

ASSEMBLY BILL NO. 397—ASSEMBLYWOMAN KASAMA

MARCH 24, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing public safety.
(BDR 43-210)

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

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

AN ACT relating to public safety; revising provisions relating to prohibited acts concerning the use of marijuana and certain other controlled substances; revising the penalties for a person who drives under the influence of alcohol or other substances and causes the death of, or substantial bodily harm to, another person; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law sets forth various penalties involving driving under the influence of alcohol or a controlled substance or with a specific amount of alcohol, a prohibited substance, or marijuana or marijuana metabolite in his or her blood. (Chapter 484C of NRS) Under existing law, the prohibition on driving with a specific amount of marijuana or marijuana metabolite in a person’s blood only applies if the offense is punishable as a felony because the offense: (1) is a third offense within 7 years; (2) constitutes vehicular homicide; or (3) proximately causes the death of, or substantial bodily harm to, another person. (NRS 484C.110, 484C.130, 484C.400, 484C.430) Additionally, existing law provides that a person who drives under the influence of alcohol or a controlled substance or with a certain amount of alcohol or a prohibited substance in his or her blood is guilty of a felony if the person has previously been convicted of a felony for: (1) committing three such offenses within 7 years; (2) an offense that proximately caused the death of, or substantial bodily harm to, another person; (3) a homicide resulting from such an offense; (4) a violation of a law of any other jurisdiction that prohibits the same or similar conduct; or (5) a violation that has been reduced from a felony. This provision of law is commonly known as the “Once a Felon, Always a Felon” rule. (NRS 484C.410) **Section 1** of this bill provides that the prohibition on a person driving with a specific amount of marijuana or marijuana metabolite in his or her blood also applies to an offense if the person has previously been convicted of a felony under the “Once a Felon, Always a Felon” rule.



Existing law also provides that an offense for driving under the influence of alcohol or a controlled substance that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense: (1) when evidenced by a conviction; or (2) if the offense is conditionally dismissed or the judgment of conviction is set aside or dismissed in connection with successful completion of a diversionary program or specialty court program. (NRS 484C.400) **Section 2** of this bill provides that an offense constitutes a prior offense if the person was ordered to undergo a program of treatment for an alcohol or other substance use disorder as the result of committing a third offense within 7 years.

Existing law provides that if a person has previously been convicted of a felony and subsequently drives a vehicle under the influence of alcohol or a controlled substance, the person is guilty of a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not less than \$2,000 nor more than \$5,000. (NRS 484C.410) **Section 3** of this bill provides that a person is subject to the same punishment if, at the time of the offense, the person is undergoing a program of treatment for an alcohol or other substance use disorder as the result of committing a third offense within 7 years.

Existing law provides that a person who drives a vehicle under the influence of alcohol or a controlled substance and proximately causes the death of, or substantial bodily harm to, another person is guilty of a category B felony punishable 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 by a fine of not less than \$2,000 nor more than \$5,000. (NRS 484C.430) **Section 4** of this bill increases the minimum and maximum terms of imprisonment for a person who proximately causes the death of another person to a minimum term of not less than 5 years and a maximum term of not more than 25 years. **Section 4** also provides that in certain circumstances, a person who drives a vehicle under the influence of alcohol or a controlled substance and proximately causes the death of another person may be punished for second-degree murder.

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

Section 1. NRS 484C.110 is hereby amended to read as follows:

484C.110 1. It is unlawful for any 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; or
- (c) Is found by measurement within 2 hours after driving or being in actual physical control of a vehicle to have a concentration of alcohol of 0.08 or more in his or her blood or breath, ➤ to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

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 driving or exercising actual physical control of a vehicle,

↳ to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this State is not a defense against any charge of violating this subsection.

3. It is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood or urine that is equal to or greater than:

Prohibited substance	Urine Nanograms per milliliter	Blood 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) Lysergic acid diethylamide	25	10
(g) Methamphetamine	500	100
(h) Phencyclidine	25	10

4. For any violation that is punishable pursuant to paragraph (c) of subsection 1 of NRS 484C.400 ~~H~~ and 484C.410, it is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood that is equal to or greater than:

Prohibited substance	Blood Nanograms per milliliter
(a) Marijuana (delta-9-tetrahydrocannabinol)	2
(b) Marijuana metabolite (11-OH-tetrahydrocannabinol)	5



5. 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 driving or being in actual physical control of the vehicle, and before his or her blood or breath 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.

6. A person who violates any provision of this section may be subject to any additional penalty set forth in NRS 484B.130 or 484B.135.

Sec. 2. NRS 484C.400 is hereby amended to read as follows:

484C.400 1. Unless a greater penalty is provided pursuant to NRS 484C.430 or 484C.440, and except as otherwise provided in NRS 484C.394 or 484C.410, a person who violates the provisions of NRS 484C.110 or 484C.120:

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

(1) Except as otherwise provided in subparagraph (4) of this paragraph or subsection 3 of NRS 484C.420, order the person to pay tuition for an educational course on alcohol or other substance use disorders approved by the Department and complete the course within the time specified in the order, and the court shall notify the Department if the person fails to complete the course within the specified time;

(2) Unless the sentence is reduced pursuant to NRS 484C.320:

(I) Sentence the person to imprisonment for not less than 2 days nor more than 6 months in jail or residential confinement for not less than 2 days nor more than 6 months, in the manner provided in NRS 4.376 to 4.3766, inclusive, or 5.0755 to 5.078, inclusive; or

(II) Order the person to perform not less than 48 hours, but not more than 96 hours, of community service while dressed in distinctive garb that identifies the person as having violated the provisions of NRS 484C.110 or 484C.120;

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

(4) If the person is found to have a concentration of alcohol of 0.18 or more in his or her blood or breath, order the person to attend a program of treatment for an alcohol or other substance use disorder pursuant to the provisions of NRS 484C.360.



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

(1) Sentence the person to:

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

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

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

(3) Order the person to attend a program of treatment for an alcohol or other substance use disorder pursuant to the provisions of NRS 484C.360.

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

(c) Except as otherwise provided in NRS 484C.340, for a third offense within 7 years, is guilty of a category B felony and the court:

(1) Shall:

(I) Sentence the person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; and

(II) Fine the person not less than \$2,000 nor more than \$5,000; and

(2) May order the person to attend a program of treatment for an alcohol or other substance use disorder pursuant to the provisions of NRS 484C.360 if the results of an evaluation conducted pursuant to NRS 484C.300 indicate that the person has an alcohol or other substance use disorder and that the person can be treated successfully for his or her condition.

➤ An offender who is imprisoned pursuant to the provisions of this paragraph must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section:

(a) When evidenced by a conviction; ~~for~~



(b) *If the person was ordered to undergo a program of treatment for an alcohol or other substance use disorder pursuant to NRS 484C.340 as the result of the offense; or*

(c) If the offense is conditionally dismissed or the judgment of conviction is set aside pursuant to NRS 176A.240, 176A.260 or 176A.290 or dismissed in connection with successful completion of a diversionary program or specialty court program,

↳ without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. A term of confinement imposed pursuant to the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months after the date of conviction or, if the offender was sentenced pursuant to NRS 484C.320 or 484C.330 and the suspension of his or her sentence was revoked, within 6 months after the date of revocation. Any time for which the offender is confined must consist of not less than 24 consecutive hours.

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

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

6. For the purpose of determining whether one offense occurs within 7 years of another offense, any period of time between the two offenses during which, for any such offense, the offender is imprisoned, serving a term of residential confinement, placed under the supervision of a treatment provider, on parole or on probation must be excluded.

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

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

(b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any



other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;
or

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

Sec. 3. NRS 484C.410 is hereby amended to read as follows:

484C.410 1. Unless a greater penalty is provided in NRS 484C.440, a person who ~~has~~ :

(a) ~~Has~~ previously been convicted of:

~~(a)~~ (1) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to paragraph (c) of subsection 1 of NRS 484C.400;

~~(b)~~ (2) A violation of NRS 484C.430;

~~(c)~~ (3) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;

~~(d)~~ (4) A violation of a law of any other jurisdiction that prohibits the same or similar conduct as set forth in ~~paragraph (a), (b) or (c);~~ *subparagraph (1), (2) or (3);* or

~~(e)~~ (5) A violation of NRS 484C.110 or 484C.120 that is punishable pursuant to paragraph (b) of subsection 1 of NRS 484C.400 that was reduced from a felony pursuant to NRS 484C.340 ~~;~~ *;* or

(b) Is undergoing a program of treatment for an alcohol or other substance use disorder pursuant to NRS 484C.340 in accordance with the provisions of paragraph (c) of subsection 1 of NRS 484C.400,

➔ and who violates the provisions of NRS 484C.110 or 484C.120 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000. An offender so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. An offense which is listed in ~~paragraphs (a) to (e),~~ *subparagraphs (1) to (5),* inclusive, of *paragraph (a)* of subsection 1 that occurred on any date preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard for the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the



principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. A term of confinement imposed pursuant to the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months after the date of conviction or, if the offender was sentenced pursuant to NRS 484C.320 or 484C.330 and the suspension of offender's sentence was revoked, within 6 months after the date of revocation. Any time for which the offender is confined must consist of not less than 24 consecutive hours.

4. Jail sentences simultaneously imposed pursuant to this section and NRS 482.456, 483.560, 484C.400 or 485.330 must run consecutively.

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

6. For the purpose of determining whether one offense occurs within 7 years of another offense, any period of time between the two offenses during which, for any such offense, the offender is imprisoned, serving a term of residential confinement, placed under the supervision of a treatment provider, on parole or on probation must be excluded.

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

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

(b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430; or

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

Sec. 4. NRS 484C.430 is hereby amended to read as follows:

484C.430 1. ~~Unless a greater penalty is provided pursuant to NRS 484C.440, a~~ A person ~~[who:]~~ shall not do any act or neglect any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State, if the act or neglect of duty proximately causes the death of, or



substantial bodily harm to, another person and the person driving or in actual physical control of the vehicle:

(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 driving or being in actual physical control of a vehicle 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 driving or exercising actual physical control of a vehicle; or

(f) Has a prohibited substance in his or her blood or urine, as applicable, in an amount that is equal to or greater than the amount set forth in subsection 3 or 4 of NRS 484C.110 . ~~§~~

~~➔ and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, another person,]~~

2. Unless the offense is punishable as second-degree murder pursuant to subsection 2 of NRS 200.030 or a greater penalty is provided pursuant to NRS 484C.440, a person who violates any provision of subsection 1 is guilty of :

(a) If the violation proximately causes the death of another person, a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than ~~[2]~~ 5 years and a maximum term of not more than ~~[20]~~ 25 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000.

(b) If the violation proximately causes substantial bodily harm to another person, 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 must 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-]~~ ***3.*** 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



1 for any other reason unless the attorney knows or it is obvious that
2 the charge is not supported by probable cause or cannot be proved at
3 the time of trial. A sentence imposed pursuant to subsection 1 may
4 not be suspended nor may probation be granted.

5 ~~§3.1~~ 4. Except as otherwise provided in subsection ~~§4.1~~ 5, if
6 consumption is proven by a preponderance of the evidence, it is an
7 affirmative defense under paragraph (c) of subsection 1 that the
8 defendant consumed a sufficient quantity of alcohol after driving or
9 being in actual physical control of the vehicle, and before his or her
10 blood or breath was tested, to cause the defendant to have a
11 concentration of alcohol of 0.08 or more in his or her blood or
12 breath. A defendant who intends to offer this defense at a trial or
13 preliminary hearing must, not less than 14 days before the trial
14 or hearing or at such other time as the court may direct, file and
15 serve on the prosecuting attorney a written notice of that intent.

16 ~~§4.1~~ 5. If the defendant is also charged with violating the
17 provisions of NRS 484E.010, 484E.020 or 484E.030, the defendant
18 may not offer the affirmative defense set forth in subsection ~~§3.1~~ 4.

19 ~~§5.1~~ 6. If the defendant was transporting a person who is less
20 than 15 years of age in the motor vehicle at the time of the violation,
21 the court shall consider that fact as an aggravating factor in
22 determining the sentence of the defendant.

23 **Sec. 5.** This act becomes effective on July 1, 2023.

