

ASSEMBLY BILL NO. 7—ASSEMBLYMAN MANENDO

PREFILED JANUARY 27, 2003

Referred to Concurrent Committees on Judiciary
and Ways and Means

SUMMARY—Reduces concentration of alcohol that may be present in blood or breath of person while operating vehicle or vessel. (BDR 43-17)

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 driving under the influence of alcohol or a controlled substance; reducing the concentration of alcohol that may be present in the blood or breath of a person while operating a vehicle or vessel; 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 483.045 is hereby amended to read as follows:
- 2 483.045 The phrase “concentration of alcohol of 0.02 or more
- 3 but less than ~~0.10~~ *0.08* in his blood or breath” means 0.02 gram or
- 4 more but less than ~~0.10~~ *0.08* gram of alcohol per 100 milliliters of
- 5 the blood of a person or per 210 liters of his breath.
- 6 **Sec. 2.** NRS 483.461 is hereby amended to read as follows:
- 7 483.461 1. If the result of a test given pursuant to NRS
- 8 484.382 or 484.383 shows that a person less than 21 years of age
- 9 had a concentration of alcohol of 0.02 or more but less than ~~0.10~~
- 10 *0.08* in his blood or breath at the time of the test, his license, permit
- 11 or privilege to drive must be suspended for a period of 90 days.
- 12 2. If a revocation or suspension of a person’s license, permit or
- 13 privilege to drive for a violation of NRS 62.227, 484.379 or
- 14 484.3795 follows a suspension ordered pursuant to subsection 1, the
- 15 Department shall:



- 1 (a) Cancel the suspension ordered pursuant to subsection 1; and
- 2 (b) Give the person credit toward the period of revocation or
- 3 suspension ordered pursuant to NRS 62.227, 484.379 or 484.3795,
- 4 whichever is applicable, for any period during which the person's
- 5 license, permit or privilege to drive was suspended pursuant to
- 6 subsection 1.

7 3. This section does not preclude:

- 8 (a) The prosecution of a person for a violation of any other
- 9 provision of law; or
- 10 (b) The suspension or revocation of a person's license, permit or
- 11 privilege to drive pursuant to any other provision of law.

12 **Sec. 3.** NRS 483.462 is hereby amended to read as follows:

13 483.462 1. A peace officer who has received the result of a

14 test given pursuant to NRS 484.382 or 484.383 which indicates that

15 a person less than 21 years of age to whom the test was given had a

16 concentration of alcohol of 0.02 or more but less than ~~0.10~~ 0.08

17 in his blood or breath shall prepare a written certificate indicating

18 whether the peace officer:

- 19 (a) Had reasonable grounds to believe that the person was
- 20 driving under the influence of alcohol;
- 21 (b) Served an order of suspension on the person pursuant to
- 22 subsection 2; and
- 23 (c) Issued the person a temporary license pursuant to subsection
- 24 2.

25 2. If a person less than 21 years of age to whom a test is given

26 pursuant to NRS 484.382 or 484.383 is present when a peace officer

27 receives the result of the test and the test indicates that the person

28 has a concentration of alcohol of 0.02 or more but less than ~~0.10~~

29 0.08 in his blood or breath, the peace officer shall:

- 30 (a) Serve an order of suspension of the license, permit or
- 31 privilege;
- 32 (b) Seize any license or permit of the person;
- 33 (c) Advise the person of his right to:
 - 34 (1) Administrative and judicial review of the suspension; and
 - 35 (2) Have a temporary license;
- 36 (d) If the person requests a temporary license, issue the person a
- 37 temporary license on a form approved by the Department which
- 38 becomes effective 24 hours after he receives the temporary license
- 39 and expires 120 hours after it becomes effective; and
- 40 (e) Transmit to the Department:
 - 41 (1) Any license or permit seized pursuant to paragraph (b);
 - 42 and
 - 43 (2) The written certificate which the peace officer is required
 - 44 to prepare pursuant to subsection 1.



1 3. If a person less than 21 years of age to whom a test is given
2 pursuant to NRS 484.382 or 484.383 is not present when a peace
3 officer receives the result of the test and the test indicates that the
4 person has a concentration of alcohol of 0.02 or more but less than
5 ~~0.10~~ 0.08 in his blood or breath, the peace officer shall transmit to
6 the Department a copy of the result of the test and the written
7 certificate which the peace officer is required to prepare pursuant to
8 subsection 1.

9 4. The Department, upon receiving a copy of the result of the
10 test and the written certificate transmitted by the peace officer
11 pursuant to subsection 3, shall:

- 12 (a) Review the result of the test and the written certificate; and
- 13 (b) If the Department determines that it is appropriate, issue an
14 order to suspend the license, permit or privilege to drive of the
15 person by mailing the order to the person at his last known address.

16 5. An order for suspension issued by the Department pursuant
17 to subsection 4 must:

- 18 (a) Explain the grounds for the suspension;
- 19 (b) Indicate the period of the suspension;
- 20 (c) Require the person to transmit to the Department any license
21 or permit held by the person; and
- 22 (d) Explain that the person has a right to administrative and
23 judicial review of the suspension.

24 6. An order for suspension issued by the Department pursuant
25 to subsection 4 is presumed to have been received by the person 5
26 days after the order is deposited, postage prepaid, in the United
27 States mail by the Department. The date of mailing of the order may
28 be shown by a certificate that is prepared by an officer or employee
29 of the Department specifying the date of mailing.

30 **Sec. 4.** NRS 483.463 is hereby amended to read as follows:
31 483.463 1. At any time during which the license, permit or
32 privilege to drive is suspended pursuant to NRS 483.462, the person
33 may request in writing a hearing by the Department to review the
34 order of suspension. A person is entitled to only one administrative
35 hearing pursuant to this section.

36 2. Unless the parties agree otherwise, the hearing must be
37 conducted within 15 days after receipt of the request or as soon
38 thereafter as is practicable in the county in which the requester
39 resides.

- 40 3. The Director or his agent may:
- 41 (a) Issue subpoenas for:
 - 42 (1) The attendance of witnesses at the hearing; and
 - 43 (2) The production of relevant books and papers; and
 - 44 (b) Require a reexamination of the requester.



- 1 4. The scope of the hearing must be limited to the issues of
2 whether the person, at the time of the test:
3 (a) Was less than 21 years of age; and
4 (b) Had a concentration of alcohol of 0.02 or more but less than
5 ~~0.10~~ 0.08 in his blood or breath.
- 6 5. The Department shall issue the person a temporary license
7 for a period that is sufficient to complete the administrative hearing.
- 8 6. Upon an affirmative finding on the issues listed in
9 subsection 4, the Department shall affirm the order of suspension.
10 Otherwise, the order of suspension must be rescinded.
- 11 7. If the order of suspension is affirmed by the Department, the
12 person is entitled to judicial review of the issues listed in subsection
13 4 in the manner provided in chapter 233B of NRS.
- 14 8. The court shall notify the Department upon issuing a stay.
15 Upon receiving such notice, the Department shall issue an additional
16 temporary license for a period that is sufficient to complete the
17 judicial review.
- 18 9. The hearing officer or the court shall notify the Department
19 if the hearing officer grants a continuance of the administrative
20 hearing or the court grants a continuance after issuing a stay of the
21 suspension. Upon receiving such notice, the Department shall cancel
22 any temporary license granted pursuant to this section and notify the
23 holder by mailing an order of cancelation to the last known address
24 of the holder.
- 25 **Sec. 5.** NRS 484.038 is hereby amended to read as follows:
26 484.038 The phrase "concentration of alcohol of ~~0.10~~ 0.08 or
27 more in his blood or breath" means ~~0.10~~ 0.08 gram or more of
28 alcohol per 100 milliliters of the blood of a person or per 210 liters
29 of his breath.
- 30 **Sec. 6.** NRS 484.379 is hereby amended to read as follows:
31 484.379 1. It is unlawful for any person who:
32 (a) Is under the influence of intoxicating liquor;
33 (b) Has a concentration of alcohol of ~~0.10~~ 0.08 or more in his
34 blood or breath; or
35 (c) Is found by measurement within 2 hours after driving or
36 being in actual physical control of a vehicle to have a concentration
37 of alcohol of ~~0.10~~ 0.08 or more in his blood or breath,
38 to drive or be in actual physical control of a vehicle on a highway or
39 on premises to which the public has access.
- 40 2. It is unlawful for any person who:
41 (a) Is under the influence of a controlled substance;
42 (b) Is under the combined influence of intoxicating liquor and a
43 controlled substance; or
44 (c) Inhales, ingests, applies or otherwise uses any chemical,
45 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,
3 to drive or be in actual physical control of a vehicle on a highway or
4 on premises to which the public has access. The fact that any person
5 charged with a violation of this subsection is or has been entitled to
6 use that drug under the laws of this state is not a defense against any
7 charge of violating this subsection.

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

| 12 | 13 Prohibited substance | 14 Urine | 15 Blood |
|----|--------------------------------|---------------|----------------|
| 16 | | Nanograms per | Nanograms |
| | | milliliter | per milliliter |
| 17 | (a) Amphetamine | 500 | 100 |
| 18 | (b) Cocaine | 150 | 50 |
| 19 | (c) Cocaine metabolite | 150 | 50 |
| 20 | (d) Heroin | 2,000 | 50 |
| 21 | (e) Heroin metabolite: | | |
| 22 | (1) Morphine | 2,000 | 50 |
| 23 | (2) 6-monoacetyl morphine | 10 | 10 |
| 24 | (f) Lysergic acid diethylamide | 25 | 10 |
| 25 | (g) Marijuana | 10 | 2 |
| 26 | (h) Marijuana metabolite | 15 | 5 |
| 27 | (i) Methamphetamine | 500 | 100 |
| 28 | (j) Phencyclidine | 25 | 10 |

29
30 4. If consumption is proven by a preponderance of the
31 evidence, it is an affirmative defense under paragraph (c) of
32 subsection 1 that the defendant consumed a sufficient quantity of
33 alcohol after driving or being in actual physical control of the
34 vehicle, and before his blood or breath was tested, to cause him to
35 have a concentration of alcohol of ~~{0.10}~~ 0.08 or more in his blood
36 or breath. A defendant who intends to offer this defense at a trial or
37 preliminary hearing must, not less than 14 days before the trial or
38 hearing or at such other time as the court may direct, file and serve
39 on the prosecuting attorney a written notice of that intent.

40 **Sec. 7.** NRS 484.3795 is hereby amended to read as follows:

- 41 484.3795 1. A person who:
- 42 (a) Is under the influence of intoxicating liquor;
 - 43 (b) Has a concentration of alcohol of ~~{0.10}~~ 0.08 or more in his
 - 44 blood or breath;



1 (c) Is found by measurement within 2 hours after driving or
2 being in actual physical control of a vehicle to have a concentration
3 of alcohol of ~~[0.10]~~ 0.08 or more in his blood or breath;

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

7 (e) Inhales, ingests, applies or otherwise uses any chemical,
8 poison or organic solvent, or any compound or combination of any
9 of these, to a degree which renders him incapable of safely driving
10 or exercising actual physical control of a vehicle; or

11 (f) Has a prohibited substance in his blood or urine in an amount
12 that is equal to or greater than the amount set forth in subsection 3
13 of NRS 484.379,

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

26 2. A prosecuting attorney shall not dismiss a charge of
27 violating the provisions of subsection 1 in exchange for a plea of
28 guilty, guilty but mentally ill or nolo contendere to a lesser charge or
29 for any other reason unless he knows or it is obvious that the charge
30 is not supported by probable cause or cannot be proved at the time
31 of trial. A sentence imposed pursuant to subsection 1 may not be
32 suspended nor may probation be granted.

33 3. If consumption is proven by a preponderance of the
34 evidence, it is an affirmative defense under paragraph (c) of
35 subsection 1 that the defendant consumed a sufficient quantity of
36 alcohol after driving or being in actual physical control of the
37 vehicle, and before his blood or breath was tested, to cause him to
38 have a concentration of alcohol of ~~[0.10]~~ 0.08 or more in his blood
39 or breath. A defendant who intends to offer this defense at a trial or
40 preliminary hearing must, not less than 14 days before the trial or
41 hearing or at such other time as the court may direct, file and serve
42 on the prosecuting attorney a written notice of that intent.

43 4. If the defendant was transporting a person who is less than
44 15 years of age in the motor vehicle at the time of the violation, the



1 court shall consider that fact as an aggravating factor in determining
2 the sentence of the defendant.

3 **Sec. 8.** NRS 484.384 is hereby amended to read as follows:

4 484.384 1. If the result of a test given under NRS 484.382 or
5 484.383 shows that a person had a concentration of alcohol of ~~{0.10}~~
6 **0.08** or more in his blood or breath at the time of the test, his
7 license, permit or privilege to drive must be revoked as provided in
8 NRS 484.385 and he is not eligible for a license, permit or privilege
9 for a period of 90 days.

10 2. If a revocation of a person's license, permit or privilege to
11 drive under NRS 62.227 or 483.460 follows a revocation under
12 subsection 1 which was based on his having a concentration of
13 alcohol of ~~{0.10}~~ **0.08** or more in his blood or breath, the
14 Department shall cancel the revocation under that subsection and
15 give the person credit for any period during which he was not
16 eligible for a license, permit or privilege.

17 3. Periods of ineligibility for a license, permit or privilege to
18 drive which are imposed pursuant to this section must run
19 consecutively.

20 **Sec. 9.** NRS 484.385 is hereby amended to read as follows:

21 484.385 1. As agent for the Department, the officer who
22 obtained the result of a test given pursuant to NRS 484.382 or
23 484.383 shall immediately serve an order of revocation of the
24 license, permit or privilege to drive on a person who has a
25 concentration of alcohol of ~~{0.10}~~ **0.08** or more in his blood or
26 breath or has a detectable amount of a prohibited substance in his
27 blood or urine, if that person is present, and shall seize his license or
28 permit to drive. The officer shall then advise him of his right to
29 administrative and judicial review of the revocation and to have a
30 temporary license, and shall issue him a temporary license on a form
31 approved by the Department if he requests one, which is effective
32 for only 7 days including the date of issuance. The officer shall
33 immediately transmit the person's license or permit to the
34 Department along with the written certificate required by subsection
35 2.

36 2. When a police officer has served an order of revocation of a
37 driver's license, permit or privilege on a person pursuant to
38 subsection 1, or later receives the result of an evidentiary test which
39 indicates that a person, not then present, had a concentration of
40 alcohol of ~~{0.10}~~ **0.08** or more in his blood or breath or had a
41 detectable amount of a prohibited substance in his blood or urine,
42 the officer shall immediately prepare and transmit to the
43 Department, together with the seized license or permit and a copy of
44 the result of the test, a written certificate that he had reasonable
45 grounds to believe that the person had been driving or in actual



1 physical control of a vehicle with a concentration of alcohol of
2 ~~0.10~~ 0.08 or more in his blood or breath or with a detectable
3 amount of a prohibited substance in his blood or urine, as
4 determined by a chemical test. The certificate must also indicate
5 whether the officer served an order of revocation on the person and
6 whether he issued the person a temporary license.

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

18 4. Notice of an order of revocation and notice of the
19 affirmation of a prior order of revocation or the cancelation of a
20 temporary license provided in NRS 484.387 is sufficient if it is
21 mailed to the person's last known address as shown by any
22 application for a license. The date of mailing may be proved by the
23 certificate of any officer or employee of the Department, specifying
24 the time of mailing the notice. The notice is presumed to have been
25 received upon the expiration of 5 days after it is deposited, postage
26 prepaid, in the United States mail.

27 **Sec. 10.** NRS 484.387 is hereby amended to read as follows:

28 484.387 1. At any time while a person is not eligible for a
29 license, permit or privilege to drive following an order of revocation
30 issued pursuant to NRS 484.385, he may request in writing a
31 hearing by the Department to review the order of revocation, but he
32 is only entitled to one hearing. The hearing must be conducted
33 within 15 days after receipt of the request, or as soon thereafter as is
34 practicable, in the county where the requester resides unless the
35 parties agree otherwise. The Director or his agent may issue
36 subpoenas for the attendance of witnesses and the production of
37 relevant books and papers and may require a reexamination of the
38 requester. The Department shall issue an additional temporary
39 license for a period which is sufficient to complete the
40 administrative review.

41 2. The scope of the hearing must be limited to the issue of
42 whether the person, at the time of the test, had a concentration of
43 alcohol of ~~0.10~~ 0.08 or more in his blood or breath or a detectable
44 amount of a prohibited substance in his blood or urine. Upon an
45 affirmative finding on this issue, the Department shall affirm the



1 order of revocation. Otherwise, the order of revocation must be
2 rescinded.

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

10 4. If a hearing officer grants a continuance of a hearing at the
11 request of the person whose license was revoked, or a court does so
12 after issuing a stay of the revocation, the officer or court shall notify
13 the Department, and the Department shall cancel the temporary
14 license and notify the holder by mailing the order of cancelation to
15 his last known address.

16 **Sec. 11.** NRS 488.405 is hereby amended to read as follows:
17 488.405 As used in NRS 488.410 and 488.420, the phrase
18 “concentration of alcohol of ~~{0.10}~~ 0.08 or more in his blood or
19 breath” means ~~{0.10}~~ 0.08 gram or more per 100 milliliters of the
20 blood of a person or per 210 liters of his breath.

21 **Sec. 12.** NRS 488.410 is hereby amended to read as follows:
22 488.410 1. It is unlawful for any person who:
23 (a) Is under the influence of intoxicating liquor;
24 (b) Has a concentration of alcohol of ~~{0.10}~~ 0.08 or more in his
25 blood or breath; or
26 (c) Is found by measurement within 2 hours after operating or
27 being in actual physical control of a vessel to have a concentration
28 of alcohol of ~~{0.10}~~ 0.08 or more in his blood or breath,
29 to operate or be in actual physical control of a vessel under power or
30 sail on the waters of this state.

31 2. It is unlawful for any person who:
32 (a) Is under the influence of a controlled substance;
33 (b) Is under the combined influence of intoxicating liquor and a
34 controlled substance; or
35 (c) Inhales, ingests, applies or otherwise uses any chemical,
36 poison or organic solvent, or any compound or combination of any
37 of these, to a degree which renders him incapable of safely
38 operating or exercising actual physical control of a vessel under
39 power or sail,
40 to operate or be in actual physical control of a vessel under power or
41 sail on the waters of this state.

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



| 1 | Prohibited substance | Urine | Blood |
|----|--------------------------------|---------------|---------------|
| 2 | | Nanograms per | Nanograms per |
| 3 | | milliliter | milliliter |
| 4 | | | |
| 5 | (a) Amphetamine | 500 | 100 |
| 6 | (b) Cocaine | 150 | 50 |
| 7 | (c) Cocaine metabolite | 150 | 50 |
| 8 | (d) Heroin | 2,000 | 50 |
| 9 | (e) Heroin metabolite: | | |
| 10 | (1) Morphine | 2,000 | 50 |
| 11 | (2) 6-monoacetyl morphine | 10 | 10 |
| 12 | (f) Lysergic acid diethylamide | 25 | 10 |
| 13 | (g) Marijuana | 10 | 2 |
| 14 | (h) Marijuana metabolite | 15 | 5 |
| 15 | (i) Methamphetamine | 500 | 100 |
| 16 | (j) Phencyclidine | 25 | 10 |

17
18 4. If consumption is proven by a preponderance of the
19 evidence, it is an affirmative defense under paragraph (c) of
20 subsection 1 that the defendant consumed a sufficient quantity of
21 alcohol after operating or being in actual physical control of the
22 vessel, and before his blood was tested, to cause him to have a
23 concentration of ~~0.10~~ 0.08 or more of alcohol in his blood or
24 breath. A defendant who intends to offer this defense at a trial or
25 preliminary hearing must, not less than 14 days before the trial or
26 hearing or at such other time as the court may direct, file and serve
27 on the prosecuting attorney a written notice of that intent.

28 **Sec. 13.** NRS 488.420 is hereby amended to read as follows:

- 29 488.420 1. A person who:
- 30 (a) Is under the influence of intoxicating liquor;
 - 31 (b) Has a concentration of alcohol of ~~0.10~~ 0.08 or more in his
32 blood or breath;
 - 33 (c) Is found by measurement within 2 hours after operating or
34 being in actual physical control of a vessel under power or sail to
35 have a concentration of alcohol of ~~0.10~~ 0.08 or more in his blood
36 or breath;
 - 37 (d) Is under the influence of a controlled substance or is under
38 the combined influence of intoxicating liquor and a controlled
39 substance;
 - 40 (e) Inhales, ingests, applies or otherwise uses any chemical,
41 poison or organic solvent, or any compound or combination of any
42 of these, to a degree which renders him incapable of safely
43 operating or being in actual physical control of a vessel under power
44 or sail; or



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

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

23 3. If consumption is proven by a preponderance of the
24 evidence, it is an affirmative defense under paragraph (c) of
25 subsection 1 that the defendant consumed a sufficient quantity of
26 alcohol after operating or being in actual physical control of the
27 vessel under power or sail, and before his blood was tested, to cause
28 him to have a concentration of alcohol of ~~0.10~~ 0.08 or more in his
29 blood or breath. A defendant who intends to offer this defense at a
30 trial or preliminary hearing must, not less than 14 days before the
31 trial or hearing or at such other time as the court may direct, file and
32 serve on the prosecuting attorney a written notice of that intent.

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

36 **Sec. 14.** NRS 202.257 is hereby amended to read as follows:

37 202.257 1. It is unlawful for a person who:

38 (a) Has a concentration of alcohol of 0.10 or more in his blood
39 or breath; or

40 (b) Is under the influence of any controlled substance, or is
41 under the combined influence of intoxicating liquor and a controlled
42 substance, or any person who inhales, ingests, applies or otherwise
43 uses any chemical, poison or organic solvent, or any compound or
44 combination of any of these, to a degree which renders him



1 incapable of safely exercising actual physical control of a
2 firearm,
3 to have in his actual physical possession any firearm. This
4 prohibition does not apply to the actual physical possession of a
5 firearm by a person who was within his personal residence and had
6 the firearm in his possession solely for self-defense.

7 2. Any evidentiary test to determine whether a person has
8 violated the provisions of subsection 1 must be administered in the
9 same manner as an evidentiary test that is administered pursuant to
10 NRS 484.383 to 484.3947, inclusive, except that submission to the
11 evidentiary test is required of any person who is directed by a police
12 officer to submit to the test. If a person to be tested fails to submit to
13 a required test as directed by a police officer, the officer may direct
14 that reasonable force be used to the extent necessary to obtain the
15 samples of blood from the person to be tested, if the officer has
16 reasonable cause to believe that the person to be tested was in
17 violation of this section.

18 3. Any person who violates the provisions of subsection 1 is
19 guilty of a misdemeanor.

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

24 5. As used in this section, the phrase "concentration of alcohol
25 of 0.10 or more in his blood or breath" ~~has the meaning ascribed to~~
26 ~~it in NRS 484.038.]~~ *means 0.10 gram or more of alcohol per 100*
27 *milliliters of the blood of a person or per 210 liters of his breath.*

