

ASSEMBLY BILL NO. 379—ASSEMBLYMEN GUSTAVSON, ARBERRY, ANGLE, DE BRAGA, BACHE, MANENDO, KOIVISTO, CEGAVSKE, BROWER, OHRENSCHALL, CHOWNING, COLLINS, MCCLAIN, TIFFANY, VON TOBEL, PRICE, GIBBONS, BERMAN, NEIGHBORS, LEE, PERKINS, HETTRICK, HUMKE, CLABORN, BEERS, NOLAN AND LESLIE

MARCH 3, 1999

Referred to Committee on Judiciary

SUMMARY—Provides for increased penalties for distribution or sale of controlled substance to minor. (BDR 40-726)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to controlled substances; providing for increased penalties for distributing or selling a controlled substance to a minor; providing that murder of a minor caused by the distribution or sale of a controlled substance to the minor is murder in the first degree and constitutes an aggravating circumstance; 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:

- 1 **Section 1.** NRS 453.333 is hereby amended to read as follows:
2 453.333 ***1.*** If the death of a person is proximately caused by a
3 controlled substance which was sold, given, traded or otherwise made
4 available to him by another person in violation of this chapter, the person
5 who sold, gave or traded or otherwise made the substance available to him
6 is guilty of murder.
7 ***2.*** If convicted of murder ~~first~~ ***of*** the second degree, he is guilty of a
8 category A felony and shall be punished as provided in subsection 5 of
9 NRS 200.030. ~~first~~
10 ***3. Except as otherwise provided in subsection 4, if*** convicted of
11 murder ~~first~~ ***of*** the first degree, he is guilty of a category A felony and shall
12 be punished as provided in subsection 4 of NRS 200.030, except that the

1 punishment of death may be imposed only if the requirements of paragraph
2 (a) of subsection 4 of that section have been met and if the defendant is or
3 has previously been convicted of violating NRS 453.3385, 453.339 or
4 453.3395 or a law of any other jurisdiction which prohibits the same
5 conduct.

6 ***4. If convicted of murder of the first degree committed upon a person***
7 ***under the age of 18 years and caused by a controlled substance which***
8 ***was sold, given, traded or otherwise made available to that person***
9 ***pursuant to paragraph (d) of subsection 1 of NRS 200.030, the***
10 ***punishment of death may be imposed if the requirements of paragraph***
11 ***(a) of subsection 4 of NRS 200.030 have been met.***

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

13 453.334 Unless a greater penalty is provided in NRS ~~[453.333,]~~
14 ***200.030***, a person who is convicted of selling , ***distributing, exchanging,***
15 ***bartering, supplying, prescribing, dispensing, giving away, administering***
16 ***or otherwise making available*** a controlled substance to a minor in
17 violation of this chapter is guilty of a category A felony and shall be
18 punished ~~[for a second or subsequent violation]~~ by imprisonment in the
19 state prison:

20 1. For life ***without the possibility of parole;***

21 ***2. For life*** with the possibility of parole, with eligibility for parole
22 beginning when a minimum of ~~[5]~~ ***15*** years has been served; or

23 ~~[2-]~~ ***3.*** For a definite term of 15 years, with eligibility for parole
24 beginning when a minimum of 5 years has been served,
25 and may be further punished by a fine of not more than \$20,000.

26 **Sec. 3.** NRS 453.348 is hereby amended to read as follows:

27 453.348 In any proceeding brought under NRS 453.316, 453.321,
28 453.333, ~~[453.334,]~~ 453.337, 453.338 or 453.401, any previous
29 convictions of the offender for a felony relating to controlled substances
30 must be alleged in the indictment or information charging the primary
31 offense, but the conviction may not be alluded to on the trial of the primary
32 offense nor may any evidence of the previous offense be produced in the
33 presence of the jury except as otherwise prescribed by law. If the offender
34 pleads guilty or guilty but mentally ill to or is convicted of the primary
35 offense but denies any previous conviction charged, the court shall
36 determine the issue after hearing all relevant evidence. A certified copy of
37 a conviction of a felony is prima facie evidence of the conviction.

38 **Sec. 4.** NRS 200.030 is hereby amended to read as follows:

39 200.030 1. Murder of the first degree is murder which is:

40 (a) Perpetrated by means of poison, lying in wait, torture or child abuse,
41 or by any other kind of willful, deliberate and premeditated killing;

(b) Committed in the perpetration or attempted perpetration of sexual assault, kidnaping, arson, robbery, burglary, invasion of the home, sexual abuse of a child or sexual molestation of a child under the age of 14 years;

~~for~~

(c) Committed to avoid or prevent the lawful arrest of any person by a peace officer or to effect the escape of any person from legal custody ~~for~~;

~~or~~

(d) Committed upon a person under the age of 18 years and caused by a controlled substance which was sold, given, traded or otherwise made available to that person.

2. Murder of the second degree is all other kinds of murder.

3. The jury before whom any person indicted for murder is tried shall, if they find him guilty thereof, designate by their verdict whether he is guilty of murder of the first or second degree.

4. A person convicted of murder of the first degree is guilty of a category A felony and shall be punished:

(a) By death, only if one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances; or

(b) By imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.

A determination of whether aggravating circumstances exist is not necessary to fix the penalty at imprisonment for life with or without the possibility of parole.

5. A person convicted of murder of the second degree is guilty of a category A felony and shall be punished by imprisonment in the state prison:

(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.

6. As used in this section:

(a) "Child abuse" means physical injury of a nonaccidental nature to a child under the age of 18 years . ~~for~~

(b) "Sexual abuse of a child" means any of the acts described in NRS 432B.100 . ~~for and~~

(c) "Sexual molestation" means any willful and lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years,

1 with the intent of arousing, appealing to, or gratifying the lust, passions or
2 sexual desires of the perpetrator or of the child.

3 **Sec. 5.** NRS 200.033 is hereby amended to read as follows:

4 200.033 The only circumstances by which murder of the first degree
5 may be aggravated are:

6 1. The murder was committed by a person under sentence of
7 imprisonment.

8 2. The murder was committed by a person who, at any time before a
9 penalty hearing is conducted for the murder pursuant to NRS 175.552, is
10 or has been convicted of:

11 (a) Another murder and the provisions of subsection 12 do not
12 otherwise apply to that other murder; or

13 (b) A felony involving the use or threat of violence to the person of
14 another and the provisions of subsection 4 do not otherwise apply to that
15 felony.

16 For the purposes of this subsection, a person shall be deemed to have been
17 convicted at the time the jury verdict of guilt is rendered or upon
18 pronouncement of guilt by a judge or judges sitting without a jury.

19 3. The murder was committed by a person who knowingly created a
20 great risk of death to more than one person by means of a weapon, device
21 or course of action which would normally be hazardous to the lives of
22 more than one person.

23 4. The murder was committed while the person was engaged, alone or
24 with others, in the commission of or an attempt to commit or flight after
25 committing or attempting to commit, any robbery, arson in the first degree,
26 burglary, invasion of the home or kidnaping in the first degree, and the
27 person charged:

28 (a) Killed or attempted to kill the person murdered; or

29 (b) Knew or had reason to know that life would be taken or lethal force
30 used.

31 5. The murder was committed to avoid or prevent a lawful arrest or to
32 effect an escape from custody.

33 6. The murder was committed by a person, for himself or another, to
34 receive money or any other thing of monetary value.

35 7. The murder was committed upon a peace officer or fireman who
36 was killed while engaged in the performance of his official duty or because
37 of an act performed in his official capacity, and the defendant knew or
38 reasonably should have known that the victim was a peace officer or
39 fireman. For the purposes of this subsection, "peace officer" means:

40 (a) An employee of the department of prisons who does not exercise
41 general control over offenders imprisoned within the institutions and
42 facilities of the department but whose normal duties require him to come

1 into contact with those offenders, when carrying out the duties prescribed
2 by the director of the department.

3 (b) Any person upon whom some or all of the powers of a peace officer
4 are conferred pursuant to NRS 289.150 to 289.360, inclusive, when
5 carrying out those powers.

6 8. The murder involved torture or the mutilation of the victim.

7 9. The murder was committed upon one or more persons at random
8 and without apparent motive.

9 10. The murder was committed upon a person less than 14 years of
10 age.

11 11. The murder was committed upon a person because of the actual or
12 perceived race, color, religion, national origin, physical or mental disability
13 or sexual orientation of that person.

14 12. The defendant has, in the immediate proceeding, been convicted of
15 more than one offense of murder in the first or second degree. For the
16 purposes of this subsection, a person shall be deemed to have been
17 convicted of a murder at the time the jury verdict of guilt is rendered or
18 upon pronouncement of guilt by a judge or judges sitting without a jury.

19 13. The person, alone or with others, subjected or attempted to subject
20 the victim of the murder to nonconsensual sexual penetration immediately
21 before, during or immediately after the commission of the murder. For the
22 purposes of this subsection:

23 (a) "Nonconsensual" means against the victim's will or under
24 conditions in which the person knows or reasonably should know that the
25 victim is mentally or physically incapable of resisting, consenting or
26 understanding the nature of his conduct, including, but not limited to,
27 conditions in which the person knows or reasonably should know that the
28 victim is dead.

29 (b) "Sexual penetration" means cunnilingus, fellatio or any intrusion,
30 however slight, of any part of the victim's body or any object manipulated
31 or inserted by a person, alone or with others, into the genital or anal
32 openings of the body of the victim, whether or not the victim is alive. The
33 term includes, but is not limited to, anal intercourse and sexual intercourse
34 in what would be its ordinary meaning.

35 ***14. The murder was committed upon a person under the age of 18***
36 ***years and caused by a controlled substance which was sold, given, traded***
37 ***or otherwise made available to that person.***

38 **Sec. 6.** The amendatory provisions of this act do not apply to offenses
39 committed before October 1, 1999.