
ASSEMBLY BILL NO. 67—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to driving, operating or being in actual physical control of a vehicle or vessel while under the influence of alcohol or a controlled substance or engaging in other prohibited conduct. (BDR 4-151)

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

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

AN ACT relating to public safety; revising provisions governing the admission into evidence of certain affidavits and declarations in certain criminal proceedings; revising provisions governing the administration of certain tests for the presence of alcohol, controlled substances and prohibited substances; providing for the revocation of the license, permit or privilege to drive of a person who fails to submit to certain tests for the presence of alcohol, controlled substances and prohibited substances under certain circumstances; revising provisions concerning operating or being in actual physical control of a vessel; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law makes it unlawful for a person to drive, operate or be in actual
- 2 physical control of a vehicle or vessel while under the influence of intoxicating
- 3 liquor or a controlled substance, or both. (NRS 484C.110, 484C.120, 488.410)
- 4 **Sections 9 and 20** of this bill define the term “under the influence” for the purposes
- 5 of existing law relating to driving, operating or being in actual physical control of a
- 6 vehicle or vessel while under the influence of intoxicating liquor or a controlled
- 7 substance, or both.
- 8 Existing law allows the affidavits and declarations of certain persons to be
- 9 admitted as evidence during a criminal proceeding to prove certain facts relating to



10 the testing of the blood, breath or urine of a defendant to determine the presence or
11 concentration of alcohol or certain other substances. In a felony trial, if the
12 defendant objects in writing to the admission of such affidavits or declarations, the
13 court must not admit the affidavit or declaration into evidence and the prosecution
14 may cause the witness to testify at trial concerning the information contained in the
15 affidavit or declaration. A defendant in a misdemeanor trial, however, must also
16 establish that: (1) there is a substantial and bona fide dispute between the
17 prosecution and the defense regarding the facts in the declaration; and (2) it is in the
18 best interests of justice that the witness who signed the affidavit or declaration be
19 cross-examined. (NRS 50.315) The Nevada Supreme Court has held that the
20 additional requirements imposed on a misdemeanor defendant under existing law
21 violate a defendant's constitutional right to confront the witnesses against him or
22 her and are therefore unconstitutional. (*City of Reno v. Howard*, 130 Nev. Adv. Op.
23 12, 318 P.3d 1063 (2014))

24 **Section 1** of this bill eliminates the constitutional defect identified by the
25 Nevada Supreme Court and provides instead that an affidavit or declaration must
26 not be admitted as evidence during a misdemeanor trial to prove certain facts
27 relating to the testing of the blood, breath or urine of a defendant to determine the
28 presence or concentration of alcohol or certain other substances if, not later than 10
29 days before the date set for trial or such shorter time before the date set for trial as
30 authorized by the court, the defendant objects in writing to the admission of the
31 affidavit or declaration and requests an opportunity to cross-examine the witness at
32 trial. Under **section 1**, if the affidavit or declaration is not admitted into evidence,
33 the prosecution may produce the witness to provide testimony at trial concerning
34 the information contained in the affidavit or declaration at trial.

35 Under existing law, a person who drives a vehicle in this State is deemed to
36 have given his or her consent to an evidentiary test of his or her blood, urine, breath
37 or other bodily substance to determine the concentration of alcohol in his or her
38 blood or breath or to determine whether a controlled substance, chemical, poison,
39 organic solvent or another prohibited substance is present. If a person who has thus
40 given his or her "implied consent" to an evidentiary test refuses to submit to the test
41 when directed to do so by a police officer who has reason to believe that the person
42 was driving a vehicle or operating a vessel while under the influence of alcohol or a
43 controlled substance, existing law authorizes the police officer to direct that
44 reasonable force be used to obtain a sample of blood from the person to be tested.
45 (NRS 484C.160) The Nevada Supreme Court has held that the consent implied by a
46 person's decision to drive in this State is not voluntary consent to an evidentiary
47 blood test and, thus, existing laws that allow a police officer to obtain a blood
48 sample from a person without a warrant and without voluntary consent are
49 unconstitutional. (*Byars v. State*, 130 Nev. Adv. Op. No. 85, 336 P.3d 939 (2014))

50 **Sections 12 and 14** of this bill eliminate the constitutional defect identified by
51 the Nevada Supreme Court and provide instead that if a person refuses to submit to
52 an evidentiary blood test at the request of a police officer: (1) the officer may apply
53 for a warrant or other court order directing the use of reasonable force to obtain the
54 blood sample; and (2) the person's driver's license must be revoked for a certain
55 period. **Sections 15 and 16** of this bill make corresponding revisions to provisions
56 of existing law which establish the procedure for effecting such a revocation and
57 provide for an administrative hearing to challenge such a revocation. **Section 25** of
58 this bill makes comparable changes to existing law concerning the evidentiary tests
59 of persons who operate or exercise actual physical control over vessels on the
60 waters of this State. **Section 5** of this bill makes comparable changes to existing
61 law concerning evidentiary tests of persons who have actual physical possession of
62 a firearm.

63 Existing law makes it unlawful for a person to operate or be in actual physical
64 control of a vessel on the waters of this State while under the influence of



65 intoxicating liquor or a controlled substance or while engaging in certain other
66 prohibited conduct if the vessel is "under power or sail." (NRS 488.410) **Section 21**
67 of this bill makes the operation or actual physical control of a vessel by such a
68 person unlawful if the vessel is "under way," that is, if the vessel is adrift, making
69 way or being propelled, and is not aground, made fast to the shore or tied or made
70 fast to a dock or mooring. **Sections 2-4, 6-8, 19, 21-25 and 27-30** of this bill make
71 conforming changes.

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

- 1 **Section 1.** NRS 50.315 is hereby amended to read as follows:
2 50.315 1. Except as otherwise provided in subsections 6 and
3 7, the affidavit or declaration of a person is admissible in evidence
4 in any criminal or administrative proceeding to prove:
5 (a) That the affiant or declarant has been certified by the
6 Director of the Department of Public Safety as being competent to
7 operate devices of a type certified by the Committee on Testing for
8 Intoxication as accurate and reliable for testing a person's breath to
9 determine the concentration of alcohol in his or her breath;
10 (b) The identity of a person from whom the affiant or declarant
11 obtained a sample of breath; and
12 (c) That the affiant or declarant tested the sample using a device
13 of a type so certified and that the device was functioning properly.
14 2. Except as otherwise provided in subsections 6 and 7, the
15 affidavit or declaration of a person who has examined a prepared
16 chemical solution or gas that has been used in calibrating, or
17 verifying the calibration of, a device for testing another's breath to
18 determine the concentration of alcohol in his or her breath is
19 admissible in evidence in any criminal or administrative proceeding
20 to prove:
21 (a) The occupation of the affiant or declarant; and
22 (b) That the solution or gas has the chemical composition
23 necessary for use in accurately calibrating, or verifying the
24 calibration of, the device.
25 3. Except as otherwise provided in subsections 6 and 7, the
26 affidavit or declaration of a person who calibrates a device for
27 testing another's breath to determine the concentration of alcohol in
28 his or her breath is admissible in evidence in any criminal or
29 administrative proceeding to prove:
30 (a) The occupation of the affiant or declarant;
31 (b) That on a specified date the affiant or declarant calibrated the
32 device at a named law enforcement agency by using the procedures
33 and equipment prescribed in the regulations of the Committee on
34 Testing for Intoxication;



1 (c) That the calibration was performed within the period
2 required by the Committee's regulations; and

3 (d) Upon completing the calibration of the device, it was
4 operating properly.

5 4. Except as otherwise provided in subsections 6 and 7, the
6 affidavit or declaration made under the penalty of perjury of a
7 person who withdraws a sample of blood from another for analysis
8 by an expert as set forth in NRS 50.320 is admissible in any
9 criminal or administrative proceeding to prove:

10 (a) The occupation of the affiant or declarant;

11 (b) The identity of the person from whom the affiant or
12 declarant withdrew the sample;

13 (c) The fact that the affiant or declarant kept the sample in his or
14 her sole custody or control and in substantially the same condition
15 as when he or she first obtained it until delivering it to another; and

16 (d) The identity of the person to whom the affiant or declarant
17 delivered it.

18 5. Except as otherwise provided in subsections 6 and 7, the
19 affidavit or declaration of a person who receives from another a
20 sample of blood or urine or other tangible evidence that is alleged to
21 contain alcohol or a controlled substance, chemical, poison, organic
22 solvent or another prohibited substance may be admitted in any
23 criminal or civil or administrative proceeding to prove:

24 (a) The occupation of the affiant or declarant;

25 (b) The fact that the affiant or declarant received a sample or
26 other evidence from another person and kept it in his or her sole
27 custody or control in substantially the same condition as when he or
28 she first received it until delivering it to another; and

29 (c) The identity of the person to whom the affiant or declarant
30 delivered it.

31 6. If, ~~[at or before the time of trial,]~~ *not later than 10 days*
32 *before the date set for trial or such shorter time before the date set*
33 *for trial as authorized by the court,* the defendant : ~~[establishes~~
34 ~~that:]~~

35 (a) ~~[There is a substantial and bona fide dispute regarding the~~
36 ~~facts in the affidavit or declaration; and~~

37 ~~—(b) It is in the best interests of justice that the witness who~~
38 ~~signed the affidavit or declaration be cross-examined,]~~ *Objects in*
39 *writing to admitting into evidence the affidavit or declaration; and*

40 *(b) Requests an opportunity to cross-examine at trial the*
41 *witness who signed the affidavit or declaration,*

42 *↪ the court shall not admit the affidavit or declaration into*
43 *evidence and* may order the prosecution to produce the witness and
44 may continue the trial for any time the court deems reasonably



1 necessary to receive such testimony. The time within which a trial is
2 required is extended by the time of the continuance.

3 7. During any trial in which the defendant has been accused of
4 committing a felony, the defendant may object in writing to
5 admitting into evidence an affidavit or declaration described in this
6 section. If the defendant makes such an objection, the court shall not
7 admit the affidavit or declaration into evidence and the prosecution
8 may cause the person to testify to any information contained in the
9 affidavit or declaration.

10 8. The Committee on Testing for Intoxication shall adopt
11 regulations prescribing the form of the affidavits and declarations
12 described in this section.

13 **Sec. 2.** NRS 50.325 is hereby amended to read as follows:

14 50.325 1. If a person is charged with an offense listed in
15 subsection 4, and it is necessary to prove:

16 (a) The existence of any alcohol;

17 (b) The quantity of a controlled substance; or

18 (c) The existence or identity of a controlled substance, chemical,
19 poison, organic solvent or another prohibited substance,

20 the prosecuting attorney may request that the affidavit or
21 declaration of an expert or other person described in NRS 50.315
22 and 50.320 be admitted into evidence at the preliminary hearing,
23 hearing before a grand jury or trial concerning the offense. Except
24 as otherwise provided in NRS 50.315 and 50.320, the affidavit or
25 declaration must be admitted into evidence at the trial.

26 2. If the request is to have the affidavit or declaration admitted
27 into evidence at a preliminary hearing or hearing before a grand
28 jury, the affidavit or declaration must be admitted into evidence
29 upon submission. If the request is to have the affidavit or declaration
30 admitted into evidence at trial, the request must be:

31 (a) Made at least 10 days before the date set for the trial;

32 (b) Sent to the defendant's counsel and to the defendant, by
33 registered or certified mail, or personally served on the defendant's
34 counsel or the defendant; and

35 (c) Accompanied by a copy of the affidavit or declaration and
36 the name, address and telephone number of the affiant or declarant.

37 3. The provisions of this section do not prohibit either party
38 from producing any witness to offer testimony at trial.

39 4. The provisions of this section apply to any of the following
40 offenses:

41 (a) An offense punishable pursuant to NRS 202.257, 455A.170,
42 455B.080, 493.130 or 639.283.

43 (b) An offense punishable pursuant to chapter 453, 484A to
44 484E, inclusive, or 488 of NRS.



1 (c) A homicide resulting from driving, operating or being in
2 actual physical control of a vehicle or a vessel under ~~power or sail~~
3 way while under the influence of intoxicating liquor or a controlled
4 substance or resulting from any other conduct prohibited by NRS
5 484C.110, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS
6 488.410, 488.420 or 488.425.

7 (d) Any other offense for which it is necessary to prove, as an
8 element of the offense:

9 (1) The existence of any alcohol;

10 (2) The quantity of a controlled substance; or

11 (3) The existence or identity of a controlled substance,
12 chemical, poison, organic solvent or another prohibited substance.

13 **Sec. 3.** NRS 62E.620 is hereby amended to read as follows:

14 62E.620 1. The juvenile court shall order a delinquent child
15 to undergo an evaluation to determine whether the child is an abuser
16 of alcohol or other drugs if the child committed:

17 (a) An unlawful act in violation of NRS 484C.110, 484C.120,
18 484C.130 or 484C.430;

19 (b) The unlawful act of using, possessing, selling or distributing
20 a controlled substance; or

21 (c) The unlawful act of purchasing, consuming or possessing an
22 alcoholic beverage in violation of NRS 202.020.

23 2. Except as otherwise provided in subsection 3, an evaluation
24 of the child must be conducted by:

25 (a) A clinical alcohol and drug abuse counselor who is licensed,
26 an alcohol and drug abuse counselor who is licensed or certified, or
27 an alcohol and drug abuse counselor intern or a clinical alcohol and
28 drug abuse counselor intern who is certified, pursuant to chapter
29 641C of NRS, to make that classification; or

30 (b) A physician who is certified to make that classification by
31 the Board of Medical Examiners.

32 3. If the child resides in this State but the nearest location at
33 which an evaluation may be conducted is in another state, the court
34 may allow the evaluation to be conducted in the other state if the
35 person conducting the evaluation:

36 (a) Possesses qualifications that are substantially similar to the
37 qualifications described in subsection 2;

38 (b) Holds an appropriate license, certificate or credential issued
39 by a regulatory agency in the other state; and

40 (c) Is in good standing with the regulatory agency in the other
41 state.

42 4. The evaluation of the child may be conducted at an
43 evaluation center.

44 5. The person who conducts the evaluation of the child shall
45 report to the juvenile court the results of the evaluation and make a



1 recommendation to the juvenile court concerning the length and
2 type of treatment required for the child.

3 6. The juvenile court shall:

4 (a) Order the child to undergo a program of treatment as
5 recommended by the person who conducts the evaluation of the
6 child.

7 (b) Require the treatment facility to submit monthly reports on
8 the treatment of the child pursuant to this section.

9 (c) Order the child or the parent or guardian of the child, or both,
10 to the extent of their financial ability, to pay any charges relating to
11 the evaluation and treatment of the child pursuant to this section.
12 If the child or the parent or guardian of the child, or both, do not
13 have the financial resources to pay all those charges:

14 (1) The juvenile court shall, to the extent possible, arrange
15 for the child to receive treatment from a treatment facility which
16 receives a sufficient amount of federal or state money to offset the
17 remainder of the costs; and

18 (2) The juvenile court may order the child, in lieu of paying
19 the charges relating to the child's evaluation and treatment, to
20 perform community service.

21 7. After a treatment facility has certified a child's successful
22 completion of a program of treatment ordered pursuant to this
23 section, the treatment facility is not liable for any damages to person
24 or property caused by a child who:

25 (a) Drives, operates or is in actual physical control of a vehicle
26 or a vessel under ~~power or sail~~ way while under the influence of
27 intoxicating liquor or a controlled substance; or

28 (b) Engages in any other conduct prohibited by NRS 484C.110,
29 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS
30 488.410, 488.420 or 488.425 or a law of any other jurisdiction that
31 prohibits the same or similar conduct.

32 8. The provisions of this section do not prohibit the juvenile
33 court from:

34 (a) Requiring an evaluation to be conducted by a person who is
35 employed by a private company if the company meets the standards
36 of the Division of Public and Behavioral Health of the Department
37 of Health and Human Services. The evaluation may be conducted at
38 an evaluation center.

39 (b) Ordering the child to attend a program of treatment which is
40 administered by a private company.

41 9. Except as otherwise provided in section 6 of chapter 435,
42 Statutes of Nevada 2007, all information relating to the evaluation
43 or treatment of a child pursuant to this section is confidential and,
44 except as otherwise authorized by the provisions of this title or the
45 juvenile court, must not be disclosed to any person other than:



- 1 (a) The juvenile court;
- 2 (b) The child;
- 3 (c) The attorney for the child, if any;
- 4 (d) The parents or guardian of the child;
- 5 (e) The district attorney; and
- 6 (f) Any other person for whom the communication of that
- 7 information is necessary to effectuate the evaluation or treatment of
- 8 the child.

9 10. A record of any finding that a child has violated the
10 provisions of NRS 484C.110, 484C.120, 484C.130 or 484C.430
11 must be included in the driver's record of that child for 7 years after
12 the date of the offense.

13 **Sec. 4.** NRS 178.484 is hereby amended to read as follows:

14 178.484 1. Except as otherwise provided in this section, a
15 person arrested for an offense other than murder of the first degree
16 must be admitted to bail.

17 2. A person arrested for a felony who has been released on
18 probation or parole for a different offense must not be admitted to
19 bail unless:

20 (a) A court issues an order directing that the person be admitted
21 to bail;

22 (b) The State Board of Parole Commissioners directs the
23 detention facility to admit the person to bail; or

24 (c) The Division of Parole and Probation of the Department of
25 Public Safety directs the detention facility to admit the person to
26 bail.

27 3. A person arrested for a felony whose sentence has been
28 suspended pursuant to NRS 4.373 or 5.055 for a different offense or
29 who has been sentenced to a term of residential confinement
30 pursuant to NRS 4.3762 or 5.076 for a different offense must not be
31 admitted to bail unless:

32 (a) A court issues an order directing that the person be admitted
33 to bail; or

34 (b) A department of alternative sentencing directs the detention
35 facility to admit the person to bail.

36 4. A person arrested for murder of the first degree may be
37 admitted to bail unless the proof is evident or the presumption great
38 by any competent court or magistrate authorized by law to do so in
39 the exercise of discretion, giving due weight to the evidence and to
40 the nature and circumstances of the offense.

41 5. A person arrested for a violation of NRS 484C.110,
42 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who
43 is under the influence of intoxicating liquor must not be admitted to
44 bail or released on the person's own recognizance unless the person
45 has a concentration of alcohol of less than 0.04 in his or her breath.



1 A test of the person's breath pursuant to this subsection to determine
2 the concentration of alcohol in his or her breath as a condition of
3 admission to bail or release is not admissible as evidence against the
4 person.

5 6. A person arrested for a violation of NRS 484C.110,
6 484C.120, 484C.130, 484C.430, 488.410, 488.420 or 488.425 who
7 is under the influence of a controlled substance, is under the
8 combined influence of intoxicating liquor and a controlled
9 substance, or inhales, ingests, applies or otherwise uses any
10 chemical, poison or organic solvent, or any compound or
11 combination of any of these, to a degree which renders the person
12 incapable of safely driving or exercising actual physical control of a
13 vehicle or vessel under ~~power or sail~~ way must not be admitted to
14 bail or released on the person's own recognizance sooner than 12
15 hours after arrest.

16 7. A person arrested for a battery that constitutes domestic
17 violence pursuant to NRS 33.018 must not be admitted to bail
18 sooner than 12 hours after arrest. If the person is admitted to bail
19 more than 12 hours after arrest, without appearing personally before
20 a magistrate or without the amount of bail having been otherwise set
21 by a magistrate or a court, the amount of bail must be:

22 (a) Three thousand dollars, if the person has no previous
23 convictions of battery that constitute domestic violence pursuant to
24 NRS 33.018 and there is no reason to believe that the battery for
25 which the person has been arrested resulted in substantial bodily
26 harm or was committed by strangulation;

27 (b) Five thousand dollars, if the person has:

28 (1) No previous convictions of battery that constitute
29 domestic violence pursuant to NRS 33.018, but there is reason to
30 believe that the battery for which the person has been arrested
31 resulted in substantial bodily harm or was committed by
32 strangulation; or

33 (2) One previous conviction of battery that constitutes
34 domestic violence pursuant to NRS 33.018, but there is no reason to
35 believe that the battery for which the person has been arrested
36 resulted in substantial bodily harm or was committed by
37 strangulation; or

38 (c) Fifteen thousand dollars, if the person has:

39 (1) One previous conviction of battery that constitutes
40 domestic violence pursuant to NRS 33.018 and there is reason to
41 believe that the battery for which the person has been arrested
42 resulted in substantial bodily harm or was committed by
43 strangulation; or

44 (2) Two or more previous convictions of battery that
45 constitute domestic violence pursuant to NRS 33.018.



1 ↳ The provisions of this subsection do not affect the authority of a
2 magistrate or a court to set the amount of bail when the person
3 personally appears before the magistrate or the court, or when a
4 magistrate or a court has otherwise been contacted to set the amount
5 of bail. For the purposes of this subsection, a person shall be
6 deemed to have a previous conviction of battery that constitutes
7 domestic violence pursuant to NRS 33.018 if the person has been
8 convicted of such an offense in this State or has been convicted of
9 violating a law of any other jurisdiction that prohibits the same or
10 similar conduct.

11 8. A person arrested for violating a temporary or extended
12 order for protection against domestic violence issued pursuant to
13 NRS 33.017 to 33.100, inclusive, or for violating a restraining order
14 or injunction that is in the nature of a temporary or extended order
15 for protection against domestic violence issued in an action or
16 proceeding brought pursuant to title 11 of NRS, or for violating a
17 temporary or extended order for protection against stalking,
18 aggravated stalking or harassment issued pursuant to NRS 200.591,
19 or for violating a temporary or extended order for protection against
20 sexual assault pursuant to NRS 200.378 must not be admitted to bail
21 sooner than 12 hours after arrest if:

22 (a) The arresting officer determines that such a violation is
23 accompanied by a direct or indirect threat of harm;

24 (b) The person has previously violated a temporary or extended
25 order for protection of the type for which the person has been
26 arrested; or

27 (c) At the time of the violation or within 2 hours after the
28 violation, the person has:

29 (1) A concentration of alcohol of 0.08 or more in the
30 person's blood or breath; or

31 (2) An amount of a prohibited substance in the person's
32 blood or urine that is equal to or greater than the amount set forth in
33 subsection 3 of NRS 484C.110.

34 9. If a person is admitted to bail more than 12 hours after
35 arrest, pursuant to subsection 8, without appearing personally before
36 a magistrate or without the amount of bail having been otherwise set
37 by a magistrate or a court, the amount of bail must be:

38 (a) Three thousand dollars, if the person has no previous
39 convictions of violating a temporary or extended order for
40 protection against domestic violence issued pursuant to NRS 33.017
41 to 33.100, inclusive, or of violating a restraining order or injunction
42 that is in the nature of a temporary or extended order for protection
43 against domestic violence issued in an action or proceeding brought
44 pursuant to title 11 of NRS, or of violating a temporary or extended
45 order for protection against stalking, aggravated stalking or



1 harassment issued pursuant to NRS 200.591, or of violating a
2 temporary or extended order for protection against sexual assault
3 pursuant to NRS 200.378;

4 (b) Five thousand dollars, if the person has one previous
5 conviction of violating a temporary or extended order for protection
6 against domestic violence issued pursuant to NRS 33.017 to 33.100,
7 inclusive, or of violating a restraining order or injunction that is in
8 the nature of a temporary or extended order for protection against
9 domestic violence issued in an action or proceeding brought
10 pursuant to title 11 of NRS, or of violating a temporary or extended
11 order for protection against stalking, aggravated stalking or
12 harassment issued pursuant to NRS 200.591, or of violating a
13 temporary or extended order for protection against sexual assault
14 pursuant to NRS 200.378; or

15 (c) Fifteen thousand dollars, if the person has two or more
16 previous convictions of violating a temporary or extended order for
17 protection against domestic violence issued pursuant to NRS 33.017
18 to 33.100, inclusive, or of violating a restraining order or injunction
19 that is in the nature of a temporary or extended order for protection
20 against domestic violence issued in an action or proceeding brought
21 pursuant to title 11 of NRS, or of violating a temporary or extended
22 order for protection against stalking, aggravated stalking or
23 harassment issued pursuant to NRS 200.591, or of violating a
24 temporary or extended order for protection against sexual assault
25 pursuant to NRS 200.378.

26 ↪ The provisions of this subsection do not affect the authority of a
27 magistrate or a court to set the amount of bail when the person
28 personally appears before the magistrate or the court or when a
29 magistrate or a court has otherwise been contacted to set the amount
30 of bail. For the purposes of this subsection, a person shall be
31 deemed to have a previous conviction of violating a temporary or
32 extended order for protection against domestic violence issued
33 pursuant to NRS 33.017 to 33.100, inclusive, or of violating a
34 restraining order or injunction that is in the nature of a temporary or
35 extended order for protection against domestic violence issued in an
36 action or proceeding brought pursuant to title 11 of NRS, or of
37 violating a temporary or extended order for protection against
38 stalking, aggravated stalking or harassment issued pursuant to NRS
39 200.591, or of violating a temporary or extended order for
40 protection against sexual assault pursuant to NRS 200.378, if the
41 person has been convicted of such an offense in this State or has
42 been convicted of violating a law of any other jurisdiction that
43 prohibits the same or similar conduct.



1 10. The court may, before releasing a person arrested for an
2 offense punishable as a felony, require the surrender to the court of
3 any passport the person possesses.

4 11. Before releasing a person arrested for any crime, the court
5 may impose such reasonable conditions on the person as it deems
6 necessary to protect the health, safety and welfare of the community
7 and to ensure that the person will appear at all times and places
8 ordered by the court, including, without limitation:

9 (a) Requiring the person to remain in this State or a certain
10 county within this State;

11 (b) Prohibiting the person from contacting or attempting to
12 contact a specific person or from causing or attempting to cause
13 another person to contact that person on the person's behalf;

14 (c) Prohibiting the person from entering a certain geographic
15 area; or

16 (d) Prohibiting the person from engaging in specific conduct
17 that may be harmful to the person's own health, safety or welfare, or
18 the health, safety or welfare of another person.

19 ➤ In determining whether a condition is reasonable, the court shall
20 consider the factors listed in NRS 178.4853.

21 12. If a person fails to comply with a condition imposed
22 pursuant to subsection 11, the court may, after providing the person
23 with reasonable notice and an opportunity for a hearing:

24 (a) Deem such conduct a contempt pursuant to NRS 22.010; or

25 (b) Increase the amount of bail pursuant to NRS 178.499.

26 13. An order issued pursuant to this section that imposes a
27 condition on a person admitted to bail must include a provision
28 ordering any law enforcement officer to arrest the person if the
29 officer has probable cause to believe that the person has violated a
30 condition of bail.

31 14. Before a person may be admitted to bail, the person must
32 sign a document stating that:

33 (a) The person will appear at all times and places as ordered by
34 the court releasing the person and as ordered by any court before
35 which the charge is subsequently heard;

36 (b) The person will comply with the other conditions which
37 have been imposed by the court and are stated in the document; and

38 (c) If the person fails to appear when so ordered and is taken
39 into custody outside of this State, the person waives all rights
40 relating to extradition proceedings.

41 ➤ The signed document must be filed with the clerk of the court of
42 competent jurisdiction as soon as practicable, but in no event later
43 than the next business day.

44 15. If a person admitted to bail fails to appear as ordered by a
45 court and the jurisdiction incurs any cost in returning the person to



1 the jurisdiction to stand trial, the person who failed to appear is
2 responsible for paying those costs as restitution.

3 16. For the purposes of subsections 8 and 9, an order or
4 injunction is in the nature of a temporary or extended order for
5 protection against domestic violence if it grants relief that might be
6 given in a temporary or extended order issued pursuant to NRS
7 33.017 to 33.100, inclusive.

8 17. As used in this section, "strangulation" has the meaning
9 ascribed to it in NRS 200.481.

10 **Sec. 5.** NRS 202.257 is hereby amended to read as follows:

11 202.257 1. It is unlawful for a person who:

12 (a) Has a concentration of alcohol of 0.10 or more in his or her
13 blood or breath; or

14 (b) Is under the influence of any controlled substance, or is
15 under the combined influence of intoxicating liquor and a controlled
16 substance, or any person who inhales, ingests, applies or otherwise
17 uses any chemical, poison or organic solvent, or any compound or
18 combination of any of these, to a degree which renders him or her
19 incapable of safely exercising actual physical control of a firearm,
20 to have in his or her actual physical possession any firearm. This
21 prohibition does not apply to the actual physical possession of a
22 firearm by a person who was within the person's personal residence
23 and had the firearm in his or her possession solely for self-defense.

24 2. Any evidentiary test to determine whether a person has
25 violated the provisions of subsection 1 must be administered in the
26 same manner as an evidentiary test that is administered pursuant to
27 NRS 484C.160 to 484C.250, inclusive, except that submission to
28 the evidentiary test is required of any person who is ~~directed~~
29 *requested* by a police officer to submit to the test. If a person to be
30 tested fails to submit to a required test as ~~directed~~ *requested* by a
31 police officer, the officer may ~~direct~~ *apply for a warrant or court*
32 *order directing* that reasonable force be used to the extent necessary
33 to obtain the samples of blood from the person to be tested, if the
34 officer has reasonable cause to believe that the person to be tested
35 was in violation of this section.

36 3. Any person who violates the provisions of subsection 1 is
37 guilty of a misdemeanor.

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

42 5. As used in this section, the phrase "concentration of alcohol
43 of 0.10 or more in his or her blood or breath" means 0.10 gram or
44 more of alcohol per 100 milliliters of the blood of a person or per
45 210 liters of his or her breath.



1 **Sec. 6.** NRS 453A.300 is hereby amended to read as follows:

2 453A.300 1. A person who holds a registry identification
3 card issued to him or her pursuant to NRS 453A.220 or 453A.250 is
4 not exempt from state prosecution for, nor may the person establish
5 an affirmative defense to charges arising from, any of the following
6 acts:

7 (a) Driving, operating or being in actual physical control of a
8 vehicle or a vessel under ~~power or sail~~ way while under the
9 influence of marijuana.

10 (b) Engaging in any other conduct prohibited by NRS 484C.110,
11 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS
12 488.410, 488.420, 488.425 or 493.130.

13 (c) Possessing a firearm in violation of paragraph (b) of
14 subsection 1 of NRS 202.257.

15 (d) Possessing marijuana in violation of NRS 453.336 or
16 possessing paraphernalia in violation of NRS 453.560 or 453.566, if
17 the possession of the marijuana or paraphernalia is discovered
18 because the person engaged or assisted in the medical use of
19 marijuana in:

20 (1) Any public place or in any place open to the public or
21 exposed to public view; or

22 (2) Any local detention facility, county jail, state prison,
23 reformatory or other correctional facility, including, without
24 limitation, any facility for the detention of juvenile offenders.

25 (e) Delivering marijuana to another person who he or she knows
26 does not lawfully hold a registry identification card issued by the
27 Division or its designee pursuant to NRS 453A.220 or 453A.250.

28 (f) Delivering marijuana for consideration to any person,
29 regardless of whether the recipient lawfully holds a registry
30 identification card issued by the Division or its designee pursuant to
31 NRS 453A.220 or 453A.250.

32 2. Except as otherwise provided in NRS 453A.225 and in
33 addition to any other penalty provided by law, if the Division
34 determines that a person has willfully violated a provision of this
35 chapter or any regulation adopted by the Division to carry out the
36 provisions of this chapter, the Division may, at its own discretion,
37 prohibit the person from obtaining or using a registry identification
38 card for a period of up to 6 months.

39 **Sec. 7.** NRS 458.260 is hereby amended to read as follows:

40 458.260 1. Except as otherwise provided in subsection 2, the
41 use of alcohol, the status of drunkard and the fact of being found in
42 an intoxicated condition are not:

43 (a) Public offenses and shall not be so treated in any ordinance
44 or resolution of a county, city or town.



1 (b) Elements of an offense giving rise to a criminal penalty or
2 civil sanction.

3 2. The provisions of subsection 1 do not apply to:

4 (a) A civil or administrative violation for which intoxication is
5 an element of the violation pursuant to the provisions of a specific
6 statute or regulation;

7 (b) A criminal offense for which intoxication is an element of
8 the offense pursuant to the provisions of a specific statute or
9 regulation;

10 (c) A homicide resulting from driving, operating or being in
11 actual physical control of a vehicle or a vessel under ~~power or sail~~
12 way while under the influence of intoxicating liquor or a controlled
13 substance or resulting from any other conduct prohibited by NRS
14 484C.110, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS
15 488.410, 488.420 or 488.425; and

16 (d) Any offense or violation which is similar to an offense or
17 violation described in paragraph (a), (b) or (c) and which is set forth
18 in an ordinance or resolution of a county, city or town.

19 3. This section does not make intoxication an excuse or
20 defense for any criminal act.

21 **Sec. 8.** NRS 458.270 is hereby amended to read as follows:

22 458.270 1. Except as otherwise provided in subsection 7, a
23 person who is found in any public place under the influence of
24 alcohol, in such a condition that the person is unable to exercise care
25 for his or her health or safety or the health or safety of other persons,
26 must be placed under civil protective custody by a peace officer.

27 2. A peace officer may use upon such a person the kind and
28 degree of force which would be lawful if the peace officer were
29 effecting an arrest for a misdemeanor with a warrant.

30 3. If a licensed facility for the treatment of persons who abuse
31 alcohol exists in the community where the person is found, the
32 person must be delivered to the facility for observation and care. If
33 no such facility exists in the community, the person so found may
34 be placed in a county or city jail or detention facility for shelter or
35 supervision for his or her health and safety until he or she is no
36 longer under the influence of alcohol. The person may not be
37 required against his or her will to remain in a licensed facility, jail or
38 detention facility longer than 48 hours.

39 4. An intoxicated person taken into custody by a peace officer
40 for a public offense must immediately be taken to a secure
41 detoxification unit or other appropriate medical facility if the
42 condition of the person appears to require emergency medical
43 treatment. Upon release from the detoxification unit or medical
44 facility, the person must immediately be remanded to the custody of



1 the apprehending peace officer and the criminal proceedings
2 proceed as prescribed by law.

3 5. The placement of a person found under the influence of
4 alcohol in civil protective custody must be:

5 (a) Recorded at the facility, jail or detention facility to which the
6 person is delivered; and

7 (b) Communicated at the earliest practical time to the person's
8 family or next of kin if they can be located.

9 6. Every peace officer and other public employee or agency
10 acting pursuant to this section is performing a discretionary function
11 or duty.

12 7. The provisions of this section do not apply to a person who
13 is apprehended or arrested for:

14 (a) A civil or administrative violation for which intoxication is
15 an element of the violation pursuant to the provisions of a specific
16 statute or regulation;

17 (b) A criminal offense for which intoxication is an element of
18 the offense pursuant to the provisions of a specific statute or
19 regulation;

20 (c) A homicide resulting from driving, operating or being in
21 actual physical control of a vehicle or a vessel under ~~power or sail~~
22 *way* while under the influence of intoxicating liquor or a controlled
23 substance or resulting from any other conduct prohibited by NRS
24 484C.110, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS
25 488.410, 488.420 or 488.425; and

26 (d) Any offense or violation which is similar to an offense or
27 violation described in paragraph (a), (b) or (c) and which is set forth
28 in an ordinance or resolution of a county, city or town.

29 **Sec. 9.** Chapter 484C of NRS is hereby amended by adding
30 thereto a new section to read as follows:

31 ***“Under the influence” means impaired to a degree that renders***
32 ***a person incapable of safely driving or exercising actual physical***
33 ***control of a vehicle.***

34 **Sec. 10.** NRS 484C.010 is hereby amended to read as follows:
35 484C.010 As used in this chapter, unless the context otherwise
36 requires, the words and terms defined in NRS 484C.020 to
37 484C.100, inclusive, ***and section 9 of this act*** have the meanings
38 ascribed to them in those sections.

39 **Sec. 11.** NRS 484C.150 is hereby amended to read as follows:
40 484C.150 1. Any person who drives or is in actual physical
41 control of a vehicle on a highway or on premises to which the public
42 has access shall be deemed to have given his or her consent to a
43 preliminary test of his or her breath to determine the concentration
44 of alcohol in his or her breath when the test is administered at the
45 ~~direction~~ ***request*** of a police officer at the scene of a vehicle



1 accident or collision or where the police officer stops a vehicle, if
2 the officer has reasonable grounds to believe that the person to be
3 tested was:

4 (a) Driving or in actual physical control of a vehicle while under
5 the influence of intoxicating liquor or a controlled substance; or

6 (b) Engaging in any other conduct prohibited by NRS 484C.110,
7 484C.120, 484C.130 or 484C.430.

8 2. If the person fails to submit to the test, the officer shall
9 ~~seize~~:

10 (a) *Seize* the license or permit of the person to drive as provided
11 in NRS 484C.220 ; and

12 (b) *If reasonable grounds otherwise exist*, arrest the person and
13 take him or her to a convenient place for the administration of a
14 reasonably available evidentiary test under NRS 484C.160.

15 3. The result of the preliminary test must not be used in any
16 criminal action, except to show there were reasonable grounds to
17 make an arrest.

18 **Sec. 12.** NRS 484C.160 is hereby amended to read as follows:

19 484C.160 1. Except as otherwise provided in subsections ~~3~~
20 ~~and 4,~~ *4 and 5*, any person who drives or is in actual physical
21 control of a vehicle on a highway or on premises to which the public
22 has access shall be deemed to have given his or her consent to an
23 evidentiary test of his or her blood, urine, breath or other bodily
24 substance to determine the concentration of alcohol in his or her
25 blood or breath or to determine whether a controlled substance,
26 chemical, poison, organic solvent or another prohibited substance is
27 present, if such a test is administered at the ~~direction~~ *request* of a
28 police officer having reasonable grounds to believe that the person
29 to be tested was:

30 (a) Driving or in actual physical control of a vehicle while under
31 the influence of intoxicating liquor or a controlled substance ~~;~~ or
32 *with a prohibited substance in his or her blood or urine; or*

33 (b) Engaging in any other conduct prohibited by NRS 484C.110,
34 484C.120, 484C.130 or 484C.430.

35 2. *A police officer who requests that a person submit to a test*
36 *pursuant to subsection 1 shall inform the person that his or her*
37 *license, permit or privilege to drive will be revoked if he or she*
38 *fails to submit to the test.*

39 3. If the person to be tested pursuant to subsection 1 is dead or
40 unconscious, the officer shall direct that samples of blood from the
41 person be tested.

42 ~~3-~~ 4. Any person who is afflicted with hemophilia or with a
43 heart condition requiring the use of an anticoagulant as determined
44 by a physician is exempt from any blood test which may be required
45 pursuant to this section but must, when appropriate pursuant to the



1 provisions of this section, be required to submit to a breath or urine
2 test.

3 ~~[4.]~~ 5. If the concentration of alcohol in the blood or breath of
4 the person to be tested is in issue:

5 (a) Except as otherwise provided in this section, the person may
6 refuse to submit to a blood test if means are reasonably available to
7 perform a breath test.

8 (b) The person may request a blood test, but if means are
9 reasonably available to perform a breath test when the blood test is
10 requested, and the person is subsequently convicted, the person must
11 pay for the cost of the blood test, including the fees and expenses of
12 witnesses *whose testimony* in court ~~[.]~~ *or an administrative hearing*
13 *is necessary because of the use of the blood test. The expenses of*
14 *such a witness must be assessed at an hourly rate of not less than:*

15 (1) *Fifty dollars for travel to and from the place of the*
16 *proceeding; and*

17 (2) *One-hundred dollars for giving or waiting to give*
18 *testimony.*

19 (c) ~~[A police officer may direct the person to submit to a blood~~
20 ~~test if the officer has reasonable grounds to believe that the person:~~

21 ~~— (1) Caused death or substantial bodily harm to another~~
22 ~~person as a result of driving or being in actual physical control of a~~
23 ~~vehicle while under the influence of intoxicating liquor or a~~
24 ~~controlled substance or as a result of engaging in any other conduct~~
25 ~~prohibited by NRS 484C.110, 484C.130 or 484C.430; or~~

26 ~~— (2) Has been convicted within the previous 7 years of:~~

27 ~~— (I) A violation of NRS 484C.110, 484C.120, 484C.130,~~
28 ~~484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
29 ~~488.425 or a law of another jurisdiction that prohibits the same or~~
30 ~~similar conduct; or~~

31 ~~— (II) Any other offense in this State or another jurisdiction~~
32 ~~in which death or substantial bodily harm to another person resulted~~
33 ~~from conduct prohibited by a law set forth in sub-subparagraph (I).~~

34 ~~— 5.]~~ *Except as otherwise provided in NRS 484C.200, not more*
35 *than three samples of the person's blood or breath may be taken*
36 *during the 5-hour period immediately following the time of the*
37 *initial arrest.*

38 6. If the presence of a controlled substance, chemical, poison,
39 organic solvent or another prohibited substance in the blood or urine
40 of the person is in issue, the officer may ~~[direct]~~ *request that*
41 *the person* ~~[to]~~ *submit to a blood or urine test, or both .* ~~[, in addition to~~
42 ~~the breath test.~~

43 ~~— 6.]~~ 7. Except as otherwise provided in subsections ~~[3 and 5.]~~ *4*
44 *and 6,* a police officer shall not ~~[direct]~~ *request that* a person ~~[to]~~
45 *submit to a urine test.*



1 ~~[7.]~~ 8. If a person to be tested fails to submit to a required test
2 as ~~[directed]~~ *requested* by a police officer pursuant to this section
3 and the officer has reasonable grounds to believe that the person to
4 be tested was:

5 (a) Driving or in actual physical control of a vehicle while under
6 the influence of intoxicating liquor or a controlled substance ~~[.]~~ or
7 *with a prohibited substance in his or her blood or urine; or*

8 (b) Engaging in any other conduct prohibited by NRS 484C.110,
9 484C.120, 484C.130 or 484C.430,

10 ~~↪ the officer may [direct] apply for a warrant or court order~~
11 ~~directing that reasonable force be used to the extent necessary to~~
12 ~~obtain samples of blood from the person to be tested. [Not more~~
13 ~~than three such samples may be taken during the 5 hour period~~
14 ~~immediately following the time of the initial arrest. In such a~~
15 ~~circumstance, the officer is not required to provide the person with a~~
16 ~~choice of tests for determining the concentration of alcohol or~~
17 ~~presence of a controlled substance or another prohibited substance~~
18 ~~in his or her blood.~~

19 ~~—8.]~~ 9. If a person who is less than 18 years of age is ~~[directed]~~
20 *requested* to submit to an evidentiary test pursuant to this section,
21 the officer shall, before testing the person, make a reasonable
22 attempt to notify the parent, guardian or custodian of the person, if
23 known.

24 **Sec. 13.** NRS 484C.200 is hereby amended to read as follows:

25 484C.200 1. Except as otherwise provided in subsection 2, an
26 evidentiary test of breath to determine the concentration of alcohol
27 in a person's breath may be used to establish that concentration only
28 if two consecutive samples of the person's breath are taken and:

29 (a) The difference between the concentration of alcohol in the
30 person's breath indicated by the two samples is less than or equal
31 to 0.02;

32 (b) If the provisions of paragraph (a) do not apply, a third
33 evidentiary test of breath is administered and the difference between
34 the concentration of alcohol in the person's breath indicated by the
35 third sample and one of the first two samples is less than or equal to
36 0.02; or

37 (c) If the provisions of paragraphs (a) and (b) do not apply, a
38 fourth evidentiary test is administered. Except as otherwise provided
39 in NRS 484C.160, the fourth evidentiary test must be a blood test.

40 2. If the person fails to provide the second or third consecutive
41 sample, or to submit to the fourth evidentiary test, the results of the
42 first test may be used alone as evidence of the concentration of
43 alcohol in the person's breath. If for some other reason a second,
44 third or fourth sample is not obtained, the results of the first test may



1 be used with all other evidence presented to establish the
2 concentration.

3 3. If a person refuses or otherwise fails to provide a second or
4 third consecutive sample or submit to a fourth evidentiary test, ~~the~~
5 ~~police officer may direct that reasonable force be used to obtain a~~
6 ~~sample or conduct a test pursuant to~~ *such refusal or failure*
7 *constitutes a failure to submit to a required test as provided in*
8 NRS 484C.160.

9 **Sec. 14.** NRS 484C.210 is hereby amended to read as follows:

10 484C.210 1. *If a person fails to submit to an evidentiary test*
11 *as requested by a police officer pursuant to NRS 484C.160, the*
12 *license, permit or privilege to drive of the person must be revoked*
13 *as provided in NRS 484C.220, and the person is not eligible for a*
14 *license, permit or privilege to drive for a period of:*

15 (a) *One year; or*

16 (b) *Three years, if the license, permit or privilege to drive of*
17 *the person has been revoked during the immediately preceding 7*
18 *years for failure to submit to an evidentiary test.*

19 2. If the result of a test given under NRS 484C.150 or
20 484C.160 shows that a person had a concentration of alcohol of 0.08
21 or more in his or her blood or breath *or a detectable amount of a*
22 *controlled substance or a prohibited substance in his or her blood*
23 *or urine* at the time of the test, the license, permit or privilege of the
24 person to drive must be revoked as provided in NRS 484C.220 and
25 the person is not eligible for a license, permit or privilege for a
26 period of 90 days.

27 ~~2.~~ 3. If a revocation of a person's license, permit or privilege
28 to drive under NRS 62E.640 or 483.460 follows a revocation under
29 subsection ~~2~~ 2 which was based on the person having a
30 concentration of alcohol of 0.08 or more in his or her blood or
31 breath, the Department shall cancel the revocation under that
32 subsection and give the person credit for any period during which
33 the person was not eligible for a license, permit or privilege.

34 ~~3.~~ 4. Periods of ineligibility for a license, permit or privilege
35 to drive which are imposed pursuant to this section must run
36 consecutively.

37 **Sec. 15.** NRS 484C.220 is hereby amended to read as follows:

38 484C.220 1. As agent for the Department, the officer who
39 *requested that a test be given pursuant to NRS 484C.150 or*
40 *484C.160 or who* obtained the result of a test given pursuant to NRS
41 484C.150 or 484C.160 shall immediately serve an order of
42 revocation of the license, permit or privilege to drive on a person
43 who *failed to submit to a test requested by the police officer*
44 *pursuant to NRS 484C.150 or 484C.160 or who* has a concentration
45 of alcohol of 0.08 or more in his or her blood or breath or has a



1 detectable amount of a *controlled substance or* prohibited substance
2 in his or her blood or urine, if that person is present, and shall seize
3 the license or permit to drive of the person. The officer shall then ,
4 *unless the information is expressly set forth in the order of*
5 *revocation*, advise the person of his or her right to administrative
6 and judicial review of the revocation pursuant to NRS 484C.230
7 and, except as otherwise provided in this subsection, that the person
8 has a right to request a temporary license. If the person currently is
9 driving with a temporary license that was issued pursuant to this
10 section or NRS 484C.230, the person is not entitled to request an
11 additional temporary license pursuant to this section or NRS
12 484C.230, and the order of revocation issued by the officer must
13 revoke the temporary license that was previously issued. If the
14 person is entitled to request a temporary license, the officer shall
15 issue the person a temporary license on a form approved by the
16 Department if the person requests one, which is effective for only 7
17 days including the date of issuance. The officer shall immediately
18 transmit the person's license or permit to the Department along with
19 the written certificate required by subsection 2.

20 2. When a police officer has served an order of revocation of a
21 driver's license, permit or privilege on a person pursuant to
22 subsection 1, or later receives the result of an evidentiary test which
23 indicates that a person, not then present, had a concentration of
24 alcohol of 0.08 or more in his or her blood or breath or had a
25 detectable amount of a *controlled substance or a* prohibited
26 substance in his or her blood or urine, the officer shall immediately
27 prepare and transmit to the Department, together with the seized
28 license or permit and a copy of the result of the test, *if any*, a written
29 certificate that the officer had reasonable grounds to believe that the
30 person had been driving or in actual physical control of a vehicle
31 ~~[with]~~ :

32 (a) *With* a concentration of alcohol of 0.08 or more in his or her
33 blood or breath or with a detectable amount of a *controlled*
34 *substance or a* prohibited substance in his or her blood or urine, as
35 determined by a chemical test ~~[]~~ ; or

36 (b) *While under the influence of intoxicating liquor or a*
37 *controlled substance or with a prohibited substance in his or her*
38 *blood or urine and the person refused to submit to a required*
39 *evidentiary test.*

40 ↪ The certificate must also indicate whether the officer served an
41 order of revocation on the person and whether the officer issued the
42 person a temporary license.

43 3. The Department, upon receipt of such a certificate for which
44 an order of revocation has not been served, after examining the
45 certificate and copy of the result of the chemical test, if any, and



1 finding that revocation is proper, shall issue an order revoking the
2 person's license, permit or privilege to drive by mailing the order to
3 the person at the person's last known address. The order must
4 indicate the grounds for the revocation and the period during which
5 the person is not eligible for a license, permit or privilege to drive
6 and state that the person has a right to administrative and judicial
7 review of the revocation and to have a temporary license. The order
8 of revocation becomes effective 5 days after mailing.

9 4. Notice of an order of revocation and notice of the
10 affirmation of a prior order of revocation or the cancellation of a
11 temporary license provided in NRS 484C.230 is sufficient if it is
12 mailed to the person's last known address as shown by any
13 application for a license. The date of mailing may be proved by the
14 certificate of any officer or employee of the Department, specifying
15 the time of mailing the notice. The notice is presumed to have been
16 received upon the expiration of 5 days after it is deposited, postage
17 prepaid, in the United States mail.

18 **Sec. 16.** NRS 484C.230 is hereby amended to read as follows:

19 484C.230 1. At any time while a person is not eligible for a
20 license, permit or privilege to drive following an order of revocation
21 issued pursuant to NRS 484C.220, the person may request in writing
22 a hearing by the Department to review the order of revocation, but
23 the person is only entitled to one hearing. The hearing must be
24 conducted within 15 days after receipt of the request, or as soon
25 thereafter as is practicable, in the county where the requester resides
26 unless the parties agree otherwise. The Director or agent of the
27 Director may issue subpoenas for the attendance of witnesses and
28 the production of relevant books and papers and may require a
29 reexamination of the requester. Unless the person is ineligible for a
30 temporary license pursuant to NRS 484C.220, the Department shall
31 issue an additional temporary license for a period which is sufficient
32 to complete the administrative review.

33 2. The scope of the hearing must be limited to the issue of
34 whether the person ~~is~~ **at** :

35 *(a) Failed to submit to a required test provided for in NRS*
36 *484C.150 or 484C.160; or*

37 *(b) At the time of the test, had a concentration of alcohol of 0.08*
38 *or more in his or her blood or breath or a detectable amount of a*
39 *controlled substance or a prohibited substance in his or her blood*
40 *or urine.*

41 ↪ Upon an affirmative finding on ~~this~~ **either** issue, the
42 Department shall affirm the order of revocation. Otherwise, the
43 order of revocation must be rescinded.

44 3. If, after the hearing, the order of revocation is affirmed, the
45 person whose license, privilege or permit has been revoked is



1 entitled to a review of the same issues in district court in the same
2 manner as provided by chapter 233B of NRS. The court shall notify
3 the Department upon the issuance of a stay, and the Department
4 shall issue an additional temporary license for a period which is
5 sufficient to complete the review.

6 4. If a hearing officer grants a continuance of a hearing at the
7 request of the person whose license was revoked, or a court does so
8 after issuing a stay of the revocation, the officer or court shall notify
9 the Department, and the Department shall cancel the temporary
10 license and notify the holder by mailing the order of cancellation to
11 the person's last known address.

12 **Sec. 17.** NRS 484C.240 is hereby amended to read as follows:

13 484C.240 1. If a person refuses to submit to a required
14 chemical test provided for in NRS 484C.150 or 484C.160, evidence
15 of that refusal is admissible in any criminal or administrative action
16 arising out of acts alleged to have been committed while the person
17 was:

18 (a) Driving or in actual physical control of a vehicle while under
19 the influence of intoxicating liquor or a controlled substance ~~or~~ or
20 *with a prohibited substance in his or her blood or urine; or*

21 (b) Engaging in any other conduct prohibited by NRS 484C.110,
22 484C.120, 484C.130 or 484C.430.

23 2. Except as otherwise provided in subsection 3 of NRS
24 484C.150, a court or hearing officer may not exclude evidence of a
25 required test or failure to submit to such a test if the police officer or
26 other person substantially complied with the provisions of NRS
27 484C.150 to 484C.250, inclusive, and 484C.600 to 484C.640,
28 inclusive.

29 3. If a person submits to a chemical test provided for in NRS
30 484C.150 or 484C.160, full information concerning that test must be
31 made available, upon request of the person, to the person or his or
32 her attorney.

33 4. Evidence of a required test is not admissible in a criminal or
34 administrative proceeding unless it is shown by documentary or
35 other evidence that the law enforcement agency calibrated the
36 breath-testing device and otherwise maintained it as required by the
37 regulations of the Committee on Testing for Intoxication.

38 **Sec. 18.** NRS 484C.250 is hereby amended to read as follows:

39 484C.250 1. The results of any blood test administered under
40 the provisions of NRS 484C.160 or 484C.180 are not admissible in
41 any hearing or criminal action arising out of acts alleged to have
42 been committed by a person who was driving or in actual physical
43 control of a vehicle while under the influence of intoxicating liquor
44 or a controlled substance *or with a prohibited substance in his or*
45 *her blood or urine* or who was engaging in any other conduct



1 prohibited by NRS 484C.110, 484C.120, 484C.130 or 484C.430
2 unless:

3 (a) The blood tested was withdrawn by a person, other than an
4 arresting officer, who:

5 (1) Is a physician, physician assistant licensed pursuant to
6 chapter 630 or 633 of NRS, registered nurse, licensed practical
7 nurse, advanced emergency medical technician, paramedic or a
8 phlebotomist, technician, technologist or assistant employed in a
9 medical laboratory; or

10 (2) Has special knowledge, skill, experience, training and
11 education in withdrawing blood in a medically acceptable manner,
12 including, without limitation, a person qualified as an expert on that
13 subject in a court of competent jurisdiction or a person who has
14 completed a course of instruction that qualifies him or her to take an
15 examination in phlebotomy that is administered by the American
16 Medical Technologists or the American Society for Clinical
17 Pathology; and

18 (b) The test was performed on whole blood, except if the sample
19 was clotted when it was received by the laboratory, the test may be
20 performed on blood serum or plasma.

21 2. The limitation contained in paragraph (a) of subsection 1
22 does not apply to the taking of a chemical test of the urine, breath or
23 other bodily substance.

24 3. No person listed in paragraph (a) of subsection 1 incurs any
25 civil or criminal liability as a result of the administering of a blood
26 test when requested by a police officer or the person to be tested to
27 administer the test.

28 **Sec. 19.** NRS 484C.360 is hereby amended to read as follows:

29 484C.360 1. When a program of treatment is ordered
30 pursuant to NRS 484C.340 or paragraph (a) or (b) of subsection 1 of
31 NRS 484C.400, the court shall place the offender under the clinical
32 supervision of a treatment facility for treatment in accordance with
33 the report submitted to the court pursuant to NRS 484C.340 or
34 subsection 3, 4, 5 or 6 of NRS 484C.350, as appropriate. The court
35 shall:

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

38 (b) Release the offender for treatment in the community,
39 ↪ for the period of supervision ordered by the court.

40 2. The court shall:

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

43 (b) Order the offender, to the extent of his or her financial
44 resources, to pay any charges for treatment pursuant to this section.

45 If the offender does not have the financial resources to pay all those



1 charges, the court shall, to the extent possible, arrange for the
2 offender to obtain the treatment from a treatment facility that
3 receives a sufficient amount of federal or state money to offset the
4 remainder of the charges.

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

7 (a) Drives, operates or is in actual physical control of a vehicle
8 or a vessel under ~~power or sail~~ way while under the influence of
9 intoxicating liquor or a controlled substance; or

10 (b) Engages in any other conduct prohibited by NRS 484C.110,
11 484C.120, 484C.130, 484C.430, subsection 2 of NRS 488.400, NRS
12 488.410, 488.420 or 488.425 or a law of any other jurisdiction that
13 prohibits the same or similar conduct,

14 ↪ after the treatment facility has certified that the offender
15 has successfully completed a program of treatment ordered pursuant
16 to NRS 484C.340 or paragraph (a) or (b) of subsection 1 of
17 NRS 484C.400.

18 **Sec. 20.** NRS 488.035 is hereby amended to read as follows:

19 488.035 As used in this chapter, unless the context otherwise
20 requires:

21 1. "Aquatic invasive species" means an aquatic species which
22 is exotic or not native to this State and which the Commission has
23 determined to be detrimental to aquatic life, water resources or
24 infrastructure for providing water in this State.

25 2. "Aquatic plant material" means aquatic plants or parts of
26 plants that are dependent on an aquatic environment to survive.

27 3. "Commission" means the Board of Wildlife Commissioners.

28 4. "Conveyance" means a motor vehicle, trailer or any other
29 equipment used to transport a vessel or containers or devices used to
30 haul water on a vessel that may contain or carry an aquatic invasive
31 species or aquatic plant material.

32 5. "Decontaminate" means eliminate any aquatic invasive
33 species on a vessel or conveyance in a manner specified by the
34 Commission which may include, without limitation, washing the
35 vessel or conveyance, draining the water in the vessel or
36 conveyance, drying the vessel or conveyance or chemically,
37 thermally or otherwise treating the vessel or conveyance.

38 6. "Department" means the Department of Wildlife.

39 7. "Flat wake" means the condition of the water close astern a
40 moving vessel that results in a flat wave disturbance.

41 8. "Interstate waters of this State" means waters forming the
42 boundary between the State of Nevada and an adjoining state.

43 9. "Legal owner" means a secured party under a security
44 agreement relating to a vessel or a renter or lessor of a vessel to the
45 State or any political subdivision of the State under a lease or an



1 agreement to lease and sell or to rent and purchase which grants
2 possession of the vessel to the lessee for a period of 30 consecutive
3 days or more.

4 10. "Motorboat" means any vessel propelled by machinery,
5 whether or not the machinery is the principal source of propulsion.

6 11. "Operate" means to navigate or otherwise use a motorboat
7 or a vessel.

8 12. "Owner" means:

9 (a) A person having all the incidents of ownership, including the
10 legal title of a vessel, whether or not he or she lends, rents or
11 pledges the vessel; and

12 (b) A debtor under a security agreement relating to a vessel.

13 ↪ "Owner" does not include a person defined as a "legal owner"
14 under subsection 9.

15 13. "Prohibited substance" has the meaning ascribed to it in
16 NRS 484C.080.

17 14. "Registered owner" means the person registered by the
18 Commission as the owner of a vessel.

19 15. *"Under the influence" means impaired to a degree that*
20 *renders a person incapable of safely operating or exercising actual*
21 *physical control of a vessel.*

22 16. A vessel is "under way" if it is adrift, making way or being
23 propelled, and is not aground, made fast to the shore, or tied or
24 made fast to a dock or mooring.

25 ~~16.~~ 17. "Vessel" means every description of watercraft, other
26 than a seaplane on the water, used or capable of being used as a
27 means of transportation on water.

28 ~~17.~~ 18. "Waters of this State" means any waters within the
29 territorial limits of this State.

30 **Sec. 21.** NRS 488.410 is hereby amended to read as follows:

31 488.410 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 0.08 or more in his or her
34 blood or breath; or

35 (c) Is found by measurement within 2 hours after operating or
36 being in actual physical control of a vessel to have a concentration
37 of alcohol of 0.08 or more in his or her blood or breath,

38 ↪ to operate or be in actual physical control of a vessel under
39 ~~power or sail~~ way on the waters of this State.

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 the person incapable of safely
2 operating or exercising actual physical control of a vessel under
3 ~~power or sail~~ way,
4 to operate or be in actual physical control of a vessel under
5 ~~power or sail~~ way on the waters of this State.

6 3. It is unlawful for any person to operate or be in actual
7 physical control of a vessel under ~~power or sail~~ way on the waters
8 of this State with an amount of a prohibited substance in his or her
9 blood or urine that is equal to or greater than:

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

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

38 5. Except as otherwise provided in NRS 488.427, a person who
39 violates the provisions of this section is guilty of a misdemeanor.

40 **Sec. 22.** NRS 488.420 is hereby amended to read as follows:

41 488.420 1. Unless a greater penalty is provided pursuant to
42 NRS 488.425, a person who:

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

44 (b) Has a concentration of alcohol of 0.08 or more in his or her
45 blood or breath;



1 (c) Is found by measurement within 2 hours after operating or
2 being in actual physical control of a vessel under ~~[power or sail]~~
3 way to have a concentration of alcohol of 0.08 or more in his or her
4 blood or breath;

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

8 (e) Inhales, ingests, applies or otherwise uses any chemical,
9 poison or organic solvent, or any compound or combination of any
10 of these, to a degree which renders the person incapable of safely
11 operating or being in actual physical control of a vessel under
12 ~~[power or sail];~~ way; or

13 (f) Has a prohibited substance in his or her blood or urine in an
14 amount that is equal to or greater than the amount set forth in
15 subsection 3 of NRS 488.410,

16 ➔ and does any act or neglects any duty imposed by law while
17 operating or being in actual physical control of any vessel under
18 ~~[power or sail,]~~ way, if the act or neglect of duty proximately causes
19 the death of, or substantial bodily harm to, another person, is guilty
20 of a category B felony and shall be punished by imprisonment in the
21 state prison for a minimum term of not less than 2 years and a
22 maximum term of not more than 20 years and shall be further
23 punished by a fine of not less than \$2,000 nor more than \$5,000. A
24 person so imprisoned must, insofar as practicable, be segregated
25 from offenders whose crimes were violent and, insofar as
26 practicable, be assigned to an institution or facility of minimum
27 security.

28 2. A prosecuting attorney shall not dismiss a charge of
29 violating the provisions of subsection 1 in exchange for a plea of
30 guilty, guilty but mentally ill or nolo contendere to a lesser charge or
31 for any other reason unless the prosecuting attorney knows or it is
32 obvious that the charge is not supported by probable cause or cannot
33 be proved at the time of trial. A sentence imposed pursuant to
34 subsection 1 must not be suspended, and probation must not be
35 granted.

36 3. If consumption is proven by a preponderance of the
37 evidence, it is an affirmative defense under paragraph (c) of
38 subsection 1 that the defendant consumed a sufficient quantity of
39 alcohol after operating or being in actual physical control of the
40 vessel under ~~[power or sail,]~~ way, and before his or her blood was
41 tested, to cause the defendant to have a concentration of alcohol of
42 0.08 or more in his or her blood or breath. A defendant who intends
43 to offer this defense at a trial or preliminary hearing must, not less
44 than 14 days before the trial or hearing or at such other time as the



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

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

6 **Sec. 23.** NRS 488.425 is hereby amended to read as follows:

7 488.425 1. A person commits homicide by vessel if the
8 person:

9 (a) Operates or is in actual physical control of a vessel under
10 ~~power or sail~~ way on the waters of this State and:

11 (1) Is under the influence of intoxicating liquor;

12 (2) Has a concentration of alcohol of 0.08 or more in his or
13 her blood or breath;

14 (3) Is found by measurement within 2 hours after operating
15 or being in actual physical control of a vessel under ~~power or sail~~
16 way to have a concentration of alcohol of 0.08 or more in his or her
17 blood or breath;

18 (4) Is under the influence of a controlled substance or is
19 under the combined influence of intoxicating liquor and a controlled
20 substance;

21 (5) Inhales, ingests, applies or otherwise uses any chemical,
22 poison or organic solvent, or any compound or combination of any
23 of these, to a degree which renders the person incapable of safely
24 operating or exercising actual physical control of a vessel under
25 ~~power or sail~~ way; or

26 (6) Has a prohibited substance in his or her blood or urine in
27 an amount that is equal to or greater than the amount set forth in
28 subsection 3 of NRS 488.410;

29 (b) Proximately causes the death of another person while
30 operating or in actual physical control of a vessel under ~~power or~~
31 ~~sail~~ way; and

32 (c) Has previously been convicted of at least three offenses.

33 2. A person who commits homicide by vessel is guilty of a
34 category A felony and shall be punished by imprisonment in the
35 state prison:

36 (a) For life with the possibility of parole, with eligibility for
37 parole beginning when a minimum of 10 years has been served; or

38 (b) For a definite term of 25 years, with eligibility for parole
39 beginning when a minimum of 10 years has been served.

40 3. A person imprisoned pursuant to subsection 2 must, insofar
41 as practicable, be segregated from offenders whose crimes were
42 violent and, insofar as practicable, be assigned to an institution or
43 facility of minimum security.

44 4. A prosecuting attorney shall not dismiss a charge of
45 homicide by vessel in exchange for a plea of guilty, guilty but



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

6 5. If consumption is proven by a preponderance of the
7 evidence, it is an affirmative defense under subparagraph (3) of
8 paragraph (a) of subsection 1 that the defendant consumed a
9 sufficient quantity of alcohol after operating or being in actual
10 physical control of the vessel, and before his or her blood or breath
11 was tested, to cause the defendant to have a concentration of alcohol
12 of 0.08 or more in his or her blood or breath. A defendant who
13 intends to offer this defense at a trial or preliminary hearing must,
14 not less than 14 days before the trial or hearing or at such other time
15 as the court may direct, file and serve on the prosecuting attorney a
16 written notice of that intent.

17 6. If the defendant was transporting a person who is less than
18 15 years of age in the vessel at the time of the violation, the court
19 shall consider that fact as an aggravating factor in determining the
20 sentence of the defendant.

21 7. As used in this section, "offense" means:

22 (a) A violation of NRS 488.410 or 488.420;

23 (b) A homicide resulting from operating or being in actual
24 physical control of a vessel while under the influence of intoxicating
25 liquor or a controlled substance or resulting from any other conduct
26 prohibited by this section or NRS 488.410 or 488.420; or

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

29 **Sec. 24.** NRS 488.450 is hereby amended to read as follows:

30 488.450 1. Any person who operates or is in actual physical
31 control of a vessel under ~~[power or sail]~~ way on the waters of this
32 State shall be deemed to have given consent to a preliminary test of
33 his or her breath to determine the concentration of alcohol in his or
34 her breath when the test is administered at the ~~[direction]~~ request
35 of a peace officer after a vessel accident or collision or where an
36 officer stops a vessel, if the officer has reasonable grounds to
37 believe that the person to be tested was:

38 (a) Operating or in actual physical control of a vessel under
39 ~~[power or sail]~~ way while under the influence of intoxicating liquor
40 or a controlled substance; or

41 (b) Engaging in any other conduct prohibited by NRS 488.410,
42 488.420 or 488.425.

43 2. If the person fails to submit to the test, the officer shall , if
44 *reasonable grounds otherwise exist*, arrest the person and take him



1 or her to a convenient place for the administration of a reasonably
2 available evidentiary test under NRS 488.460.

3 3. The result of the preliminary test must not be used in any
4 criminal action, except to show there were reasonable grounds to
5 make an arrest.

6 **Sec. 25.** NRS 488.460 is hereby amended to read as follows:

7 488.460 1. Except as otherwise provided in subsections 3 and
8 4, a person who operates or is in actual physical control of a vessel
9 under ~~power or sail~~ way on the waters of this State shall be
10 deemed to have given consent to an evidentiary test of his or her
11 blood, urine, breath or other bodily substance to determine the
12 concentration of alcohol in his or her blood or breath or to determine
13 whether a controlled substance, chemical, poison, organic solvent or
14 another prohibited substance is present, if such a test is administered
15 at the ~~direction~~ request of a peace officer having reasonable
16 grounds to believe that the person to be tested was:

17 (a) Operating or in actual physical control of a vessel under
18 ~~power or sail~~ way while under the influence of intoxicating liquor
19 or a controlled substance ~~;~~ or *with a prohibited substance in his or*
20 *her blood or urine; or*

21 (b) Engaging in any other conduct prohibited by NRS 488.410,
22 488.420 or 488.425.

23 2. If the person to be tested pursuant to subsection 1 is dead or
24 unconscious, the officer shall direct that samples of blood from the
25 person be tested.

26 3. Any person who is afflicted with hemophilia or with a heart
27 condition requiring the use of an anticoagulant as determined by a
28 physician is exempt from any blood test which may be required
29 pursuant to this section, but must, when appropriate pursuant to the
30 provisions of this section, be required to submit to a breath or urine
31 test.

32 4. If the concentration of alcohol of the blood or breath of the
33 person to be tested is in issue:

34 (a) Except as otherwise provided in this section, the person may
35 refuse to submit to a blood test if means are reasonably available to
36 perform a breath test.

37 (b) The person may request a blood test, but if means are
38 reasonably available to perform a breath test when the blood test is
39 requested, and the person is subsequently convicted, the person must
40 pay for the cost of the blood test, including the fees and expenses of
41 witnesses *whose testimony* in court ~~is~~ *is necessary because of the*
42 *use of the blood test. The expenses of such a witness must be*
43 *assessed at an hourly rate of not less than:*

44 (1) *Fifty dollars for travel to and from the place of the*
45 *proceeding; and*



1 (2) *One-hundred dollars for giving or waiting to give*
2 *testimony.*

3 (c) ~~[A peace officer may direct the person to submit to a blood~~
4 ~~test if the officer has reasonable grounds to believe that the person:~~

5 ~~—— (1) Caused death or substantial bodily harm to another~~
6 ~~person as a result of operating or being in actual physical control~~
7 ~~of a vessel under power or sail while under the influence of~~
8 ~~intoxicating liquor or a controlled substance or as a result of~~
9 ~~engaging in any other conduct prohibited by NRS 488.410, 488.420~~
10 ~~or 488.425; or~~

11 ~~—— (2) Has been convicted within the previous 7 years of:~~
12 ~~—— (I) A violation of NRS 484C.110, 484C.120, 484C.130,~~
13 ~~484C.430, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or~~
14 ~~488.425 or a law of another jurisdiction that prohibits the same or~~
15 ~~similar conduct; or~~

16 ~~—— (II) Any other offense in this State or another jurisdiction~~
17 ~~in which death or substantial bodily harm to another person resulted~~
18 ~~from conduct prohibited by a law set forth in sub-subparagraph (I).]~~
19 *Except as otherwise provided in NRS 488.470, not more than three*
20 *samples of the person's blood or breath may be taken during the*
21 *5-hour period immediately following the time of the initial arrest.*

22 5. If the presence of a controlled substance, chemical, poison,
23 organic solvent or another prohibited substance in the blood or urine
24 of the person is in issue, the officer may ~~[direct]~~ *request that*
25 the person ~~[to]~~ submit to a blood or urine test, or both. ~~[, in addition to~~
26 ~~the breath test.]~~

27 6. Except as otherwise provided in subsections 3 and 5, a peace
28 officer shall not ~~[direct]~~ *request that* a person ~~[to]~~ submit to a urine
29 test.

30 7. If a person to be tested fails to submit to a required test as
31 ~~[directed]~~ *requested* by a peace officer pursuant to this section and
32 the officer has reasonable grounds to believe that the person to be
33 tested was:

34 (a) Operating or in actual physical control of a vessel under
35 ~~[power or sail]~~ *way* while under the influence of intoxicating liquor
36 or a controlled substance ~~[;]~~ or *with a prohibited substance in his or*
37 *her blood or urine; or*

38 (b) Engaging in any other conduct prohibited by NRS 488.410,
39 488.420 or 488.425,

40 ➔ the officer may ~~[direct]~~ *apply for a warrant or court order*
41 *directing* that reasonable force be used to the extent necessary to
42 obtain samples of blood from the person to be tested. ~~[Not more~~
43 ~~than three such samples may be taken during the 5-hour period~~
44 ~~immediately following the time of the initial arrest. In such a~~
45 ~~circumstance, the officer is not required to provide the person with a~~



~~choice of tests for determining the alcoholic content or presence of a controlled substance or another prohibited substance in the person's blood.]~~

8. If a person who is less than 18 years of age is requested to submit to an evidentiary test pursuant to this section, the officer shall, before testing the person, make a reasonable attempt to notify the parent, guardian or custodian of the person, if known.

Sec. 26. NRS 488.470 is hereby amended to read as follows:

488.470 1. Except as otherwise provided in subsection 2, an evidentiary test of breath to determine the concentration of alcohol in a person's breath may be used to establish that concentration only if two consecutive samples of the person's breath are taken and:

(a) The difference between the concentration of alcohol in the person's breath indicated by the two samples is less than or equal to 0.02;

(b) If the provisions of paragraph (a) do not apply, a third evidentiary test of breath is administered and the difference between the concentration of alcohol in the person's breath indicated by the third sample and one of the first two samples is less than or equal to 0.02; or

(c) If the provisions of paragraphs (a) and (b) do not apply, a fourth evidentiary test is administered. Except as otherwise provided in NRS 488.460, the fourth evidentiary test must be a blood test.

2. If the person fails to provide the second or third consecutive sample, or to submit to the fourth evidentiary test, the results of the first test may be used alone as evidence of the concentration of alcohol in the person's breath. If for some other reason a second, third or fourth sample is not obtained, the results of the first test may be used with all other evidence presented to establish the concentration.

3. If a person refuses or otherwise fails to provide a second or third consecutive sample or submit to a fourth evidentiary test, ~~[a peace officer may direct that reasonable force be used to obtain a sample or conduct a test pursuant to]~~ *such refusal or failure constitutes a failure to submit to a required evidentiary test as provided in NRS 488.460.*

Sec. 27. NRS 488.480 is hereby amended to read as follows:

488.480 1. If a person refuses to submit to a required chemical test provided for in NRS 488.450 or 488.460, evidence of that refusal is admissible in any criminal action arising out of acts alleged to have been committed while the person was:

(a) Operating or in actual physical control of a vessel under ~~[power or sail]~~ *way* while under the influence of intoxicating liquor or a controlled substance; or



1 (b) Engaging in any other conduct prohibited by NRS 488.410,
2 488.420 or 488.425.

3 2. Except as otherwise provided in subsection 3 of NRS
4 488.450, a court may not exclude evidence of a required test or
5 failure to submit to such a test if the peace officer or other person
6 substantially complied with the provisions of NRS 488.450 to
7 488.500, inclusive.

8 3. If a person submits to a chemical test provided for in NRS
9 488.450 or 488.460, full information concerning that test must be
10 made available, upon request, to the person or the person's attorney.

11 4. Evidence of a required test is not admissible in a criminal
12 proceeding unless it is shown by documentary or other evidence that
13 the device for testing breath was certified pursuant to NRS
14 484C.610 and was calibrated, maintained and operated as provided
15 by the regulations of the Committee on Testing for Intoxication
16 adopted pursuant to NRS 484C.620, 484C.630 or 484C.640.

17 5. If the device for testing breath has been certified by the
18 Committee on Testing for Intoxication to be accurate and reliable
19 pursuant to NRS 484C.610, it is presumed that, as designed and
20 manufactured, the device is accurate and reliable for the purpose of
21 testing a person's breath to determine the concentration of alcohol in
22 the person's breath.

23 6. A court shall take judicial notice of the certification by the
24 Director of a person to operate testing devices of one of the certified
25 types. If a test to determine the amount of alcohol in a person's
26 breath has been performed with a certified type of device by a
27 person who is certified pursuant to NRS 484C.630 or 484C.640, it is
28 presumed that the person operated the device properly.

29 7. This section does not preclude the admission of evidence of
30 a test of a person's breath where the:

31 (a) Information is obtained through the use of a device other
32 than one of a type certified by the Committee on Testing for
33 Intoxication.

34 (b) Test has been performed by a person other than one who is
35 certified by the Director.

36 8. As used in this section, "Director" means the Director of the
37 Department of Public Safety.

38 **Sec. 28.** NRS 488.490 is hereby amended to read as follows:

39 488.490 1. A person who is arrested for operating or being in
40 actual physical control of a vessel under ~~[power or sail]~~ way while
41 under the influence of intoxicating liquor or a controlled substance
42 or for engaging in any other conduct prohibited by NRS 488.410,
43 488.420 or 488.425 must be permitted, upon the person's request
44 and at his or her expense, reasonable opportunity to have a qualified



1 person of his or her own choosing administer a chemical test to
2 determine:

- 3 (a) The concentration of alcohol in his or her blood or breath; or
4 (b) Whether a controlled substance, chemical, poison, organic
5 solvent or another prohibited substance is present in his or her blood
6 or urine.

7 2. The failure or inability to obtain such a test does not
8 preclude the admission of evidence relating to the refusal to submit
9 to a test or relating to a test taken upon the request of a peace
10 officer.

11 3. A test obtained under the provisions of this section
12 may not be substituted for or stand in lieu of the test required by
13 NRS 488.460.

14 **Sec. 29.** NRS 488.500 is hereby amended to read as follows:

15 488.500 1. The results of any blood test administered under
16 the provisions of NRS 488.460 or 488.490 are not admissible in any
17 criminal action arising out of acts alleged to have been committed
18 by a person who was operating or in actual physical control of a
19 vessel under ~~[power or sail]~~ way while under the influence of
20 intoxicating liquor or a controlled substance or *with a prohibited*
21 *substance in his or her blood or urine* or who was engaging in any
22 other conduct prohibited by NRS 488.410, 488.420 or 488.425
23 unless:

24 (a) The blood tested was withdrawn by a person, other than an
25 arresting officer, who:

26 (1) Is a physician, registered nurse, licensed practical nurse,
27 advanced emergency medical technician, paramedic or a
28 phlebotomist, technician, technologist or assistant employed in a
29 medical laboratory; or

30 (2) Has special knowledge, skill, experience, training and
31 education in withdrawing blood in a medically acceptable manner,
32 including, without limitation, a person qualified as an expert on that
33 subject in a court of competent jurisdiction or a person who has
34 completed a course of instruction that qualifies him or her to take an
35 examination in phlebotomy that is administered by the American
36 Medical Technologists or the American Society for Clinical
37 Pathology; and

38 (b) The test was performed on whole blood, except if the sample
39 was clotted when it was received by the laboratory, the test may be
40 performed on blood serum or plasma.

41 2. The limitation contained in paragraph (a) of subsection 1
42 does not apply to the taking of a chemical test of the urine, breath or
43 other bodily substance.

44 3. No person listed in paragraph (a) of subsection 1 incurs any
45 civil or criminal liability as a result of the administering of a blood



1 test when requested by a peace officer or the person to be tested to
2 administer the test.

3 **Sec. 30.** NRS 488.520 is hereby amended to read as follows:

4 488.520 1. Any coroner, or other public officer performing
5 like duties, shall in all cases in which a death has occurred as a
6 result of an accident involving a vessel under ~~power or sail~~ way on
7 the waters of this state, whether the person killed is the operator of
8 the vessel or a passenger or other person, cause to be drawn from
9 each decedent, within 8 hours after the accident, a blood sample to
10 be analyzed for the presence and concentration of alcohol.

11 2. The findings of the examinations are a matter of public
12 record and must be reported to the Commission by the coroner or
13 other public officer within 30 days after the death.

14 3. Analyses of blood alcohol are acceptable only if made by
15 laboratories licensed to perform this function.

16 **Sec. 31.** This act becomes effective upon passage and
17 approval.

