

Nevada DUI Law Overview

COMMON ACRONYM(S) USED TO DESCRIBE “DRUNK DRIVING”: DUI, Driving Under the Influence PROHIBITED VEHICULAR ACTIVITY: “drive or be in actual physical control”

COVERED VEHICLES OR DEVICES: “a vehicle”, which is defined in NRS 484.217 as “every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationary rails; and electric personal assistive mobility devices as defined in NRS 482.029. (i.e., a Segway mobility device)

COVERED LOCATIONS: “on a highway or on premises to which the public has access” “Highway” is defined in NRS 484.065 as the entire width between the boundary lines of every way dedicated to a public authority when any part of the way is open to the use of the public for purposes of vehicular traffic, whether or not the public authority is maintaining the way. In addition, “premises to which the public has access” is defined in NRS 484.122 as virtually every place where a vehicle can be driven or operated in the state of Nevada except a private way on a farm and the driveway of a personal dwelling. The term specifically includes other parking lots and gated communities, and no distinction is made as to whether the site is paved or unpaved.

DRINKING-DRIVING OFFENSES: Driving, etc., while under the influence of intoxicating liquor. Driving, etc., while a driver has a concentration of alcohol of 0.08 or more in his blood or breath. (at the time of driving) [NRS 484.379] Driving, etc., and being found by measurement with a concentration of alcohol of 0.08 or more in his blood or breath within 2 hours of after driving (per se offense). Driving, etc., under the influence of a controlled substance or a combination of intoxicating liquor and a controlled substance, or who 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 him incapable of safely driving or exercising actual physical control of a vehicle. NRS 484.379(2)(a)-(c) Driving, etc., with an amount of a “prohibited substance” in his blood or urine that is equal to or greater than a proscribed amount, set out in NRS 484.379. A prohibited substance is defined in NRS 484.1245 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 NRS 453.166 or 453.176 when it is used: Amphetamine; Cocaine or cocaine metabolite; Heroin or heroin metabolite (morphine or 6-monoacetyl morphine); Lysergic acid diethylamide; Marijuana or marijuana metabolite; Methamphetamine; Phencyclidine.

DEGREE OF IMPAIRMENT (LEGAL STANDARD) REQUIRED FOR CONVICTION: For DUI after consuming substances other than alcohol if a driver 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 him incapable of safely driving or exercising actual physical control of a vehicle, he is guilty of the offense of driving under the influence. For DUI after consuming intoxicating liquor, there is no statutory definition of "under the influence." Because of the language contained in NRS 484.379(2)(c) is so inclusive regarding the consumption of chemicals, poisons, and solvents, it is likely that the Nevada Supreme Court would adopt this definition.

PENALTIES FOR DRINKING-DRIVING OFFENSES:

Nevada law is very strict regarding sentences imposed for DUI offenses. In 2005, the Nevada Legislature enacted detailed legislation which increased the penalties on subsequent offenses.

For first conviction in seven years: \$400 to \$1,000 fine; jail term of not less than 2 days nor more than 6 months or 48 hours to 96 hours of community service and if the driver is found to have a concentration of alcohol of 0.18 or more in his blood or breath, he must attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484.37945; 90-day license revocation.

For second conviction within 7 years: Jail term of 10 days to 6 months or residential confinement for not less than 10 days nor more than 6 months; \$750 to \$1,000 fine or an equivalent number of hours of community service while dressed in distinctive garb that identifies the offender as having violated the provisions of NRS 484.379; and the driver may be ordered to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484.37945; one-year license revocation.

For third offense within 7 years, a driver is punished for a Category B felony, by prison for one to six years; \$2,000 to \$5,000 fine; 3-year license revocation. The 2005 Nevada Legislature increased the penalty for any subsequent offense. The biggest change to the law is the “once a felon, always a felon” provision of NRS 484.3792(2), which provides that when an individual has been once convicted of a DUI that was punished as a felony, all subsequent DUI arrests, whenever they occur and without regard to how many years have elapsed since the last DUI felony, will also be punished as felonies, but with increased penalties. All offenses which fall under this category are punishable as a Category B felony, with a sentence of 2 to 15 years in prison.

For the purposes of sentencing, it is notable that prior offenses need not be proven in the order in which the offenses occurred. For example, a person could be prosecuted for the offenses in any order. The last occurring DUI offense need not be the offense being punished as a felony. NRS 484.3792(3). Further, in Nevada, probation is not available for any DUI offense, and a sentence cannot be suspended, except for the portion of the sentence that exceeds the mandatory minimum. (NRS 484.3792(4)). A prosecutor cannot reduce a DUI charge in a plea agreement unless he knows that the charge is not supported by probable cause or cannot be proved at the time of trial. *Id.*

Note: There is a civil penalty of \$35 which may be imposed on every DUI conviction, and if imposed, the Department of Motor Vehicles may deny driving privileges to a driver until such penalty is paid.

In addition to any other penalty imposed by law, a driver may be ordered to attend a 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 in order to have the defendant understand the effect such a crime has on other persons. (Victim Impact Panel) Notwithstanding the above, if a driver is convicted of a DUI offense where the conduct of the driver is the proximate cause of the death of or causes substantial bodily harm to a person other than himself, the offense shall be punished as a category B felony and the driver 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.

When a person accused of a DUI has been transporting a person who is less than 15 years of age at the time of the offense, this factor shall be considered to be an aggravating factor in sentencing the defendant. NRS 484.379(8).

In one of the more interesting amendments to DUI laws, the 2005 Legislature determined that for the purpose of determining whether two offenses occurred within 7 years of one another, 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. NRS 484.3792(9).

The issue of valid prior offenses is a source of much legal discussion in Nevada. The prior offenses are not elements of the offense, but rather are sentencing enhancements. As such, they are not read to the jury, but must be proved at the time of sentencing. Because the prior offenses are often misdemeanor violations, the full panoply of legal rights and procedural safeguards are not required to “prove up” the proffered prior conviction. It is sufficient that the “spirit of constitutional principles” is respected in taking the plea. [Koenig v. State, 99 Nev. 780, 672 P.2d 37 (1983)] Further, the validity of prior offenses which are offered for enhancement purposes need not be determined at the preliminary hearing. This is because the standard of proof at a preliminary hearing is less than that of a trial, and therefore “facts concerning a prior offense” need only be “shown” at the time of the preliminary hearing. It is up to the trial court to determine the validity of such proffered prior offenses at or before the time of sentencing. [Parsons v. State, 116 Nev. 928, at 937, 10 P.3d 836 (2000)]

STATUTORY DRINKING-DRIVING PRESUMPTIONS: Repealed

IMPLIED CONSENT LAWS:

Tests permitted: In accordance with NRS 484.382, any person who drives or is in actual physical control of a vehicle on the highways of Nevada is deemed to have given his consent to a preliminary test of his breath if the officer has “reasonable grounds” to believe that he is under the influence of alcohol or a controlled substance. If the driver refuses to submit to such a preliminary test, the officer shall seize his driver’s license and shall take him to a place where an evidentiary test may be taken of his blood or breath. This provision, by its terms, creates a tension between the twin governmental objectives of removing intoxicated drivers from the road [Galvan v. State, 98 Nev. 550, 655 P.2d 155 (1982)] and the

equally valid goal of ensuring that principles of Due Process and Equal Protection are afforded to drivers suspected of DUI offenses. The Nevada Supreme Court has usually had the opportunity to interpret this statute in light of its application to administrative hearings before the Department of Motor Vehicles relating to license revocation. [State, Dep't of Motor Vehicles & Public Safety v. McLeod, 106 Nev. 852, 801 P.2d 1390 (1990)] In other words, this statute, reading implied consent as authority for the use of a Preliminary Breath Testing (PBT) device, does not necessarily mean that the officer has to have probable cause to arrest before ordering such a test. Indeed, NRS 484.382(3) expressly prohibits the admissibility of the noted PBT value in any criminal proceeding. Further, the penalty for refusal to submit is the seizure of the driver's license, an administrative function delegated by the Department of Motor Vehicles to the officer requesting the test.

Further, in accordance with NRS 484.383, a person who drives or is in actual control of a vehicle on the highways of Nevada is deemed to have given consent to an evidentiary test of his breath, blood, urine or "other bodily substance" if an officer has reasonable grounds to believe that that the driver is under the influence of alcohol or a controlled substance or otherwise is in violation of NRS 484.379. The same conflicting considerations described above for the administration of a PBT apply with at least the same gravity when an evidentiary test is administered. In Galvan vs State, cited above, the Nevada Supreme Court held that the 4th Amendment did not preclude the administration of a warrantless evidentiary test on an unconscious driver where the driver was not under arrest, and probable cause already existed for the arrest. Notably, where a driver expressly gave consent to the administration of an evidentiary test when advised of the provisions of the law, the Nevada Supreme Court noted that the driver's express consent to the test meant that the provisions of the implied consent law, NRS 484.383, did not become operative. [Davis v. State, 99 Nev. 25, 656 P.2d 855 (1983)] It appears, then, that something more is required before an evidentiary test administered under this statute is admissible in a criminal proceeding. While it is tempting to prosecutors to cite this provision as authority for the drawing of blood or obtaining of breath samples, which it is, the salient issue is whether the results of the blood or breath test may be used against an accused in a criminal prosecution without an independent determination of probable cause. The better view is that probable cause must be independently determined before the test results may be admitted for that purpose. This does not, of course, affect the admissibility in civil administrative hearings.

For a first offense DUI, if means are reasonably available to conduct a breath test, and the officer suspects that the driver is under the influence of alcohol, then the driver may refuse to submit to a blood test for a first offense and must be allowed to give a breath test. For a suspected second or subsequent offense within 7 years, however, or if there is death or substantial bodily injury which the officer reasonably believes was caused by a person under the influence, then the officer may order a blood test. Reasonable force may be used to perform the blood test. [NRS 484.383(4)]

If the officer has a reasonable basis to conclude that the driver is under the influence of a controlled substance, or the combined effect of alcohol and a controlled substance, then he may order a blood or urine test, or both, in addition to a breath test.

Type of advisement required: A driver does not have the right in the State of Nevada to refuse evidentiary testing if the officer has a reasonable basis to believe that he is under the influence. As stated above, however, a driver may refuse a preliminary breath test, but such refusal will result in the officer's seizure of the driver's license of the motorist.

Penalties for refusal: Some years ago, it was possible for a driver to refuse an evidentiary breath or blood test. The penalty for such a refusal was the revocation of a driver's privilege to drive, often for a much lengthier period of time than would have been the case from a test result over the legal limit. Because of legislative amendments in recent years, it is virtually impossible for a driver to refuse to take either preliminary or evidentiary tests. There are no penalties, because in the event of a refusal, blood will be drawn by force, if necessary. NRS 484.389 expressly allows for the introduction of evidence of a refusal, but this is a provision left over from previous legislation. Revocations of drivers' licenses are governed by NRS 483.460, which set out the mandatory revocation periods. There is a 90-day license revocation for refusing a preliminary breath test.

Admissibility of refusal: Because a refusal is virtually impossible, this is seldom an issue. A driver's statement that he is unwilling to take such a test, however, is generally considered to be an admission pursuant to NRS 51.035. As such, it likely admissible in any subsequent proceeding.

Administrative Per Se Law: Following the administration of a breath test which shows a BAC of .08 concentration of alcohol, a police officer will seize the individual's driver's license and issue a notice of revocation for a period of 90

days. This applies only to the administration of a breath test. With the administration of a blood test, the process is more complex. The Department of Motor Vehicles, upon receiving notice of the elevated BAC, will issue a revocation of the driver's license for the 90 period of time, pending the outcome of either an administrative hearing, if requested by the driver, or the outcome of the criminal proceedings. The period of revocation will ultimately be determined by the issue of whether or not the driver is convicted of a DUI offense. The Department of Motor Vehicles will determine whether the conviction is the first, second, or third within a 7 year period of time. If a first offense, the period of license revocation is 90 days. For a second offense within 7 years, the DMV will revoke for a period of one year. A third offense within 7 years will result in a 3 year license revocation. [NRS 483.460] The second or third offenses within 7 years do not depend upon whether the driver was actually convicted of a second or third enhanced offense, and the DMV is not bound by the trial court's determination of whether the offense should or should not have been enhanced.

It is possible to reduce the period of license revocation for first offenses. Although the initial, presumptive period of revocation is 90 days for a first offense, this period of time shall be reduced by one half when the Department of Motor Vehicles receives notice that a driver has been permitted to undergo a program of treatment pursuant to NRS 484.37937. Such a program must last for a minimum period of 6 months, and the period of time that the driver is not eligible for a license shall be restored if the DMV receives word that the driver was not accepted for or failed to complete the program. [NRS 484.37937; NRS 483.460(3)].

Restricted Driver's License. A restricted license to operate a motor vehicle may be issued by the Department of Motor Vehicles when [NRS 483.490] one half of the revocation period for a first offense has elapsed. This is only available for a first time violation, and if a driver is convicted of anything other than a first time violation, no such restricted license is available. A restricted license may be used to allow a driver to drive to and from work or in the course of his work, or both; or to acquire supplies of medicine or food or receive regularly scheduled medical care for himself or a member of his immediate family. [NRS 483.490(1)]

Ignition Interlock Device. If a person is convicted of a first time DUI and his blood or breath alcohol level is less than 0.18 concentration, the Court may order him to have installed at his own expense an Ignition Interlock Device in any motor vehicle which he owns or operates as a condition to obtaining a restricted license

pursuant to NRS 483.490 or as a condition of reinstatement of his driving privilege for a period of at least 3 months up to 6 months.

[484.3943(1)(a)] If a driver has been convicted of a first or second DUI offense and his blood or breath alcohol concentration is 0.18 or more, or if a person has been convicted of a felony DUI offense, the Court shall order him to install at his own expense, for a period of not less than 12 months nor more than 36 months, a device in any motor vehicle which he owns or operates as a condition to obtaining a restricted license pursuant to NRS 483.490 or as a condition of reinstatement of his driving privilege.

CHEMICAL TEST LAWS:

General provisions: Chemical test evidence 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 testing device and otherwise maintained the device as required by the regulations of the Committee on Testing for Intoxication. [NRS 484.389] An evidentiary breath test may be used to establish BAC only if two consecutive breath samples are taken, and test results do not differ by more than .02 percent. If the test results differ by more than .02 percent a third test must be taken.

Administrative rules & regulations: Adopted by Committee on Testing for Intoxication. All administrative rules and regulations are contained in Chapter 484 of the Nevada Administrative Code (NAC)

BLOOD-DRAWING STATUTE (WHO MAY DRAW BLOOD):

The results of a police administered blood test are not admissible unless – (a) the blood was withdrawn by a physician, physician's assistant, registered nurse, licensed practical nurse, emergency medical technician or a phlebotomist, a technician, technologist or assistant employed in a medical laboratory, or a person who 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 NRS 652.127, (b) the test was performed on whole blood, and (c) the person who withdrew the blood was authorized to do so by the appropriate medical licensing or certifying agency.

INDEPENDENT TEST STATUTE:

A person who is arrested for DUI or who has been engaging in any other conduct prohibited by NRS 484.379, 484.3795 or 484.37955 must be permitted, upon his request and at his expense, reasonable opportunity to have a qualified person of his own choosing administer a chemical test or tests to determine the concentration of alcohol in his blood or breath or whether a controlled substance, chemical, poison, organic solvent or another prohibited substance is present in his blood or urine. The failure or inability to obtain such a test does not preclude the admission of either the police test or the person's refusal of testing.

PLEA BARGAINING STATUTE:

The prosecution may not dismiss a DUI or per se charge in exchange for a plea of guilty or nolo contendere to a lesser charge for any reason unless the prosecutor knows or it is obvious that the charge is not supported by probable cause or cannot be proved at trial.