

SENATE BILL NO. 299—SENATORS HARDY,
HECK, BEERS, LEE AND WASHINGTON

MARCH 15, 2007

JOINT SPONSOR: ASSEMBLYMAN HARDY

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to crimes against pregnant women. (BDR 15-730)

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 criminal liability; revising provisions relating to crimes against pregnant women; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides additional penalties for certain crimes committed against older persons and vulnerable persons. (NRS 193.167) **Section 1** of this bill provides an additional penalty for certain crimes committed against pregnant women.

Existing law provides that if a person drives under the influence of alcohol or a controlled substance and proximately causes the death of, or substantial bodily harm to, a person other than himself, the person is guilty of a category B felony which is punishable by imprisonment for a minimum term of not less than 2 years and a maximum term of not more than 20 years and a fine of not less than \$2,000 nor more than \$5,000. **Section 2** of this bill provides that a person is guilty of the same offense and subject to the same penalty if the person drives under the influence of alcohol or a controlled substance and proximately causes the termination of the pregnancy of a person other than himself.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 193.167 is hereby amended to read as follows:
193.167 1. Except as otherwise provided in NRS 193.169,
any person who commits the crime of:

- (a) Murder;
- (b) Attempted murder;
- (c) Assault;
- (d) Battery;
- (e) Kidnapping;
- (f) Robbery;
- (g) Sexual assault;
- (h) Embezzlement of money or property of a value of \$250 or more;
- (i) Obtaining money or property of a value of \$250 or more by false pretenses; or
- (j) Taking money or property from the person of another,
↪ against any person who is 60 years of age or older or against a vulnerable person shall be punished by imprisonment in the county jail or state prison, whichever applies, for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this subsection must run consecutively with the sentence prescribed by statute for the crime.

2. Except as otherwise provided in NRS 193.169, any person who commits a criminal violation of the provisions of chapter 90 or 91 of NRS against any person who is 60 years of age or older or against a vulnerable person shall be punished by imprisonment in the county jail or state prison, whichever applies, for a term equal to and in addition to the term of imprisonment prescribed by statute for the criminal violation. The sentence prescribed by this subsection must run consecutively with the sentence prescribed by statute for the criminal violation.

3. *Except as otherwise provided in NRS 193.169, any person who commits the crime of:*

- (a) Murder;*
- (b) Attempted murder;*
- (c) Assault;*
- (d) Battery;*
- (e) Kidnapping;*
- (f) Robbery; or*
- (g) Sexual assault,*
↪ *against a woman who is pregnant at the time the crime is committed, and who knows or reasonably should know, at the time the crime is committed, that the woman is pregnant, shall be*



1 *punished by imprisonment in the county jail or state prison,*
2 *whichever applies, for a term equal to and in addition to the term*
3 *of imprisonment prescribed by statute for the crime. The sentence*
4 *prescribed by this subsection must run consecutively with the*
5 *sentence prescribed by statute for the crime.*

6 4. This section does not create any separate offense but
7 provides an additional penalty for the primary offense, whose
8 imposition is contingent upon the finding of the prescribed fact.

9 ~~4.1~~ 5. As used in this section, "vulnerable person" has the
10 meaning ascribed to it in subsection 7 of NRS 200.5092.

11 **Sec. 2.** NRS 484.3795 is hereby amended to read as follows:

12 484.3795 1. Unless a greater penalty is provided pursuant to
13 NRS 484.37955, a person who:

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

15 (b) Has a concentration of alcohol of 0.08 or more in his blood
16 or breath;

17 (c) Is found by measurement within 2 hours after driving or
18 being in actual physical control of a vehicle to have a concentration
19 of alcohol of 0.08 or more in his blood or breath;

20 (d) Is under the influence of a controlled substance or is under
21 the combined influence of intoxicating liquor and a controlled
22 substance;

23 (e) Inhales, ingests, applies or otherwise uses any chemical,
24 poison or organic solvent, or any compound or combination of any
25 of these, to a degree which renders him incapable of safely driving
26 or exercising actual physical control of a vehicle; or

27 (f) Has a prohibited substance in his blood or urine in an amount
28 that is equal to or greater than the amount set forth in subsection 3
29 of NRS 484.379,

30 ➡ and does any act or neglects any duty imposed by law while
31 driving or in actual physical control of any vehicle on or off the
32 highways of this State, if the act or neglect of duty proximately
33 causes the death of, or substantial bodily harm to, a person other
34 than himself, *or proximately causes the termination of the*
35 *pregnancy of a person other than himself*, is guilty of a category B
36 felony and shall be punished by imprisonment in the state prison for
37 a minimum term of not less than 2 years and a maximum term of not
38 more than 20 years and must be further punished by a fine of not
39 less than \$2,000 nor more than \$5,000. A person so imprisoned
40 must, insofar as practicable, be segregated from offenders whose
41 crimes were violent and, insofar as practicable, be assigned to an
42 institution or facility of minimum security.

43 2. A prosecuting attorney shall not dismiss a charge of
44 violating the provisions of subsection 1 in exchange for a plea of
45 guilty or nolo contendere to a lesser charge or for any other reason



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1 unless he knows or it is obvious that the charge is not supported by
2 probable cause or cannot be proved at the time of trial. A sentence
3 imposed pursuant to subsection 1 may not be suspended nor may
4 probation be granted.

5 3. If consumption is proven by a preponderance of the
6 evidence, it is an affirmative defense under paragraph (c) of
7 subsection 1 that the defendant consumed a sufficient quantity of
8 alcohol after driving or being in actual physical control of the
9 vehicle, and before his blood or breath was tested, to cause him to
10 have a concentration of alcohol of 0.08 or more in his blood or
11 breath. A defendant who intends to offer this defense at a trial
12 or preliminary hearing must, not less than 14 days before the trial or
13 hearing or at such other time as the court may direct, file and serve
14 on the prosecuting attorney a written notice of that intent.

15 4. If the defendant was transporting a person who is less than
16 15 years of age in the motor vehicle at the time of the violation, the
17 court shall consider that fact as an aggravating factor in determining
18 the sentence of the defendant.

19 **Sec. 3.** NRS 484.3795 is hereby amended to read as follows:

20 484.3795 1. Unless a greater penalty is provided pursuant to
21 NRS 484.37955, a person who:

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

23 (b) Has a concentration of alcohol of 0.10 or more in his blood
24 or breath;

25 (c) Is found by measurement within 2 hours after driving or
26 being in actual physical control of a vehicle to have a concentration
27 of alcohol of 0.10 or more in his blood or breath;

28 (d) Is under the influence of a controlled substance or is under
29 the combined influence of intoxicating liquor and a controlled
30 substance;

31 (e) Inhales, ingests, applies or otherwise uses any chemical,
32 poison or organic solvent, or any compound or combination of any
33 of these, to a degree which renders him incapable of safely driving
34 or exercising actual physical control of a vehicle; or

35 (f) Has a prohibited substance in his blood or urine in an amount
36 that is equal to or greater than the amount set forth in subsection 3
37 of NRS 484.379,

38 ➤ and does any act or neglects any duty imposed by law while
39 driving or in actual physical control of any vehicle on or off the
40 highways of this State, if the act or neglect of duty proximately
41 causes the death of, or substantial bodily harm to, a person other
42 than himself, *or proximately causes the termination of the*
43 *pregnancy of a person other than himself*, is guilty of a category B
44 felony and shall be punished by imprisonment in the state prison for
45 a minimum term of not less than 2 years and a maximum term of not



1 more than 20 years and must be further punished by a fine of not
2 less than \$2,000 nor more than \$5,000. A person so imprisoned
3 must, insofar as practicable, be segregated from offenders whose
4 crimes were violent and, insofar as practicable, be assigned to an
5 institution or facility of minimum security.

6 2. A prosecuting attorney shall not dismiss a charge of
7 violating the provisions of subsection 1 in exchange for a plea of
8 guilty or nolo contendere to a lesser charge or for any other reason
9 unless he knows or it is obvious that the charge is not supported by
10 probable cause or cannot be proved at the time of trial. A sentence
11 imposed pursuant to subsection 1 may not be suspended nor may
12 probation be granted.

13 3. If consumption is proven by a preponderance of the
14 evidence, it is an affirmative defense under paragraph (c) of
15 subsection 1 that the defendant consumed a sufficient quantity of
16 alcohol after driving or being in actual physical control of the
17 vehicle, and before his blood or breath was tested, to cause him to
18 have a concentration of alcohol of 0.10 or more in his blood
19 or breath. A defendant who intends to offer this defense at a trial or
20 preliminary hearing must, not less than 14 days before the trial or
21 hearing or at such other time as the court may direct, file and serve
22 on the prosecuting attorney a written notice of that intent.

23 4. If the defendant was transporting a person who is less than
24 15 years of age in the motor vehicle at the time of the violation, the
25 court shall consider that fact as an aggravating factor in determining
26 the sentence of the defendant.

27 **Sec. 4.** 1. This section and sections 1 and 2 of this act
28 become effective on October 1, 2007.

29 2. Section 2 of this act expires by limitation on the date of the
30 repeal of the federal law requiring each state to make it unlawful for
31 a person to operate a motor vehicle with a blood alcohol
32 concentration of 0.08 percent or greater as a condition to receiving
33 federal funding for the construction of highways in this State.

34 3. Section 3 of this act becomes effective on the date of the
35 repeal of the federal law requiring each state to make it unlawful for
36 a person to operate a motor vehicle with a blood alcohol
37 concentration of 0.08 percent or greater as a condition to receiving
38 federal funding for the construction of highways in this State.

