

Amendment No. 628

Senate Amendment to Senate Bill No. 299 (BDR 15-730)

Proposed by: Senators Amodei, Care, Hardy, Horsford, McGinness, Nolan, Titus, Washington and Wiener**Amendment Box:** Conflicts with Amendment No. 355.**Amends:** Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold*** is newly added transitory language.

BAW



Date: 4/24/2007

S.B. No. 299—Establishes provisions relating to crimes against unborn children.
(BDR 15-730)



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

MARCH 15, 2007

JOINT SPONSOR: ASSEMBLYMAN HARDY

Referred to Committee on Judiciary

SUMMARY—~~{Establishes}~~ **Revises** provisions relating to crimes against ~~{unborn children}~~ **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.

~

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~{omitted material}~~ is material to be omitted.

AN ACT relating to criminal liability; ~~{establishing}~~ **revising** provisions relating to crimes against ~~{unborn children; repealing the provisions relating to the willful killing of an unborn quick child}~~ **pregnant women; providing penalties;** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~{ This bill provides that the mother of an unborn child and the unborn child constitute separate and distinct victims for purposes of prosecuting any criminal offense involving violence, except in certain circumstances. This bill also eliminates the crime of killing an "unborn quick child," as the provisions of this bill make it unnecessary for the Nevada Revised Statutes to include a specific crime for the killing of an unborn child. }~~

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:

Delete existing sections 1 and 2 of this bill and replace with the following new sections 1 through 4:

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 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.

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

1 ~~44.5.~~ As used in this section, "vulnerable person" has the meaning ascribed
2 to it in subsection 7 of NRS 200.5092.

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

4 484.3795 1. Unless a greater penalty is provided pursuant to NRS
5 484.37955, a person who:

6 (a) Is under the influence of intoxicating liquor;
7 (b) Has a concentration of alcohol of 0.08 or more in his blood or breath;
8 (c) Is found by measurement within 2 hours after driving or being in actual
9 physical control of a vehicle to have a concentration of alcohol of 0.08 or more in
10 his blood or breath;

11 (d) Is under the influence of a controlled substance or is under the combined
12 influence of intoxicating liquor and a controlled substance;

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

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

18 and does any act or neglects any duty imposed by law while driving or in actual
19 physical control of any vehicle on or off the highways of this State, if the act or
20 neglect of duty proximately causes the death of, or substantial bodily harm to, a
21 person other than himself, or proximately causes the termination of the pregnancy

22 of a person other than himself, is guilty of a category B felony and shall be
23 punished by imprisonment in the state prison for a minimum term of not less than 2
24 years and a maximum term of not more than 20 years and must be further punished
25 by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned
26 must, insofar as practicable, be segregated from offenders whose crimes were
27 violent and, insofar as practicable, be assigned to an institution or facility of
28 minimum security.

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

35 3. If consumption is proven by a preponderance of the evidence, it is an
36 affirmative defense under paragraph (c) of subsection 1 that the defendant
37 consumed a sufficient quantity of alcohol after driving or being in actual physical
38 control of the vehicle, and before his blood or breath was tested, to cause him to
39 have a concentration of alcohol of 0.08 or more in his blood or breath. A defendant
40 who intends to offer this defense at a trial or preliminary hearing must, not less than
41 14 days before the trial or hearing or at such other time as the court may direct, file
42 and serve on the prosecuting attorney a written notice of that intent.

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

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

47 484.3795 1. Unless a greater penalty is provided pursuant to NRS
48 484.37955, a person who:

49 (a) Is under the influence of intoxicating liquor;
50 (b) Has a concentration of alcohol of 0.10 or more in his blood or breath;
51 (c) Is found by measurement within 2 hours after driving or being in actual
52 physical control of a vehicle to have a concentration of alcohol of 0.10 or more in
53 his blood or breath;

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

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

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

➤ and does any act or neglects any duty imposed by law while driving or in actual physical control of any vehicle on or off the highways of this State, if the act or neglect of duty proximately causes the death of, or substantial bodily harm to, a person other than himself, or proximately causes the termination of the pregnancy of a person other than himself, 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 2 years and a maximum term of not more than 20 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000. A person so imprisoned must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

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

3. If consumption is proven by a preponderance of the evidence, it is an affirmative defense under paragraph (c) of subsection 1 that the defendant consumed a sufficient quantity of alcohol after driving or being in actual physical control of the vehicle, and before his blood or breath was tested, to cause him to have a concentration of alcohol of 0.10 or more in his blood or breath. A defendant who intends to offer this 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.

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

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

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

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