

ASSEMBLY BILL NO. 465—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

MARCH 28, 2005

Referred to Committee on Judiciary

SUMMARY—Prohibits person from allowing child to be present in any conveyance or upon any premises wherein certain crimes involving controlled substances other than marijuana are committed. (BDR 40-112)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: 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; 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



1 *any manner knowingly engages in or conspires with, aids or abets*
2 *another person to engage in such activity; or*

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

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

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

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

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

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

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

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

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

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

39 *(c) A person who violates the provisions of paragraph (b) of*
40 *subsection 1:*

41 *(1) If the violation does not proximately cause substantial*
42 *bodily harm or death to the child, is guilty of a category B felony*
43 *and shall be punished by imprisonment in the state prison for a*
44 *minimum term of not less than 5 years and a maximum term of*



1 *not more than 20 years, and shall be further punished by a fine of*
2 *not more than \$15,000.*

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

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

9 *(II) For a definite term of 40 years, with eligibility for*
10 *parole beginning when a minimum of 10 years has been served,*
11 *↪ and shall be further punished by a fine of not more than*
12 *\$50,000.*

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

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

19 *4. As used in this section:*

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

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

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

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

30 453.3351 1. Unless a greater penalty is provided by law, and
31 except as otherwise provided in NRS 193.169, any person who
32 violates NRS 453.322, 453.3385 or 453.3395 where the violation
33 included the manufacture of any material, compound, mixture or
34 preparation which contains any quantity of methamphetamine:

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

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

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

44 ↪ shall be punished by imprisonment in the state prison for a term
45 equal to and in addition to the term of imprisonment prescribed by



1 statute for the crime. The sentence prescribed by this section runs
2 consecutively with the sentence prescribed by statute for the crime.

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

6 3. For the purposes of this section:

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

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

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

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

15 453.3363 1. If a person who has not previously been
16 convicted of any offense pursuant to NRS 453.011 to 453.552,
17 inclusive, or pursuant to any statute of the United States or of any
18 state relating to narcotic drugs, marijuana, or stimulant, depressant
19 or hallucinogenic substances tenders a plea of guilty, nolo
20 contendere or similar plea to a charge pursuant to subsection 2 or 3
21 of NRS 453.336, NRS 453.411 or 454.351 ~~§~~ *or subparagraph (1)*
22 *of paragraph (a) of subsection 2 of section 1 of this act*, or is found
23 guilty of one of those charges, the court, without entering a
24 judgment of conviction and with the consent of the accused, may
25 suspend further proceedings and place him on probation upon terms
26 and conditions that must include attendance and successful
27 completion of an educational program or, in the case of a person
28 dependent upon drugs, of a program of treatment and rehabilitation
29 pursuant to NRS 453.580.

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

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

42 4. Except as otherwise provided in subsection 5, discharge and
43 dismissal under this section is without adjudication of guilt and is
44 not a conviction for purposes of this section or for purposes of
45 employment, civil rights or any statute or regulation or license or



1 questionnaire or for any other public or private purpose, but is a
2 conviction for the purpose of additional penalties imposed for
3 second or subsequent convictions or the setting of bail. Discharge
4 and dismissal restores the person discharged, in the contemplation
5 of the law, to the status occupied before the arrest, indictment or
6 information. He may not be held thereafter under any law to be
7 guilty of perjury or otherwise giving a false statement by reason of
8 failure to recite or acknowledge that arrest, indictment, information
9 or trial in response to an inquiry made of him for any purpose.
10 Discharge and dismissal under this section may occur only once
11 with respect to any person.

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

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

18 200.010 Murder is the unlawful killing of a human being ~~by~~
19 ~~with~~ :

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

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

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

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

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

29 207.012 1. A person who:

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

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

36 ➔ is a habitual felon and shall be punished for a category A felony
37 by imprisonment in the state prison:

38 (1) For life without the possibility of parole;

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

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

43 2. The district attorney shall include a count under this section
44 in any information or shall file a notice of habitual felon if an
45 indictment is found, if each prior conviction and the alleged offense



1 committed by the accused constitutes a violation of subparagraph
2 (1) of paragraph (a) of subsection 1 of NRS 193.330, NRS 199.160,
3 199.500, 200.030, 200.310, 200.340, 200.366, 200.380, 200.390,
4 subsection 3 or 4 of NRS 200.400, NRS 200.410, subsection 3 of
5 NRS 200.450, subsection 5 of NRS 200.460, NRS 200.465,
6 subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of
7 paragraph (b) of subsection 2 of NRS 200.508, NRS 200.710,
8 200.720, 201.230, 201.450, 202.170, 202.270, subsection 2 of NRS
9 202.780, paragraph (b) of subsection 2 of NRS 202.820, subsection
10 2 of NRS 202.830, NRS 205.010, subsection 4 of NRS 205.060,
11 subsection 4 of NRS 205.067, NRS 205.075, 207.400, paragraph (a)
12 of subsection 1 of NRS 212.090, NRS 453.333, 484.219 or
13 484.3795 **H** or section 1 of this act.
14 3. The trial judge may not dismiss a count under this section
15 that is included in an indictment or information.



