

Assembly Bill No. 336–Assemblyman Neighbors

Joint Sponsor: Senator McGinness

CHAPTER.....

AN ACT relating to controlled substances; authorizing the court to order a person convicted of distributing or selling an imitation controlled substance, a controlled substance or drug paraphernalia to a person who is under 18 years of age to pay restitution for the costs of the victim for participating in a program of treatment for the abuse of controlled substances; providing a penalty; and providing other matters properly relating thereto.

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

Section 1. NRS 453.332 is hereby amended to read as follows:

453.332 1. Except as otherwise provided in subsection 6, it is unlawful for a person to manufacture, distribute, sell or possess with the intent to distribute or sell an imitation controlled substance.

2. Except as otherwise provided in subsection 3, a person who violates subsection 1 is guilty of a misdemeanor.

3. A person who is 18 years of age or older who distributes or sells an imitation controlled substance to a person who is under the age of 18 *years* is guilty of a category C felony and shall be punished as provided in NRS 193.130. *In addition to any other penalty, the court may order the convicted person to pay restitution for any reasonable costs incurred for the participation of the person to whom he distributed or sold the imitation controlled substance in a program for the treatment of the abuse of controlled substances. If the court orders the convicted person to make such restitution, the court shall notify the parent, guardian or other person legally responsible for the person to whom the imitation controlled substance was distributed or sold that such restitution has been ordered.*

4. A person who:

(a) Uses or possesses with the intent to use an imitation controlled substance; or

(b) Advertises or solicits in any manner with reasonable knowledge that the advertisement or solicitation is to promote the distribution of an imitation controlled substance,

is guilty of a gross misdemeanor upon his first and second convictions, and upon a third or any further conviction, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

5. For the purposes of this section:

(a) “Distribute” means the actual, constructive or attempted transfer, delivery or dispensing to another of an imitation controlled substance.

(b) “Imitation controlled substance” means a substance, not a controlled substance, which:

(1) In the form distributed is shaped, marked or colored so as to lead a reasonable person to believe it is a controlled substance; or

(2) Is represented to be a controlled substance. In determining whether such a representation was made, the court shall consider, in addition to all other logically relevant factors:

(I) Statements made by the defendant regarding the nature of the substance, its use or effect.

(II) Statements made by the defendant regarding the recipient's ability to resell the substance at a substantially higher price than is customary for the substance.

(III) Whether the substance is packaged in a manner normally used for illicit controlled substances.

6. This section does not apply to the manufacture, distribution, sale or possession of an imitation controlled substance for use as a placebo by a practitioner in the course of his professional practice or research.

Sec. 2. NRS 453.334 is hereby amended to read as follows:

453.334 Unless a greater penalty is provided in NRS 453.333, a person who is convicted of selling a controlled substance to a minor in violation of this chapter is guilty of a category A felony and shall be punished for a second or subsequent violation by imprisonment in the state prison:

1. For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or

2. For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served,

and may be further punished by a fine of not more than \$20,000. *In addition to any other penalty, the court may order a person who is 18 years of age or older who is convicted of selling a controlled substance to a minor in violation of this chapter to pay restitution for any reasonable costs incurred for the participation of the minor in a program for the treatment of the abuse of controlled substances. If the court orders the convicted person to make such restitution, the court shall notify the parent, guardian or other person legally responsible for the minor that such restitution has been ordered.*

Sec. 3. NRS 453.562 is hereby amended to read as follows:

453.562 A person 18 years of age or older who violates NRS 453.560 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a category C felony and shall be punished as provided in NRS 193.130. *In addition to any other penalty, the court may order the convicted person to pay restitution for any reasonable costs incurred for the participation of the person to whom he delivered the paraphernalia in a program for the treatment of the abuse of controlled substances. If the court orders the convicted person to make such restitution, the court shall notify the parent, guardian or other person legally responsible for the person to whom the paraphernalia was delivered that such restitution has been ordered.*

Sec. 4. The amendatory provisions of this act do not apply to offenses that were committed before October 1, 1999.

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