
ASSEMBLY BILL NO. 362—ASSEMBLYMEN GIUNCHIGLIANI,
ANDERSON AND CONKLIN

MARCH 17, 2003

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to driving or being in actual physical control of vehicle or operating or being in actual physical control of vessel while under influence of certain controlled substances. (BDR 43-802)

FISCAL NOTE: Effect on Local Government: Yes.
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 traffic laws; revising provisions relating to driving or being in actual physical control of a vehicle while under the influence of certain controlled substances; revising provisions relating to operating or being in actual physical control of a vessel while under the influence of certain controlled substances; 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 484.1245 is hereby amended to read as
2 follows:
3 484.1245 “Prohibited substance” means any of the following
4 substances if the person who uses the substance has not been issued
5 a valid prescription to use the substance and the substance is
6 classified in schedule I or II pursuant to NRS 453.166 or 453.176
7 when it is used:
8 1. Amphetamine.
9 2. Cocaine or cocaine metabolite.
10 3. Heroin or heroin metabolite (morphine or 6-monoacetyl
11 morphine).



- 1 4. Lysergic acid diethylamide.
- 2 5. ~~Marijuana or marijuana metabolite.~~
- 3 ~~6.]~~ Methamphetamine.
- 4 ~~7.]~~ 6. Phencyclidine.

5 **Sec. 2.** NRS 484.379 is hereby amended to read as follows:

6 484.379 1. It is unlawful for any person who:

- 7 (a) Is under the influence of intoxicating liquor;
- 8 (b) Has a concentration of alcohol of 0.10 or more in his blood
- 9 or breath; or
- 10 (c) Is found by measurement within 2 hours after driving or
- 11 being in actual physical control of a vehicle to have a concentration
- 12 of alcohol of 0.10 or more in his blood or breath,
- 13 to drive or be in actual physical control of a vehicle on a highway or
- 14 on premises to which the public has access.

15 2. ~~H.]~~ *Except as otherwise provided in subsection 4, it* is

16 unlawful for any person who:

- 17 (a) Is under the influence of a controlled substance;
- 18 (b) Is under the combined influence of intoxicating liquor and a
- 19 controlled substance; or
- 20 (c) Inhales, ingests, applies or otherwise uses any chemical,
- 21 poison or organic solvent, or any compound or combination of any
- 22 of these, to a degree which renders him incapable of safely driving
- 23 or exercising actual physical control of a vehicle,
- 24 to drive or be in actual physical control of a vehicle on a highway or
- 25 on premises to which the public has access. The fact that any person
- 26 charged with a violation of this subsection is or has been entitled to
- 27 use that drug under the laws of this state is not a defense against any
- 28 charge of violating this subsection.

29 3. It is unlawful for any person to drive or be in actual physical

30 control of a vehicle on a highway or on premises to which the public

31 has access with an amount of a prohibited substance in his blood or

32 urine that is equal to or greater than:

33	34 Prohibited substance	35 Urine	36 Blood
37		Nanograms	Nanograms
38		per milliliter	per milliliter
39	(a) Amphetamine	500	100
40	(b) Cocaine	150	50
41	(c) Cocaine metabolite	150	50
42	(d) Heroin	2,000	50
43	(e) Heroin metabolite:		
44	(1) Morphine	2,000	50
45	(2) 6-monoacetyl morphine	10	10
	(f) Lysergic acid diethylamide	25	10
	(g) Marijuana	10	2



1	(h) Marijuana metabolite	15	5
2	(+) Methamphetamine	500	100
3	(+) (h) Phencyclidine	25	10

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5 4. *Except as otherwise provided in this subsection, it is*
6 *unlawful for any person to drive or be in actual physical control of*
7 *a vehicle on a highway or on premises to which the public has*
8 *access with an amount of delta-9-tetrahydrocannabinol in his*
9 *blood that is equal to or greater than 20 nanograms per milliliter.*
10 *For the purposes of determining whether a person has:*

- 11 (a) *Violated the provisions of this subsection; or*
12 (b) *Driven or been in actual physical control of a vehicle while*
13 *under the influence of marijuana, as prohibited by paragraphs (a)*
14 *and (b) of subsection 2,*
15 *the fact that a person has an amount of delta-9-*
16 *tetrahydrocannabinol in his blood that is equal to or greater than*
17 *20 nanograms per milliliter creates a rebuttable presumption of*
18 *guilt. The rebuttable presumption may be overcome only if the*
19 *person alleged to have committed the violation proves by a*
20 *preponderance of evidence that his ability to drive or physically*
21 *control the vehicle was not impaired.*

22 5. If consumption is proven by a preponderance of the
23 evidence, it is an affirmative defense under paragraph (c) of
24 subsection 1 that the defendant consumed a sufficient quantity of
25 alcohol after driving or being in actual physical control of the
26 vehicle, and before his blood or breath was tested, to cause him to
27 have a concentration of alcohol of 0.10 or more in his blood or
28 breath. A defendant who intends to offer this defense at a trial
29 or preliminary hearing must, not less than 14 days before the trial or
30 hearing or at such other time as the court may direct, file and serve
31 on the prosecuting attorney a written notice of that intent.

32 **Sec. 3.** NRS 484.3795 is hereby amended to read as follows:

33 484.3795 1. A person who:

- 34 (a) Is under the influence of intoxicating liquor;
35 (b) Has a concentration of alcohol of 0.10 or more in his blood
36 or breath;
37 (c) Is found by measurement within 2 hours after driving or
38 being in actual physical control of a vehicle to have a concentration
39 of alcohol of 0.10 or more in his blood or breath;
40 (d) ~~(h)~~ *Except as otherwise provided in paragraph (g), is* under
41 the influence of a controlled substance or is under the combined
42 influence of intoxicating liquor and a controlled substance;
43 (e) Inhales, ingests, applies or otherwise uses any chemical,
44 poison or organic solvent, or any compound or combination of any



1 of these, to a degree which renders him incapable of safely driving
2 or exercising actual physical control of a vehicle; ~~for~~

3 (f) Has a prohibited substance in his blood or urine in an amount
4 that is equal to or greater than the amount set forth in subsection 3
5 of NRS 484.379 ~~;~~; or

6 (g) *Has delta-9-tetrahydrocannabinol in his blood in an*
7 *amount that is equal to or greater than the amount set forth in*
8 *subsection 4 of NRS 484.379 and has not rebutted the*
9 *presumption described in that subsection,*

10 and does any act or neglects any duty imposed by law while driving
11 or in actual physical control of any vehicle on or off the highways of
12 this state, if the act or neglect of duty proximately causes the death
13 of, or substantial bodily harm to, a person other than himself, is
14 guilty of a category B felony and shall be punished by imprisonment
15 in the state prison for a minimum term of not less than 2 years and a
16 maximum term of not more than 20 years and must be further
17 punished by a fine of not less than \$2,000 nor more than \$5,000. A
18 person so imprisoned must, insofar as practicable, be segregated
19 from offenders whose crimes were violent and, insofar as
20 practicable, be assigned to an institution or facility of minimum
21 security.

22 2. A prosecuting attorney shall not dismiss a charge of
23 violating the provisions of subsection 1 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. A sentence imposed pursuant to subsection 1 may not be
28 suspended nor may probation be granted.

29 3. If consumption is proven by a preponderance of the
30 evidence, it is an affirmative defense under paragraph (c) of
31 subsection 1 that the defendant consumed a sufficient quantity of
32 alcohol after driving or being in actual physical control of the
33 vehicle, and before his blood or breath was tested, to cause him to
34 have a concentration of alcohol of 0.10 or more in his blood or
35 breath. A defendant who intends to offer this defense at a trial
36 or preliminary hearing must, not less than 14 days before the trial or
37 hearing or at such other time as the court may direct, file and serve
38 on the prosecuting attorney a written notice of that intent.

39 4. If the defendant was transporting a person who is less than
40 15 years of age in the motor vehicle at the time of the violation, the
41 court shall consider that fact as an aggravating factor in determining
42 the sentence of the defendant.

43 **Sec. 4.** NRS 488.410 is hereby amended to read as follows:

44 488.410 1. It is unlawful for any person who:

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



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

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

8 2. ~~(H)~~ *Except as otherwise provided in subsection 4, it is*
9 *unlawful for any person who:*

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

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

13 (c) Inhales, ingests, applies or otherwise uses any chemical,
14 poison or organic solvent, or any compound or combination of any
15 of these, to a degree which renders him incapable of safely
16 operating or exercising actual physical control of a vessel under
17 power or sail,
18 to operate or be in actual physical control of a vessel under power or
19 sail on the waters of this state.

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

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

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41 4. *Except as otherwise provided in this subsection, it is*
42 *unlawful for any person to operate or be in actual physical control*
43 *of a vessel under power or sail on the waters of this state with an*
44 *amount of delta-9-tetrahydrocannabinol in his blood that is equal*



1 *to or greater than 20 nanograms per milliliter. For the purposes of*
2 *determining whether a person has:*

- 3 (a) *Violated the provisions of this subsection; or*
4 (b) *Operated or been in actual physical control of a vessel*
5 *under power or sail while under the influence of marijuana, as*
6 *prohibited by paragraphs (a) and (b) of subsection 2,*
7 *the fact that a person has an amount of delta-9-*
8 *tetrahydrocannabinol in his blood that is equal to or greater than*
9 *20 nanograms per milliliter creates a rebuttable presumption of*
10 *guilt. The rebuttable presumption may be overcome only if the*
11 *person alleged to have committed the violation proves by a*
12 *preponderance of evidence that his ability to operate or physically*
13 *control the vessel was not impaired.*

14 5. If consumption is proven by a preponderance of the
15 evidence, it is an affirmative defense under paragraph (c) of
16 subsection 1 that the defendant consumed a sufficient quantity of
17 alcohol after operating or being in actual physical control of the
18 vessel, and before his blood was tested, to cause him to have a
19 concentration of 0.10 or more of alcohol in his blood or breath. A
20 defendant who intends to offer this defense at a trial or preliminary
21 hearing must, not less than 14 days before the trial or hearing or at
22 such other time as the court may direct, file and serve on the
23 prosecuting attorney a written notice of that intent.

24 **Sec. 5.** NRS 488.420 is hereby amended to read as follows:

25 488.420 1. A person who:

- 26 (a) Is under the influence of intoxicating liquor;
27 (b) Has a concentration of alcohol of 0.10 or more in his blood
28 or breath;
29 (c) Is found by measurement within 2 hours after operating or
30 being in actual physical control of a vessel under power or sail to
31 have a concentration of alcohol of 0.10 or more in his blood or
32 breath;
33 (d) ~~Is~~ *Except as otherwise provided in paragraph (g), is* under
34 the influence of a controlled substance or is under the combined
35 influence of intoxicating liquor and a controlled substance;
36 (e) Inhales, ingests, applies or otherwise uses any chemical,
37 poison or organic solvent, or any compound or combination of any
38 of these, to a degree which renders him incapable of safely
39 operating or being in actual physical control of a vessel under power
40 or sail; ~~or~~
41 (f) Has a prohibited substance in his blood or urine in an amount
42 that is equal to or greater than the amount set forth in subsection 3
43 of NRS 488.410 ~~or~~ *;* ~~or~~

44 (g) *Has delta-9-tetrahydrocannabinol in his blood in an*
45 *amount that is equal to or greater than the amount set forth in*



1 *subsection 4 of NRS 488.410 and has not rebutted the*
2 *presumption described in that subsection,*
3 and does any act or neglects any duty imposed by law while
4 operating or being in actual physical control of any vessel under
5 power or sail, if the act or neglect of duty proximately causes the
6 death of, or substantial bodily harm to, a person other than himself,
7 is guilty of a category B felony and shall be punished by
8 imprisonment in the state prison for a minimum term of not less
9 than 2 years and a maximum term of not more than 20 years and
10 shall be further punished by a fine of not less than \$2,000 nor more
11 than \$5,000. A person so imprisoned must, insofar as practicable, be
12 segregated from offenders whose crimes were violent and, insofar as
13 practicable, be assigned to an institution or facility of minimum
14 security.

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

22 3. If consumption is proven by a preponderance of the
23 evidence, it is an affirmative defense under paragraph (c) of
24 subsection 1 that the defendant consumed a sufficient quantity of
25 alcohol after operating or being in actual physical control of the
26 vessel under power or sail, and before his blood was tested, to cause
27 him to have a concentration of alcohol of 0.10 or more in his blood
28 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
30 hearing or at such other time as the court may direct, file and serve
31 on the prosecuting attorney a written notice of that intent.

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

