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AN ACT relating to public safety; providing that the affirmative defense available to certain persons who drive a vehicle and proximately cause substantial bodily harm to or the death of another person cannot be offered by a person also charged with violating certain other provisions of law; increasing the maximum term of imprisonment for a person who leaves the scene of an accident that results in bodily injury to or the death of a person; providing that the bodily injury to or the death of each person that results from an accident of which a person leaves the scene constitutes a separate offense; providing that the sentence of a person convicted of leaving the scene of an accident that results in bodily injury to or the death of a person may not be suspended nor may probation be granted to the person; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law generally provides that a person who drives a vehicle while under the influence of alcohol or a prohibited substance and proximately causes substantial bodily harm to or the death of another person is guilty of a category B felony and must be punished 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 and not more than \$5,000. The sentence of a person convicted of such a crime may not be suspended nor may probation be granted to the person. (NRS 484C.430)

Existing law also generally requires the driver of any vehicle involved in an accident that results in bodily injury to or the death of a person to stop his or her vehicle immediately at or near the scene of the accident and return to and remain at the scene until the driver provides certain information and renders reasonable assistance to any injured person. A person who violates such a provision is guilty of a category B felony and must be punished 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 and not more than \$5,000. (NRS 484E.010, 484E.030)

Section 2 of this bill increases the maximum term of imprisonment for a person who leaves the scene of an accident that results in bodily injury to or the death of a person from 15 years to 20 years, thereby making the penalties the same for leaving the scene of such an accident and driving under the influence of alcohol or a prohibited substance and proximately causing substantial bodily harm to or the death of another person. **Section 2** also provides that such a person commits a separate offense for each person who is injured or dies in the accident. Finally, **section 2** provides that the sentence of a person convicted of such a crime may not be suspended nor may probation be granted to the person.

Existing law provides that if: (1) a person drives a vehicle and proximately causes substantial bodily harm to or the death of another person; (2) the person 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; and (3) consumption is proven by a preponderance of the evidence, the person may use as an affirmative defense that he or she consumed a sufficient quantity of alcohol after driving or being in actual control of the vehicle, and before his or her blood or breath was tested, to cause the person to have such a concentration of alcohol in his or her blood or breath. (NRS 484C.430) **Section 1** of this bill provides that a person may not offer such an affirmative defense if the person is also charged with a violation of any of the provisions of law which require a person to: (1) stop at the scene of an accident involving death, personal injury or damage to a vehicle or other property; and (2) provide certain information and render reasonable assistance to injured persons after any such accident.

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

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

Section 1. NRS 484C.430 is hereby amended to read as follows:

484C.430 1. Unless a greater penalty is provided pursuant to NRS 484C.440, a 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;
- (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;
- (d) Is under the influence of a controlled substance or is under the combined influence of intoxicating liquor and a controlled substance;
- (e) 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; or
- (f) Has a prohibited substance in his or her blood or urine in an amount that is equal to or greater than the amount set forth in subsection 3 of NRS 484C.110,
↳ and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, another person, is guilty of a category B felony and shall be punished 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 must be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar as practicable, be segregated



from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

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

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

4. *If the defendant is also charged with violating the provisions of NRS 484E.010, 484E.020 or 484E.030, the defendant may not offer the affirmative defense set forth in subsection 3.*

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

Sec. 2. NRS 484E.010 is hereby amended to read as follows:

484E.010 1. The driver of any vehicle involved in an accident on a highway or on premises to which the public has access resulting in bodily injury to or the death of a person shall immediately stop his or her vehicle at the scene of the accident or as close thereto as possible, and shall forthwith return to and in every event shall remain at the scene of the accident until the driver has fulfilled the requirements of NRS 484E.030.

2. Every such stop must be made without obstructing traffic more than is necessary.

3. A person failing to comply with the provisions of subsection 1 is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than ~~HS~~ 20 years



and by a fine of not less than \$2,000 nor more than \$5,000. *A person failing to comply with the provisions of subsection 1 commits a separate offense under this section for the bodily injury to or the death of each person that results from an accident with regard to which the person failed to comply with the provisions of subsection 1.*

4. A sentence imposed pursuant to subsection 3 may not be suspended nor may probation be granted.

Sec. 3. The amendatory provisions of this act apply to an offense committed on or after October 1, 2015.

