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**A.B. 34**

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ASSEMBLY BILL NO. 34—ASSEMBLYMEN CONKLIN AND ANDERSON

PREFILED JANUARY 30, 2003

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JOINT SPONSOR: SENATOR AMODEI

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Referred to Committee on Judiciary

**SUMMARY**—Provides that once person has been convicted of felony for operating vehicle or vessel while under influence of alcohol or controlled substance, any subsequent violation is treated as felony. (BDR 43-137)

**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.

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AN ACT relating to substances causing impairment; providing that once a person has been convicted of a felony for operating a vehicle or vessel while under the influence of alcohol or a controlled substance, any subsequent violation is treated as a felony; providing penalties; 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 483.460 is hereby amended to read as follows:  
2     483.460 1. Except as otherwise provided by specific statute,  
3     the Department shall revoke the license, permit or privilege of any  
4     driver upon receiving a record of his conviction of any of the  
5     following offenses, when that conviction has become final, and  
6     the driver is not eligible for a license, permit or privilege to drive for  
7     the period indicated:  
8     (a) For a period of 3 years if the offense is:  
9     (1) A violation of subsection 2 of NRS 484.377.



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1 (2) A third or subsequent violation *of NRS 484.379* within 7  
2 years. ~~of NRS 484.379.~~

3 (3) *A violation of NRS 484.379 that is punishable pursuant*  
4 *to subsection 2 of NRS 484.3792.*

5 (4) A violation of NRS 484.3795 or a homicide resulting  
6 from driving or being in actual physical control of a vehicle while  
7 under the influence of intoxicating liquor or a controlled substance  
8 or resulting from any other conduct prohibited by NRS 484.379 or  
9 484.3795.

10 The period during which such a driver is not eligible for a license,  
11 permit or privilege to drive must be set aside during any period of  
12 imprisonment and the period of revocation must resume upon  
13 completion of the period of imprisonment or when the person is  
14 placed on residential confinement.

15 (b) For a period of 1 year if the offense is:

16 (1) Any other manslaughter resulting from the driving of a  
17 motor vehicle or felony in the commission of which a motor vehicle  
18 is used, including the unlawful taking of a motor vehicle.

19 (2) Failure to stop and render aid as required pursuant to the  
20 laws of this state in the event of a motor vehicle accident resulting in  
21 the death or bodily injury of another.

22 (3) Perjury or the making of a false affidavit or statement  
23 under oath to the Department pursuant to NRS 483.010 to 483.630,  
24 inclusive, or pursuant to any other law relating to the ownership or  
25 driving of motor vehicles.

26 (4) Conviction, or forfeiture of bail not vacated, upon three  
27 charges of reckless driving committed within a period of 12 months.

28 (5) A second violation *of NRS 484.379* within 7 years ~~of~~  
29 ~~NRS 484.379~~, *unless the violation is punishable pursuant to*  
30 *subsection 2 of NRS 484.3792* and the driver is not eligible for a  
31 restricted license during any of that period.

32 (6) A violation of NRS 484.348.

33 (c) For a period of 90 days, if the offense is a first violation *of*  
34 *NRS 484.379* within 7 years ~~of NRS 484.379.~~, *unless the*  
35 *violation is punishable pursuant to subsection 2 of NRS 484.3792.*

36 2. The Department shall revoke the license, permit or privilege  
37 of a driver convicted of violating NRS 484.379 who fails to  
38 complete the educational course on the use of alcohol and controlled  
39 substances within the time ordered by the court and shall add a  
40 period of 90 days during which the driver is not eligible for a  
41 license, permit or privilege to drive.

42 3. When the Department is notified by a court that a person  
43 who has been convicted of a first violation *of NRS 484.379* within 7  
44 years ~~of NRS 484.379~~ has been permitted to enter a program of  
45 treatment pursuant to NRS 484.37937, the Department shall reduce



1 by one-half the period during which he is not eligible for a license,  
2 permit or privilege to drive, but shall restore that reduction in time if  
3 notified that he was not accepted for or failed to complete the  
4 treatment.

5 4. The Department shall revoke the license, permit or privilege  
6 to drive of a person who is required to install a device pursuant to  
7 NRS 484.3943 but who operates a motor vehicle without such a  
8 device:

9 (a) For 3 years, if it is his first such offense during the period of  
10 required use of the device.

11 (b) For 5 years, if it is his second such offense during the period  
12 of required use of the device.

13 5. A driver whose license, permit or privilege is revoked  
14 pursuant to subsection 4 is not eligible for a restricted license during  
15 the period set forth in paragraph (a) or (b) of that subsection,  
16 whichever applies.

17 6. In addition to any other requirements set forth by specific  
18 statute, if the Department is notified that a court has ordered the  
19 revocation, suspension or delay in the issuance of a license pursuant  
20 to chapter 62 of NRS, NRS 176.064 or 206.330, chapter 484 of NRS  
21 or any other provision of law, the Department shall take such  
22 actions as are necessary to carry out the court's order.

23 7. As used in this section, "device" has the meaning ascribed to  
24 it in NRS 484.3941.

25 **Sec. 2.** NRS 483.490 is hereby amended to read as follows:

26 483.490 1. Except as otherwise provided in this section, after  
27 a driver's license has been suspended or revoked for an offense  
28 other than a second violation *of NRS 484.379* within 7 years ~~of~~  
29 ~~NRS 484.379~~, *unless the second violation is a violation that is*  
30 *punishable pursuant to subsection 2 of NRS 484.3792*, and one-  
31 half of the period during which the driver is not eligible for a license  
32 has expired, the Department may, unless the statute authorizing the  
33 suspension prohibits the issuance of a restricted license, issue a  
34 restricted driver's license to an applicant permitting the applicant to  
35 drive a motor vehicle:

36 (a) To and from work or in the course of his work, or both; or

37 (b) To acquire supplies of medicine or food or receive regularly  
38 scheduled medical care for himself or a member of his immediate  
39 family.

40 Before a restricted license may be issued, the applicant must submit  
41 sufficient documentary evidence to satisfy the Department that a  
42 severe hardship exists because the applicant has no alternative  
43 means of transportation and that the severe hardship outweighs the  
44 risk to the public if he is issued a restricted license.



1 2. A person who has been ordered to install a device in a motor  
2 vehicle pursuant to NRS 484.3943:  
3 (a) Shall install the device not later than 21 days after the date  
4 on which the order was issued; and  
5 (b) May not receive a restricted license pursuant to this section  
6 until:  
7 (1) After at least 1 year of the period during which he is not  
8 eligible for a license, if he was convicted of:  
9 (I) A violation of NRS 484.3795 or a homicide resulting  
10 from driving or being in actual physical control of a vehicle while  
11 under the influence of intoxicating liquor or a controlled substance  
12 or resulting from any other conduct prohibited by NRS 484.379 or  
13 484.3795; ~~for~~  
14 (II) A third or subsequent violation of *NRS 484.379*  
15 within 7 years ~~of NRS 484.379;~~; or  
16 (III) *A violation of NRS 484.379 that is punishable*  
17 *pursuant to subsection 2 of NRS 484.3792;*  
18 (2) After at least 180 days of the period during which he is  
19 not eligible for a license, if he was convicted of a violation of  
20 subsection 2 of NRS 484.377; or  
21 (3) After at least 45 days of the period during which he is not  
22 eligible for a license, if he was convicted of a first violation of *NRS*  
23 *484.379* within 7 years. ~~of NRS 484.379.~~  
24 3. If the Department has received a copy of an order requiring a  
25 person to install a device in a motor vehicle pursuant to NRS  
26 484.3943, the Department shall not issue a restricted driver's license  
27 to such a person pursuant to this section unless the applicant has  
28 submitted proof of compliance with the order and subsection 2.  
29 4. After a driver's license has been revoked pursuant to  
30 subsection 1 of NRS 62.227 or suspended pursuant to paragraph (h)  
31 of subsection 1 of NRS 62.211, NRS 62.224, 62.2255, 62.226 or  
32 62.228, the Department may issue a restricted driver's license to an  
33 applicant permitting the applicant to drive a motor vehicle:  
34 (a) If applicable, to and from work or in the course of his work,  
35 or both; ~~and~~ or  
36 (b) If applicable, to and from school.  
37 5. After a driver's license has been suspended pursuant to NRS  
38 483.443, the Department may issue a restricted driver's license to an  
39 applicant permitting the applicant to drive a motor vehicle:  
40 (a) If applicable, to and from work or in the course of his work,  
41 or both;  
42 (b) To receive regularly scheduled medical care for himself or a  
43 member of his immediate family; ~~and~~ or  
44 (c) If applicable, as necessary to exercise a court-ordered right to  
45 visit a child.



1 6. A driver who violates a condition of a restricted license  
2 issued pursuant to subsection 1 or by another jurisdiction is guilty of  
3 a misdemeanor and, if the license of the driver was suspended or  
4 revoked for:

- 5 (a) A violation of NRS 484.379, 484.3795 or 484.384;
- 6 (b) A homicide resulting from driving or being in actual  
7 physical control of a vehicle while under the influence of  
8 intoxicating liquor or a controlled substance or resulting from any  
9 other conduct prohibited by NRS 484.379 or 484.3795; or
- 10 (c) A violation of a law of any other jurisdiction that  
11 prohibits the same or similar conduct as set forth in paragraph (a)  
12 or (b),  
13 the driver shall be punished in the manner provided pursuant to  
14 subsection 2 of NRS 483.560.

15 7. The periods of suspensions and revocations required  
16 pursuant to this chapter and NRS 484.384 must run consecutively,  
17 except as otherwise provided in NRS 483.465 and 483.475 ~~§~~ when  
18 the suspensions must run concurrently.

19 8. Whenever the Department suspends or revokes a license, the  
20 period of suspension, or of ineligibility for a license after the  
21 revocation, begins upon the effective date of the revocation or  
22 suspension as contained in the notice thereof.

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

24 484.3792 1. Unless a greater penalty is provided pursuant  
25 to NRS 484.3795 ~~§~~ *and except as otherwise provided in*  
26 *subsection 2*, a person who violates the provisions of NRS 484.379:

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

30 (1) Except as otherwise provided in subparagraph (4) or  
31 subsection ~~6.~~ 7, order him to pay tuition for an educational course  
32 on the abuse of alcohol and controlled substances approved by the  
33 Department and complete the course within the time specified in the  
34 order, and the court shall notify the Department if he fails to  
35 complete the course within the specified time;

36 (2) Unless the sentence is reduced pursuant to NRS  
37 484.37937, sentence him to imprisonment for not less than 2 days  
38 nor more than 6 months in jail, or to perform not less than 48 hours,  
39 but not more than 96 hours, of community service while dressed in  
40 distinctive garb that identifies him as having violated the provisions  
41 of NRS 484.379;

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

43 (4) If he is found to have a concentration of alcohol of 0.18  
44 or more in his blood or breath, order him to attend a program of



1 treatment for the abuse of alcohol or drugs pursuant to the  
2 provisions of NRS 484.37945.

3 (b) For a second offense within 7 years, is guilty of a  
4 misdemeanor. Unless the sentence is reduced pursuant to NRS  
5 484.3794, the court shall:

6 (1) Sentence him to:

7 (I) Imprisonment for not less than 10 days nor more than  
8 6 months in jail; or

9 (II) Residential confinement for not less than 10 days nor  
10 more than 6 months, in the manner provided in NRS 4.376 to  
11 4.3766, inclusive, or 5.0755 to 5.078, inclusive;

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

13 (3) Order him to perform not less than 100 hours, but not  
14 more than 200 hours, of community service while dressed in  
15 distinctive garb that identifies him as having violated the provisions  
16 of NRS 484.379, unless the court finds that extenuating  
17 circumstances exist; and

18 (4) Order him to attend a program of treatment for the  
19 abuse of alcohol or drugs pursuant to the provisions of  
20 NRS 484.37945.

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

24 (c) For a third ~~for subsequent~~ offense within 7 years, is guilty  
25 of a category B felony and shall be punished by imprisonment in the  
26 state prison for a minimum term of not less than 1 year and a  
27 maximum term of not more than 6 years, and shall be further  
28 punished by a fine of not less than \$2,000 nor more than \$5,000. An  
29 offender so imprisoned must, insofar as practicable, be segregated  
30 from offenders whose crimes were violent and, insofar as  
31 practicable, be assigned to an institution or facility of minimum  
32 security.

33 2. *A person who has previously been convicted of:*

34 (a) *A felony pursuant to this section;*

35 (b) *A violation of NRS 484.3795;*

36 (c) *A homicide resulting from driving or being in actual*  
37 *physical control of a vehicle while under the influence of*  
38 *intoxicating liquor or a controlled substance or resulting from any*  
39 *other conduct prohibited by NRS 484.379 or 484.3795; or*

40 (d) *A violation of a law of any other jurisdiction that prohibits*  
41 *the same or similar conduct as set forth in paragraph (a), (b)*  
42 *or (c),*

43 *and who violates the provisions of NRS 484.379 is guilty of a*  
44 *category B felony and shall be punished by imprisonment in the*  
45 *state prison for a minimum term of not less than 2 years and a*



1 *maximum term of not more than 15 years, and shall be further*  
2 *punished by a fine of not less than \$2,000 nor more than \$5,000.*  
3 *An offender so imprisoned must, insofar as practicable, be*  
4 *segregated from offenders whose crimes were violent and, insofar*  
5 *as practicable, be assigned to an institution or facility of minimum*  
6 *security.*

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

17 ~~[3-]~~ 4. A person convicted of violating the provisions of NRS  
18 484.379 must not be released on probation, and a sentence imposed  
19 for violating those provisions must not be suspended except, as  
20 provided in NRS 4.373, 5.055, 484.37937 and 484.3794, that  
21 portion of the sentence imposed that exceeds the mandatory  
22 minimum. A prosecuting attorney shall not dismiss a charge of  
23 violating the provisions of NRS 484.379 in exchange for a plea of  
24 guilty, guilty but mentally ill or nolo contendere to a lesser charge or  
25 for any other reason unless he knows or it is obvious that the charge  
26 is not supported by probable cause or cannot be proved at the time  
27 of trial.

28 ~~[4-]~~ 5. A term of confinement imposed pursuant to the  
29 provisions of this section may be served intermittently at the  
30 discretion of the judge or justice of the peace, except that a person  
31 who is convicted of a second or subsequent offense within 7 years  
32 must be confined for at least one segment of not less than 48  
33 consecutive hours. This discretion must be exercised after  
34 considering all the circumstances surrounding the offense, and the  
35 family and employment of the offender, but any sentence of 30 days  
36 or less must be served within 6 months after the date of conviction  
37 or, if the offender was sentenced pursuant to NRS 484.37937 or  
38 484.3794 and the suspension of his sentence was revoked, within 6  
39 months after the date of revocation. Any time for which the offender  
40 is confined must consist of not less than 24 consecutive hours.

41 ~~[5-]~~ 6. Jail sentences simultaneously imposed pursuant to this  
42 section and NRS 482.456, 483.560 or 485.330 must run  
43 consecutively.

44 ~~[6-]~~ 7. If the person who violated the provisions of NRS  
45 484.379 possesses a driver's license issued by a state other than the



1 State of Nevada and does not reside in the State of Nevada, in  
2 carrying out the provisions of subparagraph (1) of paragraph (a) of  
3 subsection 1, the court shall:

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

8 (b) Order him to complete an educational course by  
9 correspondence on the abuse of alcohol and controlled substances  
10 approved by the Department within the time specified in the  
11 order,

12 and the court shall notify the Department if the person fails to  
13 complete the assigned course within the specified time.

14 ~~{7}~~ 8. If the defendant was transporting a person who is less  
15 than 15 years of age in the motor vehicle at the time of the violation,  
16 the court shall consider that fact as an aggravating factor in  
17 determining the sentence of the defendant.

18 ~~{8}~~ 9. As used in this section, unless the context otherwise  
19 requires:

20 (a) "Concentration of alcohol of 0.18 or more in his blood or  
21 breath" means 0.18 gram or more of alcohol per 100 milliliters of  
22 the blood of a person or per 210 liters of this breath.

23 (b) "Offense" means:

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

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

29 (3) A violation of a law of any other jurisdiction that  
30 prohibits the same or similar conduct as set forth in ~~{paragraph (a)~~  
31 ~~or (b)}~~ *subparagraph (1) or (2)*.

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

33 484.37937 1. Except as otherwise provided in subsection 2, a  
34 person who is found guilty of a first violation of NRS 484.379, other  
35 than a person who is found to have a concentration of alcohol of  
36 0.18 or more in his blood or breath, may, at that time or any time  
37 before he is sentenced, apply to the court to undergo a program of  
38 treatment for alcoholism or drug abuse which is certified by the  
39 Health Division of the Department of Human Resources for at least  
40 6 months. The court shall authorize that treatment if:

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

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





- 1 (2) A physician who is certified to make that diagnosis by the  
2 Board of Medical Examiners;
- 3 (b) He agrees to pay the cost of the treatment to the extent of his  
4 financial resources; and
- 5 (c) He has served or will serve a term of imprisonment in jail of  
6 1 day, or has performed or will perform 48 hours of community  
7 service.
- 8 2. A person may not apply to the court to undergo a program of  
9 treatment pursuant to subsection 1 if, within the immediately  
10 preceding 7 years, he has been found guilty of:
- 11 (a) *A felony pursuant to NRS 484.3792;*  
12 (b) A violation of NRS 484.3795;  
13 ~~(c)~~ (c) A homicide resulting from driving or being in actual  
14 physical control of a vehicle while under the influence of  
15 intoxicating liquor or a controlled substance or resulting from any  
16 other conduct prohibited by NRS 484.379 or 484.3795; or  
17 ~~(d)~~ (d) A violation of a law of any other jurisdiction that  
18 prohibits the same or similar conduct as set forth in paragraph (a)  
19 ~~or (b)~~, (b) or (c).
- 20 3. For the purposes of subsection 1, a violation of a law of any  
21 other jurisdiction that prohibits the same or similar conduct as NRS  
22 484.379 constitutes a violation of NRS 484.379.
- 23 4. A prosecuting attorney may, within 10 days after receiving  
24 notice of an application for treatment pursuant to this section,  
25 request a hearing on the question of whether the offender is eligible  
26 to undergo a program of treatment for alcoholism or drug abuse.  
27 The court shall order a hearing on the application upon the request  
28 of the prosecuting attorney or may order a hearing on its own  
29 motion. The hearing must be limited to the question of whether the  
30 offender is eligible to undergo such a program of treatment.
- 31 5. At the hearing on the application for treatment, the  
32 prosecuting attorney may present the court with any relevant  
33 evidence on the matter. If a hearing is not held, the court shall  
34 decide the matter upon affidavits and other information before the  
35 court.
- 36 6. If the court grants an application for treatment, the court  
37 shall:
- 38 (a) Immediately sentence the offender and enter judgment  
39 accordingly.
- 40 (b) Suspend the sentence of the offender for not more than 3  
41 years upon the condition that the offender be accepted for treatment  
42 by a treatment facility, that he complete the treatment satisfactorily  
43 and that he comply with any other condition ordered by the court.
- 44 (c) Advise the offender that:



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

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

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

17 7. The court shall administer the program of treatment pursuant  
18 to the procedures provided in NRS 458.320 and 458.330, except that  
19 the court:

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

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

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

28 **Sec. 5.** NRS 484.3794 is hereby amended to read as follows:

29 484.3794 1. Except as otherwise provided in subsection 2, a  
30 person who is found guilty of a second violation of NRS 484.379  
31 within 7 years may, at that time or any time before he is sentenced,  
32 apply to the court to undergo a program of treatment for alcoholism  
33 or drug abuse which is certified by the Health Division of the  
34 Department of Human Resources for at least 1 year if:

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

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

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

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

42 (c) He has served or will serve a term of imprisonment in jail of  
43 5 days, and if required pursuant to NRS 484.3792, has performed or  
44 will perform not less than 50 hours, but not more than 100 hours, of  
45 community service.



1 2. A person may not apply to the court to undergo a program of  
2 treatment pursuant to subsection 1 if ~~[, within the immediately~~  
3 ~~preceding 7 years,]~~ he *previously* has been found guilty of:

- 4 (a) *A felony pursuant to NRS 484.3792;*  
5 (b) A violation of NRS 484.3795;  
6 ~~[(b)]~~ (c) A homicide resulting from driving or being in actual  
7 physical control of a vehicle while under the influence of  
8 intoxicating liquor or a controlled substance or resulting from any  
9 other conduct prohibited by NRS 484.379 or 484.3795; or  
10 ~~[(e)]~~ (d) A violation of a law of any other jurisdiction that  
11 prohibits the same or similar conduct as set forth in paragraph (a)  
12 ~~[or (b)], (b) or (c).~~

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

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

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

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

28 (a) Immediately sentence the offender and enter judgment  
29 accordingly.

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

34 (c) Advise the offender that:

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

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



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

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

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

13 (b) May immediately revoke the suspension of sentence for a  
14 violation of a condition of the suspension.

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

18 **Sec. 6.** NRS 484.37943 is hereby amended to read as follows:

19 484.37943 1. ~~¶¶~~ *Except as otherwise provided in*  
20 *subsection 3, if* a person is found guilty of a first violation, if the  
21 concentration of alcohol in the defendant's blood or breath at the  
22 time of the offense was 0.18 or more, or any second violation of  
23 NRS 484.379 within 7 years, the court shall, before sentencing the  
24 offender, require an evaluation of the offender pursuant to  
25 subsection ~~[3, 4 or 5]~~ *4, 5 or 6* to determine whether he is an abuser  
26 of alcohol or other drugs.

27 2. ~~¶¶~~ *Except as otherwise provided in subsection 3, if* a  
28 person is convicted of a first violation of NRS 484.379 and he is  
29 under 21 years of age at the time of the violation, the court shall,  
30 before sentencing the offender, require an evaluation of the offender  
31 pursuant to subsection ~~[3, 4 or 5]~~ *4, 5 or 6* to determine whether he  
32 is an abuser of alcohol or other drugs.

33 3. *The court shall not require an evaluation of an offender*  
34 *pursuant to subsection 4, 5 or 6 if the offender has previously been*  
35 *found guilty of:*

36 (a) *A felony pursuant to NRS 484.3792;*

37 (b) *A violation of NRS 484.3795;*

38 (c) *A homicide resulting from driving or being in actual*  
39 *physical control of a vehicle while under the influence of*  
40 *intoxicating liquor or a controlled substance; or*

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



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

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

7       (b) A physician who is certified to make that evaluation by the  
8 Board of Medical Examiners,  
9 who shall report to the court the results of the evaluation and make a  
10 recommendation to the court concerning the length and type of  
11 treatment required for the offender.

12       ~~[4]~~ 5. The evaluation of an offender who resides more than 30  
13 miles from an evaluation center may be conducted outside an  
14 evaluation center by a person who has the qualifications set forth in  
15 subsection ~~[3]~~ 4. The person who conducts the evaluation shall  
16 report to the court the results of the evaluation and make a  
17 recommendation to the court concerning the length and type of  
18 treatment required for the offender.

19       ~~[5]~~ 6. The evaluation of an offender who resides in another  
20 state may, upon approval of the court, be conducted in the state  
21 where the offender resides by a physician or other person who is  
22 authorized by the appropriate governmental agency in that state to  
23 conduct such an evaluation. The offender shall ensure that the  
24 results of the evaluation and the recommendation concerning the  
25 length and type of treatment for the offender are reported to the  
26 court.

27       ~~[6]~~ 7. An offender who is evaluated pursuant to this section  
28 shall pay the cost of the evaluation. An evaluation center or a person  
29 who conducts an evaluation in this state outside an evaluation center  
30 shall not charge an offender more than \$100 for the evaluation.

31       **Sec. 7.** NRS 484.37945 is hereby amended to read as follows:  
32       484.37945 1. When a program of treatment is ordered  
33 pursuant to paragraph (a) or (b) of subsection 1 of NRS 484.3792,  
34 the court shall place the offender under the clinical supervision of a  
35 treatment facility for treatment for a period not to exceed 1 year, in  
36 accordance with the report submitted to the court pursuant to  
37 subsection ~~[3, 4 or 5]~~ 4, 5 or 6 of NRS 484.37943. The court shall:

38       (a) Order the offender confined in a treatment facility, then  
39 release the offender for supervised aftercare in the community; or

40       (b) Release the offender for treatment in the  
41 community,  
42 for the period of supervision ordered by the court.

43       2. The court shall:

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



1 (b) Order the offender, to the extent of his financial resources, to  
2 pay any charges for his treatment pursuant to this section. If the  
3 offender does not have the financial resources to pay all those  
4 charges, the court shall, to the extent possible, arrange for the  
5 offender to obtain his treatment from a treatment facility that  
6 receives a sufficient amount of federal or state money to offset the  
7 remainder of the charges.

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

10 (a) Drives, operates or is in actual physical control of a vehicle  
11 or a vessel under power or sail while under the influence of  
12 intoxicating liquor or a controlled substance; or

13 (b) Engages in any other conduct prohibited by NRS 484.379,  
14 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420  
15 or a law of any other jurisdiction that prohibits the same or similar  
16 conduct,

17 after the treatment facility has certified to his successful completion  
18 of a program of treatment ordered pursuant to paragraph (a) or (b) of  
19 subsection 1 of NRS 484.3792.

20 **Sec. 8.** NRS 484.3796 is hereby amended to read as follows:

21 484.3796 1. Before sentencing an offender pursuant to NRS  
22 484.3795 or paragraph (c) of subsection 1 *or subsection 2* of NRS  
23 484.3792, the court shall require that the offender be evaluated to  
24 determine whether he is an abuser of alcohol or drugs and whether  
25 he can be treated successfully for his condition.

26 2. The evaluation must be conducted by:

27 (a) An alcohol and drug abuse counselor who is licensed or  
28 certified pursuant to chapter 641C of NRS to make such an  
29 evaluation;

30 (b) A physician who is certified to make such an evaluation by  
31 the Board of Medical Examiners; or

32 (c) A psychologist who is certified to make such an evaluation  
33 by the Board of Psychological Examiners.

34 3. The alcohol and drug abuse counselor, physician or  
35 psychologist who conducts the evaluation shall immediately forward  
36 the results of the evaluation to the Director of the Department of  
37 Corrections.

38 **Sec. 9.** NRS 484.3943 is hereby amended to read as follows:

39 484.3943 1. Except as otherwise provided in subsection 5, a  
40 court:

41 (a) May order a person convicted of a first violation of NRS  
42 484.379, for a period of not less than 3 months nor more than 6  
43 months; and

44 (b) Shall order a person convicted of a ~~third or subsequent~~  
45 ~~violation of NRS 484.379]~~ *felony pursuant to NRS 484.3792* or a



1 violation of NRS 484.3795, for a period of not less than 12 months  
2 nor more than 36 months,  
3 to install at his own expense a device in any motor vehicle which he  
4 owns or operates as a condition to obtaining a restricted license  
5 pursuant to subsection 3 of NRS 483.490.

6 2. A court may order a person convicted of a violation of NRS  
7 484.379 or 484.3795, for a period determined by the court, to install  
8 at his own expense a device in any motor vehicle which he owns or  
9 operates as a condition of reinstatement of his driving privilege.

10 3. If the court orders a person to install a device pursuant to  
11 subsection 1 or 2:

12 (a) The court shall immediately prepare and transmit a copy of  
13 its order to the Director. The order must include a statement that a  
14 device is required and the specific period for which it is required.  
15 The Director shall cause this information to be incorporated into the  
16 records of the Department and noted as a restriction on the person's  
17 driver's license.

18 (b) The person who is required to install the device shall provide  
19 proof of compliance to the Department before he may receive a  
20 restricted license or before his driving privilege may be reinstated,  
21 as applicable. Each model of a device installed pursuant to this  
22 section must have been certified by the Committee on Testing for  
23 Intoxication.

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

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

30 (b) If he was ordered to install a device pursuant to paragraph  
31 (b) of subsection 1, have the device inspected by the manufacturer  
32 of the device or its agent at least one time each 90 days,  
33 to determine whether the device is operating properly. An inspection  
34 required pursuant to this subsection must be conducted in  
35 accordance with regulations adopted pursuant to NRS 484.3888.  
36 The manufacturer or its agent shall submit a report to the Director  
37 indicating whether the device is operating properly and whether it  
38 has been tampered with. If the device has been tampered with, the  
39 Director shall notify the court that ordered the installation of  
40 the device.

41 5. If a person is required to operate a motor vehicle in the  
42 course and scope of his employment and the motor vehicle is owned  
43 by his employer, the person may operate that vehicle without the  
44 installation of a device, if:



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

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

6 This exemption does not apply to a motor vehicle owned by a  
7 business which is all or partly owned or controlled by the person  
8 otherwise subject to this section.

9 **Sec. 10.** Chapter 488 of NRS is hereby amended by adding  
10 thereto a new section to read as follows:

11 *1. A person who violates the provisions of NRS 488.410 and*  
12 *who has previously been convicted of a violation of NRS 488.420*  
13 *or a violation of the law of any other jurisdiction that prohibits the*  
14 *same or similar conduct as set forth in NRS 488.420 is guilty of a*  
15 *category B felony and shall be punished by imprisonment in the*  
16 *state prison for a minimum term of not less than 2 years and a*  
17 *maximum term of not more than 15 years, and shall be further*  
18 *punished by a fine of not less than \$2,000 nor more than \$5,000.*  
19 *An offender so imprisoned must, insofar as practicable, be*  
20 *segregated from offenders whose crimes were violent and, insofar*  
21 *as practicable, be assigned to an institution or facility of minimum*  
22 *security.*

23 *2. The facts concerning a prior violation of NRS 488.420*  
24 *must be alleged in the complaint, indictment or information, must*  
25 *not be read to the jury or proved at trial but must be proved at the*  
26 *time of sentencing.*

27 *3. A prosecuting attorney shall not dismiss a charge of*  
28 *violating the provisions of NRS 488.410 against a person*  
29 *previously convicted of violating NRS 488.420 in exchange for a*  
30 *plea of guilty or nolo contendere to a lesser charge or for any*  
31 *other reason unless he knows or it is obvious that the charge is not*  
32 *supported by probable cause or cannot be proved at the time of*  
33 *trial. A sentence imposed pursuant to subsection 1 must not be*  
34 *suspended, and probation must not be granted.*

35 *4. If a person less than 15 years of age was in the vessel at the*  
36 *time of the defendant's violation, the court shall consider that fact*  
37 *as an aggravating factor in determining the sentence of the*  
38 *defendant.*

39 **Sec. 11.** NRS 488.410 is hereby amended to read as follows:

40 488.410 1. It is unlawful for any person who:

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

42 (b) Has a concentration of alcohol of 0.10 or more in his blood  
43 or breath; or





1 (c) Is found by measurement within 2 hours after operating or  
2 being in actual physical control of a vessel to have a concentration  
3 of alcohol of 0.10 or more in his blood or breath,  
4 to operate or be in actual physical control of a vessel under power or  
5 sail on the waters of this state.

6 2. It is unlawful for any person who:

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

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

10 (c) Inhales, ingests, applies or otherwise uses any chemical,  
11 poison or organic solvent, or any compound or combination of any  
12 of these, to a degree which renders him incapable of safely  
13 operating or exercising actual physical control of a vessel under  
14 power or sail,

15 to operate or be in actual physical control of a vessel under power or  
16 sail on the waters of this state.

17 3. It is unlawful for any person to operate or be in actual  
18 physical control of a vessel under power or sail on the waters of this  
19 state with an amount of a prohibited substance in his blood or urine  
20 that is equal to or greater than:

21	22 Prohibited substance	23 Urine	24 Blood
25		Nanograms per	Nanograms per
26		milliliter	milliliter
27	(a) Amphetamine	500	100
28	(b) Cocaine	150	50
29	(c) Cocaine metabolite	150	50
30	(d) Heroin	2,000	50
31	(e) Heroin metabolite:		
32	(1) Morphine	2,000	50
33	(2) 6-monoacetyl morphine	10	10
34	(f) Lysergic acid diethylamide	25	10
35	(g) Marijuana	10	2
36	(h) Marijuana metabolite	15	5
37	(i) Methamphetamine	500	100
38	(j) Phencyclidine	25	10

39 4. If consumption is proven by a preponderance of the  
40 evidence, it is an affirmative defense under paragraph (c) of  
41 subsection 1 that the defendant consumed a sufficient quantity of  
42 alcohol after operating or being in actual physical control of the  
43 vessel, and before his blood was tested, to cause him to have a  
44 concentration of 0.10 or more of alcohol in his blood or breath. A  
45 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



1 such other time as the court may direct, file and serve on the  
2 prosecuting attorney a written notice of that intent.

3 *5. Except as otherwise provided in section 10 of this act, a*  
4 *person who violates the provisions of this section is guilty of a*  
5 *misdemeanor.*

6 **Sec. 12.** NRS 488.430 is hereby amended to read as follows:

7 488.430 1. Before sentencing a defendant pursuant to NRS  
8 488.420 ~~§~~ *or section 10 of this act*, the court shall require that the  
9 defendant be evaluated to determine whether he is an abuser of  
10 alcohol or drugs and whether he can be treated successfully for his  
11 condition.

12 2. The evaluation must be conducted by:

13 (a) An alcohol and drug abuse counselor who is licensed or  
14 certified pursuant to chapter 641C of NRS to make such an  
15 evaluation;

16 (b) A physician who is certified to make such an evaluation by  
17 the Board of Medical Examiners; or

18 (c) A psychologist who is certified to make such an evaluation  
19 by the Board of Psychological Examiners.

20 3. The alcohol and drug abuse counselor, physician or  
21 psychologist who conducts the evaluation shall immediately forward  
22 the results of the evaluation to the Director of the Department of  
23 Corrections.

24 **Sec. 13.** NRS 209.425 is hereby amended to read as follows:

25 209.425 1. The Director shall, with the approval of the  
26 Board, establish a program for the treatment of an abuser of alcohol  
27 or drugs who is imprisoned pursuant to paragraph (c) of subsection  
28 1 *or subsection 2* of NRS 484.3792 or NRS 484.3795. The program  
29 must include an initial period of intensive mental and physical  
30 rehabilitation in a facility of the Department, followed by regular  
31 sessions of education, counseling and any other necessary or  
32 desirable treatment.

33 2. The Director may, upon the request of the offender after the  
34 initial period of rehabilitation, allow the offender to earn wages  
35 under any other program established by the Department if the  
36 offender assigns to the Department any wages he earns under such a  
37 program. The Director may deduct from the wages of the offender  
38 an amount determined by the Director, with the approval of the  
39 Board, to:

40 (a) Offset the costs, as reflected in the budget of the Department,  
41 to maintain the offender in a facility or institution of the Department  
42 and in the program of treatment established pursuant to this section;  
43 and

44 (b) Meet any existing obligation of the offender for the support  
45 of his family or restitution to any victim of his crime.



1       **Sec. 14.** NRS 209.481 is hereby amended to read as follows:  
2       209.481 1. The Director shall not assign any prisoner to an  
3 institution or facility of minimum security if the prisoner:  
4       (a) Except as otherwise provided in NRS 484.3792 , ~~and~~  
5 484.3795, *488.420 and section 10 of this act*, is not eligible for  
6 parole or release from prison within a reasonable period;  
7       (b) Has recently committed a serious infraction of the rules of an  
8 institution or facility of the Department;  
9       (c) Has not performed the duties assigned to him in a faithful  
10 and orderly manner;  
11       (d) Has been convicted of a sexual offense;  
12       (e) Has committed an act of serious violence during the previous  
13 year; or  
14       (f) Has attempted to escape or has escaped from an institution of  
15 the Department.  
16       2. The Director shall, by regulation, establish procedures for  
17 classifying and selecting qualified prisoners.  
18       **Sec. 15.** The amendatory provisions of this act apply to  
19 offenses committed before October 1, 2003, for the purpose of  
20 determining whether a person is subject to the provisions of  
21 subsection 2 of NRS 484.3792, as amended by this act, or  
22 subsection 1 of section 10 of this act.

