

ASSEMBLY BILL NO. 397—ASSEMBLYWOMAN KASAMA

MARCH 24, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing public safety. (BDR 43-210)

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

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

AN ACT relating to public safety; revising provisions relating to prohibited acts concerning the use of marijuana and certain other controlled substances; revising the penalties for a person who drives under the influence of alcohol or other substances and causes the death of, or substantial bodily harm to, another person; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law sets forth various penalties involving driving under the influence  
2 of alcohol or a controlled substance or with a specific amount of alcohol, a  
3 prohibited substance, or marijuana or marijuana metabolite in his or her blood.  
4 (Chapter 484C of NRS) Under existing law, the prohibition on driving with a  
5 specific amount of marijuana or marijuana metabolite in a person’s blood only  
6 applies if the offense is punishable as a felony because the offense: (1) is a third  
7 offense within 7 years; (2) constitutes vehicular homicide; or (3) proximately  
8 causes the death of, or substantial bodily harm to, another person. (NRS 484C.110,  
9 484C.130, 484C.400, 484C.430) Additionally, existing law provides that a person  
10 who drives under the influence of alcohol or a controlled substance or with a  
11 certain amount of alcohol or a prohibited substance in his or her blood is guilty of a  
12 felony if the person has previously been convicted of a felony for: (1) committing  
13 three such offenses within 7 years; (2) an offense that proximately caused the death  
14 of, or substantial bodily harm to, another person; (3) a homicide resulting from such  
15 an offense; (4) a violation of a law of any other jurisdiction that prohibits the same  
16 or similar conduct; or (5) a violation that has been reduced from a felony. This  
17 provision of law is commonly known as the “Once a Felon, Always a Felon” rule.  
18 (NRS 484C.410) **Section 1** of this bill provides that the prohibition on a person  
19 driving with a specific amount of marijuana or marijuana metabolite in his or her  
20 blood also applies to an offense if the person has previously been convicted of a  
21 felony under the “Once a Felon, Always a Felon” rule.



Existing law also provides that an offense for driving under the influence of alcohol or a controlled substance that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense: (1) when evidenced by a conviction; or (2) if the offense is conditionally dismissed or the judgment of conviction is set aside or dismissed in connection with successful completion of a diversionary program or specialty court program. (NRS 484C.400) **Section 2** of this bill provides that an offense constitutes a prior offense if the person was ordered to undergo a program of treatment for an alcohol or other substance use disorder as the result of committing a third offense within 7 years.

Existing law provides that if a person has previously been convicted of a felony and subsequently drives a vehicle under the influence of alcohol or a controlled substance, the person is guilty of a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not less than \$2,000 nor more than \$5,000. (NRS 484C.410) **Section 3** of this bill provides that a person is subject to the same punishment if, at the time of the offense, the person is undergoing a program of treatment for an alcohol or other substance use disorder as the result of committing a third offense within 7 years.

Existing law provides that a person who drives a vehicle under the influence of alcohol or a controlled substance and proximately causes the death of, or substantial bodily harm to, another person is guilty of a category B felony punishable by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years and by a fine of not less than \$2,000 nor more than \$5,000. (NRS 484C.430) **Section 4** of this bill increases the minimum and maximum terms of imprisonment for a person who proximately causes the death of another person to a minimum term of not less than 5 years and a maximum term of not more than 25 years. **Section 4** also provides that in certain circumstances, a person who drives a vehicle under the influence of alcohol or a controlled substance and proximately causes the death of another person may be punished for second-degree murder.

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

**Section 1.** NRS 484C.110 is hereby amended to read as follows:

484C.110 1. It is unlawful for any person who:

(a) Is under the influence of intoxicating liquor;

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

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

↳ to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access.

2. It is unlawful for any person who:

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

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



(c) Inhales, ingests, applies or otherwise uses any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders the person incapable of safely driving or exercising actual physical control of a vehicle,

↳ to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access. The fact that any person charged with a violation of this subsection is or has been entitled to use that drug under the laws of this State is not a defense against any charge of violating this subsection.

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

Prohibited substance	Urine Nanograms per milliliter	Blood Nanograms per milliliter
(a) Amphetamine	500	100
(b) Cocaine	150	50
(c) Cocaine metabolite	150	50
(d) Heroin	2,000	50
(e) Heroin metabolite:		
(1) Morphine	2,000	50
(2) 6-monoacetyl morphine	10	10
(f) Lysergic acid diethylamide	25	10
(g) Methamphetamine	500	100
(h) Phencyclidine	25	10

4. For any violation that is punishable pursuant to paragraph (c) of subsection 1 of NRS 484C.400 ~~§~~ *and 484C.410*, it is unlawful for any person to drive or be in actual physical control of a vehicle on a highway or on premises to which the public has access with an amount of any of the following prohibited substances in his or her blood that is equal to or greater than:

Prohibited substance	Blood Nanograms per milliliter
(a) Marijuana (delta-9-tetrahydrocannabinol)	2
(b) Marijuana metabolite (11-OH-tetrahydrocannabinol)	5



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

12 6. A person who violates any provision of this section may be  
13 subject to any additional penalty set forth in NRS 484B.130 or  
14 484B.135.

15 **Sec. 2.** NRS 484C.400 is hereby amended to read as follows:

16 484C.400 1. Unless a greater penalty is provided pursuant to  
17 NRS 484C.430 or 484C.440, and except as otherwise provided in  
18 NRS 484C.394 or 484C.410, a person who violates the provisions  
19 of NRS 484C.110 or 484C.120:

20 (a) For the first offense within 7 years, is guilty of a  
21 misdemeanor. Unless the person is allowed to undergo treatment as  
22 provided in NRS 484C.320, the court shall:

23 (1) Except as otherwise provided in subparagraph (4) of this  
24 paragraph or subsection 3 of NRS 484C.420, order the person to pay  
25 tuition for an educational course on alcohol or other substance use  
26 disorders approved by the Department and complete the course  
27 within the time specified in the order, and the court shall notify the  
28 Department if the person fails to complete the course within the  
29 specified time;

30 (2) Unless the sentence is reduced pursuant to  
31 NRS 484C.320:

32 (I) Sentence the person to imprisonment for not less than  
33 2 days nor more than 6 months in jail or residential confinement for  
34 not less than 2 days nor more than 6 months, in the manner provided  
35 in NRS 4.376 to 4.3766, inclusive, or 5.0755 to 5.078, inclusive; or

36 (II) Order the person to perform not less than 48 hours,  
37 but not more than 96 hours, of community service while dressed in  
38 distinctive garb that identifies the person as having violated the  
39 provisions of NRS 484C.110 or 484C.120;

40 (3) Fine the person not less than \$400 nor more than \$1,000;  
41 and

42 (4) If the person is found to have a concentration of alcohol  
43 of 0.18 or more in his or her blood or breath, order the person to  
44 attend a program of treatment for an alcohol or other substance use  
45 disorder pursuant to the provisions of NRS 484C.360.



1 (b) For a second offense within 7 years, is guilty of a  
2 misdemeanor. Unless the sentence is reduced pursuant to NRS  
3 484C.330, the court shall:

4 (1) Sentence the person to:

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

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

10 (2) Fine the person not less than \$750 nor more than \$1,000,  
11 or order the person to perform an equivalent number of hours of  
12 community service while dressed in distinctive garb that identifies  
13 the person as having violated the provisions of NRS 484C.110 or  
14 484C.120; and

15 (3) Order the person to attend a program of treatment for an  
16 alcohol or other substance use disorder pursuant to the provisions of  
17 NRS 484C.360.

18 ➤ A person who willfully fails or refuses to complete successfully a  
19 term of residential confinement or a program of treatment ordered  
20 pursuant to this paragraph is guilty of a misdemeanor.

21 (c) Except as otherwise provided in NRS 484C.340, for a third  
22 offense within 7 years, is guilty of a category B felony and the  
23 court:

24 (1) Shall:

25 (I) Sentence the person to imprisonment in the state  
26 prison for a minimum term of not less than 1 year and a maximum  
27 term of not more than 6 years; and

28 (II) Fine the person not less than \$2,000 nor more than  
29 \$5,000; and

30 (2) May order the person to attend a program of treatment for  
31 an alcohol or other substance use disorder pursuant to the provisions  
32 of NRS 484C.360 if the results of an evaluation conducted pursuant  
33 to NRS 484C.300 indicate that the person has an alcohol or other  
34 substance use disorder and that the person can be treated  
35 successfully for his or her condition.

36 ➤ An offender who is imprisoned pursuant to the provisions of this  
37 paragraph must, insofar as practicable, be segregated from offenders  
38 whose crimes were violent and, insofar as practicable, be assigned  
39 to an institution or facility of minimum security.

40 2. An offense that occurred within 7 years immediately  
41 preceding the date of the principal offense or after the principal  
42 offense constitutes a prior offense for the purposes of this section:

43 (a) When evidenced by a conviction; ~~for~~



1 (b) *If the person was ordered to undergo a program of*  
2 *treatment for an alcohol or other substance use disorder pursuant*  
3 *to NRS 484C.340 as the result of the offense; or*

4 (c) If the offense is conditionally dismissed or the judgment of  
5 conviction is set aside pursuant to NRS 176A.240, 176A.260 or  
6 176A.290 or dismissed in connection with successful completion of  
7 a diversionary program or specialty court program,

8 ↪ without regard to the sequence of the offenses and convictions.  
9 The facts concerning a prior offense must be alleged in the  
10 complaint, indictment or information, must not be read to the jury or  
11 proved at trial but must be proved at the time of sentencing and, if  
12 the principal offense is alleged to be a felony, must also be shown at  
13 the preliminary examination or presented to the grand jury.

14 3. A term of confinement imposed pursuant to the provisions  
15 of this section may be served intermittently at the discretion of the  
16 judge or justice of the peace, except that a person who is convicted  
17 of a second or subsequent offense within 7 years must be confined  
18 for at least one segment of not less than 48 consecutive hours. This  
19 discretion must be exercised after considering all the circumstances  
20 surrounding the offense, and the family and employment of the  
21 offender, but any sentence of 30 days or less must be served within  
22 6 months after the date of conviction or, if the offender was  
23 sentenced pursuant to NRS 484C.320 or 484C.330 and the  
24 suspension of his or her sentence was revoked, within 6 months  
25 after the date of revocation. Any time for which the offender is  
26 confined must consist of not less than 24 consecutive hours.

27 4. Jail sentences simultaneously imposed pursuant to this  
28 section and NRS 482.456, 483.560, 484C.410 or 485.330 must run  
29 consecutively.

30 5. If the defendant was transporting a person who is less than  
31 15 years of age in the motor vehicle at the time of the violation, the  
32 court shall consider that fact as an aggravating factor in determining  
33 the sentence of the defendant.

34 6. For the purpose of determining whether one offense occurs  
35 within 7 years of another offense, any period of time between the  
36 two offenses during which, for any such offense, the offender is  
37 imprisoned, serving a term of residential confinement, placed under  
38 the supervision of a treatment provider, on parole or on probation  
39 must be excluded.

40 7. As used in this section, unless the context otherwise  
41 requires, "offense" means:

42 (a) A violation of NRS 484C.110, 484C.120 or 484C.430;

43 (b) A homicide resulting from driving or being in actual  
44 physical control of a vehicle while under the influence of  
45 intoxicating liquor or a controlled substance or resulting from any



1 other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;  
2 or

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

5 **Sec. 3.** NRS 484C.410 is hereby amended to read as follows:

6 484C.410 1. Unless a greater penalty is provided in NRS  
7 484C.440, a person who ~~has~~ :

8 (a) *Has* previously been convicted of:

9 ~~{(a)}~~ (1) A violation of NRS 484C.110 or 484C.120 that is  
10 punishable as a felony pursuant to paragraph (c) of subsection 1 of  
11 NRS 484C.400;

12 ~~{(b)}~~ (2) A violation of NRS 484C.430;

13 ~~{(c)}~~ (3) A homicide resulting from driving or being in actual  
14 physical control of a vehicle while under the influence of  
15 intoxicating liquor or a controlled substance or resulting from any  
16 other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;

17 ~~{(d)}~~ (4) A violation of a law of any other jurisdiction that  
18 prohibits the same or similar conduct as set forth in ~~{paragraph (a);~~  
19 ~~(b) or (c);}~~ *subparagraph (1), (2) or (3)*; or

20 ~~{(e)}~~ (5) A violation of NRS 484C.110 or 484C.120 that is  
21 punishable pursuant to paragraph (b) of subsection 1 of NRS  
22 484C.400 that was reduced from a felony pursuant to NRS  
23 484C.340 ~~{}~~; or

24 (b) *Is undergoing a program of treatment for an alcohol or*  
25 *other substance use disorder pursuant to NRS 484C.340 in*  
26 *accordance with the provisions of paragraph (c) of subsection 1 of*  
27 *NRS 484C.400,*

28 ➔ and who violates the provisions of NRS 484C.110 or 484C.120 is  
29 guilty of a category B felony and shall be punished by imprisonment  
30 in the state prison for a minimum term of not less than 2 years and a  
31 maximum term of not more than 15 years, and shall be further  
32 punished by a fine of not less than \$2,000 nor more than \$5,000. An  
33 offender so imprisoned must, insofar as practicable, be segregated  
34 from offenders whose crimes were violent and, insofar as  
35 practicable, be assigned to an institution or facility of minimum  
36 security.

37 2. An offense which is listed in ~~{paragraphs (a) to (e);}~~  
38 *subparagraphs (1) to (5)*, inclusive, of *paragraph (a)* of subsection  
39 1 that occurred on any date preceding the date of the principal  
40 offense or after the principal offense constitutes a prior offense for  
41 the purposes of this section when evidenced by a conviction,  
42 without regard for the sequence of the offenses and convictions. The  
43 facts concerning a prior offense must be alleged in the complaint,  
44 indictment or information, must not be read to the jury or proved at  
45 trial but must be proved at the time of sentencing and, if the



1 principal offense is alleged to be a felony, must also be shown at the  
2 preliminary examination or presented to the grand jury.

3 3. A term of confinement imposed pursuant to the provisions  
4 of this section may be served intermittently at the discretion of the  
5 judge or justice of the peace, except that a person who is convicted  
6 of a second or subsequent offense within 7 years must be confined  
7 for at least one segment of not less than 48 consecutive hours. This  
8 discretion must be exercised after considering all the circumstances  
9 surrounding the offense, and the family and employment of the  
10 offender, but any sentence of 30 days or less must be served within  
11 6 months after the date of conviction or, if the offender was  
12 sentenced pursuant to NRS 484C.320 or 484C.330 and the  
13 suspension of offender's sentence was revoked, within 6 months  
14 after the date of revocation. Any time for which the offender is  
15 confined must consist of not less than 24 consecutive hours.

16 4. Jail sentences simultaneously imposed pursuant to this  
17 section and NRS 482.456, 483.560, 484C.400 or 485.330 must run  
18 consecutively.

19 5. If the defendant was transporting a person who is less than  
20 15 years of age in the motor vehicle at the time of the violation, the  
21 court shall consider that fact as an aggravating factor in determining  
22 the sentence of the defendant.

23 6. For the purpose of determining whether one offense occurs  
24 within 7 years of another offense, any period of time between the  
25 two offenses during which, for any such offense, the offender is  
26 imprisoned, serving a term of residential confinement, placed under  
27 the supervision of a treatment provider, on parole or on probation  
28 must be excluded.

29 7. As used in this section, unless the context otherwise  
30 requires, "offense" means:

31 (a) A violation of NRS 484C.110, 484C.120 or 484C.430;

32 (b) A homicide resulting from driving or being in actual  
33 physical control of a vehicle while under the influence of  
34 intoxicating liquor or a controlled substance or resulting from any  
35 other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;  
36 or

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

39 **Sec. 4.** NRS 484C.430 is hereby amended to read as follows:

40 484C.430 1. ~~Unless a greater penalty is provided pursuant to~~  
41 ~~NRS 484C.440, a] A person [who:] shall not do any act or neglect~~  
42 ~~any duty imposed by law while driving or in actual physical~~  
43 ~~control of any vehicle on or off the highways of this State, if the~~  
44 ~~act or neglect of duty proximately causes the death of, or~~





1 ***substantial bodily harm to, another person and the person driving***  
2 ***or in actual physical control of the vehicle:***

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

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

6 (c) Is found by measurement within 2 hours after driving or  
7 being in actual physical control of a vehicle to have a concentration  
8 of alcohol of 0.08 or more in his or her blood or breath;

9 (d) Is under the influence of a controlled substance or is under  
10 the combined influence of intoxicating liquor and a controlled  
11 substance;

12 (e) Inhales, ingests, applies or otherwise uses any chemical,  
13 poison or organic solvent, or any compound or combination of any  
14 of these, to a degree which renders the person incapable of safely  
15 driving or exercising actual physical control of a vehicle; or

16 (f) Has a prohibited substance in his or her blood or urine, as  
17 applicable, in an amount that is equal to or greater than the amount  
18 set forth in subsection 3 or 4 of NRS 484C.110. †;

19 ~~→ and does any act or neglects any duty imposed by law while~~  
20 ~~driving or in actual physical control of any vehicle on or off the~~  
21 ~~highways of this State, if the act or neglect of duty proximately~~  
22 ~~causes the death of, or substantial bodily harm to, another person, †~~

23 ***2. Unless the offense is punishable as second-degree murder***  
24 ***pursuant to subsection 2 of NRS 200.030 or a greater penalty is***  
25 ***provided pursuant to NRS 484C.440, a person who violates any***  
26 ***provision of subsection 1 is guilty of :***

27 (a) ***If the violation proximately causes the death of another***  
28 ***person, a category B felony and shall be punished by imprisonment***  
29 ***in the state prison for a minimum term of not less than [2] 5 years***  
30 ***and a maximum term of not more than [20] 25 years and must be***  
31 ***further punished by a fine of not less than \$2,000 nor more than***  
32 ***\$5,000.***

33 (b) ***If the violation proximately causes substantial bodily harm***  
34 ***to another person, a category B felony and shall be punished by***  
35 ***imprisonment in the state prison for a minimum term of not less***  
36 ***than 2 years and a maximum term of not more than 20 years and***  
37 ***must be further punished by a fine of not less than \$2,000 nor***  
38 ***more than \$5,000.***

39 → A person so imprisoned must, insofar as practicable, be  
40 segregated from offenders whose crimes were violent and, insofar as  
41 practicable, be assigned to an institution or facility of minimum  
42 security.

43 [2.] 3. A prosecuting attorney shall not dismiss a charge of  
44 violating the provisions of subsection 1 in exchange for a plea of  
45 guilty, guilty but mentally ill or nolo contendere to a lesser charge or



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

5 ~~[3.]~~ 4. Except as otherwise provided in subsection ~~[4.]~~ 5, if  
6 consumption is proven by a preponderance of the evidence, it is an  
7 affirmative defense under paragraph (c) of subsection 1 that the  
8 defendant consumed a sufficient quantity of alcohol after driving or  
9 being in actual physical control of the vehicle, and before his or her  
10 blood or breath was tested, to cause the defendant to have a  
11 concentration of alcohol of 0.08 or more in his or her blood or  
12 breath. A defendant who intends to offer this defense at a trial or  
13 preliminary hearing must, not less than 14 days before the trial  
14 or hearing or at such other time as the court may direct, file and  
15 serve on the prosecuting attorney a written notice of that intent.

16 ~~[4.]~~ 5. If the defendant is also charged with violating the  
17 provisions of NRS 484E.010, 484E.020 or 484E.030, the defendant  
18 may not offer the affirmative defense set forth in subsection ~~[3.]~~ 4.

19 ~~[5.]~~ 6. If the defendant was transporting a person who is less  
20 than 15 years of age in the motor vehicle at the time of the violation,  
21 the court shall consider that fact as an aggravating factor in  
22 determining the sentence of the defendant.

23 **Sec. 5.** This act becomes effective on July 1, 2023.





