosecution and the defense regarding the facts in the declaration; and (2) it is in the best interests of justice that the witness who signed the affidavit or declaration be cross-examined.

(NRS 50.315) The Nevada Supreme Court has held that the additional requirements imposed on a misdemeanor defendant under existing law violate a defendant's constitutional right to confront the witnesses against him or her and are therefore unconstitutional. (*City of Reno v. Howard*, 130 Nev. Adv. Op. 12, 318 P.3d 1063 (2014))

Section 1 of this bill eliminates the constitutional defect identified by the Nevada Supreme Court and provides instead that an affidavit or declaration must not be admitted as evidence during a misdemeanor trial to prove certain facts relating to the testing of the blood, breath or urine of a defendant to determine the presence or concentration of alcohol or certain other substances if, not later than 10 days before the date set for trial or such shorter time before the date set for trial as authorized by the court, the defendant objects in writing to the admission of the affidavit or declaration. ~~and requests an opportunity to cross examine the witness at trial.~~ Under **section 1**, if the affidavit or declaration is not admitted into evidence, the prosecution may produce the witness to provide testimony at trial concerning the information contained in the affidavit or declaration at trial.

Under existing law, a person who drives a vehicle in this State is deemed to have given his or her consent to an evidentiary test of his or her blood, urine, breath or other bodily substance to determine the concentration of alcohol in his or her blood or breath or to determine whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present. If a person who has thus given his or her "implied consent" to an evidentiary test refuses to submit to the test when directed to do so by a police officer who has reason to believe that the person was driving a vehicle or operating a vessel while under the influence of alcohol or a controlled substance, existing law authorizes the police officer to direct that reasonable force be used to obtain a sample of blood from the person to be tested. (NRS 484C.160) The Nevada Supreme Court has held that the consent implied by a person's decision to drive in this State is not voluntary consent to an evidentiary blood test and, thus, existing laws that allow a police officer to obtain a blood sample from a person without a warrant and without voluntary consent are unconstitutional. (*Byars v. State*, 130 Nev. Adv. Op. No. 85, 336 P.3d 939 (2014))

Sections 12 and 14 of this bill eliminate the constitutional defect identified by the Nevada Supreme Court and provide instead that if a person refuses to submit to an evidentiary blood test at the request of a police officer: (1) the officer may apply for a warrant or other court order directing the use of reasonable force to obtain the blood sample; and (2) the person's driver's license must be revoked for a certain period. **Section 14 further authorizes the revocation of a person's license, permit or privilege to drive if an evidentiary test reveals the presence of a detectable amount of a controlled substance for which he or she did not have a valid prescription or reveals a prohibited substance in his or her blood or urine.** **Sections 15 and 16** of this bill make corresponding revisions to provisions of existing law which establish the procedure for effecting such a revocation and provide for an administrative hearing to challenge such a revocation. **Section 25** of this bill makes comparable changes to existing law concerning the evidentiary tests of persons who operate or exercise actual physical control over vessels on the waters of this State. **Section 5** of this bill makes comparable changes to existing law concerning evidentiary tests of persons who have actual physical possession of a firearm.

~~Existing law makes it unlawful for a person to operate or be in actual physical control of a vessel on the waters of this State while under the influence of intoxicating liquor or a controlled substance or while engaging in certain other prohibited conduct if the vessel is "under power or sail." (NRS 488.410) Section 21 of this bill makes the operation or actual physical control of a vessel by such a person unlawful if the vessel is "under way," that is, if the vessel is adrift, making way or being propelled, and is not aground, made fast to the shore or tied or made fast to a dock or mooring. Sections 2, 4, 6, 8, 19, 21-25 and 27-30 of this bill make conforming changes.~~

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

Section 1. NRS 50.315 is hereby amended to read as follows:

50.315 1. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person is admissible in evidence in any criminal or administrative proceeding to prove:

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

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

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

2. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person who has examined a prepared chemical solution or gas that has been used in calibrating, or verifying the calibration of, a device for testing another's breath to determine the concentration of alcohol in his or her breath is admissible in evidence in any criminal or administrative proceeding to prove:

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

(b) That the solution or gas has the chemical composition necessary for use in accurately calibrating, or verifying the calibration of, the device.

3. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person who calibrates a device for testing another's breath to determine the concentration of alcohol in his or her breath is admissible in evidence in any criminal or administrative proceeding to prove:

(a) The occupation of the affiant or declarant;

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

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

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

4. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration made under the penalty of perjury of a person who withdraws a sample of blood from another for analysis by an expert as set forth in NRS 50.320 is admissible in any criminal or administrative proceeding to prove:

(a) The occupation of the affiant or declarant;

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

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

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

5. Except as otherwise provided in subsections 6 and 7, the affidavit or declaration of a person who receives from another a sample of blood or urine or other tangible evidence that is alleged to contain alcohol or a controlled substance, chemical, poison, organic solvent or another prohibited substance may be admitted in any criminal or civil or administrative proceeding to prove:

(a) The occupation of the affiant or declarant;

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

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

6. If, ~~at or before the time of trial,~~ *not later than 10 days before the date set for trial or such shorter time before the date set for trial as authorized by the court,* the defendant ~~establishes that:~~

~~(a) There is a substantial and bona fide dispute regarding the 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.~~ *Objects/ objects in writing to admitting into evidence the affidavit or declaration.* ~~It and~~

~~(b) Requests an opportunity to cross examine at trial the witness who signed the affidavit or declaration;~~

~~the~~ *the court shall not admit the affidavit or declaration into evidence and* 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 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. 2. ~~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 preliminary hearing, hearing before a grand jury or trial concerning the offense. Except as otherwise provided in NRS 50.315 and 50.320, the affidavit or declaration must be admitted into evidence at the trial.~~

~~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 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, or personally served on the defendant's counsel or the defendant; 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.~~

~~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 452, 484A to 484E, inclusive, 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] may while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425.~~

~~(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~~

~~(3) The existence or identity of a controlled substance, chemical, poison, organic solvent or another prohibited substance.] (Deleted by amendment.)~~

Sec. 3. ~~NRS 62E.620 is hereby amended to read as follows:~~

~~62E.620. 1. The juvenile court shall order a delinquent child to undergo an evaluation to determine whether the child is an abuser of alcohol or other drugs if the child committed:~~

~~(a) An unlawful act in violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430;~~

~~(b) The unlawful act of using, possessing, selling or distributing a controlled substance; or~~

~~(c) The unlawful act of purchasing, consuming or possessing an alcoholic beverage in violation of NRS 202.020.~~

~~2. Except as otherwise provided in subsection 3, an evaluation of the child must be conducted by:~~

~~(a) A clinical alcohol and drug abuse counselor who is licensed, an alcohol and drug abuse counselor who is licensed or certified, or an alcohol and drug abuse counselor intern or a clinical alcohol and drug abuse counselor intern who is certified, pursuant to chapter 641C of NRS, to make that classification; or~~

~~(b) A physician who is certified to make that classification by the Board of Medical Examiners.~~

~~3. If the child resides in this State but the nearest location at which an evaluation may be conducted is in another state, the court may allow the evaluation to be conducted in the other state if the person conducting the evaluation:~~

~~(a) Possesses qualifications that are substantially similar to the qualifications described in subsection 2;~~

~~(b) Holds an appropriate license, certificate or credential issued by a regulatory agency in the other state; and~~

~~(c) Is in good standing with the regulatory agency in the other state.~~

~~4. The evaluation of the child may be conducted at an evaluation center.~~

~~5. The person who conducts the evaluation of the child shall report to the juvenile court the results of the evaluation and make a recommendation to the juvenile court concerning the length and type of treatment required for the child.~~

~~6. The juvenile court shall:~~

~~(a) Order the child to undergo a program of treatment as recommended by the person who conducts the evaluation of the child.~~

~~(b) Require the treatment facility to submit monthly reports on the treatment of the child pursuant to this section.~~

~~(c) Order the child or the parent or guardian of the child, or both, to the extent of their financial ability, to pay any charges relating to the evaluation and treatment of the child pursuant to this section. If the child or the parent or guardian of the child, or both, do not have the financial resources to pay all those charges:~~

~~(1) The juvenile court shall, to the extent possible, arrange for the child to receive treatment from a treatment facility which receives a sufficient amount of federal or state money to offset the remainder of the costs; and~~

~~(2) The juvenile court may order the child, in lieu of paying the charges relating to the child's evaluation and treatment, to perform community service.~~

~~7. After a treatment facility has certified a child's successful completion of a program of treatment ordered pursuant to this section, the treatment facility is not liable for any damages to person or property caused by a child who:~~

~~(a) Drives, operates or is in actual physical control of a vehicle or a vessel under [power or sail] way while under the influence of intoxicating liquor or a controlled substance; or~~

~~(b) Engages in any other conduct prohibited by NRS 484C.110, 484C.120, 484C.130, 484C.420, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425 or a law of any other jurisdiction that prohibits the same or similar conduct.~~

~~8. The provisions of this section do not prohibit the juvenile court from:~~

~~(a) Requiring an evaluation to be conducted by a person who is employed by a private company if the company meets the standards of the Division of Public and Behavioral Health of the Department of Health and Human Services. The evaluation may be conducted at an evaluation center.~~

~~(b) Ordering the child to attend a program of treatment which is administered by a private company.~~

~~9. Except as otherwise provided in section 6 of chapter 425, Statutes of Nevada 2007, all information relating to the evaluation or treatment of a child pursuant to this section is confidential and, except as otherwise authorized by the provisions of this title or the juvenile court, must not be disclosed to any person other than:~~

~~(a) The juvenile court;~~

~~(b) The child;~~

~~(c) The attorney for the child, if any;~~

~~(d) The parents or guardian of the child;~~

~~(e) The district attorney; and~~

~~(f) Any other person for whom the communication of that information is necessary to effectuate the evaluation or treatment of the child.~~

~~10. A record of any finding that a child has violated the provisions of NRS 484C.110, 484C.120, 484C.130 or 484C.430 must be included in the driver's record of that child for 7 years after the date of the offense.] (Deleted by amendment.)~~

Sec. 4. ~~[NRS 178.484 is hereby amended to read as follows:~~

~~178.484 1. Except as otherwise provided in this section, a person arrested for an offense other than murder of the first degree must be admitted to bail.~~

~~2. A person arrested for a felony who has been released on probation or parole for a different offense must not be admitted to bail unless:~~

~~(a) A court issues an order directing that the person be admitted to bail;~~

~~(b) The State Board of Parole Commissioners directs the detention facility to admit the person to bail; or~~

~~(c) The Division of Parole and Probation of the Department of Public Safety directs the detention facility to admit the person to bail.~~

~~3. A person arrested for a felony whose sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a different offense must not be admitted to bail unless:~~

~~(a) A court issues an order directing that the person be admitted to bail; or~~

~~(b) A department of alternative sentencing directs the detention facility to admit the person to bail.~~

~~4. A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.~~

~~5. A person arrested for a violation of NRS 484C.110, 484C.120, 484C.120, 484C.130, 488.410, 488.420 or 488.425 who is under the influence of intoxicating liquor must not be admitted to bail or released on the person's own recognizance unless the person has a concentration of alcohol of less than 0.04 in his or her breath. A test of the person's breath pursuant to this subsection to determine the concentration of alcohol in his or her breath as a condition of admission to bail or release is not admissible as evidence against the person.~~

~~6. A person arrested for a violation of NRS 484C.110, 484C.120, 484C.120, 484C.130, 488.410, 488.420 or 488.425 who is under the influence of a controlled substance, is under the combined influence of intoxicating liquor and a controlled substance, or inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle or vessel under [power or sail] way must not be admitted to bail or released on the person's own recognizance sooner than 12 hours after arrest.~~

~~7. A person arrested for a battery that constitutes domestic violence pursuant to NRS 33.018 must not be admitted to bail sooner than 12 hours after arrest. If the person is admitted to bail more than 12 hours after arrest, without appearing personally before a magistrate or without the amount of bail having been otherwise set by a magistrate or a court, the amount of bail must be:~~

~~(a) Three thousand dollars, if the person has no previous convictions of battery that constitute domestic violence pursuant to NRS 33.018 and there is no reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation;~~

~~(b) Five thousand dollars, if the person has:~~

~~(1) No previous convictions of battery that constitute domestic violence pursuant to NRS 33.018, but there is reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or~~

~~(2) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018, but there is no reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or~~

~~(c) Fifteen thousand dollars, if the person has:~~

~~(1) One previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 and there is reason to believe that the battery for which the person has been arrested resulted in substantial bodily harm or was committed by strangulation; or~~

~~(2) Two or more previous convictions of battery that constitute domestic violence pursuant to NRS 33.018.~~

~~→ The provisions of this subsection do not affect the authority of a magistrate or a court to set the amount of bail when the person personally appears before the magistrate or the court, or when a magistrate or a court has otherwise been contacted to set the amount of bail. For the purposes of this subsection, a person shall be deemed to have a previous conviction of battery that constitutes domestic violence pursuant to NRS 33.018 if the person has been convicted of such an~~

1 offense in this State or has been convicted of violating a law of any other
2 jurisdiction that prohibits the same or similar conduct.

3 ~~8. A person arrested for violating a temporary or extended order for~~
4 ~~protection against domestic violence issued pursuant to NRS 33.017 to 33.100,~~
5 ~~inclusive, or for violating a restraining order or injunction that is in the nature of a~~
6 ~~temporary or extended order for protection against domestic violence issued in an~~
7 ~~action or proceeding brought pursuant to title 11 of NRS, or for violating a~~
8 ~~temporary or extended order for protection against stalking, aggravated stalking or~~
9 ~~harassment issued pursuant to NRS 200.591, or for violating a temporary or~~
10 ~~extended order for protection against sexual assault pursuant to NRS 200.378 must~~
11 ~~not be admitted to bail sooner than 12 hours after arrest if:~~

12 ~~(a) The arresting officer determines that such a violation is accompanied by a~~
13 ~~direct or indirect threat of harm;~~

14 ~~(b) The person has previously violated a temporary or extended order for~~
15 ~~protection of the type for which the person has been arrested; or~~

16 ~~(c) At the time of the violation or within 2 hours after the violation, the person~~
17 ~~has:~~

18 ~~(1) A concentration of alcohol of 0.08 or more in the person's blood or~~
19 ~~breath; or~~

20 ~~(2) An amount of a prohibited substance in the person's blood or urine that~~
21 ~~is equal to or greater than the amount set forth in subsection 3 of NRS 484C.110.~~

22 ~~9. If a person is admitted to bail more than 12 hours after arrest, pursuant to~~
23 ~~subsection 8, without appearing personally before a magistrate or without the~~
24 ~~amount of bail having been otherwise set by a magistrate or a court, the amount of~~
25 ~~bail must be:~~

26 ~~(a) Three thousand dollars, if the person has no previous convictions of~~
27 ~~violating a temporary or extended order for protection against domestic violence~~
28 ~~issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining~~
29 ~~order or injunction that is in the nature of a temporary or extended order for~~
30 ~~protection against domestic violence issued in an action or proceeding brought~~
31 ~~pursuant to title 11 of NRS, or of violating a temporary or extended order for~~
32 ~~protection against stalking, aggravated stalking or harassment issued pursuant to~~
33 ~~NRS 200.591, or of violating a temporary or extended order for protection against~~
34 ~~sexual assault pursuant to NRS 200.378;~~

35 ~~(b) Five thousand dollars, if the person has one previous conviction of~~
36 ~~violating a temporary or extended order for protection against domestic violence~~
37 ~~issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining~~
38 ~~order or injunction that is in the nature of a temporary or extended order for~~
39 ~~protection against domestic violence issued in an action or proceeding brought~~
40 ~~pursuant to title 11 of NRS, or of violating a temporary or extended order for~~
41 ~~protection against stalking, aggravated stalking or harassment issued pursuant to~~
42 ~~NRS 200.591, or of violating a temporary or extended order for protection against~~
43 ~~sexual assault pursuant to NRS 200.378; or~~

44 ~~(c) Fifteen thousand dollars, if the person has two or more previous convictions~~
45 ~~of violating a temporary or extended order for protection against domestic violence~~
46 ~~issued pursuant to NRS 33.017 to 33.100, inclusive, or of violating a restraining~~
47 ~~order or injunction that is in the nature of a temporary or extended order for~~
48 ~~protection against domestic violence issued in an action or proceeding brought~~
49 ~~pursuant to title 11 of NRS, or of violating a temporary or extended order for~~
50 ~~protection against stalking, aggravated stalking or harassment issued pursuant to~~
51 ~~NRS 200.591, or of violating a temporary or extended order for protection against~~
52 ~~sexual assault pursuant to NRS 200.378.~~

~~1 The provisions of this subsection do not affect the authority of a magistrate or a~~
~~2 court to set the amount of bail when the person personally appears before the~~
~~3 magistrate or the court or when a magistrate or a court has otherwise been contacted~~
~~4 to set the amount of bail. For the purposes of this subsection, a person shall be~~
~~5 deemed to have a previous conviction of violating a temporary or extended order~~
~~6 for protection against domestic violence issued pursuant to NRS 33.017 to 33.100,~~
~~7 inclusive, or of violating a restraining order or injunction that is in the nature of a~~
~~8 temporary or extended order for protection against domestic violence issued in an~~
~~9 action or proceeding brought pursuant to title 11 of NRS, or of violating a~~
~~10 temporary or extended order for protection against stalking, aggravated stalking or~~
~~11 harassment issued pursuant to NRS 200.591, or of violating a temporary or~~
~~12 extended order for protection against sexual assault pursuant to NRS 200.378, if the~~
~~13 person has been convicted of such an offense in this State or has been convicted of~~
~~14 violating a law of any other jurisdiction that prohibits the same or similar conduct.~~

~~15 10. The court may, before releasing a person arrested for an offense~~
~~16 punishable as a felony, require the surrender to the court of any passport the person~~
~~17 possesses.~~

~~18 11. Before releasing a person arrested for any crime, the court may impose~~
~~19 such reasonable conditions on the person as it deems necessary to protect the~~
~~20 health, safety and welfare of the community and to ensure that the person will~~
~~21 appear at all times and places ordered by the court, including, without limitation:~~

~~22 (a) Requiring the person to remain in this State or a certain county within this~~
~~23 State;~~

~~24 (b) Prohibiting the person from contacting or attempting to contact a specific~~
~~25 person or from causing or attempting to cause another person to contact that person~~
~~26 on the person's behalf;~~

~~27 (c) Prohibiting the person from entering a certain geographic area; or~~

~~28 (d) Prohibiting the person from engaging in specific conduct that may be~~
~~29 harmful to the person's own health, safety or welfare, or the health, safety or~~
~~30 welfare of another person.~~

~~31 12. In determining whether a condition is reasonable, the court shall consider the~~
~~32 factors listed in NRS 178.4853.~~

~~33 12. If a person fails to comply with a condition imposed pursuant to~~
~~34 subsection 11, the court may, after providing the person with reasonable notice and~~
~~35 an opportunity for a hearing:~~

~~36 (a) Deem such conduct a contempt pursuant to NRS 22.010; or~~

~~37 (b) Increase the amount of bail pursuant to NRS 178.499.~~

~~38 13. An order issued pursuant to this section that imposes a condition on a~~
~~39 person admitted to bail must include a provision ordering any law enforcement~~
~~40 officer to arrest the person if the officer has probable cause to believe that the~~
~~41 person has violated a condition of bail.~~

~~42 14. Before a person may be admitted to bail, the person must sign a document~~
~~43 stating that:~~

~~44 (a) The person will appear at all times and places as ordered by the court~~
~~45 releasing the person and as ordered by any court before which the charge is~~
~~46 subsequently heard;~~

~~47 (b) The person will comply with the other conditions which have been imposed~~
~~48 by the court and are stated in the document; and~~

~~49 (c) If the person fails to appear when so ordered and is taken into custody~~
~~50 outside of this State, the person waives all rights relating to extradition proceedings.~~

~~51 15. The signed document must be filed with the clerk of the court of competent~~
~~52 jurisdiction as soon as practicable, but in no event later than the next business day.~~

1 ~~15. If a person admitted to bail fails to appear as ordered by a court and the~~
2 ~~jurisdiction incurs any cost in returning the person to the jurisdiction to stand trial,~~
3 ~~the person who failed to appear is responsible for paying those costs as restitution.~~

4 ~~16. For the purposes of subsections 8 and 9, an order or injunction is in the~~
5 ~~nature of a temporary or extended order for protection against domestic violence if~~
6 ~~it grants relief that might be given in a temporary or extended order issued pursuant~~
7 ~~to NRS 22.017 to 22.100, inclusive.~~

8 ~~17. As used in this section, "strangulation" has the meaning ascribed to it in~~
9 ~~NRS 200.481.] (Deleted by amendment.)~~

10 **Sec. 5.** NRS 202.257 is hereby amended to read as follows:

11 202.257 1. It is unlawful for a person who:

12 (a) Has a concentration of alcohol of 0.10 or more in his or her blood or breath;
13 or

14 (b) Is under the influence of any controlled substance, or is under the combined
15 influence of intoxicating liquor and a controlled substance, or any person who
16 inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent,
17 or any compound or combination of any of these, to a degree which renders him or
18 her incapable of safely exercising actual physical control of a firearm,
19 to have in his or her actual physical possession any firearm. This prohibition
20 does not apply to the actual physical possession of a firearm by a person who was
21 within the person's personal residence and had the firearm in his or her possession
22 solely for self-defense.

23 2. Any evidentiary test to determine whether a person has violated the
24 provisions of subsection 1 must be administered in the same manner as an
25 evidentiary test that is administered pursuant to NRS 484C.160 to 484C.250,
26 inclusive, except that submission to the evidentiary test is required of any person
27 who is ~~directed~~ **requested** by a police officer to submit to the test. If a person to be
28 tested fails to submit to a required test as ~~directed~~ **requested** by a police officer,
29 the officer may ~~direct~~ **apply for a warrant or court order directing** that
30 reasonable force be used to the extent necessary to obtain the samples of blood
31 from the person to be tested, if the officer has reasonable cause to believe that the
32 person to be tested was in violation of this section.

33 3. Any person who violates the provisions of subsection 1 is guilty of a
34 misdemeanor.

35 4. A firearm is subject to forfeiture pursuant to NRS 179.1156 to 179.119,
36 inclusive, only if, during the violation of subsection 1, the firearm is brandished,
37 aimed or otherwise handled by the person in a manner which endangered others.

38 5. As used in this section, the phrase "concentration of alcohol of 0.10 or
39 more in his or her blood or breath" means 0.10 gram or more of alcohol per 100
40 milliliters of the blood of a person or per 210 liters of his or her breath.

41 **Sec. 6.** ~~NRS 453A.200 is hereby amended to read as follows:~~

42 ~~453A.200 1. A person who holds a registry identification card issued to him~~
43 ~~or her pursuant to NRS 453A.220 or 453A.250 is not exempt from state prosecution~~
44 ~~for, nor may the person establish an affirmative defense to charges arising from,~~
45 ~~any of the following acts:~~

46 ~~(a) Driving, operating or being in actual physical control of a vehicle or a~~
47 ~~vessel under [power or sail] way while under the influence of marijuana.~~

48 ~~(b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120,~~
49 ~~484C.130, 484C.130, subsection 2 of NRS 488.400, NRS 488.410, 488.420,~~
50 ~~488.425 or 492.130.~~

51 ~~(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS~~
52 ~~202.257.~~

~~(d) Possessing marijuana in violation of NRS 452.226 or possessing paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:~~

~~(1) Any public place or in any place open to the public or exposed to public view; or~~

~~(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.~~

~~(e) Delivering marijuana to another person who he or she knows does not lawfully hold a registry identification card issued by the Division or its designee pursuant to NRS 453A.220 or 453A.250.~~

~~(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the Division or its designee pursuant to NRS 453A.220 or 453A.250.~~

~~2. Except as otherwise provided in NRS 453A.225 and in addition to any other penalty provided by law, if the Division determines that a person has willfully violated a provision of this chapter or any regulation adopted by the Division to carry out the provisions of this chapter, the Division may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.] **(Deleted by amendment.)**~~

Sec. 7. [NRS 458.260 is hereby amended to read as follows:

~~458.260 1. Except as otherwise provided in subsection 2, the use of alcohol, the status of drunkard and the fact of being found in an intoxicated condition are not:~~

~~(a) Public offenses and shall not be so treated in any ordinance or resolution of a county, city or town;~~

~~(b) Elements of an offense giving rise to a criminal penalty or civil sanction.~~

~~2. The provisions of subsection 1 do not apply to:~~

~~(a) A civil or administrative violation for which intoxication is an element of the violation pursuant to the provisions of a specific statute or regulation;~~

~~(b) A criminal offense for which intoxication is an element of the offense pursuant to the provisions of a specific statute or regulation;~~

~~(c) A homicide resulting from driving, operating or being in actual physical control of a vehicle or a vessel under [power or sail] way while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425; and~~

~~(d) Any offense or violation which is similar to an offense or violation described in paragraph (a), (b) or (c) and which is set forth in an ordinance or resolution of a county, city or town.~~

~~3. This section does not make intoxication an excuse or defense for any criminal act.] **(Deleted by amendment.)**~~

Sec. 8. [NRS 458.270 is hereby amended to read as follows:

~~458.270 1. Except as otherwise provided in subsection 7, a person who is found in any public place under the influence of alcohol, in such a condition that the person is unable to exercise care for his or her health or safety or the health or safety of other persons, must be placed under civil protective custody by a peace officer.~~

~~2. A peace officer may use upon such a person the kind and degree of force which would be lawful if the peace officer were effecting an arrest for a misdemeanor with a warrant.~~

~~2. If a licensed facility for the treatment of persons who abuse alcohol exists in the community where the person is found, the person must be delivered to the facility for observation and care. If no such facility exists in the community, the person so found may be placed in a county or city jail or detention facility for shelter or supervision for his or her health and safety until he or she is no longer under the influence of alcohol. The person may not be required against his or her will to remain in a licensed facility, jail or detention facility longer than 48 hours.~~

~~4. An intoxicated person taken into custody by a peace officer for a public offense must immediately be taken to a secure detoxification unit or other appropriate medical facility if the condition of the person appears to require emergency medical treatment. Upon release from the detoxification unit or medical facility, the person must immediately be remanded to the custody of the apprehending peace officer and the criminal proceedings proceed as prescribed by law.~~

~~5. The placement of a person found under the influence of alcohol in civil protective custody must be:~~

~~(a) Recorded at the facility, jail or detention facility to which the person is delivered; and~~

~~(b) Communicated at the earliest practical time to the person's family or next of kin if they can be located.~~

~~6. Every peace officer and other public employee or agency acting pursuant to this section is performing a discretionary function or duty.~~

~~7. The provisions of this section do not apply to a person who is apprehended or arrested for:~~

~~(a) A civil or administrative violation for which intoxication is an element of the violation pursuant to the provisions of a specific statute or regulation;~~

~~(b) A criminal offense for which intoxication is an element of the offense pursuant to the provisions of a specific statute or regulation;~~

~~(c) A homicide resulting from driving, operating or being in actual physical control of a vehicle or a vessel under [power or sail] *may* while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425; and~~

~~(d) Any offense or violation which is similar to an offense or violation described in paragraph (a), (b) or (c) and which is set forth in an ordinance or resolution of a county, city or town. **(Deleted by amendment.)**~~

Sec. 9. Chapter 484C of NRS is hereby amended by adding thereto a new section to read as follows:

"Under the influence" means impaired to a degree that renders a person incapable of safely driving or exercising actual physical control of a vehicle.

Sec. 10. NRS 484C.010 is hereby amended to read as follows:

484C.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 484C.020 to 484C.100, inclusive, **and section 9 of this act** have the meanings ascribed to them in those sections.

Sec. 11. NRS 484C.150 is hereby amended to read as follows:

484C.150 1. Any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his or her consent to a preliminary test of his or her breath to determine the concentration of alcohol in his or her breath when the test is administered at the ~~direction~~ **request** of a police officer at the scene of a vehicle accident or collision or where the police officer stops a vehicle, if the officer has reasonable grounds to believe that the person to be tested was:

(a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance; or

(b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430.

2. If the person fails to submit to the test, the officer shall ~~seize~~:

(a) *Seize* the license or permit of the person to drive as provided in NRS 484C.220; and

(b) *If reasonable grounds otherwise exist*, arrest the person and take him or her to a convenient place for the administration of a reasonably available evidentiary test under NRS 484C.160.

3. The result of the preliminary test must not be used in any criminal action, except to show there were reasonable grounds to make an arrest.

Sec. 12. NRS 484C.160 is hereby amended to read as follows:

484C.160 1. Except as otherwise provided in subsections ~~3 and 4~~, *4 and 5*, any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his or her consent to an evidentiary test of his or her blood, urine, breath or other bodily substance to determine the concentration of alcohol in his or her blood or breath or to determine whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present, if such a test is administered at the ~~direction~~ *request* of a police officer having reasonable grounds to believe that the person to be tested was:

(a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance ~~or~~ *with a prohibited substance in his or her blood or urine; or*

(b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430.

2. *A police officer who requests that a person submit to a test pursuant to subsection 1 shall inform the person that his or her license, permit or privilege to drive will be revoked if he or she fails to submit to the test.*

3. If the person to be tested pursuant to subsection 1 is dead or unconscious, the officer shall direct that samples of blood from the person be tested.

~~3.4~~ 4. Any person who is afflicted with hemophilia or with a heart condition requiring the use of an anticoagulant as determined by a physician is exempt from any blood test which may be required pursuant to this section but must, when appropriate pursuant to the provisions of this section, be required to submit to a breath or urine test.

~~4.4~~ 5. If the concentration of alcohol in the blood or breath of the person to be tested is in issue:

(a) Except as otherwise provided in this section, the person may refuse to submit to a blood test if means are reasonably available to perform a breath test.

(b) The person may request a blood test, but if means are reasonably available to perform a breath test when the blood test is requested, and the person is subsequently convicted, the person must pay for the cost of the blood test, including the fees and expenses of witnesses *whose testimony* in court ~~or~~ *an administrative hearing is necessary because of the use of the blood test. The expenses of such a witness must* *may* be assessed at an hourly rate of not less than:

(1) *Fifty dollars for travel to and from the place of the proceeding; and*

(2) *One hundred dollars for giving or waiting to give testimony.*

(c) ~~A police officer may direct the person to submit to a blood test if the officer has reasonable grounds to believe that the person:~~

~~(1) Caused death or substantial bodily harm to another person as a result of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or as a result of engaging in any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430; or~~

~~(2) Has been convicted within the previous 7 years of:~~

~~(I) A violation of NRS 484C.110, 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425 or a law of another jurisdiction that prohibits the same or similar conduct; or~~

~~(II) Any other offense in this State or another jurisdiction in which death or substantial bodily harm to another person resulted from conduct prohibited by a law set forth in sub-subparagraph (I).~~

~~5-} Except as otherwise provided in NRS 484C.200, not more than three samples of the person's blood or breath may be taken during the 5-hour period immediately following the time of the initial arrest.~~

6. If the presence of a controlled substance, chemical, poison, organic solvent or another prohibited substance in the blood or urine of the person is in issue, the officer may ~~direct~~ request that the person ~~to~~ submit to a blood or urine test, or both, ~~in addition to the breath test.~~

~~6-} 7. Except as otherwise provided in subsections 3 and 5-} 4 and 6, a police officer shall not direct request that a person to submit to a urine test.~~

~~7-} 8. If a person to be tested fails to submit to a required test as directed requested by a police officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was:~~

(a) Driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance ~~to~~ or *with a prohibited substance in his or her blood or urine; or*

(b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430,

the officer may ~~direct~~ *apply for a warrant or court order directing* that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested. ~~Not more than three such samples may be taken during the 5-hour period immediately following the time of the initial arrest. In such a circumstance, the officer is not required to provide the person with a choice of tests for determining the concentration of alcohol or presence of a controlled substance or another prohibited substance in his or her blood.~~

~~8-} 9. If a person who is less than 18 years of age is directed requested to submit to an evidentiary test pursuant to this section, the officer shall, before testing the person, make a reasonable attempt to notify the parent, guardian or custodian of the person, if known.~~

Sec. 13. NRS 484C.200 is hereby amended to read as follows:

484C.200 1. Except as otherwise provided in subsection 2, an evidentiary test of breath to determine the concentration of alcohol in a person's breath may be used to establish that concentration only if two consecutive samples of the person's breath are taken and:

(a) The difference between the concentration of alcohol in the person's breath indicated by the two samples is less than or equal to 0.02;

(b) If the provisions of paragraph (a) do not apply, a third evidentiary test of breath is administered and the difference between the concentration of alcohol in the person's breath indicated by the third sample and one of the first two samples is less than or equal to 0.02; or

(c) If the provisions of paragraphs (a) and (b) do not apply, a fourth evidentiary test is administered. Except as otherwise provided in NRS 484C.160, the fourth evidentiary test must be a blood test.

2. If the person fails to provide the second or third consecutive sample, or to submit to the fourth evidentiary test, the results of the first test may be used alone as evidence of the concentration of alcohol in the person's breath. If for some other reason a second, third or fourth sample is not obtained, the results of the first test may be used with all other evidence presented to establish the concentration.

3. If a person refuses or otherwise fails to provide a second or third consecutive sample or submit to a fourth evidentiary test, ~~the police officer may direct that reasonable force be used to obtain a sample or conduct a test pursuant to~~ such refusal or failure constitutes a failure to submit to a required test as provided in NRS 484C.160.

Sec. 14. NRS 484C.210 is hereby amended to read as follows:

484C.210 1. *If a person fails to submit to an evidentiary test as requested by a police officer pursuant to NRS 484C.160, the license, permit or privilege to drive of the person must be revoked as provided in NRS 484C.220, and the person is not eligible for a license, permit or privilege to drive for a period of:*

(a) *One year; or*

(b) *Three years, if the license, permit or privilege to drive of the person has been revoked during the immediately preceding 7 years for failure to submit to an evidentiary test.*

2. If the result of a test given under NRS 484C.150 or 484C.160 shows that a person had a concentration of alcohol of 0.08 or more in his or her blood or breath or a detectable amount of a controlled substance for which he or she did not have a valid prescription or a prohibited substance in his or her blood or urine at the time of the test, the license, permit or privilege of the person to drive must be revoked as provided in NRS 484C.220 and the person is not eligible for a license, permit or privilege for a period of 90 days.

~~2-3~~ 3. If a revocation of a person's license, permit or privilege to drive under NRS 62E.640 or 483.460 follows a revocation under subsection ~~HH~~ 2 which was based on the person having a concentration of alcohol of 0.08 or more in his or her blood or breath, the Department shall cancel the revocation under that subsection and give the person credit for any period during which the person was not eligible for a license, permit or privilege.

~~3-3~~ 4. Periods of ineligibility for a license, permit or privilege to drive which are imposed pursuant to this section must run consecutively.

Sec. 15. NRS 484C.220 is hereby amended to read as follows:

484C.220 1. As agent for the Department, the officer who *requested that a test be given pursuant to NRS 484C.150 or 484C.160 or who* obtained the result of a test given pursuant to NRS 484C.150 or 484C.160 shall immediately serve an order of revocation of the license, permit or privilege to drive on a person who *failed to submit to a test requested by the police officer pursuant to NRS 484C.150 or 484C.160 or who* has a concentration of alcohol of 0.08 or more in his or her blood or breath or has a detectable amount of a controlled substance for which he or she does not have a valid prescription or a prohibited substance in his or her blood or urine, if that person is present, and shall seize the license or permit to drive of the person. The officer shall then, *unless the information is expressly set forth in the order of revocation*, advise the person of his or her right to administrative and judicial review of the revocation pursuant to NRS 484C.230 and, except as otherwise provided in this subsection, that the person has a right to request a temporary license. If the person currently is driving with a temporary license that was issued pursuant to this section or NRS 484C.230, the person is not entitled to request an additional temporary license pursuant to this section or NRS 484C.230, and the order of revocation issued by the officer must revoke the temporary license that was previously issued. If the person is entitled to request a

temporary license, the officer shall issue the person a temporary license on a form approved by the Department if the person requests one, which is effective for only 7 days including the date of issuance. The officer shall immediately transmit the person's license or permit to the Department along with the written certificate required by subsection 2.

2. When a police officer has served an order of revocation of a driver's license, permit or privilege on a person pursuant to subsection 1, or later receives the result of an evidentiary test which indicates that a person, not then present, had a concentration of alcohol of 0.08 or more in his or her blood or urine, or had a detectable amount of a controlled substance for which he or she did not have a valid prescription or a prohibited substance in his or her blood or urine, the officer shall immediately prepare and transmit to the Department, together with the seized license or permit and a copy of the result of the test, *if any*, a written certificate that the officer had reasonable grounds to believe that the person had been driving or in actual physical control of a vehicle ~~with~~ :

(a) *With* a concentration of alcohol of 0.08 or more in his or her blood or breath or with a detectable amount of a controlled substance for which he or she did not have a valid prescription or a prohibited substance in his or her blood or urine, as determined by a chemical test ~~+~~ ; or

(b) *While under the influence of intoxicating liquor or a controlled substance or with a prohibited substance in his or her blood or urine and the person refused to submit to a required evidentiary test.*

↳ The certificate must also indicate whether the officer served an order of revocation on the person and whether the officer issued the person a temporary license.

3. The Department, upon receipt of such a certificate for which an order of revocation has not been served, after examining the certificate and copy of the result of the chemical test, if any, and finding that revocation is proper, shall issue an order revoking the person's license, permit or privilege to drive by mailing the order to the person at the person's last known address. The order must indicate the grounds for the revocation and the period during which the person is not eligible for a license, permit or privilege to drive and state that the person has a right to administrative and judicial review of the revocation and to have a temporary license. The order of revocation becomes effective 5 days after mailing.

4. Notice of an order of revocation and notice of the affirmation of a prior order of revocation or the cancellation of a temporary license provided in NRS 484C.230 is sufficient if it is mailed to the person's last known address as shown by any application for a license. The date of mailing may be proved by the certificate of any officer or employee of the Department, specifying the time of mailing the notice. The notice is presumed to have been received upon the expiration of 5 days after it is deposited, postage prepaid, in the United States mail.

Sec. 16. NRS 484C.230 is hereby amended to read as follows:

484C.230 1. At any time while a person is not eligible for a license, permit or privilege to drive following an order of revocation issued pursuant to NRS 484C.220, the person may request in writing a hearing by the Department to review the order of revocation, but the person is only entitled to one hearing. The hearing must be conducted ~~within 15 days after receipt of the request, or,~~ as soon ~~thereafter,~~ as is practicable, ~~in the county where the requester resides unless the parties agree otherwise,~~ at any location, if the hearing officer permits each party and witness to attend the hearing by telephone, videoconference or other electronic means. The Director or agent of the Director may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the requester. Unless the person is ineligible for a

1 temporary license pursuant to NRS 484C.220, the Department shall issue an
2 additional temporary license for a period which is sufficient to complete the
3 administrative review.

4 2. The scope of the hearing must be limited to the issue of whether the person
5 ~~is at~~:

6 (a) *Failed to submit to a required test provided for in NRS 484C.150 or*
7 *484C.160; or*

8 (b) *At the time of the test, had a concentration of alcohol of 0.08 or more in his*
9 *or her blood or breath or a detectable amount of a controlled substance for which*
10 *he or she did not have a valid prescription or a prohibited substance in his or her*
11 *blood or urine.*

12 *Upon an affirmative finding on ~~this~~ either issue, the Department shall affirm*
13 *the order of revocation. Otherwise, the order of revocation must be rescinded.*

14 3. If, after the hearing, the order of revocation is affirmed, the person whose
15 license, privilege or permit has been revoked is entitled to a review of the same
16 issues in district court in the same manner as provided by chapter 233B of NRS.
17 The court shall notify the Department upon the issuance of a stay, and the
18 Department shall issue an additional temporary license for a period which is
19 sufficient to complete the review.

20 4. If a hearing officer grants a continuance of a hearing at the request of the
21 person whose license was revoked, or a court does so after issuing a stay of the
22 revocation, the officer or court shall notify the Department, and the Department
23 shall cancel the temporary license and notify the holder by mailing the order of
24 cancellation to the person's last known address.

25 **Sec. 17.** NRS 484C.240 is hereby amended to read as follows:

26 484C.240 1. If a person refuses to submit to a required chemical test
27 provided for in NRS 484C.150 or 484C.160, evidence of that refusal is admissible
28 in any criminal or administrative action arising out of acts alleged to have been
29 committed while the person was:

30 (a) Driving or in actual physical control of a vehicle while under the influence
31 of intoxicating liquor or a controlled substance ~~is~~ *or with a prohibited substance in*
32 *his or her blood or urine; or*

33 (b) Engaging in any other conduct prohibited by NRS 484C.110, 484C.120,
34 484C.130 or 484C.430.

35 2. Except as otherwise provided in subsection 3 of NRS 484C.150, a court or
36 hearing officer may not exclude evidence of a required test or failure to submit to
37 such a test if the police officer or other person substantially complied with the
38 provisions of NRS 484C.150 to 484C.250, inclusive, and 484C.600 to 484C.640,
39 inclusive.

40 3. If a person submits to a chemical test provided for in NRS 484C.150 or
41 484C.160, full information concerning that test must be made available, upon
42 request of the person, to the person or his or her attorney.

43 4. Evidence of a required test is not admissible in a criminal or administrative
44 proceeding unless it is shown by documentary or other evidence that the law
45 enforcement agency calibrated the breath-testing device and otherwise maintained
46 it as required by the regulations of the Committee on Testing for Intoxication.

47 **Sec. 18.** NRS 484C.250 is hereby amended to read as follows:

48 484C.250 1. The results of any blood test administered under the provisions
49 of NRS 484C.160 or 484C.180 are not admissible in any hearing or criminal action
50 arising out of acts alleged to have been committed by a person who was driving or
51 in actual physical control of a vehicle while under the influence of intoxicating
52 liquor or a controlled substance *or with a prohibited substance in his or her blood*

1 **or urine** or who was engaging in any other conduct prohibited by NRS 484C.110,
2 484C.120, 484C.130 or 484C.430 unless:

3 (a) The blood tested was withdrawn by a person, other than an arresting
4 officer, who:

5 (1) Is a physician, physician assistant licensed pursuant to chapter 630 or
6 633 of NRS, registered nurse, licensed practical nurse, advanced emergency
7 medical technician, paramedic or a phlebotomist, technician, technologist or
8 assistant employed in a medical laboratory; or

9 (2) Has special knowledge, skill, experience, training and education in
10 withdrawing blood in a medically acceptable manner, including, without limitation,
11 a person qualified as an expert on that subject in a court of competent jurisdiction
12 or a person who has completed a course of instruction that qualifies him or her to
13 take an examination in phlebotomy that is administered by the American Medical
14 Technologists or the American Society for Clinical Pathology; and

15 (b) The test was performed on whole blood, except if the sample was clotted
16 when it was received by the laboratory, the test may be performed on blood serum
17 or plasma.

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

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

23 **Sec. 19. ~~NRS 484C.360 is hereby amended to read as follows:~~**

24 ~~484C.360 1. When a program of treatment is ordered pursuant to NRS~~
25 ~~484C.340 or paragraph (a) or (b) of subsection 1 of NRS 484C.400, the court shall~~
26 ~~place the offender under the clinical supervision of a treatment facility for treatment~~
27 ~~in accordance with the report submitted to the court pursuant to NRS 484C.340 or~~
28 ~~subsection 3, 4, 5 or 6 of NRS 484C.350, as appropriate. The court shall:~~

29 ~~(a) Order the offender confined in a treatment facility, then release the offender~~
30 ~~for supervised aftercare in the community; or~~

31 ~~(b) Release the offender for treatment in the community,~~
32 ~~for the period of supervision ordered by the court.~~

33 ~~2. The court shall:~~

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

36 ~~(b) Order the offender, to the extent of his or her financial resources, to pay~~
37 ~~any charges for treatment pursuant to this section. If the offender does not have the~~
38 ~~financial resources to pay all those charges, the court shall, to the extent possible,~~
39 ~~arrange for the offender to obtain the treatment from a treatment facility that~~
40 ~~receives a sufficient amount of federal or state money to offset the remainder of the~~
41 ~~charges.~~

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

44 ~~(a) Drives, operates or is in actual physical control of a vehicle or a vessel~~
45 ~~under [power or sail] way while under the influence of intoxicating liquor or a~~
46 ~~controlled substance; or~~

47 ~~(b) Engages in any other conduct prohibited by NRS 484C.110, 484C.120,~~
48 ~~484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
49 ~~488.425 or a law of any other jurisdiction that prohibits the same or similar~~
50 ~~conduct.~~

51 ~~after the treatment facility has certified that the offender has successfully~~
52 ~~completed a program of treatment ordered pursuant to NRS 484C.340 or paragraph~~
53 ~~(a) or (b) of subsection 1 of NRS 484C.400.~~ **(Deleted by amendment.)**

1 **Sec. 20.** NRS 488.035 is hereby amended to read as follows:

2 488.035 As used in this chapter, unless the context otherwise requires:

3 1. "Aquatic invasive species" means an aquatic species which is exotic or not
4 native to this State and which the Commission has determined to be detrimental to
5 aquatic life, water resources or infrastructure for providing water in this State.

6 2. "Aquatic plant material" means aquatic plants or parts of plants that are
7 dependent on an aquatic environment to survive.

8 3. "Commission" means the Board of Wildlife Commissioners.

9 4. "Conveyance" means a motor vehicle, trailer or any other equipment used
10 to transport a vessel or containers or devices used to haul water on a vessel that may
11 contain or carry an aquatic invasive species or aquatic plant material.

12 5. "Decontaminate" means eliminate any aquatic invasive species on a vessel
13 or conveyance in a manner specified by the Commission which may include,
14 without limitation, washing the vessel or conveyance, draining the water in the
15 vessel or conveyance, drying the vessel or conveyance or chemically, thermally or
16 otherwise treating the vessel or conveyance.

17 6. "Department" means the Department of Wildlife.

18 7. "Flat wake" means the condition of the water close astern a moving vessel
19 that results in a flat wave disturbance.

20 8. "Interstate waters of this State" means waters forming the boundary
21 between the State of Nevada and an adjoining state.

22 9. "Legal owner" means a secured party under a security agreement relating
23 to a vessel or a renter or lessor of a vessel to the State or any political subdivision of
24 the State under a lease or an agreement to lease and sell or to rent and purchase
25 which grants possession of the vessel to the lessee for a period of 30 consecutive
26 days or more.

27 10. "Motorboat" means any vessel propelled by machinery, whether or not
28 the machinery is the principal source of propulsion.

29 11. "Operate" means to navigate or otherwise use a motorboat or a vessel.

30 12. "Owner" means:

31 (a) A person having all the incidents of ownership, including the legal title of a
32 vessel, whether or not he or she lends, rents or pledges the vessel; and

33 (b) A debtor under a security agreement relating to a vessel.

34 ➤ "Owner" does not include a person defined as a "legal owner" under subsection
35 9.

36 13. "Prohibited substance" has the meaning ascribed to it in NRS 484C.080.

37 14. "Registered owner" means the person registered by the Commission as
38 the owner of a vessel.

39 15. *"Under the influence" means impaired to a degree that renders a*
40 *person incapable of safely operating or exercising actual physical control of a*
41 *vessel.*

42 16. A vessel is "under way" if it is adrift, making way or being propelled, and
43 is not aground, made fast to the shore, or tied or made fast to a dock or mooring.

44 ~~H6+~~ 17. "Vessel" means every description of watercraft, other than a
45 seaplane on the water, used or capable of being used as a means of transportation
46 on water.

47 ~~H7+~~ 18. "Waters of this State" means any waters within the territorial limits
48 of this State.

49 **Sec. 21.** ~~NRS 488.410 is hereby amended to read as follows:~~

50 ~~488.410 1. It is unlawful for any person who:~~

51 ~~(a) Is under the influence of intoxicating liquor;~~

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

53 ~~or~~

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

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

~~2. It is unlawful for any person who:~~

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

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

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

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

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

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

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

~~5. Except as otherwise provided in NRS 488.427, a person who violates the provisions of this section is guilty of a misdemeanor.] (Deleted by amendment.)~~

Sec. 22. ~~[NRS 488.420 is hereby amended to read as follows:~~

~~488.420 1. Unless a greater penalty is provided pursuant to NRS 488.425, a person who:~~

~~(a) Is under the influence of intoxicating liquor;~~

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

~~(c) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel under [power or sail] way to have a concentration of alcohol of 0.08 or more in his or her blood or breath;~~

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

~~(e) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely operating or being in actual physical control of a vessel under [power or sail] way; or~~

~~(f) Has a prohibited substance in his or her blood or urine in an amount that is equal to or greater than the amount set forth in subsection 2 of NRS 488.410,~~

~~and does any act or neglects any duty imposed by law while operating or being in actual physical control of any vessel under [power or sail] way, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, another person, 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 20 years and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.~~

~~2. A prosecuting attorney shall not dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless the prosecuting attorney knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial. A sentence imposed pursuant to subsection 1 must not be suspended, and probation must not be granted.~~

~~3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after operating or being in actual physical control of the vessel under [power or sail] way, and before his or her blood was tested, to cause the defendant to have a concentration of alcohol of 0.08 or more in his or her blood or breath. A defendant who intends to offer this defense at a trial or preliminary hearing must, not less than 14 days before the trial or hearing or at such other time as the court may direct, file and serve on the prosecuting attorney a written notice of that intent.~~

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

Sec. 23. ~~[NRS 488.425 is hereby amended to read as follows:~~

~~488.425 1. A person commits homicide by vessel if the person:~~

~~(a) Operates or is in actual physical control of a vessel under [power or sail] way on the waters of this State and:~~

~~(1) Is under the influence of intoxicating liquor;~~

~~(2) Has a concentration of alcohol of 0.08 or more in his or her blood or breath;~~

~~(3) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel under [power or sail] way to have a concentration of alcohol of 0.08 or more in his or her blood or breath;~~

~~(4) Is under the influence of a controlled substance or is under the combined influence of intoxicating liquor and a controlled substance;~~

~~(5) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree~~

1 ~~which renders the person incapable of safely operating or exercising actual physical~~
2 ~~control of a vessel under [power or sail;] way or~~

3 ~~(6) Has a prohibited substance in his or her blood or urine in an amount~~
4 ~~that is equal to or greater than the amount set forth in subsection 3 of NRS 488.410;~~

5 ~~(b) Proximately causes the death of another person while operating or in actual~~
6 ~~physical control of a vessel under [power or sail;] way; and~~

7 ~~(c) Has previously been convicted of at least three offenses.~~

8 ~~2. A person who commits homicide by vessel is guilty of a category A felony~~
9 ~~and shall be punished by imprisonment in the state prison:~~

10 ~~(a) For life with the possibility of parole, with eligibility for parole beginning~~
11 ~~when a minimum of 10 years has been served; or~~

12 ~~(b) For a definite term of 25 years, with eligibility for parole beginning when a~~
13 ~~minimum of 10 years has been served.~~

14 ~~3. A person imprisoned pursuant to subsection 2 must, insofar as practicable,~~
15 ~~be segregated from offenders whose crimes were violent and, insofar as practicable,~~
16 ~~be assigned to an institution or facility of minimum security.~~

17 ~~4. A prosecuting attorney shall not dismiss a charge of homicide by vessel in~~
18 ~~exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser~~
19 ~~charge or for any other reason unless the prosecuting attorney knows or it is~~
20 ~~obvious that the charge is not supported by probable cause or cannot be proved at~~
21 ~~the time of trial. A sentence imposed pursuant to subsection 2 may not be~~
22 ~~suspended nor may probation be granted.~~

23 ~~5. If consumption is proven by a preponderance of the evidence, it is an~~
24 ~~affirmative defense under subparagraph (3) of paragraph (a) of subsection 1 that the~~
25 ~~defendant consumed a sufficient quantity of alcohol after operating or being in~~
26 ~~actual physical control of the vessel, and before his or her blood or breath was~~
27 ~~tested, to cause the defendant to have a concentration of alcohol of 0.08 or more in~~
28 ~~his or her blood or breath. A defendant who intends to offer this defense at a trial or~~
29 ~~preliminary hearing must, not less than 14 days before the trial or hearing or at such~~
30 ~~other time as the court may direct, file and serve on the prosecuting attorney a~~
31 ~~written notice of that intent.~~

32 ~~6. If the defendant was transporting a person who is less than 15 years of age~~
33 ~~in the vessel at the time of the violation, the court shall consider that fact as an~~
34 ~~aggravating factor in determining the sentence of the defendant.~~

35 ~~7. As used in this section, "offense" means:~~

36 ~~(a) A violation of NRS 488.410 or 488.420;~~

37 ~~(b) A homicide resulting from operating or being in actual physical control of a~~
38 ~~vessel while under the influence of intoxicating liquor or a controlled substance or~~
39 ~~resulting from any other conduct prohibited by this section or NRS 488.410 or~~
40 ~~488.420; or~~

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

43 **Sec. 24.** NRS 488.450 is hereby amended to read as follows:

44 488.450 1. Any person who operates or is in actual physical control of a
45 vessel under power or sail ~~way~~ on the waters of this State shall be deemed to have
46 given consent to a preliminary test of his or her breath to determine the
47 concentration of alcohol in his or her breath when the test is administered at the
48 ~~direction~~ request of a peace officer after a vessel accident or collision or where an
49 officer stops a vessel, if the officer has reasonable grounds to believe that the
50 person to be tested was:

51 (a) Operating or in actual physical control of a vessel under power or sail ~~way~~
52 while under the influence of intoxicating liquor or a controlled substance; or

(b) Engaging in any other conduct prohibited by NRS 488.410, 488.420 or 488.425.

2. If the person fails to submit to the test, the officer shall, *if reasonable grounds otherwise exist*, arrest the person and take him or her to a convenient place for the administration of a reasonably available evidentiary test under NRS 488.460.

3. The result of the preliminary test must not be used in any criminal action, except to show there were reasonable grounds to make an arrest.

Sec. 25. NRS 488.460 is hereby amended to read as follows:

488.460 1. Except as otherwise provided in subsections 3 and 4, a person who operates or is in actual physical control of a vessel under ~~power or sail~~ *freight* on the waters of this State shall be deemed to have given consent to an evidentiary test of his or her blood, urine, breath or other bodily substance to determine the concentration of alcohol in his or her blood or breath or to determine whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present, if such a test is administered at the ~~direction~~ *request* of a peace officer having reasonable grounds to believe that the person to be tested was:

(a) Operating or in actual physical control of a vessel under ~~power or sail~~ *freight* while under the influence of intoxicating liquor or a controlled substance ~~or~~ *with a prohibited substance in his or her blood or urine; or*

(b) Engaging in any other conduct prohibited by NRS 488.410, 488.420 or 488.425.

2. If the person to be tested pursuant to subsection 1 is dead or unconscious, the officer shall direct that samples of blood from the person be tested.

3. Any person who is afflicted with hemophilia or with a heart condition requiring the use of an anticoagulant as determined by a physician is exempt from any blood test which may be required pursuant to this section, but must, when appropriate pursuant to the provisions of this section, be required to submit to a breath or urine test.

4. If the concentration of alcohol of the blood or breath of the person to be tested is in issue:

(a) Except as otherwise provided in this section, the person may refuse to submit to a blood test if means are reasonably available to perform a breath test.

(b) The person may request a blood test, but if means are reasonably available to perform a breath test when the blood test is requested, and the person is subsequently convicted, the person must pay for the cost of the blood test, including the fees and expenses of witnesses *whose testimony in court is necessary because of the use of the blood test. The expenses of such a witness must may be assessed at an hourly rate of not less than:*

(1) Fifty dollars for travel to and from the place of the proceeding; and

(2) One hundred dollars for giving or waiting to give testimony.

~~(c) A peace officer may direct the person to submit to a blood test if the officer has reasonable grounds to believe that the person:~~

~~(1) Caused death or substantial bodily harm to another person as a result of operating or being in actual physical control of a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance or as a result of engaging in any other conduct prohibited by NRS 488.410, 488.420 or 488.425; or~~

~~(2) Has been convicted within the previous 7 years of:~~

~~(I) A violation of NRS 484C.110, 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 488.425 or a law of another jurisdiction that prohibits the same or similar conduct; or~~

~~(II) Any other offense in this State or another jurisdiction in which death or substantial bodily harm to another person resulted from conduct prohibited~~

~~by a law set forth in sub-subparagraph (1). Except as otherwise provided in NRS 488.470, not more than three samples of the person's blood or breath may be taken during the 5-hour period immediately following the time of the initial arrest.~~

5. If the presence of a controlled substance, chemical, poison, organic solvent or another prohibited substance in the blood or urine of the person is in issue, the officer may ~~direct~~ request that the person ~~to~~ submit to a blood or urine test, or both. ~~in addition to the breath test.~~

6. Except as otherwise provided in subsections 3 and 5, a peace officer shall not ~~direct~~ request that a person ~~to~~ submit to a urine test.

7. If a person to be tested fails to submit to a required test as ~~directed~~ requested by a peace officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was:

(a) Operating or in actual physical control of a vessel under ~~power or sail~~ ~~way~~ while under the influence of intoxicating liquor or a controlled substance ~~to~~ or with a prohibited substance in his or her blood or urine; or

(b) Engaging in any other conduct prohibited by NRS 488.410, 488.420 or 488.425,

the officer may ~~direct~~ apply for a warrant or court order directing that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested. ~~Not more than three such samples may be taken during the 5-hour period immediately following the time of the initial arrest. In such a circumstance, the officer is not required to provide the person with a choice of tests for determining the alcoholic content or presence of a controlled substance or another prohibited substance in the person's blood.~~

8. If a person who is less than 18 years of age is requested to submit to an evidentiary test pursuant to this section, the officer shall, before testing the person, make a reasonable attempt to notify the parent, guardian or custodian of the person, if known.

Sec. 26. NRS 488.470 is hereby amended to read as follows:

488.470 1. Except as otherwise provided in subsection 2, an evidentiary test of breath to determine the concentration of alcohol in a person's breath may be used to establish that concentration only if two consecutive samples of the person's breath are taken and:

(a) The difference between the concentration of alcohol in the person's breath indicated by the two samples is less than or equal to 0.02;

(b) If the provisions of paragraph (a) do not apply, a third evidentiary test of breath is administered and the difference between the concentration of alcohol in the person's breath indicated by the third sample and one of the first two samples is less than or equal to 0.02; or

(c) If the provisions of paragraphs (a) and (b) do not apply, a fourth evidentiary test is administered. Except as otherwise provided in NRS 488.460, the fourth evidentiary test must be a blood test.

2. If the person fails to provide the second or third consecutive sample, or to submit to the fourth evidentiary test, the results of the first test may be used alone as evidence of the concentration of alcohol in the person's breath. If for some other reason a second, third or fourth sample is not obtained, the results of the first test may be used with all other evidence presented to establish the concentration.

3. If a person refuses or otherwise fails to provide a second or third consecutive sample or submit to a fourth evidentiary test, ~~the peace officer may direct that reasonable force be used to obtain a sample or conduct a test pursuant to such refusal or failure constitutes a failure to submit to a required evidentiary test as provided in~~ NRS 488.460.

1 **Sec. 27.** ~~[NRS 488.480 is hereby amended to read as follows:~~
2 ~~488.480 1. If a person refuses to submit to a required chemical test provided~~
3 ~~for in NRS 488.450 or 488.460, evidence of that refusal is admissible in any~~
4 ~~criminal action arising out of acts alleged to have been committed while the person~~
5 ~~was:~~
6 ~~(a) Operating or in actual physical control of a vessel under [power or sail] way~~
7 ~~while under the influence of intoxicating liquor or a controlled substance; or~~
8 ~~(b) Engaging in any other conduct prohibited by NRS 488.410, 488.420 or~~
9 ~~488.425.~~
10 ~~2. Except as otherwise provided in subsection 3 of NRS 488.450, a court may~~
11 ~~not exclude evidence of a required test or failure to submit to such a test if the~~
12 ~~peace officer or other person substantially complied with the provisions of NRS~~
13 ~~488.450 to 488.500, inclusive.~~
14 ~~3. If a person submits to a chemical test provided for in NRS 488.450 or~~
15 ~~488.460, full information concerning that test must be made available, upon~~
16 ~~request, to the person or the person's attorney.~~
17 ~~4. Evidence of a required test is not admissible in a criminal proceeding~~
18 ~~unless it is shown by documentary or other evidence that the device for testing~~
19 ~~breath was certified pursuant to NRS 484C.610 and was calibrated, maintained and~~
20 ~~operated as provided by the regulations of the Committee on Testing for~~
21 ~~Intoxication adopted pursuant to NRS 484C.620, 484C.630 or 484C.640.~~
22 ~~5. If the device for testing breath has been certified by the Committee on~~
23 ~~Testing for Intoxication to be accurate and reliable pursuant to NRS 484C.610, it is~~
24 ~~presumed that, as designed and manufactured, the device is accurate and reliable for~~
25 ~~the purpose of testing a person's breath to determine the concentration of alcohol in~~
26 ~~the person's breath.~~
27 ~~6. A court shall take judicial notice of the certification by the Director of a~~
28 ~~person to operate testing devices of one of the certified types. If a test to determine~~
29 ~~the amount of alcohol in a person's breath has been performed with a certified type~~
30 ~~of device by a person who is certified pursuant to NRS 484C.630 or 484C.640, it is~~
31 ~~presumed that the person operated the device properly.~~
32 ~~7. This section does not preclude the admission of evidence of a test of a~~
33 ~~person's breath where the:~~
34 ~~(a) Information is obtained through the use of a device other than one of a type~~
35 ~~certified by the Committee on Testing for Intoxication;~~
36 ~~(b) Test has been performed by a person other than one who is certified by the~~
37 ~~Director.~~
38 ~~8. As used in this section, "Director" means the Director of the Department of~~
39 ~~Public Safety.] (Deleted by amendment.)~~

40 **Sec. 28.** ~~[NRS 488.490 is hereby amended to read as follows:~~
41 ~~488.490 1. A person who is arrested for operating or being in actual~~
42 ~~physical control of a vessel under [power or sail] way while under the influence of~~
43 ~~intoxicating liquor or a controlled substance or for engaging in any other conduct~~
44 ~~prohibited by NRS 488.410, 488.420 or 488.425 must be permitted, upon the~~
45 ~~person's request and at his or her expense, reasonable opportunity to have a~~
46 ~~qualified person of his or her own choosing administer a chemical test to determine:~~
47 ~~(a) The concentration of alcohol in his or her blood or breath; or~~
48 ~~(b) Whether a controlled substance, chemical, poison, organic solvent or~~
49 ~~another prohibited substance is present in his or her blood or urine.~~
50 ~~2. The failure or inability to obtain such a test does not preclude the~~
51 ~~admission of evidence relating to the refusal to submit to a test or relating to a test~~
52 ~~taken upon the request of a peace officer.~~

~~2. A test obtained under the provisions of this section may not be substituted for or stand in lieu of the test required by NRS 488.460.~~ **(Deleted by amendment.)**

Sec. 29. NRS 488.500 is hereby amended to read as follows:

488.500 1. The results of any blood test administered under the provisions of NRS 488.460 or 488.490 are not admissible in any criminal action arising out of acts alleged to have been committed by a person who was operating or in actual physical control of a vessel under ~~power or sail~~ **while** while under the influence of intoxicating liquor or a controlled substance or **with a prohibited substance in his or her blood or urine or** who was engaging in any other conduct prohibited by NRS 488.410, 488.420 or 488.425 unless:

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

(1) Is a physician, registered nurse, licensed practical nurse, advanced emergency medical technician, paramedic or a phlebotomist, technician, technologist or assistant employed in a medical laboratory; or

(2) Has special knowledge, skill, experience, training and education in withdrawing blood in a medically acceptable manner, including, without limitation, a person qualified as an expert on that subject in a court of competent jurisdiction or a person who has completed a course of instruction that qualifies him or her to take an examination in phlebotomy that is administered by the American Medical Technologists or the American Society for Clinical Pathology; and

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

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

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

Sec. 30. ~~NRS 488.520 is hereby amended to read as follows:~~

~~488.520 1. Any coroner, or other public officer performing like duties, shall in all cases in which a death has occurred as a result of an accident involving a vessel under [power or sail] on the waters of this state, whether the person killed is the operator of the vessel or a passenger or other person, cause to be drawn from each decedent, within 8 hours after the accident, a blood sample to be analyzed for the presence and concentration of alcohol.~~

~~2. The findings of the examinations are a matter of public record and must be reported to the Commission by the coroner or other public officer within 30 days after the death.~~

~~3. Analyses of blood alcohol are acceptable only if made by laboratories licensed to perform this function.~~ **(Deleted by amendment.)**

Sec. 31. ~~[This act becomes]~~

1. This section and sections 2 to 30, inclusive, of this act become effective upon passage and approval.

2. Section 1 of this act becomes effective on July 1, 2015.