

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

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

2. A person imprisoned pursuant to subsection 1 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.

3. 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.

4. 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.

(Added to NRS by 2005, 138; A 2007, 1454; 2009, 1873)—(Substituted in revision for part of NRS 484.37955)

REVISER'S NOTE.

The elements of the crime of vehicular homicide previously contained in this section were moved in revision to NRS 484C.130.

**DEVICE TO PREVENT PERSON WHO HAS CONSUMED
ALCOHOL FROM STARTING VEHICLE**

NRS 484C.450 “Device” defined. As used in NRS 484C.450 to 484C.480, inclusive, unless the context otherwise requires, “device” means a mechanism that:

1. Tests a person’s breath to determine the concentration of alcohol in his or her breath; and

2. 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, prevents the motor vehicle in which it is installed from starting.

(Added to NRS by 1989, 1737; A 1993, 2076; 1997, 3370; 1999, 2460; 2017, 4047)—(Substituted in revision for NRS 484.3941)

NRS 484C.460 When court is authorized or required to order installation of device; exceptions; installation and inspection. [Effective through September 30, 2018.]

1. Except as otherwise provided in subsections 2 and 5, a court:

(a) May order a person convicted of a violation of NRS 484C.110 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of NRS 484C.400, if the person is found to have had a concentration of alcohol of less than 0.18 in his or her blood or breath, for a period of not less than 3 months nor more than 6 months, to install at his or her own expense a device in any motor vehicle which the person owns or operates as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of the driving privilege of the person.

(b) Shall order a person convicted of:

(1) A violation of NRS 484C.110 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of NRS 484C.400, if the person is found to have had a concentration of alcohol of 0.18 or more in his or her blood or breath;

(2) A violation of NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to NRS 484C.400 or 484C.410; or

(3) A violation of NRS 484C.130 or 484C.430, ➤ for a period of not less than 12 months nor more than 36 months, to install at his or her own expense a device in any motor vehicle which the person owns or operates as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of the driving privilege of the person.

2. A court may provide for an exception to the provisions of subparagraph (1) of paragraph (b) of subsection 1 for a person who is convicted of a violation of NRS 484C.110 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484C.400, to avoid undue hardship to the person if the court determines that:

(a) Requiring the person to install a device in a motor vehicle which the person owns or operates would cause the person to experience an economic hardship; and

(b) The person requires the use of the motor vehicle to:

(1) Travel to and from work or in the course and scope of his or her employment;

(2) Obtain medicine, food or other necessities or to obtain health care services for the person or another member of the person's immediate family; or

(3) Transport the person or another member of the person's immediate family to or from school.

3. If the court orders a person to install a device pursuant to subsection 1:

(a) The court shall immediately prepare and transmit a copy of its order to the Director. The order must include a statement that a device is required and the specific period for which it is required. The Director shall cause this information to be incorporated into the records of the Department and noted as a restriction on the person's driver's license.

(b) The person who is required to install the device shall provide proof of compliance to the Department before the person may receive a restricted license or before the driving privilege of the person may be reinstated, as applicable. Each model of a device installed pursuant to this section must have been certified by the Committee on Testing for Intoxication.

4. A person whose driving privilege is restricted pursuant to this section shall:

(a) If the person was ordered to install a device pursuant to paragraph (a) of subsection 1, have the device inspected by the manufacturer of the device or its agent at least one time during the period in which the person is required to use the device; or

(b) If the person was ordered to install a device pursuant to paragraph (b) of subsection 1, have the device inspected by the manufacturer of the device or its agent at least one time each 90 days,

➤ to determine whether the device is operating properly. An inspection required pursuant to this subsection must be conducted in accordance with regulations adopted pursuant to NRS 484C.480. The manufacturer or its agent shall submit a report to the Director indicating whether the device is operating properly and whether it has been tampered with. If the device has been tampered with, the Director shall notify the court that ordered the installation of the device.

5. If a person is required to operate a motor vehicle in the course and scope of his or her employment and the motor vehicle is owned by the person's employer, the person may operate that vehicle without the installation of a device, if:

(a) The employee notifies his or her employer that the employee's driving privilege has been so restricted; and

(b) The employee has proof of that notification in his or her possession or the notice, or a facsimile copy thereof, is with the motor vehicle.

➤ This exemption does not apply to a motor vehicle owned by a business which is all or partly owned or controlled by the person otherwise subject to this section.

6. The running of the period during which a person is required to have a device installed pursuant to this section commences when the Department issues a restricted license to the person or reinstates the driving privilege of the person and is tolled whenever and for as long as the person is, with regard to a violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430, imprisoned, serving a term of residential confinement, placed under the supervision of a treatment provider, on parole or on probation.

(Added to NRS by 1989, 1737; A 1993, 2895; 1997, 3370; 1999, 2140; 2005, 151, 613, 2042; 2005, 22nd Special Session, 105; 2007, 100, 2805; 2015, 762)—(Substituted in revision for part of NRS 484.3943)

NRS CROSS REFERENCES.

Restricted licenses, issuance, NRS 483.490

Time for installation of device, NRS 483.490

REVISER'S NOTES.

Ch. 193, Stats. 2005, which amended this section, contains the following provision not included in NRS:

"The amendatory provisions of this act apply to offenses committed before October 1, 2005, for the purpose of determining whether a person is subject to the provisions of subsection 2 of [former] NRS 484.3792 [cf. NRS 484C.410(1)], as amended by this act, or subsection 1 of section 9 of this act [NRS 488.427]."

The definitions of "concentration of alcohol of 0.18 or more in his blood or breath," "concentration of alcohol of less than 0.18 in his blood or breath" and "treatment facility" that were previously contained in this section were moved in revision to NRS 484C.030, 484C.040 and 484C.100, respectively.

NRS 484C.460 When court is authorized or required to order installation of device; exceptions; installation and inspection. [Effective October 1, 2018.]

1. Except as otherwise provided in subsections 2 and 5, a court shall order a person convicted of:

(a) A violation of NRS 484C.110 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of NRS 484C.400, if the person is found to have had a concentration of alcohol of less than 0.18 in his or her blood or breath, to install, at his or her own expense and for a period of not less than 185 days, a device in any motor vehicle which the person operates as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of the driving privilege of the person.

(b) A violation of:

(1) NRS 484C.110 that is punishable pursuant to paragraph (a) or (b) of subsection 1 of NRS 484C.400, if the person is found to have had a concentration of alcohol of 0.18 or more in his or her blood or breath;

(2) NRS 484C.110 or 484C.120 that is punishable as a felony pursuant to NRS 484C.400 or 484C.410; or

(3) NRS 484C.130 or 484C.430,

↪ to install, at his or her own expense and for a period of not less than 12 months or more than 36 months, a device in any motor vehicle which the person operates as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of the driving privilege of the person.

2. A court may, in the interests of justice, provide for an exception to the provisions of subsection 1 for a person who is convicted of a violation of NRS 484C.110 that is punishable pursuant to paragraph (a) of subsection 1 of NRS 484C.400, to avoid undue hardship to the person if the court determines that:

(a) Requiring the person to install a device in a motor vehicle which the person owns or operates would cause the person to experience an economic hardship;

(b) The person requires the use of the motor vehicle to:

(1) Travel to and from work or in the course and scope of his or her employment; or

(2) Obtain medicine, food or other necessities or to obtain health care services for the person or another member of the person's immediate family;

(c) The person is unable to provide a deep lung breath sample for a device, as certified in writing by a physician of the person; or

(d) The person resides more than 100 miles from a manufacturer of a device or its agent.

3. If the court orders a person to install a device pursuant to subsection 1:

(a) The court shall immediately prepare and transmit a copy of its order to the Director. The order must include a statement that a device is required and the specific period for which it is required. The Director shall cause this information to be incorporated into the records of the Department and noted as a restriction on the person's driver's license.

(b) The person who is required to install the device shall provide proof of compliance to the Department before the person may receive a restricted license or before the driving privilege of the person may be reinstated, as applicable. Each model of a device installed pursuant to this section must have been certified by the Committee on Testing for Intoxication.

4. A person whose driving privilege is restricted pursuant to this section or NRS 483.490 shall have the device inspected, calibrated, monitored and maintained by the manufacturer of the device or its agent at least one time each 90 days during the period in which the person is required to use the device to determine whether the device is operating properly. Any inspection, calibration, monitoring or maintenance required pursuant to this subsection must be conducted in accordance with regulations adopted pursuant to NRS 484C.480. The manufacturer or its agent shall submit a report to the Director indicating whether the device is operating properly, whether any of the incidents listed in subsection 1 of NRS 484C.470 have occurred and whether the device has been tampered with. If the device has been tampered with, the Director shall notify the court that ordered the installation of the device. Upon receipt of such notification and before the court imposes a penalty pursuant to subsection 3 of NRS 484C.470, the court shall afford any interested party an opportunity for a hearing after reasonable notice.

5. If a person is required to operate a motor vehicle in the course and scope of his or her employment and the motor vehicle is owned by the person's employer, the person may operate that vehicle without the installation of a device, if:

(a) The employee notifies his or her employer that the employee's driving privilege has been so restricted; and

(b) The employee has proof of that notification in his or her possession or the notice, or a facsimile copy thereof, is with the motor vehicle.

➤ This exemption does not apply to a motor vehicle owned by a business which is all or partly owned or controlled by the person otherwise subject to this section.

6. The running of the period during which a person is required to have a device installed pursuant to this section commences when the Department issues a restricted license to the person or reinstates the driving privilege of the person and is tolled whenever and for as long as the person is, with regard to a violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430, imprisoned, serving a term of residential confinement, placed under the supervision of a treatment provider, on parole or on probation.

(Added to NRS by 1989, 1737; A 1993, 2895; 1997, 3370; 1999, 2140; 2005, 151, 613, 2042; 2005, 22nd Special Session, 105; 2007, 100, 2805; 2015, 762; 2017, 4047, effective October 1, 2018)—(Substituted in revision for part of NRS 484.3943)

NRS 484C.470 Penalties for tampering with or driving without device; probation and suspension of sentence prohibited; plea bargaining restricted. [Effective through September 30, 2018.]

1. A person required to install a device pursuant to NRS 484C.460 shall not operate a motor vehicle without a device or tamper with the device.

2. A person who violates any provision of subsection 1:

(a) Must have his or her driving privilege revoked in the manner set forth in subsection 4 of NRS 483.460; and

(b) Shall be:

(1) Punished by imprisonment in jail for not less than 30 days nor more than 6 months; or

(2) Sentenced to a term of not less than 60 days in residential confinement nor more than 6 months, and by a fine of not less than \$500 nor more than \$1,000.

➤ No person who is punished pursuant to this section may be granted probation, and no sentence imposed for such a violation may be suspended. No prosecutor may dismiss a charge of such a violation in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless, in the judgment of the attorney, the charge is not supported by probable cause or cannot be proved at trial.

(Added to NRS by 1989, 1738; A 1997, 3371; 2003, 1495; 2007, 1458)—
(Substituted in revision for NRS 484.3945)

NEVADA CASES.

Act abolishing insanity defense and authorizing plea of “guilty but mentally ill” is unconstitutional. The provisions of Senate Bill No. 314 of the 1995 Legislative Session (see ch. 637, Stats. 1995), which abolished exculpation by reason of insanity and authorized a plea of “guilty but mentally ill” in criminal proceedings, are unconstitutional. “Legal insanity,” pursuant to which a person is not culpable for a criminal act if he cannot form the necessary mens rea, is a fundamental principle under the due process clauses of both the U.S. and Nevada Constitutions (see Nev. Art. 1, § 8). Furthermore, although certain provisions of the 1995 act could be construed in a constitutional fashion, they cannot be severed without defeating the whole scope and object of the law, and thus the provisions of Senate Bill No. 314 of the 1995 Legislative Session must be rejected in their entirety. (N.B., case decided before amendment of former NRS 484.3945 (cf. NRS 484C.470) in 2003.) *Finger v. State*, 117 Nev. 548, 27 P.3d 66 (2001), cited, *O’Guinn v. State*, 118 Nev. 849, at 852, 59 P.3d 488 (2002)

NRS 484C.470 Extension of order to install device; penalties for tampering with or driving without device; probation and suspension of sentence prohibited; plea bargaining restricted. [Effective October 1, 2018.]

1. The court may extend the order of a person who is required to install a device pursuant to NRS 484C.210 or 484C.460, not to exceed one-half of the period during which the person is required to have a device installed, if the court receives from the Director of the Department of Public Safety a report that 4 consecutive months prior to the date of release any of the following incidents occurred:

(a) Any attempt by the person to start the vehicle with a concentration of alcohol of 0.04 or more in his or her breath unless a subsequent test performed within 10 minutes registers a concentration of alcohol lower than 0.04 and the digital image confirms the same person provided both samples;

(b) Failure of the person to take any random test unless a review of the digital image confirms that the vehicle was not occupied by the person at the time of the missed test;

(c) Failure of the person to pass any random retest with a concentration of alcohol of 0.025 or lower in his or her breath unless a subsequent test performed within 10 minutes registers a concentration of alcohol lower than 0.025, and the digital image confirms the same person provided both samples;

(d) Failure of the person to have the device inspected, calibrated, monitored and maintained by the manufacturer or its agent pursuant to subsection 4 of NRS 484C.460; or

(e) Any attempt by the person to operate a motor vehicle without a device or tamper with the device.

2. A person required to install a device pursuant to NRS 484C.210 or 484C.460 shall not operate a motor vehicle without a device or tamper with the device.

3. A person who violates any provision of subsection 2:

(a) Must have his or her driving privilege revoked in the manner set forth in subsection 4 of NRS 483.460; and

(b) Shall be:

(1) Punished by imprisonment in jail for not less than 30 days nor more than 6 months; or

(2) Sentenced to a term of not less than 60 days in residential confinement nor more than 6 months, and by a fine of not less than \$500 nor more than \$1,000.

➔ No person who is punished pursuant to this section may be granted probation, and no sentence imposed for such a violation may be suspended. No prosecutor may dismiss a charge of such a violation in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless, in the judgment of the attorney, the charge is not supported by probable cause or cannot be proved at trial.

(Added to NRS by 1989, 1738; A 1997, 3371; 2003, 1495; 2007, 1458; 2017, 4049, effective October 1, 2018)—(Substituted in revision for NRS 484.3945)

NRS 484C.475 Penalty for person providing sample of breath for device of another person. [Effective October 1, 2018.] Any person who provides a sample of breath for a device, with the intent to start a motor vehicle of another and for the purpose of allowing a person required to install a device pursuant to NRS 484C.210 or 484C.460 to avoid providing a sample of his or her breath, is guilty of a misdemeanor.

(Added to NRS by 2017, 4043, effective October 1, 2018)

NRS 484C.480 Regulations. [Effective through September 30, 2018.]

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.

(Added to NRS by 1989, 1738; A 1997, 3372; 1999, 2460)—(Substituted in revision for NRS 484.3947)

ADMINISTRATIVE REGULATIONS.

Devices that prevent intoxicated persons from starting vehicles, NAC 484C.160-484C.180

NRS 484C.480 Regulations. [Effective October 1, 2018.]

1. The Committee on Testing for Intoxication shall 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 manufacturer of the device or its agent, and other records respecting the installation, removal, inspection, maintenance and operation of the devices which it finds should be kept by the manufacturer or its agent.

(c) Prescribe standards and procedures for the proper installation, removal, inspection, calibration, maintenance and operation of a device installed by the manufacturer or its agent.

(d) Require the manufacturer or its agent to waive the cost of installing or removing the device and adjust the fee to lease, calibrate or monitor the device, if the person required to install a device pursuant to NRS 484C.210 or 484C.460:

(1) Has an income which is at or below 100 percent of the federally designated level signifying poverty, to 50 percent of the fee; or

(2) Receives supplemental nutritional assistance pursuant to NRS 422A.072, was determined indigent pursuant to NRS 171.188 or has an income which is at or below 149 percent of the federally designated level signifying poverty, to 75 percent of the fee.

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 manufacturer of the device or its 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.

(Added to NRS by 1989, 1738; A 1997, 3372; 1999, 2460; 2017, 4050, effective October 1, 2018)—(Substituted in revision for NRS 484.3947)

OTHER PENALTIES

NRS 484C.500 Civil penalty; cancellation of reinstated license upon conviction for violation of NRS 484C.110 or 484C.120; notice.

1. In addition to any other penalty provided by law, a person convicted of a violation of NRS 484C.110 or 484C.120 is liable to the State for a civil penalty of \$35, payable to the Department.