

CHAPTER.....

AN ACT relating to controlled substances; prohibiting a person from allowing a child to be present in any conveyance or upon any premises wherein certain crimes involving controlled substances other than marijuana are committed; 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. Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *A person shall not intentionally allow a child to be present in any conveyance or upon any premises wherein a controlled substance other than marijuana:*

(a) Is being used in violation of the provisions of NRS 453.011 to 453.552, inclusive, if the person in any manner knowingly engages in or conspires with, aids or abets another person to engage in such activity;

(b) Is being sold, exchanged, bartered, supplied, prescribed, dispensed, given away or administered in violation of the provisions of NRS 453.011 to 453.552, inclusive, if the person in any manner knowingly engages in or conspires with, aids or abets another person to engage in such activity; or

(c) Is being or has been manufactured or compounded in violation of the provisions of NRS 453.011 to 453.552, inclusive, if the person in any manner knowingly engages in or conspires with, aids or abets another person to engage in such activity.

2. Unless a greater penalty is provided by specific statute:

(a) A person who violates the provisions of paragraph (a) of subsection 1:

(1) If the violation does not proximately cause substantial bodily harm or death to the child, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(2) If the violation proximately causes substantial bodily harm to the child other than death, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 6 years and a maximum term of not more than 20 years, and shall be further punished by a fine of not more than \$20,000.

(3) If the violation proximately causes the death of the child, is guilty of murder, which is a category A felony, and shall be punished as provided in NRS 200.030.

(b) A person who violates the provisions of paragraph (b) of subsection 1:

(1) If the violation does not proximately cause substantial bodily harm or death to the child, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 15 years, and shall be further punished by a fine of not more than \$10,000.

(2) If the violation proximately causes substantial bodily harm to the child other than death, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 6 years and a maximum term of not more than 20 years, and shall be further punished by a fine of not more than \$20,000.

(3) If the violation proximately causes the death of the child, is guilty of murder, which is a category A felony, and shall be punished as provided in NRS 200.030.

(c) A person who violates the provisions of paragraph (c) of subsection 1:

(1) If the violation does not proximately cause substantial bodily harm or death to the child, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, and shall be further punished by a fine of not more than \$15,000.

(2) If the violation proximately causes substantial bodily harm to the child other than death, is guilty of a category A felony and shall be punished by imprisonment in the state prison:

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

(II) For a definite term of 40 years, with eligibility for parole beginning when a minimum of 10 years has been served, and shall be further punished by a fine of not more than \$50,000.

(3) If the violation proximately causes the death of the child, is guilty of murder, which is a category A felony, and shall be punished as provided in NRS 200.030.

3. Except as otherwise provided in NRS 453.3363, the court shall not grant probation to or suspend the sentence of a person convicted pursuant to this section.

4. As used in this section:

(a) "Child" means a person who is less than 18 years of age.

(b) "Conveyance" means any vessel, boat, vehicle, airplane, glider, house trailer, travel trailer, motor home or railroad car, or other means of conveyance.

(c) "Premises" means any temporary or permanent structure, including, without limitation, any building, house, room, apartment, tenement, shed, carport, garage, shop, warehouse, store, mill, barn, stable, outhouse or tent, whether located aboveground or underground and whether inhabited or not.

Sec. 2. NRS 453.3351 is hereby amended to read as follows:

453.3351 1. Unless a greater penalty is provided by law, and except as otherwise provided in NRS 193.169, any person who violates NRS 453.322, 453.3385 or 453.3395 where the violation included the manufacture of any material, compound, mixture or preparation which contains any quantity of methamphetamine:

(a) Within 500 feet of a residence, business, church, synagogue or other place of religious worship, public or private school, campus of the University and Community College System of Nevada, playground, public park, public swimming pool or recreational center for youths; **or**

(b) ~~In the presence of a person who is less than 18 years of age;~~
~~or~~

~~—(c)~~ In a manner which creates a great risk of death or substantial bodily harm to another person,

➔ shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this section runs consecutively with the sentence prescribed by statute for the crime.

2. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.

3. For the purposes of this section:

(a) "Playground" has the meaning ascribed to it in NRS 453.3345.

(b) "Recreational center for youths" has the meaning ascribed to it in NRS 453.3345.

(c) "Residence" means any house, room, apartment, tenement, manufactured home as defined in NRS 489.113, or mobile home as defined in NRS 489.120, that is designed or intended for occupancy.

Sec. 3. NRS 453.3363 is hereby amended to read as follows:

453.3363 1. If a person who has not previously been convicted of any offense pursuant to NRS 453.011 to 453.552, inclusive, or pursuant to any statute of the United States or of any state relating to narcotic drugs, marijuana, or stimulant, depressant or hallucinogenic substances tenders a plea of guilty, nolo contendere or similar plea to a charge pursuant to subsection 2 or 3 of NRS 453.336, NRS 453.411 or 454.351 ~~H~~ **or subparagraph (1) of paragraph (a) of subsection 2 of section 1 of this act**, or is found guilty of one of those charges, the court, without entering a judgment of conviction and with the consent of the accused, may

suspend further proceedings and place him on probation upon terms and conditions that must include attendance and successful completion of an educational program or, in the case of a person dependent upon drugs, of a program of treatment and rehabilitation pursuant to NRS 453.580.

2. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as provided in the section pursuant to which the accused was charged. Notwithstanding the provisions of paragraph (e) of subsection 2 of NRS 193.130, upon violation of a term or condition, the court may order the person to the custody of the Department of Corrections.

3. Upon fulfillment of the terms and conditions, the court shall discharge the accused and dismiss the proceedings against him. A nonpublic record of the dismissal must be transmitted to and retained by the Division of Parole and Probation of the Department of Public Safety solely for the use of the courts in determining whether, in later proceedings, the person qualifies under this section.

4. Except as otherwise provided in subsection 5, discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the person discharged, in the contemplation of the law, to the status occupied before the arrest, indictment or information. He may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of him for any purpose. Discharge and dismissal under this section may occur only once with respect to any person.

5. A professional licensing board may consider a proceeding under this section in determining suitability for a license or liability to discipline for misconduct. Such a board is entitled for those purposes to a truthful answer from the applicant or licensee concerning any such proceeding with respect to him.

Sec. 4. NRS 200.010 is hereby amended to read as follows:

200.010 Murder is the unlawful killing of a human being ~~with~~:

1. *With* malice aforethought, either express or implied ~~or caused~~;

2. *Caused* by a controlled substance which was sold, given, traded or otherwise made available to a person in violation of chapter 453 of NRS ~~or~~;

3. *Caused by a violation of section 1 of this act.*

➤ The unlawful killing may be effected by any of the various means by which death may be occasioned.

Sec. 5. NRS 207.012 is hereby amended to read as follows:

207.012 1. A person who:

(a) Has been convicted in this State of a felony listed in subsection 2; and

(b) Before the commission of that felony, was twice convicted of any crime which under the laws of the situs of the crime or of this State would be a felony listed in subsection 2, whether the prior convictions occurred in this State or elsewhere,

➤ is a habitual felon and shall be punished for a category A felony 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 10 years has been served; or

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

2. The district attorney shall include a count under this section in any information or shall file a notice of habitual felon if an indictment is found, if each prior conviction and the alleged offense committed by the accused constitutes a violation of subparagraph (1) of paragraph (a) of subsection 1 of NRS 193.330, NRS 199.160, 199.500, 200.030, 200.310, 200.340, 200.366, 200.380, 200.390, subsection 3 or 4 of NRS 200.400, NRS 200.410, subsection 3 of NRS 200.450, subsection 5 of NRS 200.460, NRS 200.465, subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.508, NRS 200.710, 200.720, 201.230, 201.450, 202.170, 202.270, subsection 2 of NRS 202.780, paragraph (b) of subsection 2 of NRS 202.820, subsection 2 of NRS 202.830, NRS 205.010, subsection 4 of NRS 205.060, subsection 4 of NRS 205.067, NRS 205.075, 207.400, paragraph (a) of subsection 1 of NRS 212.090, NRS 453.333, 484.219 or 484.3795 ~~H~~ **or section 1 of this act.**

3. The trial judge may not dismiss a count under this section that is included in an indictment or information.

