
ASSEMBLY BILL NO. 536—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE NEVADA SHERIFFS’
AND CHIEFS’ ASSOCIATION)

MARCH 29, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes regarding illegal use of controlled substance by pregnant woman. (BDR 40-599)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 the illegal use of a controlled substance by a pregnant woman who knows she is pregnant; authorizing a court to suspend proceedings for such an offense in certain circumstances and require the woman to undergo treatment and rehabilitation; providing that such an offense constitutes abuse or neglect of a child for certain purposes; 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.** Chapter 453 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 ***A woman who is pregnant, knows that she is pregnant and***
4 ***violates the provisions of NRS 453.411:***

5 1. ***If death results to the unborn child or to the child after he***
6 ***is born as a result of the use of a controlled substance, is guilty of***
7 ***a category B felony and shall be punished by imprisonment in the***



1 *state prison for a minimum term of not less than 1 year and a*
2 *maximum term of not more than 10 years.*

3 *2. If the unborn child or the child after he is born suffers*
4 *substantial bodily harm as a result of the use of a controlled*
5 *substance, is guilty of a category E felony and shall be punished*
6 *as provided in NRS 193.130.*

7 *3. If the unborn child or the child after he is born does not*
8 *suffer substantial bodily harm as a result of the use of a controlled*
9 *substance, is guilty of a gross misdemeanor.*

10 **Sec. 2.** NRS 453.3363 is hereby amended to read as follows:

11 453.3363 1. If a person who has not previously been
12 convicted of any offense pursuant to NRS 453.011 to 453.552,
13 inclusive, or pursuant to any statute of the United States or of any
14 state relating to narcotic drugs, marijuana, or stimulant, depressant
15 or hallucinogenic substances tenders a plea of guilty, nolo
16 contendere or similar plea to a charge pursuant to subsection 2 or 3
17 of NRS 453.336, NRS 453.411 or 454.351 ~~§~~ *or section 1 of this*
18 *act*, or is found guilty of one of those charges, the court, without
19 entering a judgment of conviction and with the consent of the
20 accused, may suspend further proceedings and place him on
21 probation upon terms and conditions that must include attendance
22 and successful completion of an educational program or, in the case
23 of a person dependent upon drugs, of a program of treatment and
24 rehabilitation pursuant to NRS 453.580.

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

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

37 4. Except as otherwise provided in subsection 5, discharge and
38 dismissal under this section is without adjudication of guilt and is
39 not a conviction for purposes of this section or for purposes of
40 employment, civil rights or any statute or regulation or license or
41 questionnaire or for any other public or private purpose, but is a
42 conviction for the purpose of additional penalties imposed for
43 second or subsequent convictions or the setting of bail. Discharge
44 and dismissal restores the person discharged, in the contemplation
45 of the law, to the status occupied before the arrest, indictment or



1 information. He may not be held thereafter under any law to be
2 guilty of perjury or otherwise giving a false statement by reason of
3 failure to recite or acknowledge that arrest, indictment, information
4 or trial in response to an inquiry made of him for any purpose.
5 Discharge and dismissal under this section may occur only once
6 with respect to any person.

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

12 **Sec. 3.** NRS 453.371 is hereby amended to read as follows:

13 453.371 As used in NRS 453.371 to 453.552, inclusive ~~§~~ ,
14 *and section 1 of this act:*

15 1. "Advanced practitioner of nursing" means a person who
16 holds a certificate of recognition granted pursuant to NRS 632.237
17 and is registered with the Board.

18 2. "Medical intern" means a medical graduate acting as an
19 assistant in a hospital for the purpose of clinical training.

20 3. "Pharmacist" means a person who holds a certificate of
21 registration issued pursuant to NRS 639.127 and is registered with
22 the Board.

23 4. "Physician," "dentist," "podiatric physician," "veterinarian"
24 and "euthanasia technician" mean persons authorized by a license to
25 practice their respective professions in this State who are registered
26 with the Board.

27 5. "Physician assistant" means a person who is registered with
28 the Board and:

29 (a) Holds a license issued pursuant to NRS 630.273; or

30 (b) Holds a certificate issued pursuant to NRS 633.451.

31 **Sec. 4.** NRS 453.411 is hereby amended to read as follows:

32 453.411 1. It is unlawful for a person knowingly to use or be
33 under the influence of a controlled substance except in accordance
34 with a lawfully issued prescription.

35 2. It is unlawful for a person knowingly to use or be under the
36 influence of a controlled substance except when administered to the
37 person at a rehabilitation clinic established or licensed by the Health
38 Division of the Department of Human Resources, or a hospital
39 certified by the Department.

40 3. ~~Unless a greater penalty is provided in NRS 212.160,~~
41 *Except as otherwise provided in section 1 of this act,* a person who
42 violates this section shall be punished:

43 (a) If the controlled substance is listed in schedule I, II, III or IV,
44 for a category E felony as provided in NRS 193.130.



(b) If the controlled substance is listed in schedule V, by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than \$1,000.

Sec. 5. NRS 432B.020 is hereby amended to read as follows:

432B.020 1. "Abuse or neglect of a child" means ~~the~~ *use of a controlled substance in violation of section 1 of this act and,* except as otherwise provided in subsection 2:

(a) Physical or mental injury of a nonaccidental nature;

(b) Sexual abuse or sexual exploitation; or

(c) Negligent treatment or maltreatment as set forth in NRS 432B.140,

➤ of a child caused or allowed by a person responsible for his welfare under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

2. A child is not abused or neglected, nor is his health or welfare harmed or threatened for the sole reason that his:

(a) Parent delivers the child to a provider of emergency services pursuant to NRS 432B.630, if the parent complies with the requirements of paragraph (a) of subsection 3 of that section; or

(b) Parent or guardian, in good faith, selects and depends upon nonmedical remedial treatment for such child, if such treatment is recognized and permitted under the laws of this State in lieu of medical treatment. This paragraph does not limit the court in ensuring that a child receive a medical examination and treatment pursuant to NRS 62E.280.

3. As used in this section, "allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that a child is abused or neglected.

Sec. 6. NRS 432B.410 is hereby amended to read as follows:

432B.410 1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.

2. Action taken by the court because of the abuse or neglect of a child does not preclude the prosecution and conviction of any person for violation of NRS 200.508 *or section 1 of this act* based on the same facts.

