

CHAPTER 484C - DRIVING UNDER THE INFLUENCE OF ALCOHOL  
OR A PROHIBITED SUBSTANCE

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#### GENERAL PROVISIONS

**SECTION 484C.010 Definitions.** As used in this chapter, unless the context otherwise requires, the words and terms defined in [SECTION 484C.020](#) to [484C.100](#), inclusive, have the meanings ascribed to them in those sections.

(Substituted in revision for part of SECTION 484.013)

**SECTION 484C.020 “Concentration of alcohol of 0.08 or more in his or her blood or breath” defined.** “Concentration of alcohol of 0.08 or more in his or her blood or breath” means 0.08 gram or more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

(Substituted in revision for SECTION 484.038)

**SECTION 484C.030 “Concentration of alcohol of 0.18 or more in his or her blood or breath” defined.** “Concentration of alcohol of 0.18 or more in his or her blood or breath” means 0.18 gram or more of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

(Substituted in revision for part of SECTION 484.3792)

**SECTION 484C.040 “Concentration of alcohol of less than 0.18 in his or her blood or breath” defined.** “Concentration of alcohol of less than 0.18 in his or her blood or breath” means less than 0.18 gram of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

(Substituted in revision for part of SECTION 484.3943)

**SECTION 484C.060 “License to drive a motor vehicle” defined.** “License to drive a motor vehicle” means any license or permit to drive a motor vehicle issued under the laws of this State, including:

1. Any temporary license or instruction permit.

2. The privilege of any person to drive a motor vehicle whether or not such person holds a valid license.

3. Any nonresident's driving privilege.

(Substituted in revision for SECTION 484.077)

**SECTION 484C.070 "Nonresident's driving privilege" defined.** "Nonresident's driving privilege" means the privilege conferred upon a nonresident by the laws of this State pertaining to the driving by such person of a motor vehicle, or the use of a vehicle owned by such person, in this State.

(Substituted in revision for SECTION 484.087)

**SECTION 484C.080 "Prohibited substance" defined.** "Prohibited substance" means any of the following substances if the person who uses the substance has not been issued a valid prescription to use the substance and the substance is classified in schedule I or II pursuant to [SECTION 453.166](#) or [453.176](#) when it is used:

1. Amphetamine.
2. Cocaine or cocaine metabolite.
3. Heroin or heroin metabolite (morphine or 6-monoacetyl morphine).
4. Lysergic acid diethylamide.
5. Marijuana or marijuana metabolite.
6. Methamphetamine.
7. Phencyclidine.

(Substituted in revision for SECTION 484.1245)

**SECTION 484C.100 "Treatment facility" defined.** "Treatment facility" means a facility for the treatment of abuse of alcohol or drugs, which is certified by the Health Division of the Department of Health and Human Services.

(Substituted in revision for part of SECTION 484.3793)

## PROHIBITED ACTS

**SECTION 484C.110 Unlawful acts; affirmative defense; additional penalty for violation committed in work zone.**

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 or Reservation 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 a prohibited substance 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) Marijuana	10	2
(h) Marijuana metabolite	15	5
(i) Methamphetamine	500	100
(j) Phencyclidine	25	10

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.

5. A person who violates any provision of this section may be subject to the additional penalty set forth in [SECTION 484B.130](#).

(Substituted in revision for SECTION 484.379)

**SECTION 484C.120 Unlawful acts relating to operation of commercial motor vehicle; affirmative defense; additional penalty for violation committed in work zone.**

1. It is unlawful for any person who:
  - (a) Is under the influence of intoxicating liquor;

(b) Has a concentration of alcohol of 0.04 or more but less than 0.08 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 commercial motor vehicle to have a concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath,

↳ to drive or be in actual physical control of a commercial motor 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 commercial motor vehicle,

↳ to drive or be in actual physical control of a commercial motor 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 commercial motor vehicle on a highway or on premises to which the public has access with an amount of a prohibited substance in his or her blood or urine that is equal to or greater than:

Urine	Blood		
Nanograms	Nanograms		
Prohibited substance	per milliliter	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) Marijuana	10	2	
(h) Marijuana metabolite	15	5	
(i) Methamphetamine	500	100	
(j) Phencyclidine	25	10	

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 commercial motor vehicle, and before his or her blood or breath was tested, to cause the defendant to have a concentration of alcohol of 0.04 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.

5. A person who violates any provision of this section may be subject to the additional penalty set forth in [SECTION 484B.130](#).

6. As used in this section:

(a) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

(1) Has a gross combination weight rating of 26,001 or more pounds which includes a towed unit with a gross vehicle weight rating of more than 10,000 pounds;

(2) Has a gross vehicle weight rating of 26,001 or more pounds;

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Regardless of size, is used in the transportation of materials which are considered to be hazardous for the purposes of the federal Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et. seq., and for which the display of identifying placards is required pursuant to 49 C.F.R. Part 172, Subpart F.

(b) The phrase "concentration of alcohol of 0.04 or more but less than 0.08 in his or her blood or breath" means 0.04 gram or more but less than 0.08 gram of alcohol per 100 milliliters of the blood of a person or per 210 liters of his or her breath.

(Substituted in revision for SECTION 484.379778)

#### **SECTION 484C.130 Vehicular homicide; affirmative defense.**

1. A person commits vehicular homicide if the person:

(a) Drives or is in actual physical control of a vehicle on or off the highways of this State or Reservation and:

(1) Is under the influence of intoxicating liquor;

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

(3) 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;

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

(5) 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

(6) 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 [SECTION 484C.110](#);

(b) Proximately causes the death of another person while driving or in actual physical control of a vehicle on or off the highways of this State or Reservation; and

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

2. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under subparagraph (3) of paragraph (a) 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.

3. As used in this section, “offense” means:

(a) A violation of [SECTION 484C.110](#), [484C.120](#) or [484C.430](#);

(b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by this section or [SECTION 484C.110](#) or [484C.430](#); or

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

(Substituted in revision for part of SECTION 484.37955)

## **PRELIMINARY AND EVIDENTIARY TESTING OF DRIVERS AND OTHERS**

### **SECTION 484C.150 Implied consent to preliminary test of person’s breath; effect of failure to submit to test; use of results of test.**

1. Any person who drives or is in actual physical control of a vehicle on a highway or on premises to which the public has access shall be deemed to have given his or her consent to a preliminary test of his or her breath to determine the concentration of alcohol in his or her breath when the test is administered at the direction of a police officer at the scene of a vehicle accident or collision or where the police officer stops a vehicle, if the officer has reasonable grounds to believe that the person to be tested was:

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

(b) Engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#).

2. If the person fails to submit to the test, the officer shall seize the license or permit of the person to drive as provided in [SECTION 484C.220](#) and arrest the person and take him or her to a convenient place for the administration of a reasonably available evidentiary test under [SECTION 484C.160](#).

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

(Substituted in revision for SECTION 484.382)

### **SECTION 484C.160 Implied consent to evidentiary test; exemption from blood test; choice of test; when blood test may be required; when other tests may be used; reasonable force authorized to obtain test in certain circumstances; notification of parent or guardian of minor directed to submit to test.**

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



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

(b) Engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#).

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

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

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

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

(b) The person may request a blood test, but if means are reasonably available to perform a breath test when the blood test is requested, and the person is subsequently convicted, the person must pay for the cost of the blood test, including the fees and expenses of witnesses in court.

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

(1) Caused death or substantial bodily harm to another person as a result of driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or as a result of engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.130](#) or [484C.430](#); or

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

(I) A violation of [SECTION 484C.110](#), [484C.120](#), [484C.130](#), [484C.430](#), subsection 2 of [NRS 488.400](#), [NRS 488.410](#), [488.420](#) or [488.425](#) or a law of another jurisdiction that prohibits the same or similar conduct; or

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

5. If the presence of a controlled substance, chemical, poison, organic solvent or another prohibited substance in the blood or urine of the person is in issue, the officer may direct the person to submit to a blood or urine test, or both, in addition to the breath test.

6. Except as otherwise provided in subsections 3 and 5, a police officer shall not direct a person to submit to a urine test.

7. If a person to be tested fails to submit to a required test as directed by a police officer pursuant to this section and the officer has reasonable grounds to believe that the person to be tested was:

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

(b) Engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#),

↳ the officer may direct that reasonable force be used to the extent necessary to obtain samples of blood from the person to be tested. Not more than three such samples may be

taken during the 5-hour period immediately following the time of the initial arrest. In such a circumstance, the officer is not required to provide the person with a choice of tests for determining the concentration of alcohol or presence of a controlled substance or another prohibited substance in his or her blood.

8. If a person who is less than 18 years of age is directed 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.

(Substituted in revision for SECTION 484.383)

**SECTION 484C.170 Analysis of blood of deceased victim of accident involving motor vehicle to determine presence and concentration of alcohol.**

1. Any coroner, or other public official performing like duties, shall in all cases in which a death has occurred as a result of an accident involving a motor vehicle, whether the person killed is a driver, passenger or pedestrian, cause to be drawn from each decedent, within 8 hours of the accident, a blood sample to be analyzed for the presence and concentration of alcohol.

2. The findings of the examinations are a matter of public record and must be reported to the Department by the coroner or other public official within 30 days after the death.

3. Blood-alcohol analyses are acceptable only if made by laboratories licensed to perform this function.

(Substituted in revision for SECTION 484.394)

**SECTION 484C.180 Arrested person to be given opportunity to choose qualified person to administer test; substitution of test prohibited.**

1. A person who is arrested for driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or for engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#) must be permitted, upon request and at the person's expense, reasonable opportunity to have a qualified person of his or her own choosing administer a chemical test or tests to determine:

(a) The concentration of alcohol in his or her blood or breath; or

(b) Whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present in his or her blood or urine.

2. The failure or inability to obtain such a test or tests by such a person does not preclude the admission of evidence relating to the refusal to submit to a test or relating to a test taken upon the request of a police officer.

3. A test obtained under the provisions of this section may not be substituted for or stand in lieu of the test required by [SECTION 484C.160](#).

(Substituted in revision for SECTION 484.391)

**SECTION 484C.190 Presumption that solution or gas used to calibrate device for testing breath is properly prepared. If:**

1. A manufacturer or technician in a laboratory prepares a chemical solution or gas to be used in calibrating a device for testing a person's breath to determine the concentration of alcohol in his or her breath; and

2. The technician makes an affidavit or declaration that the solution or gas has the chemical composition that is necessary for calibrating the device,

↪ it is presumed that the solution or gas has been properly prepared and is suitable for calibrating the device.

(Substituted in revision for SECTION 484.3935)

**SECTION 484C.200 Requirements for evidentiary test of breath to determine concentration of alcohol in breath; use of reasonable force to obtain sample or conduct test.**

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 [SECTION 484C.160](#), 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 police officer may direct that reasonable force be used to obtain a sample or conduct a test pursuant to [SECTION 484C.160](#).

(Substituted in revision for SECTION 484.386)

**SECTION 484C.240 Admissibility of evidence of refusal to submit to evidentiary test; availability of results of test; admissibility of evidence from test.**

1. If a person refuses to submit to a required chemical test provided for in [SECTION 484C.150](#) or [484C.160](#), evidence of that refusal is admissible in any criminal or administrative action arising out of acts alleged to have been committed while the person was:

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

(b) Engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#).

2. Except as otherwise provided in subsection 3 of [SECTION 484C.150](#), a court or hearing officer may not exclude evidence of a required test or failure to submit to such a test if the police officer or other person substantially complied with the provisions of [SECTION 484C.150](#) to [484C.250](#), inclusive, and [484C.600](#) to [484C.640](#), inclusive.

3. If a person submits to a chemical test provided for in [SECTION 484C.150](#) or [484C.160](#), full information concerning that test must be made available, upon request of the person, to the person or his or her attorney.

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

(Substituted in revision for SECTION 484.389)

**SECTION 484C.250 Admissibility of results of blood test in hearing or criminal action; immunity from liability for person administering blood test in certain circumstances.**

1. The results of any blood test administered under the provisions of [SECTION 484C.160](#) or [484C.180](#) are not admissible in any hearing or criminal action arising out of acts alleged to have been committed by a person who was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or who was engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#) unless:

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

(1) Is a physician, physician assistant licensed pursuant to [chapter 630](#) or [633](#) of SECTION, registered nurse, licensed practical nurse, emergency medical technician or a phlebotomist, technician, technologist or assistant employed in a medical laboratory; or

(2) Has special knowledge, skill, experience, training and education in withdrawing blood in a medically acceptable manner, including, without limitation, a person qualified as an expert on that subject in a court of competent jurisdiction or a person who has completed a course of instruction described in subsection 2 of [SECTION 652.127](#); and

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

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

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

(Substituted in revision for SECTION 484.393)

**EVALUATION AND TREATMENT OF OFFENDERS FOR ALCOHOL OR DRUG ABUSE**

**SECTION 484C.320 Application by first-time offender to undergo program of treatment; sentencing of offender and conditional suspension of sentence.**

1. An offender who is found guilty of a violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable pursuant to paragraph (a) of subsection 1 of [SECTION 484C.400](#), other than an offender who is found to have a concentration of alcohol of 0.18 or more in his or her blood or breath, may, at that time or any time before the offender is sentenced, apply to the court to undergo a program of treatment for alcoholism or drug abuse which is certified by the Health Division of the Department of Health and Human Services for at least 6 months. The court shall authorize that treatment if:

(a) The offender is diagnosed as an alcoholic or abuser of drugs by:

(1) An alcohol and drug abuse counselor who is licensed or certified, or a clinical alcohol and drug abuse counselor who is licensed, pursuant to [chapter 641C](#) of NRS, to make that diagnosis; or

(2) A physician who is certified to make that diagnosis by the Board of Medical Examiners;

(b) The offender agrees to pay the cost of the treatment to the extent of his or her financial resources; and

(c) The offender has served or will serve a term of imprisonment in jail of 1 day, or has performed or will perform 24 hours of community service.

2. A prosecuting attorney may, within 10 days after receiving notice of an application for treatment pursuant to this section, request a hearing on the question of whether the offender is eligible to undergo a program of treatment for alcoholism or drug abuse. The court shall order a hearing on the application upon the request of the prosecuting attorney or may order a hearing on its own motion. The hearing must be limited to the question of whether the offender is eligible to undergo such a program of treatment.

3. At the hearing on the application for treatment, the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter upon affidavits and other information before the court.

4. If the court grants an application for treatment, the court shall:

(a) Immediately sentence the offender and enter judgment accordingly.

(b) Suspend the sentence of the offender for not more than 3 years upon the condition that the offender be accepted for treatment by a treatment facility, that the offender complete the treatment satisfactorily and that the offender comply with any other condition ordered by the court.

(c) Advise the offender that:

(1) If the offender is accepted for treatment by such a facility, he or she may be placed under the supervision of the facility for a period not to exceed 3 years and during treatment the offender may be confined in an institution or, at the discretion of the facility, released for treatment or supervised aftercare in the community.

(2) If the offender is not accepted for treatment by such a facility or he or she fails to complete the treatment satisfactorily, the offender shall serve the sentence imposed by the court. Any sentence of imprisonment must be reduced by a time equal to that which the offender served before beginning treatment.

(3) If the offender completes the treatment satisfactorily, the offender's sentence will be reduced to a term of imprisonment which is no longer than that provided for the offense in paragraph (c) of subsection 1 and a fine of not more than the minimum fine provided for the offense in [SECTION 484C.400](#), but the conviction must remain on the record of criminal history of the offender.

(Substituted in revision for SECTION 484.37937)

**SECTION 484C.330 Application by second-time offender to undergo program of treatment; sentencing of offender and conditional suspension of sentence.**

1. An offender who is found guilty of a violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable pursuant to paragraph (b) of subsection 1 of [SECTION 484C.400](#) may, at that time or any time before the offender is sentenced, apply to the court to undergo a program

of treatment for alcoholism or drug abuse which is certified by the Health Division of the Department of Health and Human Services for at least 1 year if:

(a) The offender is diagnosed as an alcoholic or abuser of drugs by:

(1) An alcohol and drug abuse counselor who is licensed or certified, or a clinical alcohol and drug abuse counselor who is licensed, pursuant to [chapter 641C](#) of NRS, to make that diagnosis; or

(2) A physician who is certified to make that diagnosis by the Board of Medical Examiners;

(b) The offender agrees to pay the costs of the treatment to the extent of his or her financial resources; and

(c) The offender has served or will serve a term of imprisonment in jail of 5 days and, if required pursuant to [SECTION 484C.400](#), has performed or will perform not less than one-half of the hours of community service.

2. A prosecuting attorney may, within 10 days after receiving notice of an application for treatment pursuant to this section, request a hearing on the matter. The court shall order a hearing on the application upon the request of the prosecuting attorney or may order a hearing on its own motion.

3. At the hearing on the application for treatment, the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter upon affidavits and other information before the court.

4. If the court determines that an application for treatment should be granted, the court shall:

(a) Immediately sentence the offender and enter judgment accordingly.

(b) Suspend the sentence of the offender for not more than 3 years upon the condition that the offender be accepted for treatment by a treatment facility, that the offender complete the treatment satisfactorily and that the offender comply with any other condition ordered by the court.

(c) Advise the offender that:

(1) If the offender is accepted for treatment by such a facility, he or she may be placed under the supervision of the facility for a period not to exceed 3 years and during treatment the offender may be confined in an institution or, at the discretion of the facility, released for treatment or supervised aftercare in the community.

(2) If the offender is not accepted for treatment by such a facility or he or she fails to complete the treatment satisfactorily, the offender shall serve the sentence imposed by the court. Any sentence of imprisonment must be reduced by a time equal to that which the offender served before beginning treatment.

(3) If the offender completes the treatment satisfactorily, the offender's sentence will be reduced to a term of imprisonment which is no longer than that provided for the offense in paragraph (c) of subsection 1 and a fine of not more than the minimum provided for the offense in [SECTION 484C.400](#), but the conviction must remain on the record of criminal history of the offender.

5. The court shall administer the program of treatment pursuant to the procedures provided in [NRS 458.320](#) and [458.330](#), except that the court:

(a) Shall not defer the sentence, set aside the conviction or impose conditions upon the election of treatment except as otherwise provided in this section.

(b) May immediately revoke the suspension of sentence for a violation of a condition of the suspension.

(Substituted in revision for SECTION 484.3794)

**SECTION 484C.340 Application by third-time offender to undergo program of treatment; sentencing of offender and conditional suspension of proceedings; requirements to participate in program of treatment; certain previous convictions preclude offender from participating in program of treatment.**

1. An offender who enters a plea of guilty or nolo contendere to a violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable pursuant to paragraph (c) of subsection 1 of [SECTION 484C.400](#) may, at the time the offender enters a plea, apply to the court to undergo a program of treatment for alcoholism or drug abuse which is certified by the Health Division of the Department of Health and Human Services for at least 3 years if:

(a) The offender is diagnosed as an alcoholic or abuser of drugs by:

(1) An alcohol and drug abuse counselor who is licensed or certified, or a clinical alcohol and drug abuse counselor who is licensed, pursuant to [chapter 641C](#) of NRS, to make that diagnosis; or

(2) A physician who is certified to make that diagnosis by the Board of Medical Examiners; and

(b) The offender agrees to pay the costs of the treatment to the extent of his or her financial resources.

↪ An alcohol and drug abuse counselor, a clinical alcohol and drug abuse counselor or a physician who diagnoses an offender as an alcoholic or abuser of drugs shall make a report and recommendation to the court concerning the length and type of treatment required for the offender.

2. A prosecuting attorney may, within 10 days after receiving notice of an application for treatment pursuant to this section, request a hearing on the matter. The court shall order a hearing on the application upon the request of the prosecuting attorney or may order a hearing on its own motion.

3. At the hearing on the application for treatment, the prosecuting attorney may present the court with any relevant evidence on the matter. If a hearing is not held, the court shall decide the matter and other information before the court.

4. If the court determines that an application for treatment should be granted, the court shall:

(a) Immediately, without entering a judgment of conviction and with the consent of the offender, suspend further proceedings and place the offender on probation for not more than 5 years upon the condition that the offender be accepted for treatment by a treatment facility, that the offender complete the treatment satisfactorily and that the offender comply with any other condition ordered by the court.

(b) Advise the offender that:

(1) If the offender is accepted for treatment by such a facility, he or she may be placed under the supervision of the facility for not more than 5 years and during treatment the offender may be confined in an institution or, at the discretion of the treatment facility, released for treatment or supervised aftercare in the community.

(2) If the offender is not accepted for treatment by such a treatment facility, or if he or she fails to complete the treatment satisfactorily, the court will enter a judgment of conviction for a violation of paragraph (c) of subsection 1 of [SECTION 484C.400](#). Any sentence of imprisonment may be reduced by a time equal to that which the offender served before beginning treatment.

(3) If the offender completes the treatment satisfactorily, the court will enter a judgment of conviction for a violation of paragraph (b) of subsection 1 of [SECTION 484C.400](#).

(4) The provisions of [SECTION 483.460](#) requiring the revocation of the license, permit or privilege of the offender to drive do not apply.

5. The court shall administer the program of treatment pursuant to the procedures provided in [SECTION 458.320](#) and [458.330](#), except that the court:

(a) Shall not defer the sentence or set aside the conviction upon the election of treatment, except as otherwise provided in this section; and

(b) May enter a judgment of conviction and proceed as provided in paragraph (c) of subsection 1 of [SECTION 484C.400](#) for a violation of a condition ordered by the court.

6. To participate in a program of treatment, the offender must:

(a) Serve not less than 6 months of residential confinement;

(b) Install, at his or her own expense, a device for not less than 12 months;

(c) Not drive any vehicle unless it is equipped with a device;

(d) Agree to be subject to periodic testing for the use of alcohol or controlled substances while participating in a program of treatment; and

(e) Agree to any other conditions that the court deems necessary.

7. An offender may not apply to the court to undergo a program of treatment for alcoholism or drug abuse pursuant to this section if the offender has previously applied to receive treatment pursuant to this section or if the offender has previously been convicted of:

(a) A violation of [SECTION 484C.430](#);

(b) A violation of [SECTION 484C.130](#);

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

(d) A violation of paragraph (c) of subsection 1 of [SECTION 484C.400](#);

(e) A violation of [SECTION 484C.410](#); or

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

8. As used in this section, "device" has the meaning ascribed to it in [SECTION 484C.450](#).

(Substituted in revision for SECTION 484.37941)

**SECTION 484C.350 Evaluation of first-time offender with a concentration of alcohol of 0.18 in his or her blood or breath and of second-time offenders required; required evaluation of first-time offender under 21 years of age; requirements of evaluation; out-of-state evaluation; offender to pay cost of evaluation.**

1. If an offender is found guilty of a violation of [SECTION 484C.110](#) that is punishable pursuant to paragraph (a) of subsection 1 of [SECTION 484C.400](#) and if the concentration of



alcohol in the offender's blood or breath at the time of the offense was 0.18 or more, or if an offender is found guilty of a violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable pursuant to paragraph (b) of subsection 1 of [SECTION 484C.400](#), the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4, 5 or 6 to determine whether the offender is an abuser of alcohol or other drugs.

2. If an offender is convicted of a violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable pursuant to paragraph (a) of subsection 1 of [SECTION 484C.400](#) and if the offender is under 21 years of age at the time of the violation, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4, 5 or 6 to determine whether the offender is an abuser of alcohol or other drugs.

3. Except as otherwise provided in subsection 4, 5 or 6, the evaluation of an offender pursuant to this section must be conducted at an evaluation center by:

(a) An alcohol and drug abuse counselor who is licensed or certified, or a clinical alcohol and drug abuse counselor who is licensed, pursuant to [chapter 641C](#) of NRS, to make that evaluation; or

(b) A physician who is certified to make that evaluation by the Board of Medical Examiners,

↪ who shall report to the court the results of the evaluation and make a recommendation to the court concerning the length and type of treatment required for the offender.

4. The evaluation of an offender who resides more than 30 miles from an evaluation center may be conducted outside an evaluation center by a person who has the qualifications set forth in subsection 3. The person who conducts the evaluation shall report to the court the results of the evaluation and make a recommendation to the court concerning the length and type of treatment required for the offender.

5. The evaluation of an offender who resides in another state may, upon approval of the court, be conducted in the state where the offender resides by a physician or other person who is authorized by the appropriate governmental agency in that state to conduct such an evaluation. The offender shall ensure that the results of the evaluation and the recommendation concerning the length and type of treatment for the offender are reported to the court.

6. The evaluation of an offender who resides in this Reservation may, upon approval of the court, be conducted in another state, or Reservation, by a physician or other person who is authorized by the appropriate governmental agency in that state to conduct such an evaluation if the location of the physician or other person in the other state is closer to the residence of the offender than the nearest location in this State, Reservation, at which an evaluation may be conducted. The offender shall ensure that the results of the evaluation and the recommendation concerning the length and type of treatment for the offender are reported to the court.

7. An offender who is evaluated pursuant to this section shall pay the cost of the evaluation. An evaluation center or a person who conducts an evaluation in this State, or Resrvation, outside an evaluation center shall not charge an offender more than \$100 for the evaluation.

(Substituted in revision for SECTION 484.37943)

**SECTION 484C.360 Placement of offender under clinical supervision of treatment facility; payment of charges for treatment; liability of facility limited.**

1. When a program of treatment is ordered pursuant to [SECTION 484C.340](#) or paragraph (a) or (b) of subsection 1 of [SECTION 484C.400](#), the court shall place the offender under the clinical supervision of a treatment facility for treatment in accordance with the report submitted to the court pursuant to [SECTION 484C.340](#) or subsection 3, 4, 5 or 6 of [SECTION 484C.350](#), as appropriate. The court shall:

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

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

2. The court shall:

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

(b) Order the offender, to the extent of his or her financial resources, to pay any charges for treatment pursuant to this section. If the offender does not have the financial resources to pay all those charges, the court shall, to the extent possible, arrange for the offender to obtain the treatment from a treatment facility that receives a sufficient amount of federal or state money to offset the remainder of the charges.

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

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

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

↪ after the treatment facility has certified that the offender has successfully completed a program of treatment ordered pursuant to [SECTION 484C.340](#) or paragraph (a) or (b) of subsection 1 of [SECTION 484C.400](#).

(Substituted in revision for SECTION 484.37945)

**SECTION 484C.370 Evaluation or treatment by private company authorized.**

The provisions of [SECTION 484C.340](#), [484C.350](#) or [484C.360](#) do not prohibit a court from:

1. Requiring an evaluation pursuant to [SECTION 484C.350](#) to be conducted by an evaluation center that is administered by a private company if the company meets the standards of the State Board of Health pursuant to [SECTION 484C.310](#); or

2. Ordering the offender to attend a program of treatment that is administered by a private company.

(Substituted in revision for SECTION 484.37947)

**PENALTIES**

**Criminal Penalties**

**SECTION 484C.400 Penalties for first, second and third offenses; segregation of offender; intermittent confinement; consecutive sentences; aggravating factor.**

1. Unless a greater penalty is provided pursuant to [SECTION 484C.430](#) or [484C.440](#), and except as otherwise provided in [SECTION 484C.410](#), a person who violates the provisions of [SECTION 484C.110](#) or [484C.120](#):

(a) For the first offense within 7 years, is guilty of a **Category D Offense**. Unless the person is allowed to undergo treatment as provided in [SECTION 484C.320](#), the court shall:

(1) Except as otherwise provided in subparagraph (4) of this paragraph or subsection 2 of [SECTION 484C.420](#), order the person to pay tuition for an educational course on the abuse of alcohol and controlled substances approved by the Department and complete the course within the time specified in the order, and the court shall notify the Department if the person fails to complete the course within the specified time;

(2) Unless the sentence is reduced pursuant to [SECTION 484C.320](#), sentence the person to imprisonment for not less than 2 days nor more than 6 months in jail, or to perform not less than 48 hours, but not more than 96 hours, of community service while dressed in distinctive garb that identifies the person as having violated the provisions of [SECTION 484C.110](#) or [484C.120](#);

(3) Fine the person no more than \$500 (**Category D Offense**); and

(4) If the person is found to have a concentration of alcohol of 0.18 or more in his or her blood or breath, order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of [SECTION 484C.360](#).

(b) For a second offense within 7 years, is guilty of a **Category B Offense**. Unless the sentence is reduced pursuant to [SECTION 484C.330](#), the court shall:

(1) Sentence the person to:

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

(II) Residential confinement for not less than 10 days nor more than 6 months, in the manner provided in [SECTION 4.376](#) to [4.3766](#), inclusive, or [5.0755](#) to [5.078](#), inclusive;

(2) Fine the person no more than \$500 (**Category D Offense**), or order the person to perform an equivalent number of hours of community service while dressed in distinctive garb that identifies the person as having violated the provisions of [SECTION 484C.110](#) or [484C.120](#); and

(3) Order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of [SECTION 484C.360](#).

↪ A person who willfully fails or refuses to complete successfully a term of residential confinement or a program of treatment ordered pursuant to this paragraph is guilty of a **Category D Offense**.

(c) Except as otherwise provided in [SECTION 484C.340](#), for a third offense within 7 years, is guilty of a **Category A Offense** and shall be punished by imprisonment in a BIA Approved Facility for a minimum term of no more than 1 year, and shall be further punished by a fine of not more than \$5,000. An offender who is imprisoned pursuant to the provisions of this paragraph 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. An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint,

indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a **Category A Offense**.

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

4. Jail sentences simultaneously imposed pursuant to this section and [SECTION 482.456](#), [483.560](#), [484C.410](#) or [485.330](#) must run consecutively.

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.

6. For the purpose of determining whether one offense occurs within 7 years of another offense, any period of time between the two offenses during which, for any such offense, the offender is imprisoned, serving a term of residential confinement, confined in a treatment facility, on probation must be excluded.

7. As used in this section, unless the context otherwise requires, “offense” means:

- (a) A violation of [SECTION 484C.110](#), [484C.120](#) or [484C.430](#);
- (b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by [SECTION 484C.110](#), [484C.130](#) or [484C.430](#); or
- (c) A violation of a law of any other jurisdiction that prohibits the same or similar conduct as set forth in paragraph (a) or (b).

(Substituted in revision for part of SECTION 484.3792)

**SECTION 484C.410 Penalties when offender previously convicted of certain felonious conduct or homicide; segregation of offender; intermittent confinement; consecutive sentences; aggravating factor.**

1. Unless a greater penalty is provided in [SECTION 484C.440](#), a person who has previously been convicted of:

- (a) A violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable as a **Category A Offense** pursuant to paragraph (c) of subsection 1 of [SECTION 484C.400](#);
- (b) A violation of [SECTION 484C.430](#);
- (c) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by [SECTION 484C.110](#), [484C.130](#) or [484C.430](#);
- (d) A violation of a law of any other jurisdiction that prohibits the same or similar conduct as set forth in paragraph (a), (b) or (c); or

(e) A violation of [SECTION 484C.110](#) or [484C.120](#) that is punishable pursuant to paragraph (b) of subsection 1 of [SECTION 484C.400](#) that was reduced from a **Category A Offense** pursuant to [SECTION 484C.340](#),

→ and who violates the provisions of [SECTION 484C.110](#) or [484C.120](#) is guilty of a **Category A Offense**.

2. An offense which is listed in paragraphs (a) to (e), inclusive, of subsection 1 that occurred on any date preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard for the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a **Category A Offense**, must also be shown at the preliminary examination or presented to the jury.

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

4. Jail sentences simultaneously imposed pursuant to this section and [SECTION 482.456](#), [483.560](#), [484C.400](#) or [485.330](#) must run consecutively.

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.

6. For the purpose of determining whether one offense occurs within 7 years of another offense, any period of time between the two offenses during which, for any such offense, the offender is imprisoned, serving a term of residential confinement, confined in a treatment facility, on parole or on probation must be excluded.

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

(a) A violation of [SECTION 484C.110](#), [484C.120](#) or [484C.430](#);

(b) A homicide resulting from driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or resulting from any other conduct prohibited by [SECTION 484C.110](#), [484C.130](#) or [484C.430](#); or

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

(Substituted in revision for part of SECTION 484.3792)

**SECTION 484C.420 Probation prohibited; suspension of sentence and plea bargaining restricted; mandatory orders when person is nonresident.**

1. A person convicted of violating the provisions of [SECTION 484C.110](#) or [484C.120](#) must not be released on probation, and a sentence imposed for violating those provisions must

not be suspended except, as provided in [NRS 4.373](#), [5.055](#), [484C.320](#), [484C.330](#) and [484C.340](#), that portion of the sentence imposed that exceeds the mandatory minimum. A prosecuting attorney shall not dismiss a charge of violating the provisions of [SECTION 484C.110](#) or [484C.120](#) 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.

2. If the person who violated the provisions of [SECTION 484C.110](#) or [484C.120](#) possesses a driver's license issued by a state other than the State of Nevada and does not reside in the State of Nevada, in carrying out the provisions of subparagraph (1) of paragraph (a) of subsection 1 of [SECTION 484C.400](#), the court shall:

(a) Order the person to pay tuition for and submit evidence of completion of an educational course on the abuse of alcohol and controlled substances approved by a governmental agency of the state of the person's residence within the time specified in the order; or

(b) Order the person to complete an educational course by correspondence on the abuse of alcohol and controlled substances approved by the Department within the time specified in the order,

↪ and the court shall notify the Department if the person fails to complete the assigned course within the specified time.

(Substituted in revision for part of SECTION 484.3792)

**SECTION 484C.430 Penalty if death or substantial bodily harm results; exception; segregation of offender; plea bargaining restricted; suspension of sentence and probation prohibited; affirmative defense; aggravating factor.**

1. Unless a greater penalty is provided pursuant to [SECTION 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 [SECTION 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 Reservation, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, another person, is guilty of a **Category A Offense**.

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. 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 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.

(Substituted in revision for SECTION 484.3795)

**SECTION 484C.440 Penalties for vehicular homicide; segregation of offender; plea bargaining restricted; suspension of sentence and probation prohibited; aggravating factor.**

1. A person who commits vehicular homicide pursuant to [SECTION 484C.130](#) is guilty of a **Category A Offense** and shall be punished by imprisonment in the state prison, or approved BIA facility:

2. A prosecuting attorney shall not dismiss a charge of vehicular homicide 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. If the defendant was transporting a person who is less than 15 years of age in the vehicle at the time of the violation, the court shall consider that fact as an aggravating factor in determining the sentence of the defendant.

(Substituted in revision for part of SECTION 484.37955)

**Device to Prevent Person Who Has Consumed Alcohol From Starting Vehicle**

**SECTION 484C.480 Regulations.**

1. The Committee on Testing for Intoxication shall on or before January 1, 1990, adopt regulations which:

(a) Provide for the certification of each model of those devices, described by manufacturer and model, which it approves as designed and manufactured to be accurate and reliable to test a person's breath to determine the concentration of alcohol in the person's breath and, if the results of the test indicate that the person has a concentration of alcohol of 0.02 or more in his or her breath, prevent the motor vehicle in which it is installed from starting.

(b) Prescribe the form and content of records respecting the calibration of devices, which must be kept by the Director or the agent of the Director, and other records respecting the maintenance and operation of the devices which it finds should be kept by the Director or the agent.

2. The Committee shall establish its own standards and procedures for evaluating the models of the devices and obtain evaluations of those models from the Director or the agent.

3. If a model of a device has been certified by the Committee to be accurate and reliable pursuant to subsection 1, it is presumed that, as designed and manufactured, each device of that model is accurate and reliable to test a person's breath to determine the concentration of alcohol in the person's breath and, if the results of the test indicate that the person has a concentration of alcohol of 0.02 or more in his or her breath, will prevent the motor vehicle in which it is installed from starting.

(Substituted in revision for SECTION 484.3947)

### **Other Penalties**

#### **SECTION 484C.510 Fee for chemical analysis.**

1. If a defendant pleads guilty or guilty but mentally ill to, or is found guilty or guilty but mentally ill of, any violation of [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#) and a chemical analysis of his or her blood, urine, breath or other bodily substance was conducted, the court shall, in addition to any penalty provided by law, order the defendant to pay the sum of \$60 as a fee for the chemical analysis. Except as otherwise provided in this subsection, any money collected for the chemical analysis must not be deducted from, and in addition to, any fine otherwise imposed by the court and must be:

- (a) Collected from the defendant before or at the same time that the fine is collected.
- (b) Stated separately in the judgment of the court or on the court's docket.

2. All money collected pursuant to subsection 1 must be paid by the clerk of the court to the county or city treasurer, as appropriate, on or before the fifth day of each month for the preceding month.

3. The treasurer shall deposit all money received by the treasurer pursuant to subsection 2 in the county or city treasury, as appropriate, for credit to the fund for forensic services created pursuant to [SECTION 453.575](#). The money must be accounted for separately within the fund.

4. Except as otherwise provided in subsection 5, each month the treasurer shall, from the money credited to the fund pursuant to subsection 3, pay any amount owed for forensic services and deposit any remaining money in the county or city general fund, as appropriate.

5. In counties that do not receive forensic services under a contract with the State, the money credited to the fund pursuant to subsection 3:

- (a) Except as otherwise provided in paragraph (b), must be:
  - (1) Expended to pay for the chemical analyses performed within the county;
  - (2) Expended to purchase and maintain equipment to conduct such analyses;
  - (3) Expended for the training and continuing education of the employees who conduct such analyses; and
  - (4) Paid to law enforcement agencies which conduct such analyses to be used by those agencies in the manner provided in this subsection.
- (b) May only be expended to cover the costs of chemical analyses conducted by, equipment used by or training for employees of an analytical laboratory that is approved by the Committee on Testing for Intoxication created in [SECTION 484C.600](#).

(Substituted in revision for SECTION 484.3798)



**SECTION 484C.530 Offender to attend meeting of panel of victims and provide proof of attendance to court.**

1. The judge or judges in each judicial district shall cause the preparation and maintenance of a list of the panels of persons who:

(a) Have been injured or had members of their families or close friends injured or killed by a person who was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or who was engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#) or a law of any other jurisdiction that prohibits the same or similar conduct; and

(b) Have, by contacting the judge or judges in the district, expressed their willingness to discuss collectively the personal effect of those crimes.

↪ The list must include the name and telephone number of the person to be contacted regarding each such panel and a schedule of times and locations of the meetings of each such panel. The judge or judges shall establish, in cooperation with representatives of the members of the panels, a fee, if any, to be paid by defendants who are ordered to attend a meeting of the panel. The amount of the fee, if any, must be reasonable. The panel may not be operated for profit.

2. Except as otherwise provided in this subsection, if a defendant pleads guilty or guilty but mentally ill to, or is found guilty or guilty but mentally ill of, any violation of [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#), the court shall, in addition to imposing any other penalties provided by law, order the defendant to:

(a) Attend in person, at the defendant's expense, a live meeting of a panel of persons who have been injured or had members of their families or close friends injured or killed by a person who was driving or in actual physical control of a vehicle while under the influence of intoxicating liquor or a controlled substance or who was engaging in any other conduct prohibited by [SECTION 484C.110](#), [484C.120](#), [484C.130](#) or [484C.430](#) or a law of any other jurisdiction that prohibits the same or similar conduct, in order to have the defendant understand the effect such a crime has on other persons; and

(b) Pay the fee, if any, established by the court pursuant to subsection 1.

↪ The court may, but is not required to, order the defendant to attend such a meeting if one is not available within 60 miles of the defendant's residence.

3. A person ordered to attend a meeting pursuant to subsection 2 shall, after attending the meeting, present evidence or other documentation satisfactory to the court that the person attended the meeting and remained for its entirety.

(Substituted in revision for SECTION 484.3797)