

SENATE BILL NO. 284—SENATORS TITUS AND STONE

MARCH 15, 2023

JOINT SPONSORS: ASSEMBLYMEN GRAY AND HANSEN

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to driving or operating certain vehicles or vessels while under the influence of alcohol or a controlled substance. (BDR 16-940)

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 offenders; revising provisions relating to the assignment of certain offenders to an institution or facility of minimum security; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 In general, existing law prohibits the Director of the Department of Corrections
2 from assigning an offender to an institution or facility of minimum security if the
3 offender is not eligible for parole or release from prison within a reasonable period.
4 Existing law provides an exception to this prohibition for certain offenders
5 imprisoned for an offense relating to driving or operating certain vehicles or vessels
6 while under the influence of alcohol or a controlled substance. (NRS 209.481)
7 **Section 1** of this bill eliminates this exception, thereby prohibiting the Director
8 from assigning certain offenders imprisoned for an offense related to driving or
9 operating certain vehicles or vessels while under the influence of alcohol or a
10 controlled substance to an institution or facility of minimum security unless the
11 offender is eligible for parole or release from prison within a reasonable period.
12 Insofar as practicable, existing law requires certain offenders imprisoned for
13 offenses relating to driving or operating certain vehicles or vessels while under the
14 influence of alcohol or a controlled substance to be: (1) segregated from offenders
15 whose crimes were violent; and (2) assigned to an institution or facility of
16 minimum security. (NRS 484C.400, 484C.410, 484C.430, 484C.440, 488.420,
17 488.425, 488.427) **Sections 2-8** of this bill: (1) remove the requirement that such
18 offenders be assigned to an institution or facility of minimum security insofar as
19 practicable; and (2) prohibit the assignment of such offenders to an institution or



20 facility of minimum security unless the offender meets certain criteria prescribed by
21 regulations adopted by the Director.

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

1 **Section 1.** NRS 209.481 is hereby amended to read as follows:
2 209.481 1. Except as otherwise provided in NRS 176A.780,
3 the Director shall not assign any prisoner to an institution or facility
4 of minimum security if the prisoner:

5 (a) ~~Except as otherwise provided in NRS 484C.400, 484C.410,~~
6 ~~484C.430, 484C.440, 488.420, 488.425 and 488.427, is] Is~~ not
7 eligible for parole or release from prison within a reasonable period;

8 (b) Has recently committed a serious infraction of the rules of an
9 institution or facility of the Department;

10 (c) Has not performed the duties assigned to him or her in a
11 faithful and orderly manner;

12 (d) Has ever been convicted of a sexual offense that is
13 punishable as a felony;

14 (e) Has, within the immediately preceding year, been convicted
15 of any crime involving the use or threatened use of force or violence
16 against a victim that is punishable as a felony; or

17 (f) Has attempted to escape or has escaped from an institution of
18 the Department.

19 2. The Director shall, by regulation, establish procedures for
20 classifying and selecting qualified prisoners.

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

22 484C.400 1. Unless a greater penalty is provided pursuant to
23 NRS 484C.430 or 484C.440, and except as otherwise provided in
24 NRS 484C.394 or 484C.410, a person who violates the provisions
25 of NRS 484C.110 or 484C.120:

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

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

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

38 (I) Sentence the person to imprisonment for not less than
39 2 days nor more than 6 months in jail or residential confinement for



1 not less than 2 days nor more than 6 months, in the manner provided
2 in NRS 4.376 to 4.3766, inclusive, or 5.0755 to 5.078, inclusive; or

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

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

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

13 (b) For a second offense within 7 years, is guilty of a
14 misdemeanor. Unless the sentence is reduced pursuant to NRS
15 484C.330, the court shall:

16 (1) Sentence the person to:

17 (I) Imprisonment for not less than 10 days nor more than
18 6 months in jail; or

19 (II) Residential confinement for not less than 10 days nor
20 more than 6 months, in the manner provided in NRS 4.376 to
21 4.3766, inclusive, or 5.0755 to 5.078, inclusive;

22 (2) Fine the person not less than \$750 nor more than \$1,000,
23 or order the person to perform an equivalent number of hours of
24 community service while dressed in distinctive garb that identifies
25 the person as having violated the provisions of NRS 484C.110 or
26 484C.120; and

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

30 ↪ A person who willfully fails or refuses to complete successfully a
31 term of residential confinement or a program of treatment ordered
32 pursuant to this paragraph is guilty of a misdemeanor.

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

36 (1) Shall:

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

40 (II) Fine the person not less than \$2,000 nor more than
41 \$5,000; and

42 (2) May order the person to attend a program of treatment for
43 an alcohol or other substance use disorder pursuant to the provisions
44 of NRS 484C.360 if the results of an evaluation conducted pursuant
45 to NRS 484C.300 indicate that the person has an alcohol or other



1 substance use disorder and that the person can be treated
2 successfully for his or her condition.

3 ➔ An offender who is imprisoned pursuant to the provisions of this
4 paragraph must, insofar as practicable, be segregated from offenders
5 whose crimes were violent and ~~[, insofar as practicable,]~~ **must not**
6 be assigned to an institution or facility of minimum security ~~[]~~ ,
7 ***unless the offender meets the eligibility criteria for assignment to***
8 ***such an institution or facility prescribed by the regulations***
9 ***adopted pursuant to NRS 209.481.***

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

13 (a) When evidenced by a conviction; or

14 (b) If the offense is conditionally dismissed or the judgment of
15 conviction is set aside pursuant to NRS 176A.240, 176A.260 or
16 176A.290 or dismissed in connection with successful completion of
17 a diversionary program or specialty court program,

18 ➔ without regard to the sequence of the offenses and convictions.
19 The facts concerning a prior offense must be alleged in the
20 complaint, indictment or information, must not be read to the jury or
21 proved at trial but must be proved at the time of sentencing and, if
22 the principal offense is alleged to be a felony, must also be shown at
23 the preliminary examination or presented to the grand jury.

24 3. A term of confinement imposed pursuant to the provisions
25 of this section may be served intermittently at the discretion of the
26 judge or justice of the peace, except that a person who is convicted
27 of a second or subsequent offense within 7 years must be confined
28 for at least one segment of not less than 48 consecutive hours. This
29 discretion must be exercised after considering all the circumstances
30 surrounding the offense, and the family and employment of the
31 offender, but any sentence of 30 days or less must be served within
32 6 months after the date of conviction or, if the offender was
33 sentenced pursuant to NRS 484C.320 or 484C.330 and the
34 suspension of his or her sentence was revoked, within 6 months
35 after the date of revocation. Any time for which the offender is
36 confined must consist of not less than 24 consecutive hours.

37 4. Jail sentences simultaneously imposed pursuant to this
38 section and NRS 482.456, 483.560, 484C.410 or 485.330 must run
39 consecutively.

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

44 6. For the purpose of determining whether one offense occurs
45 within 7 years of another offense, any period of time between the



1 two offenses during which, for any such offense, the offender is
2 imprisoned, serving a term of residential confinement, placed under
3 the supervision of a treatment provider, on parole or on probation
4 must be excluded.

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

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

8 (b) A homicide resulting from driving or being in actual
9 physical control of a vehicle while under the influence of
10 intoxicating liquor or a controlled substance or resulting from any
11 other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;
12 or

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

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

16 484C.410 1. Unless a greater penalty is provided in NRS
17 484C.440, a person who has previously been convicted of:

18 (a) A violation of NRS 484C.110 or 484C.120 that is punishable
19 as a felony pursuant to paragraph (c) of subsection 1 of
20 NRS 484C.400;

21 (b) A violation of NRS 484C.430;

22 (c) A homicide resulting from driving or being in actual physical
23 control of a vehicle while under the influence of intoxicating liquor
24 or a controlled substance or resulting from any other conduct
25 prohibited by NRS 484C.110, 484C.130 or 484C.430;

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

29 (e) A violation of NRS 484C.110 or 484C.120 that is punishable
30 pursuant to paragraph (b) of subsection 1 of NRS 484C.400 that was
31 reduced from a felony pursuant to NRS 484C.340,

32 ↪ and who violates the provisions of NRS 484C.110 or 484C.120 is
33 guilty of a category B felony and shall be punished by imprisonment
34 in the state prison for a minimum term of not less than 2 years and a
35 maximum term of not more than 15 years, and shall be further
36 punished by a fine of not less than \$2,000 nor more than \$5,000. An
37 offender so imprisoned must, insofar as practicable, be segregated
38 from offenders whose crimes were violent and ~~insofar as~~
39 ~~practicable,~~ **must not** be assigned to an institution or facility of
40 minimum security ~~in~~, **unless the offender meets the eligibility**
41 **criteria for assignment to such an institution or facility prescribed**
42 **by the regulations adopted pursuant to NRS 209.481.**

43 2. An offense which is listed in paragraphs (a) to (e), inclusive,
44 of subsection 1 that occurred on any date preceding the date of the
45 principal offense or after the principal offense constitutes a prior



1 offense for the purposes of this section when evidenced by a
2 conviction, without regard for the sequence of the offenses and
3 convictions. The facts concerning a prior offense must be alleged in
4 the complaint, indictment or information, must not be read to the
5 jury or proved at trial but must be proved at the time of sentencing
6 and, if the principal offense is alleged to be a felony, must also be
7 shown at the preliminary examination or presented to the grand jury.

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

21 4. Jail sentences simultaneously imposed pursuant to this
22 section and NRS 482.456, 483.560, 484C.400 or 485.330 must run
23 consecutively.

24 5. If the defendant was transporting a person who is less than
25 15 years of age in the motor vehicle at the time of the violation, the
26 court shall consider that fact as an aggravating factor in determining
27 the sentence of the defendant.

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

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

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

37 (b) A homicide resulting from driving or being in actual
38 physical control of a vehicle while under the influence of
39 intoxicating liquor or a controlled substance or resulting from any
40 other conduct prohibited by NRS 484C.110, 484C.130 or 484C.430;
41 or

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



1 **Sec. 4.** NRS 484C.430 is hereby amended to read as follows:
2 484C.430 1. Unless a greater penalty is provided pursuant to
3 NRS 484C.440, a person who:

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

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

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

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

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

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

20 ↳ and does any act or neglects any duty imposed by law while
21 driving or in actual physical control of any vehicle on or off the
22 highways of this State, if the act or neglect of duty proximately
23 causes the death of, or substantial bodily harm to, another person, is
24 guilty of a category B felony and shall be punished by imprisonment
25 in the state prison for a minimum term of not less than 2 years and a
26 maximum term of not more than 20 years and must be further
27 punished by a fine of not less than \$2,000 nor more than \$5,000. A
28 person so imprisoned must, insofar as practicable, be segregated
29 from offenders whose crimes were violent and ~~[insofar as~~
30 ~~practicable,]~~ **must not** be assigned to an institution or facility of
31 minimum security ~~[;]~~ **, unless the offender meets the eligibility**
32 **criteria for assignment to such an institution or facility prescribed**
33 **by the regulations adopted pursuant to NRS 209.481.**

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

41 3. Except as otherwise provided in subsection 4, if
42 consumption is proven by a preponderance of the evidence, it is an
43 affirmative defense under paragraph (c) of subsection 1 that the
44 defendant consumed a sufficient quantity of alcohol after driving or
45 being in actual physical control of the vehicle, and before his or her



1 blood or breath was tested, to cause the defendant to have a
2 concentration of alcohol of 0.08 or more in his or her blood or
3 breath. A defendant who intends to offer this defense at a trial
4 or preliminary hearing must, not less than 14 days before the trial or
5 hearing or at such other time as the court may direct, file and serve
6 on the prosecuting attorney a written notice of that intent.

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

10 5. If the defendant was transporting a person who is less than
11 15 years of age in the motor vehicle at the time of the violation, the
12 court shall consider that fact as an aggravating factor in determining
13 the sentence of the defendant.

14 **Sec. 5.** NRS 484C.440 is hereby amended to read as follows:

15 484C.440 1. A person who commits vehicular homicide
16 pursuant to NRS 484C.130 is guilty of a category A felony and shall
17 be punished by imprisonment in the state prison:

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

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

22 2. A person imprisoned pursuant to subsection 1 ~~must~~:

23 (a) *Must*, insofar as practicable, be segregated from offenders
24 whose crimes were violent; and ~~insofar as practicable,~~

25 (b) *Must not* be assigned to an institution or facility of minimum
26 security ~~or~~, *unless the offender meets the eligibility criteria for*
27 *assignment to such an institution or facility prescribed by the*
28 *regulations adopted pursuant to NRS 209.481.*

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

36 4. If the defendant was transporting a person who is less than
37 15 years of age in the vehicle at the time of the violation, the court
38 shall consider that fact as an aggravating factor in determining the
39 sentence of the defendant.

40 **Sec. 6.** 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 to
3 have a concentration of alcohol of 0.08 or more in his or her blood
4 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 power
12 or sail; or

13 (f) Has a prohibited substance in his or her blood or urine, as
14 applicable, in an amount that is equal to or greater than the amount
15 set forth in subsection 3 or 4 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, if the act or neglect of duty proximately causes the
19 death of, or substantial bodily harm to, another person, is guilty of a
20 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.]~~ **must not** be assigned to an institution or facility of
27 minimum security ~~[;]~~, ***unless the offender meets the eligibility***
28 ***criteria for assignment to such an institution or facility prescribed***
29 ***by the regulations adopted pursuant to NRS 209.481.***

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

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



1 days before the trial or hearing or at such other time as the court
2 may direct, file and serve on the prosecuting attorney a written
3 notice of that intent.

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

7 **Sec. 7.** NRS 488.425 is hereby amended to read as follows:

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

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

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

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

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

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

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

27 (6) Has a prohibited substance in his or her blood or urine, as
28 applicable, in an amount that is equal to or greater than the amount
29 set forth in subsection 3 or 4 of NRS 488.410;

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

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

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

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

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

41 3. A person imprisoned pursuant to subsection 2 ~~must~~:

42 (a) *Must*, insofar as practicable, be segregated from offenders
43 whose crimes were violent; and ~~insofar as practicable,~~

44 (b) *Must not* be assigned to an institution or facility of minimum
45 security ~~if~~, *unless the offender meets the eligibility criteria for*



1 *assignment to such an institution or facility prescribed by the*
2 *regulations adopted pursuant to NRS 209.481.*

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

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

21 6. If the defendant was transporting a person who is less than
22 15 years of age in the vessel at the time of the violation, the court
23 shall consider that fact as an aggravating factor in determining the
24 sentence of the defendant.

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

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

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

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

33 **Sec. 8.** NRS 488.427 is hereby amended to read as follows:

34 488.427 1. Unless a greater penalty is provided pursuant to
35 NRS 488.425, a person who violates the provisions of NRS 488.410
36 and who has previously been convicted of a violation of NRS
37 488.420 or 488.425 or a violation of the law of any other
38 jurisdiction that prohibits the same or similar conduct as set forth in
39 NRS 488.420 or 488.425 is guilty of a category B felony and shall
40 be punished by imprisonment in the state prison for a minimum
41 term of not less than 2 years and a maximum term of not more than
42 15 years, and shall be further punished by a fine of not less than
43 \$2,000 nor more than \$5,000. An offender so imprisoned ~~[must,]~~ :

44 (a) **Must**, insofar as practicable, be segregated from offenders
45 whose crimes were violent ; and ~~[-insofar as practicable,-]~~



1 (b) *Must not* be assigned to an institution or facility of minimum
2 security ~~§~~, *unless the offender meets the eligibility criteria for*
3 *assignment to such an institution or facility prescribed by the*
4 *regulations adopted pursuant to NRS 209.481.*

5 2. The facts concerning a prior violation of NRS 488.420 or
6 488.425 must be alleged in the complaint, indictment or
7 information, must not be read to the jury or proved at trial but must
8 be proved at the time of sentencing.

9 3. A prosecuting attorney shall not dismiss a charge of
10 violating the provisions of NRS 488.410 against a person previously
11 convicted of violating NRS 488.420 or 488.425 in exchange for a
12 plea of guilty, guilty but mentally ill or nolo contendere to a lesser
13 charge or for any other reason unless the prosecuting attorney
14 knows or it is obvious that the charge is not supported by probable
15 cause or cannot be proved at the time of trial. A sentence imposed
16 pursuant to subsection 1 must not be suspended, and probation must
17 not be granted.

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

21 **Sec. 9.** 1. This section becomes effective upon passage and
22 approval.

23 2. Sections 1 to 8, inclusive, of this act become effective:

24 (a) Upon passage and approval for the purpose of adopting any
25 regulations and performing any other preparatory administrative
26 tasks that are necessary to carry out the provisions of this act; and

27 (b) On January 1, 2024, for all other purposes.

