

Nevada District Attorneys Association

2025 Legislative Session PROPOSED AMENDMENT TO SB 304

INTENT:

SB 304 removes the element of “Has previously been convicted of at least three offenses” from NRS 484C.440, the vehicular homicide statute. The removal of this language makes the vehicular homicide statute a DUI-death statute, even for people who cause a death on their first DUI. Unless “the death of” is removed from NRS 484C.430 (the current DUI-death statute), there would be two statutes with different penalties, both prohibiting a DUI causing death. This amendment adds section 2 to the bill and removes “the death of” from NRS 484C.430.

PROPOSED AMENDMENT:

Add Section 2 to SB 304:

NRS 484C.430

1. ~~Unless a greater penalty is provided pursuant to NRS 484C.440, a~~ **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, as applicable, in an amount that is equal to or greater than the amount set forth in subsection 3 or 4 of NRS 484C.110,

and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State, if the act or neglect of duty proximately causes ~~the death of, or~~ substantial bodily harm to, another person, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. A prosecuting attorney shall not dismiss a charge of violating the provisions of subsection 1 in exchange for a plea of guilty, guilty but mentally ill or

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

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

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

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