
SENATE BILL NO. 481—COMMITTEE ON JUDICIARY

MARCH 18, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning controlled substances and impaired operation of vehicles and vessels. (BDR 4-1622)

FISCAL NOTE: Effect on Local Government: Yes.
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 in skeleton form for various changes concerning controlled substances and impaired operation of vehicles and vessels; 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 50.325 is hereby amended to read as follows:
2 50.325 1. If a person is charged with an offense punishable pursuant
3 to chapter 453, 484 or 488 of NRS or homicide resulting from driving,
4 operating or being in actual physical control of a vehicle or a vessel under
5 power or sail ***while having a detectable amount of a controlled substance***
6 ***or its metabolite in his blood, urine or other bodily substance or*** while
7 under the influence ***or the combined influence*** of intoxicating liquor, a
8 controlled substance or a chemical, poison or organic solvent, and it is
9 necessary to prove:
10 (a) The existence of any alcohol;
11 (b) The quantity of a controlled substance; or
12 (c) The existence or identity of a controlled substance, chemical, poison
13 or organic solvent,
14 the prosecuting attorney may request that the affidavit or declaration of an
15 expert or other person described in NRS 50.315 and 50.320 be admitted
16 into evidence at the trial or preliminary hearing concerning the offense.
17 Except as otherwise provided in NRS 50.315 and 50.320, the affidavit or
18 declaration must be admitted into evidence.

2. If the request is to have the affidavit or declaration admitted into evidence at a preliminary hearing or hearing before a grand jury, the affidavit or declaration must be admitted into evidence upon submission. If the request is to have the affidavit or declaration admitted into evidence at trial, the request must be:

- (a) Made at least 10 days before the date set for the trial;
- (b) Sent to the defendant's counsel and to the defendant, by registered or certified mail by the prosecuting attorney; and
- (c) Accompanied by a copy of the affidavit or declaration and the name, address and telephone number of the affiant or declarant.

3. The provisions of this section do not prohibit either party from producing any witness to offer testimony at trial.

Sec. 2. NRS 62.020 is hereby amended to read as follows:

62.020 As used in this chapter, unless the context otherwise requires:

1. Except as otherwise provided in this subsection, "child" means a person who is:

- (a) Less than 18 years of age; or
- (b) Less than 21 years of age and subject to the jurisdiction of the juvenile court for an act of delinquency that was committed before the person reached 18 years of age.

The term does not include a person who is excluded from the jurisdiction of the juvenile court pursuant to NRS 62.040 or a person who is certified for criminal proceedings as an adult pursuant to NRS 62.080 or 62.081.

2. "Court" means the juvenile division of the district court.

3. "Indian child" has the meaning ascribed to it in 25 U.S.C. § 1903.

4. "Indian Child Welfare Act" means the Indian Child Welfare Act of 1978, ~~42~~ 25 U.S.C. §§ 1901 et seq. ~~D-1~~

5. "Judge" means the judge of the juvenile division of the district court.

6. "Juvenile court" or "juvenile division" means:

- (a) In any judicial district that includes a county whose population is 100,000 or more, the family division of the district court; or
- (b) In any other judicial district, the juvenile division of the district court.

7. "Minor traffic offense" means a violation of any state or local law, ordinance or resolution governing the operation of a motor vehicle upon any street, alley or highway within this state other than:

(a) A violation of chapter 484 or 706 of NRS that causes the death of a person;

(b) ~~Driving a motor vehicle while under the influence of intoxicating liquor, a controlled substance or a drug in~~ A violation of NRS 484.379; or

(c) Any traffic offense declared to be a felony.

Sec. 3. NRS 62.227 is hereby amended to read as follows:

62.227 1. If a child who is less than 18 years of age is found by the juvenile court to have committed ~~the~~ **an** unlawful act ~~of driving under the influence of intoxicating liquor or a controlled substance~~ in violation of NRS 484.379 or 484.3795, the judge, or his authorized representative, shall, if the child possesses a driver's license, issue an order revoking the driver's license of that child for 90 days. If such an order is issued, the judge shall require the child to surrender to the court all driver's licenses then held by the child. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses and a copy of the order.

2. The judge shall require the child to submit to the tests and other requirements which are adopted by regulation pursuant to subsection 1 of NRS 483.495 as a condition of reinstatement of the driver's license of the child.

3. If the child is found to have committed a subsequent unlawful act as set forth in subsection 1, the court shall order an additional period of revocation to apply consecutively with the previous order.

4. The judge may authorize the department to issue a restricted driver's license pursuant to NRS 483.490 to a child whose driver's license is revoked pursuant to this section.

Sec. 4. NRS 62.2275 is hereby amended to read as follows:

62.2275 1. If a child within the jurisdiction of the juvenile court is found by the juvenile court to have committed ~~the~~ :

(a) **An** unlawful act ~~of:~~
~~—(a) Driving under the influence of intoxicating liquor or a controlled substance~~ in violation of NRS 484.379 or 484.3795;

(b) ~~Using,~~ **The unlawful act of using**, possessing, selling or distributing a controlled substance; or

(c) ~~Purchasing,~~ **The unlawful act of purchasing**, consuming or possessing an alcoholic beverage in violation of NRS 202.020, the judge, or his authorized representative, shall require the child to undergo an evaluation to determine if the child is an abuser of alcohol or other drugs.

2. The evaluation of a child pursuant to this section:

(a) Must be conducted by:

(1) A counselor certified to make that classification by the bureau of alcohol and drug abuse;

(2) A physician certified to make that classification by the board of medical examiners; or

(3) A person who is approved to make that classification by the bureau of alcohol and drug abuse,

1 who shall report to the judge the results of the evaluation and make a
2 recommendation to the judge concerning the length and type of treatment
3 required by the child.

4 (b) May be conducted at an evaluation center.

5 3. The judge shall:

6 (a) Order the child to undergo a program of treatment as recommended
7 by the person who conducted the evaluation pursuant to subsection 2.

8 (b) Require the treatment facility to submit monthly reports on the
9 treatment of the child pursuant to this section.

10 (c) Order the child, if he is at least 18 years of age or an emancipated
11 minor, or the parent or legal guardian of the child, to the extent of the
12 financial resources of the child or his parent or legal guardian, to pay any
13 charges relating to the evaluation and treatment of the child pursuant to this
14 section. If the child, or his parent or legal guardian, does not have the
15 financial resources to pay all ~~of~~ those charges:

16 (1) The judge shall, to the extent possible, arrange for the child to
17 receive treatment from a treatment facility which receives a sufficient
18 amount of federal or state money to offset the remainder of the costs; and

19 (2) The judge may order the child to perform supervised work for the
20 benefit of the community in lieu of paying the charges relating to his
21 evaluation and treatment. The work must be performed for and under the
22 supervising authority of a county, city, town or other political subdivision
23 or agency of the State of Nevada or a charitable organization that renders
24 service to the community or its residents. The court may require the child
25 or his parent or legal guardian to deposit with the court a reasonable sum of
26 money to pay for the cost of policies of insurance against liability for
27 personal injury and damage to property or for industrial insurance, or both,
28 during those periods in which the child performs the work, unless, in the
29 case of industrial insurance, it is provided by the authority for which he
30 performs the work.

31 4. ~~[A]~~ *If a treatment facility has certified that a child has successfully*
32 *completed a program of treatment ordered pursuant to this section, the*
33 *treatment facility is not liable for any subsequent damages to person or*
34 *property caused by* ~~[a child who drives while under the influence of an~~
35 ~~intoxicating liquor or a controlled substance after the treatment facility has~~
36 ~~certified to his successful completion of a program of treatment ordered~~
37 ~~pursuant to this section.]~~ *the child as a result of driving, operating or*
38 *being in actual physical control of a vehicle or a vessel under power or*
39 *sail:*

40 (a) *While having a detectable amount of a controlled substance or its*
41 *metabolite in his blood, urine or other bodily substance; or*

1 ***(b) While under the influence or the combined influence of***
2 ***intoxicating liquor, a controlled substance or a chemical, poison or***
3 ***organic solvent.***

4 5. The provisions of this section do not prohibit a judge from:

5 (a) Requiring an evaluation to be conducted by a person who is
6 employed by a private company if the company meets the standards of the
7 bureau of alcohol and drug abuse. Such an evaluation may be conducted at
8 an evaluation center pursuant to paragraph (b) of subsection 2.

9 (b) Ordering the child to attend a program of treatment which is
10 administered by a private company.

11 6. All information relating to the evaluation or treatment of a child
12 pursuant to this section is confidential and, except as otherwise authorized
13 by the provisions of this chapter or the juvenile court, must not be disclosed
14 to any person other than the juvenile court, the child and his attorney, if
15 any, his parents or guardian, the prosecuting attorney and any other person
16 for whom the communication of that information is necessary to effectuate
17 the evaluation or treatment of the child. A record of any finding that a child
18 has violated the provisions of NRS 484.379 or 484.3795 must be included
19 in the driver's record of that child for 7 years after the date of the offense.

20 7. As used in this section:

21 (a) "Bureau of alcohol and drug abuse" means the bureau of alcohol and
22 drug abuse in the rehabilitation division of the department of employment,
23 training and rehabilitation.

24 (b) "Evaluation center" has the meaning ascribed to it in NRS 484.3793.

25 (c) "Treatment facility" has the meaning ascribed to it in NRS 484.3793.

26 **Sec. 5.** NRS 484.379 is hereby amended to read as follows:

27 484.379 1. ~~It~~ ***Except as otherwise provided in subsections 2 and 3,***
28 ***it is unlawful for any person to drive or to be in actual physical***
29 ***control of a vehicle on a highway or on premises to which the public has***
30 ***access if the person:***

31 (a) Is under the influence of intoxicating liquor;

32 (b) Has 0.10 percent or more by weight of alcohol in his blood; ~~or~~

33 (c) Is found by measurement within 2 hours after driving or being in
34 actual physical control of a vehicle to have 0.10 percent or more by weight
35 of alcohol in his blood ~~;~~

36 ~~to drive or be in actual physical control of a vehicle on a highway or on~~
37 ~~premises to which the public has access.~~

38 ~~—2.— It is unlawful for any person who is an habitual user of or under the~~
39 ~~influence of any controlled substance, or is~~ ;

40 ***(d) Is*** under the combined influence of intoxicating liquor and a
41 controlled substance ~~;~~ ~~or any person who inhales, ingests, applies or~~
42 ~~otherwise~~ ~~uses~~ ;

1 *(e) Has a detectable amount of a controlled substance or its metabolite*
2 *in his blood, urine or other bodily substance; or*

3 *(f) Has inhaled, ingested, applied or otherwise used* any chemical,
4 poison or organic solvent, or any compound or combination of any of these,
5 to a degree which renders him incapable of safely driving or exercising
6 actual physical control of a vehicle . ~~to drive or be in actual physical~~

7 ~~control of a vehicle on a highway or on premises to which the public has~~
8 ~~access. The fact that any person charged with a violation of this subsection~~
9 ~~is or has been entitled to use that drug under the laws of this state is not a~~
10 ~~defense against any charge of violating this subsection.~~

11 ~~—3.— If consumption is proven by a preponderance of the evidence, it]~~

12 **2. It is an affirmative defense to a violation** under paragraph (c) of
13 subsection 1 ~~that~~ **if** the defendant **proves by a preponderance of the**
14 **evidence that he** consumed a sufficient quantity of alcohol after driving or
15 being in actual physical control of the vehicle, and before his blood was
16 tested, to cause the alcohol in his blood to equal or exceed 0.10 percent. A
17 defendant who intends to offer this **affirmative** defense at a trial or
18 preliminary hearing must, not less than 14 days before the trial or hearing
19 or at such other time as the court may direct, file and serve on the
20 prosecuting attorney a written notice of that intent.

21 **3. It is an affirmative defense to a violation under paragraph (e) of**
22 **subsection 1 if the defendant proves by a preponderance of the evidence**
23 **that each controlled substance or its metabolite that was detected in his**
24 **blood, urine or other bodily substance was:**

25 **(a) Being used in accordance with a prescription lawfully issued to the**
26 **defendant and that the defendant was not cautioned, warned or**
27 **instructed by a provider of health care or by any label on, information**
28 **provided with or container containing the controlled substance not to**
29 **drive a vehicle while using the controlled substance; or**

30 **(b) Opium whose detectable presence in his blood, urine or other**
31 **bodily substance was the result of the defendant legally ingesting poppy**
32 **seeds.**

33 **If a defendant intends to offer an affirmative defense described in this**
34 **subsection at a trial or preliminary hearing, the defendant must, not less**
35 **than 14 days before the trial or hearing or at such other time as the court**
36 **may direct, file and serve on the prosecuting attorney a written notice of**
37 **that intent.**

38 **4. Except as otherwise provided in subsection 3, a defendant may not**
39 **claim as a defense to any violation of this section that he was entitled**
40 **pursuant to the laws of this state or the laws of any other jurisdiction to**
41 **use the controlled substance, chemical, poison or organic solvent that**
42 **was involved in the violation.**

1 **5. As used in this section, “provider of health care” means a person**
2 **described in subsection 1 of NRS 629.031, whether or not the person is**
3 **licensed or practices in this state or any other jurisdiction.**

4 **Sec. 6.** NRS 484.3795 is hereby amended to read as follows:

5 484.3795 1. ~~[A]~~ **Except as otherwise provided in subsections 4 and**
6 **5, a person who:**

7 (a) Is under the influence of intoxicating liquor;

8 (b) Has 0.10 percent or more by weight of alcohol in his blood;

9 (c) Is found by measurement within 2 hours after driving or being in
10 actual physical control of a vehicle to have 0.10 percent or more by weight
11 of alcohol in his blood;

12 (d) Is under ~~[the influence of a controlled substance, or under]~~ the
13 combined influence of intoxicating liquor and a controlled substance; ~~[or~~
14 ~~—(e) Inhales, ingests, applies or otherwise uses]~~

15 **(e) Has a detectable amount of a controlled substance or its metabolite**
16 **in his blood, urine or other bodily substance; or**

17 **(f) Has inhaled, ingested, applied or otherwise used** any chemical,
18 poison or organic solvent, or any compound or combination of any of these,
19 to a degree which renders him incapable of safely driving or exercising
20 actual physical control of a vehicle,
21 and does any act or neglects any duty imposed by law while driving or in
22 actual physical control of any vehicle on or off the highways of this state, if
23 the act or neglect of duty proximately causes the death of, or substantial
24 bodily harm to, a person other than himself, is guilty of a category B felony
25 and shall be punished by imprisonment in the state prison for a minimum
26 term of not less than 2 years and a maximum term of not more than 20
27 years and must be further punished by a fine of not less than \$2,000 nor
28 more than \$5,000.

29 **2.** A person ~~[so]~~ **who is imprisoned pursuant to this section** must,
30 insofar as practicable, be segregated from offenders whose crimes were
31 violent and, insofar as practicable, be assigned to an institution or facility of
32 minimum security.

33 ~~[2.]~~ **3.** A prosecuting attorney shall not dismiss a charge of violating
34 the provisions of subsection 1 in exchange for a plea of guilty, guilty but
35 mentally ill or nolo contendere to a lesser charge or for any other reason
36 unless he knows or it is obvious that the charge is not supported by
37 probable cause or cannot be proved at the time of trial. A sentence imposed
38 pursuant to subsection 1 may not be suspended nor may probation be
39 granted.

40 ~~[3.—If consumption is proven by a preponderance of the evidence, it]~~

41 **4.** It is an affirmative defense **to a violation** under paragraph (c) of
42 subsection 1 ~~[that]~~ **if the defendant proves by a preponderance of the**
43 **evidence that he** consumed a sufficient quantity of alcohol after driving or

1 being in actual physical control of the vehicle, and before his blood was
2 tested, to cause the alcohol in his blood to equal or exceed 0.10 percent. A
3 defendant who intends to offer this **affirmative** defense at a trial or
4 preliminary hearing must, not less than 14 days before the trial or hearing
5 or at such other time as the court may direct, file and serve on the
6 prosecuting attorney a written notice of that intent.

7 ~~[4.]~~ 5. *It is an affirmative defense to a violation under paragraph (e)*
8 *of subsection 1 if the defendant proves by a preponderance of the*
9 *evidence that each controlled substance or its metabolite that was*
10 *detected in his blood, urine or other bodily substance was:*

11 *(a) Being used in accordance with a prescription lawfully issued to the*
12 *defendant and that the defendant was not cautioned, warned or*
13 *instructed by a provider of health care or by any label on, information*
14 *provided with or container containing the controlled substance not to*
15 *drive a vehicle while using the controlled substance; or*

16 *(b) Opium whose detectable presence in his blood, urine or other*
17 *bodily substance was the result of the defendant legally ingesting poppy*
18 *seeds.*

19 *If a defendant intends to offer an affirmative defense described in this*
20 *subsection at a trial or preliminary hearing, the defendant must, not less*
21 *than 14 days before the trial or hearing or at such other time as the court*
22 *may direct, file and serve on the prosecuting attorney a written notice of*
23 *that intent.*

24 6. *Except as otherwise provided in subsection 5, a defendant may not*
25 *claim as a defense to any violation of this section that he was entitled*
26 *pursuant to the laws of this state or the laws of any other jurisdiction to*
27 *use the controlled substance, chemical, poison or organic solvent that*
28 *was involved in the violation.*

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

33 8. *As used in this section, "provider of health care" means a person*
34 *described in subsection 1 of NRS 629.031, whether or not the person is*
35 *licensed or practices in this state or any other jurisdiction.*

36 **Sec. 7.** NRS 488.410 is hereby amended to read as follows:

37 488.410 1. ~~[It]~~ *Except as otherwise provided in subsections 2 and 3,*
38 *it is unlawful for any person ~~[who:]~~ to operate or be in actual physical*
39 *control of a vessel under power or sail on the waters of this state if the*
40 *person:*

41 (a) Is under the influence of intoxicating liquor;

42 (b) Has 0.10 percent or more by weight of alcohol in his blood; or

(c) Is found by measurement within 2 hours after operating or being in actual physical control of a vessel to have 0.10 percent or more by weight of alcohol in his blood ~~;~~

~~to operate or be in actual physical control of a vessel under power or sail on the waters of this state.~~

~~2. It is unlawful for any person who:~~

~~(a) Is under the influence of any controlled substance;~~

~~(b) ;~~

(d) Is under the combined influence of intoxicating liquor and a controlled substance; ~~for~~

~~(c) Inhales, ingests, applies or otherwise uses~~

(e) *Has a detectable amount of a controlled substance or its metabolite in his blood, urine or other bodily substance; or*

(f) *Has inhaled, ingested, applied or otherwise used* any chemical, poison or organic solvent, or any compound or combination of any of these, to a degree which renders him incapable of safely operating or exercising actual physical control of a vessel under power or sail . ~~;~~

~~to operate or exercise actual physical control of a vessel under power or sail on the waters of this state.~~

~~3. If consumption is proven by a preponderance of the evidence, it~~

2. It is an affirmative defense *to a violation* under paragraph (c) of subsection 1 ~~[that]~~ *if* the defendant *proves by a preponderance of the evidence that he* consumed a sufficient quantity of alcohol after operating or being in actual physical control of the vessel, and before his blood was tested, to cause the alcohol in his blood to equal or exceed 0.10 percent. A defendant who intends to offer this *affirmative* 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.

3. *It is an affirmative defense to a violation under paragraph (e) of subsection 1 if the defendant proves by a preponderance of the evidence that each controlled substance or its metabolite that was detected in his blood, urine or other bodily substance was:*

(a) *Being used in accordance with a prescription lawfully issued to the defendant and that the defendant was not cautioned, warned or instructed by a provider of health care or by any label on, information provided with or container containing the controlled substance not to drive a vehicle or operate a vessel while using the controlled substance; or*

(b) *Opium whose detectable presence in his blood, urine or other bodily substance was the result of the defendant legally ingesting poppy seeds.*

1 *If a defendant intends to offer an affirmative defense described in this*
2 *subsection at a trial or preliminary hearing, the defendant must, not less*
3 *than 14 days before the trial or hearing or at such other time as the court*
4 *may direct, file and serve on the prosecuting attorney a written notice of*
5 *that intent.*

6 *4. Except as otherwise provided in subsection 3, a defendant may not*
7 *claim as a defense to any violation of this section that he was entitled*
8 *pursuant to the laws of this state or the laws of any other jurisdiction to*
9 *use the controlled substance, chemical, poison or organic solvent that*
10 *was involved in the violation.*

11 *5. As used in this section, "provider of health care" means a person*
12 *described in subsection 1 of NRS 629.031, whether or not the person is*
13 *licensed or practices in this state or any other jurisdiction.*

14 **Sec. 8.** NRS 488.420 is hereby amended to read as follows:

15 488.420 1. ~~[A]~~ *Except as otherwise provided in subsections 4 and 5,*
16 *a person who:*

17 (a) Is under the influence of intoxicating liquor;
18 (b) Has 0.10 percent or more by weight of alcohol in his blood;
19 (c) Is found by measurement within 2 hours after operating or being in
20 actual physical control of a vessel under power or sail to have 0.10 percent
21 or more by weight of alcohol in his blood;

22 (d) Is under ~~[the influence of a controlled substance, or under]~~ the
23 combined influence of intoxicating liquor and a controlled substance; ~~for~~
24 ~~—(e) Inhales, ingests, applies or otherwise uses]~~

25 *(e) Has a detectable amount of a controlled substance or its metabolite*
26 *in his blood, urine or other bodily substance; or*

27 *(f) Has inhaled, ingested, applied or otherwise used* any chemical,
28 poison or organic solvent, or any compound or combination of any of these,
29 to a degree which renders him incapable of safely operating or being in
30 actual physical control of a vessel under power or sail,
31 and does any act or neglects any duty imposed by law while operating or
32 being in actual physical control of any vessel under power or sail, if the act
33 or neglect of duty proximately causes the death of, or substantial bodily
34 harm to, a person other than himself, is guilty of a category B felony and
35 shall be punished by imprisonment in the state prison for a minimum term
36 of not less than 2 years and a maximum term of not more than 20 years and
37 shall be further punished by a fine of not less than \$2,000 nor more than
38 \$5,000.

39 *2. A person ~~[so]~~ who is imprisoned pursuant to this section must,*
40 *insofar as practicable, be segregated from offenders whose crimes were*
41 *violent and, insofar as practicable, be assigned to an institution or facility of*
42 *minimum security.*

1 ~~[2.]~~ 3. A prosecuting attorney shall not dismiss a charge of violating
2 the provisions of subsection 1 in exchange for a plea of guilty, guilty but
3 mentally ill or nolo contendere to a lesser charge or for any other reason
4 unless he knows or it is obvious that the charge is not supported by
5 probable cause or cannot be proved at the time of trial. A sentence imposed
6 pursuant to subsection 1 must not be suspended, and probation must not be
7 granted.

8 ~~[3.—If consumption is proven by a preponderance of the evidence, it]~~

9 4. It is an affirmative defense *to a violation* under paragraph (c) of
10 subsection 1 ~~[that]~~ *if the defendant proves by a preponderance of the*
11 *evidence that he* consumed a sufficient quantity of alcohol after operating
12 or being in actual physical control of the vessel under power or sail, and
13 before his blood was tested, to cause the alcohol in his blood to equal or
14 exceed 0.10 percent. A defendant who intends to offer this *affirmative*
15 defense at a trial or preliminary hearing must, not less than 14 days before
16 the trial or hearing or at such other time as the court may direct, file and
17 serve on the prosecuting attorney a written notice of that intent.

18 ~~[4.]~~ 5. *It is an affirmative defense to a violation under paragraph (e)*
19 *of subsection 1 if the defendant proves by a preponderance of the*
20 *evidence that each controlled substance or its metabolite that was*
21 *detected in his blood, urine or other bodily substance was:*

22 *(a) Being used in accordance with a prescription lawfully issued to the*
23 *defendant and that the defendant was not cautioned, warned or*
24 *instructed by a provider of health care or by any label on, information*
25 *provided with or container containing the controlled substance not to*
26 *drive a vehicle or operate a vessel while using the controlled substance;*
27 *or*

28 *(b) Opium whose detectable presence in his blood, urine or other*
29 *bodily substance was the result of the defendant legally ingesting poppy*
30 *seeds.*

31 *If a defendant intends to offer an affirmative defense described in this*
32 *subsection at a trial or preliminary hearing, the defendant must, not less*
33 *than 14 days before the trial or hearing or at such other time as the court*
34 *may direct, file and serve on the prosecuting attorney a written notice of*
35 *that intent.*

36 6. *Except as otherwise provided in subsection 5, a defendant may not*
37 *claim as a defense to any violation of this section that he was entitled*
38 *pursuant to the laws of this state or the laws of any other jurisdiction to*
39 *use the controlled substance, chemical, poison or organic solvent that*
40 *was involved in the violation.*

41 7. If a person less than 15 years of age was in the vessel at the time of
42 the defendant's violation, the court shall consider that fact as an
43 aggravating factor in determining the sentence of the defendant.

1 **8.** *As used in this section, “provider of health care” means a person*
2 *described in subsection 1 of NRS 629.031, whether or not the person is*
3 *licensed or practices in this state or any other jurisdiction.*

4 **Sec. 9.** The amendatory provisions of this act do not apply to offenses
5 committed before the effective date of this act.

6 **Sec. 10.** This act becomes effective upon passage and approval.

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