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ASSEMBLY BILL NO. 106—COMMITTEE ON JUDICIARY  
(ON BEHALF OF THE NEVADA SUPREME COURT)

FEBRUARY 13, 2003

Referred to Committee on Judiciary

SUMMARY—Revises penalty for driving under influence of intoxicating liquor or controlled or prohibited substance and revises qualifications of person who may apply to court to undergo program of treatment for alcoholism or drug abuse. (BDR 43-606)

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.

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AN ACT relating to traffic laws; revising the penalty for driving under the influence of intoxicating liquor or a controlled or prohibited substance; revising the qualifications of a person who may apply to the court to undergo a program of treatment for alcoholism or drug abuse; and providing other matters properly relating thereto.

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

1     **Section 1.** NRS 484.3792 is hereby amended to read as  
2 follows:  
3     484.3792 1. Unless a greater penalty is provided pursuant  
4 to NRS 484.3795, a person who violates the provisions of  
5 NRS 484.379:  
6     (a) For the first offense within 7 years, is guilty of a  
7 misdemeanor. Unless he is allowed to undergo treatment as  
8 provided in NRS 484.37937, the court shall:  
9         (1) Except as otherwise provided in subparagraph (4) or  
10 subsection 6, order him to pay tuition for an educational course on  
11 the abuse of alcohol and controlled substances approved by the



\* A B 1 0 6 \*

1 Department and complete the course within the time specified in the  
2 order, and the court shall notify the Department if he fails to  
3 complete the course within the specified time;

4 (2) Unless the sentence is reduced pursuant to NRS  
5 484.37937, sentence him to imprisonment for not less than 2 days  
6 nor more than 6 months in jail, or to perform not less than 48 hours,  
7 but not more than 96 hours, of community service while dressed in  
8 distinctive garb that identifies him as having violated the provisions  
9 of NRS 484.379;

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

11 (4) If he is found to have a concentration of alcohol of 0.18  
12 or more in his blood or breath, order him to attend a program of  
13 treatment for the abuse of alcohol or drugs pursuant to the  
14 provisions of NRS 484.37945.

15 (b) For a second offense within 7 years, is guilty of a  
16 misdemeanor. Unless the sentence is reduced pursuant to NRS  
17 484.3794, the court shall:

18 (1) Sentence him to:

19 (I) Imprisonment for not less than 10 days nor more than  
20 6 months in jail; or

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

24 (2) Fine him not less than \$750 nor more than \$1,000 ~~;~~

25 ~~— (3) Order him to perform not less than 100 hours, but not~~  
26 ~~more than 200 hours, of community service while dressed in~~  
27 ~~distinctive garb that identifies him as having violated the provisions~~  
28 ~~of NRS 484.379, unless the court finds that extenuating~~  
29 ~~circumstances exist; and~~

30 ~~— (4) ] , or order him to perform an equivalent number of~~  
31 ~~hours of community service while dressed in distinctive garb that~~  
32 ~~identifies him as having violated the provisions of NRS 484.379;~~  
33 ~~and~~

34 (3) Order him to attend a program of treatment for the  
35 abuse of alcohol or drugs pursuant to the provisions of  
36 NRS 484.37945.

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

40 (c) For a third or subsequent offense within 7 years, is guilty of  
41 a category B felony and shall be punished by imprisonment in the  
42 state prison for a minimum term of not less than 1 year and a  
43 maximum term of not more than 6 years, and shall be further  
44 punished by a fine of not less than \$2,000 nor more than \$5,000. An  
45 offender so imprisoned must, insofar as practicable, be segregated



1 from offenders whose crimes were violent and, insofar as  
2 practicable, be assigned to an institution or facility of minimum  
3 security.

4 2. An offense that occurred within 7 years immediately  
5 preceding the date of the principal offense or after the principal  
6 offense constitutes a prior offense for the purposes of this section  
7 when evidenced by a conviction, without regard to the sequence of  
8 the offenses and convictions. The facts concerning a prior offense  
9 must be alleged in the complaint, indictment or information, must  
10 not be read to the jury or proved at trial but must be proved at the  
11 time of sentencing and, if the principal offense is alleged to be a  
12 felony, must also be shown at the preliminary examination or  
13 presented to the grand jury.

14 3. A person convicted of violating the provisions of NRS  
15 484.379 must not be released on probation, and a sentence imposed  
16 for violating those provisions must not be suspended except, as  
17 provided in NRS 4.373, 5.055, 484.37937 and 484.3794, that  
18 portion of the sentence imposed that exceeds the mandatory  
19 minimum. A prosecuting attorney shall not dismiss a charge of  
20 violating the provisions of NRS 484.379 in exchange for a plea of  
21 guilty, guilty but mentally ill or nolo contendere to a lesser charge or  
22 for any other reason unless he knows or it is obvious that the charge  
23 is not supported by probable cause or cannot be proved at the time  
24 of trial.

25 4. A term of confinement imposed pursuant to the provisions  
26 of this section may be served intermittently at the discretion of the  
27 judge or justice of the peace, except that a person who is convicted  
28 of a second or subsequent offense within 7 years must be confined  
29 for at least one segment of not less than 48 consecutive hours. This  
30 discretion must be exercised after considering all the circumstances  
31 surrounding the offense, and the family and employment of the  
32 offender, but any sentence of 30 days or less must be served within  
33 6 months after the date of conviction or, if the offender was  
34 sentenced pursuant to NRS 484.37937 or 484.3794 and the  
35 suspension of his sentence was revoked, within 6 months after the  
36 date of revocation. Any time for which the offender is confined  
37 must consist of not less than 24 consecutive hours.

38 5. Jail sentences simultaneously imposed pursuant to this  
39 section and NRS 482.456, 483.560 or 485.330 must run  
40 consecutively.

41 6. If the person who violated the provisions of NRS 484.379  
42 possesses a driver's license issued by a state other than the State of  
43 Nevada and does not reside in the State of Nevada, in carrying out  
44 the provisions of subparagraph (1) of paragraph (a) of subsection 1,  
45 the court shall:



1 (a) Order the person to pay tuition for and submit evidence of  
2 completion of an educational course on the abuse of alcohol and  
3 controlled substances approved by a governmental agency of the  
4 state of his residence within the time specified in the order; or

5 (b) Order him to complete an educational course by  
6 correspondence on the abuse of alcohol and controlled substances  
7 approved by the Department within the time specified in the  
8 order,  
9 and the court shall notify the Department if the person fails to  
10 complete the assigned course within the specified time.

11 7. If the defendant was transporting a person who is less than  
12 15 years of age in the motor vehicle at the time of the violation, the  
13 court shall consider that fact as an aggravating factor in determining  
14 the sentence of the defendant.

15 8. As used in this section, unless the context otherwise  
16 requires:

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

20 (b) "Offense" means:

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

22 (2) A homicide resulting from driving or being in actual  
23 physical control of a vehicle while under the influence of  
24 intoxicating liquor or a controlled substance or resulting from any  
25 other conduct prohibited by NRS 484.379 or 484.3795; or

26 (3) A violation of a law of any other jurisdiction that  
27 prohibits the same or similar conduct as set forth in ~~paragraph (a)~~  
28 ~~or (b).~~ *subparagraph (1) or (2).*

29 **Sec. 2.** NRS 484.37937 is hereby amended to read as follows:

30 484.37937 1. Except as otherwise provided in subsection 2, a  
31 person who is found guilty of a first violation of NRS 484.379, other  
32 than a person who is found to have a concentration of alcohol of  
33 0.18 or more in his blood or breath, may, at that time or any time  
34 before he is sentenced, apply to the court to undergo a program of  
35 treatment for alcoholism or drug abuse which is certified by the  
36 Health Division of the Department of Human Resources for at least  
37 6 months. The court shall authorize that treatment if:

38 (a) The person is diagnosed as an alcoholic or abuser of drugs  
39 by:

40 (1) An alcohol and drug abuse counselor who is licensed or  
41 certified pursuant to chapter 641C of NRS to make that diagnosis; or

42 (2) A physician who is certified to make that diagnosis by the  
43 Board of Medical Examiners;

44 (b) He agrees to pay the cost of the treatment to the extent of his  
45 financial resources; and



1 (c) He has served or will serve a term of imprisonment in jail  
2 of 1 day, or has performed or will perform ~~48~~ 24 hours of  
3 community service.

4 2. A person may not apply to the court to undergo a program of  
5 treatment pursuant to subsection 1 if, within the immediately  
6 preceding 7 years, he has been found guilty of:

7 (a) A violation of NRS 484.3795;

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

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

14 3. For the purposes of subsection 1, a violation of a law of any  
15 other jurisdiction that prohibits the same or similar conduct as NRS  
16 484.379 constitutes a violation of NRS 484.379.

17 4. A prosecuting attorney may, within 10 days after receiving  
18 notice of an application for treatment pursuant to this section,  
19 request a hearing on the question of whether the offender is eligible  
20 to undergo a program of treatment for alcoholism or drug abuse.  
21 The court shall order a hearing on the application upon the request  
22 of the prosecuting attorney or may order a hearing on its own  
23 motion. The hearing must be limited to the question of whether the  
24 offender is eligible to undergo such a program of treatment.

25 5. At the hearing on the application for treatment, the  
26 prosecuting attorney may present the court with any relevant  
27 evidence on the matter. If a hearing is not held, the court shall  
28 decide the matter upon affidavits and other information before the  
29 court.

30 6. If the court grants an application for treatment, the court  
31 shall:

32 (a) Immediately sentence the offender and enter judgment  
33 accordingly.

34 (b) Suspend the sentence of the offender for not more than 3  
35 years upon the condition that the offender be accepted for treatment  
36 by a treatment facility, that he complete the treatment satisfactorily  
37 and that he comply with any other condition ordered by the court.

38 (c) Advise the offender that:

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

44 (2) If he is not accepted for treatment by such a facility or he  
45 fails to complete the treatment satisfactorily, he shall serve the



1 sentence imposed by the court. Any sentence of imprisonment must  
2 be reduced by a time equal to that which he served before beginning  
3 treatment.

4 (3) If he completes the treatment satisfactorily, his sentence  
5 will be reduced to a term of imprisonment which is no longer than  
6 that provided for the offense in paragraph (c) of subsection 1 and a  
7 fine of not more than the minimum fine provided for the offense in  
8 NRS 484.3792, but the conviction must remain on his record of  
9 criminal history.

10 7. The court shall administer the program of treatment pursuant  
11 to the procedures provided in NRS 458.320 and 458.330, except that  
12 the court:

13 (a) Shall not defer the sentence, set aside the conviction or  
14 impose conditions upon the election of treatment except as  
15 otherwise provided in this section.

16 (b) May immediately revoke the suspension of sentence for a  
17 violation of any condition of the suspension.

18 8. The court shall notify the Department, on a form approved  
19 by the Department, upon granting the application of the offender for  
20 treatment and his failure to be accepted for or complete treatment.

21 **Sec. 3.** NRS 484.3794 is hereby amended to read as follows:

22 484.3794 1. Except as otherwise provided in subsection 2, a  
23 person who is found guilty of a second violation of NRS 484.379  
24 within 7 years may, at that time or any time before he is sentenced,  
25 apply to the court to undergo a program of treatment for alcoholism  
26 or drug abuse which is certified by the Health Division of the  
27 Department of Human Resources for at least 1 year if:

28 (a) He is diagnosed as an alcoholic or abuser of drugs by:

29 (1) An alcohol and drug abuse counselor who is licensed or  
30 certified pursuant to chapter 641C of NRS to make that diagnosis; or

31 (2) A physician who is certified to make that diagnosis by the  
32 Board of Medical Examiners;

33 (b) He agrees to pay the costs of the treatment to the extent of  
34 his financial resources; and

35 (c) He has served or will serve a term of imprisonment in jail of  
36 5 days, and if required pursuant to NRS 484.3792, has performed or  
37 will perform not less than ~~[50 hours, but not more than 100 hours,]~~  
38 *one-half of the hours* of community service.

39 2. A person may not apply to the court to undergo a program of  
40 treatment pursuant to subsection 1 if, within the immediately  
41 preceding 7 years, he has been found guilty of:

42 (a) A violation of NRS 484.3795;

43 (b) A homicide resulting from driving or being in actual  
44 physical control of a vehicle while under the influence of



1 intoxicating liquor or a controlled substance or resulting from any  
2 other conduct prohibited by NRS 484.379 or 484.3795; or

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

5 3. For the purposes of subsection 1, a violation of a law of any  
6 other jurisdiction that prohibits the same or similar conduct as NRS  
7 484.379 constitutes a violation of NRS 484.379.

8 4. A prosecuting attorney may, within 10 days after receiving  
9 notice of an application for treatment pursuant to this section,  
10 request a hearing on the matter. The court shall order a hearing on  
11 the application upon the request of the prosecuting attorney or may  
12 order a hearing on its own motion.

13 5. At the hearing on the application for treatment, the  
14 prosecuting attorney may present the court with any relevant  
15 evidence on the matter. If a hearing is not held, the court shall  
16 decide the matter upon affidavits and other information before the  
17 court.

18 6. If the court determines that an application for treatment  
19 should be granted, the court shall:

20 (a) Immediately sentence the offender and enter judgment  
21 accordingly.

22 (b) Suspend the sentence of the offender for not more than 3  
23 years upon the condition that the offender be accepted for treatment  
24 by a treatment facility, that he complete the treatment satisfactorily  
25 and that he comply with any other condition ordered by the court.

26 (c) Advise the offender that:

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

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

37 (3) If he completes the treatment satisfactorily, his sentence  
38 will be reduced to a term of imprisonment which is no longer than  
39 that provided for the offense in paragraph (c) of subsection 1 and a  
40 fine of not more than the minimum provided for the offense in NRS  
41 484.3792, but the conviction must remain on his record of criminal  
42 history.

43 7. The court shall administer the program of treatment pursuant  
44 to the procedures provided in NRS 458.320 and 458.330, except that  
45 the court:



1 (a) Shall not defer the sentence, set aside the conviction or  
2 impose conditions upon the election of treatment except as  
3 otherwise provided in this section.

4 (b) May immediately revoke the suspension of sentence for a  
5 violation of a condition of the suspension.

6 8. The court shall notify the Department, on a form approved  
7 by the Department, upon granting the application of the offender for  
8 treatment and his failure to be accepted for or complete treatment.

9 **Sec. 4.** This act becomes effective on July 1, 2003.

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