AB453 - 2001

Introduced on Mar 19, 2001
By Giunchigliani,

Exempts medical use of marijuana from state prosecution in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

Fiscal Note
Effect On Local Government: *Yes.*
Effect on the State: *Contains Appropriation not included in Executive Budget.*

Hearings

Assembly Judiciary	Apr-10-2001	No Action
Assembly Judiciary	Apr-12-2001	Amend, and re-refer
Assembly Ways and Means	May-07-2001	No Action
Assembly Judiciary	May-09-2001	After Passage Discussion
Assembly Ways and Means	May-17-2001	Amend, and do pass as amended
Senate Human Resources and Facilities	May-30-2001	Subcommittee
Senate Human Resources and Facilities	Jun-03-2001	Amend, and do pass as amended

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Bill History

Mar-19-01 Read first time. Referred to Concurrent Committees on Judiciary and Ways and Means. To printer.

Mar-20-01 From printer. To committees.

Mar-24-01 Notice of exemption.

✓Apr-25-01 From Concurrent Committee on Judiciary: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 351). To printer.

Apr-26-01 From printer. To engrossment. Engrossed. First reprint. To Concurrent Committee on Ways and Means.

May-18-01 From Concurrent Committee on Ways and Means: Amend, and do pass as amended.

✓May-22-01 Read third time. Amended. (Amend. No. 887). To printer.

✓May-23-01 From printer. To re-engrossment. Re-engrossed. Second reprint. Read third time. Passed, as amended. Title approved, as amended. (Yeas: 30, Nays: 12). To Senate.

May-24-01 In Senate. Read first time. Referred to Committee on Human Resources and Facilities. To committee.

✓✓ Jun-03-01 From committee: Amend, and do pass as amended. Placed on Second Reading File. Read second time. Amended. (Amend. No. 1197). To printer. From printer. To re-engrossment. Re-engrossed. Third reprint. Declared an emergency measure under the Constitution. Read third time. Passed, as amended. Title approved. (Yeas: 15, Nays: 6). To Assembly. In Assembly.

Jun-04-01 Senate Amendment No. 1197 concurred in. To enrollment.

Jun-08-01 Enrolled and delivered to Governor.

Jun-14-01 Approved by the Governor.

Jun-15-01 Chapter 592.

Section 50 effective June 14, 2001. Sections 6, 20, 21, 30 and 32 effective June 14, 2001 for purpose of adopting regulations and on October 1, 2001, for all other purposes. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 30.1 to 30.5, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, 48.5 and 49 effective on October 1, 2001. Section 37 effective at 12:01 a.m. on October 1, 2001.

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

BILL SUMMARY

71st REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

ASSEMBLY BILL 453
(Enrolled)

Topic

Assembly Bill 453 relates to medical marijuana and the penalties for possession of marijuana.

Summary

The preamble of the bill states the potential therapeutic value of medical marijuana, recognizes the importance of research concerning the medical use of this substance, and sets forth the Legislature's intent to exercise its sovereign duties while addressing the health and well-being of its citizens. The value of rehabilitation for habitual users also is noted. The measure itself authorizes the use of marijuana for treatment of certain medical conditions, including AIDS, cancer, glaucoma, cachexia, persistent muscle spasm, seizures, severe nausea, severe pain, and any other medical condition that is classified as chronic or debilitating.

This bill further establishes a procedure for distribution of medical marijuana through a registry identification card system. The bill directs the Department of Agriculture to establish and maintain a registry identification card system, whereby cards are issued to persons who meet the requirements of having such medical conditions and submit an application to the Department. Registry identification cards may also be issued to a person listed as a "designated primary caregiver" who is responsible for managing the well-being of a person diagnosed with a chronic or debilitating medical condition. The registry and application information is confidential and is not subject to discovery. The department also is required to aggressively pursue Federal Government approval of a seed bank and a program to produce and deliver marijuana to eligible individuals.

A person who holds a valid registry identification card is exempt from state prosecution for constructive possession, conspiracy, or any other criminal offense solely for being in the presence of the medical use of marijuana. This exemption only allows a person who holds such card, to possess, deliver, or produce not more than: (1) one ounce of usable marijuana; (2) three mature marijuana plants; and (3) four immature marijuana plants.

The act also requires the University of Nevada School of Medicine to apply to the Federal Government to establish a research program concerning the medical use of marijuana in the care and treatment of persons with chronic or debilitating medical conditions. The measure specifies conditions of participation, confidentiality requirements for participants, and reporting mechanisms for such a study. Further, the School of Medicine may accept gifts, grants, and donations to operate the program.

This bill also reduces the penalties for possession of one ounce or less of marijuana: for a first offense, the penalty is a misdemeanor with a fine of not more than $600 or a mandatory examination for drug treatment. If the examination reveals an addiction, the person shall be assigned to a treatment and rehabilitation program, if such a program might help the individual. For a second offense, the penalty is a misdemeanor with a fine of not more than $1,000 or assignment to a program of treatment and rehabilitation; for a third offense, the penalty is a gross misdemeanor; and for a fourth or subsequent offense, the penalty is that for a category E felony.

The 2003 Legislature is directed to review a report with regard to the number of persons participating in the medical use of marijuana and whether any federal prosecution has taken place involving these individuals. That Legislature also must review the number of those arrested and convicted for drug-related offenses to evaluate budgetary considerations for treatment programs.

Effective Date

For purposes of adopting regulations, this bill is effective on June 14, 2001. For all other purposes, this act is effective on October 1, 2001.

Background Information

Assembly Bill 453 is the result of a voter initiative (Ballot Question No. 9), to allow for the medical use of marijuana, which was overwhelmingly approved by the voters in November 2000. The initiative called for the Legislature to establish a method of distribution for medical marijuana.

ASSEMBLY BILL NO. 453–ASSEMBLYWOMAN GIUNCHIGLIANI

MARCH 19, 2001

Referred to Concurrent Committees on Judiciary and Ways and Means

SUMMARY—Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Contains Appropriation not included in Executive Budget.

EXPLANATION Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to controlled substances; authorizing the medical use of marijuana in certain circumstances; revising the penalties for possessing marijuana; making appropriations for the continuation of certain court programs of treatment for the abuse of alcohol or drugs; 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. Title 40 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Administer" has the meaning ascribed to it in NRS 453.021.***

Sec. 4. ***"Attending physician" means a physician who:***

1. Is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS; and

2. Has primary responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Sec. 5. ***"Cachexia" means general physical wasting and malnutrition associated with chronic disease.***

Sec. 6. ***"Chronic or debilitating medical condition" means:***

1. Acquired immune deficiency syndrome;

2. Cancer;

3. Glaucoma;

4. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;
(b) Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;
(c) Seizures, including, without limitation, seizures caused by epilepsy;
(d) Severe nausea; or
(e) Severe pain; or
5. Any other medical condition or treatment for a medical condition that is:
(a) Classified as a chronic or debilitating medical condition by regulation of the division; or
(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with section 30 of this act.

Sec. 7. *"Deliver" or "delivery" has the meaning ascribed to it in NRS 453.051.*

Sec. 8. *"Department" means the state department of agriculture.*

Sec. 9. *1. "Designated primary caregiver" means a person who:*
(a) Is 18 years of age or older;
(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and
(c) Is designated as such in the manner required pursuant to section 23 of this act.
2. The term does not include the attending physician of a person diagnosed with a chronic or debilitating medical condition.

Sec. 10. *"Division" means the health division of the department of human resources.*

Sec. 11. *"Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.*

Sec. 12. *"Marijuana" has the meaning ascribed to it in NRS 453.096.*

Sec. 13. *"Medical use of marijuana" means the possession or delivery of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.*

Sec. 14. *"Registry identification card" means a document issued by the department that identifies:*
1. A person who is authorized to engage in the medical use of marijuana; or
2. The designated primary caregiver, if any, of a person described in subsection 1.

Sec. 15. *1. "Usable marijuana" means the dried leaves and flowers of a plant of the genus Cannabis, and any mixture or preparation thereof, that are appropriate for medical use as allowed pursuant to the provisions of this chapter.*
2. The term does not include the seeds, stalks and roots of the plant.

Sec. 16. *"Written documentation" means:*
1. A statement signed by the attending physician of a person diagnosed with a chronic or debilitating medical condition; or

2. Copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition.

Sec. 17. *1. Except as otherwise provided in sections 18, 24 and 31 of this act, a person engaged in or assisting in the medical use of marijuana is exempt from state prosecution for:*
(a) Possession or delivery of marijuana or drug paraphernalia;
(b) Aiding and abetting another in the possession or delivery of marijuana or drug paraphernalia; or
(c) Any other criminal offense in which possession or delivery of marijuana or drug paraphernalia is an element,
if the person holds a registry identification card issued to him pursuant to section 20 or 23 of this act.
2. In addition to the provisions of subsection 1, no person may be prosecuted for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana as authorized pursuant to the provisions of this chapter.

Sec. 18. *1. A person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act may engage in, and the designated primary caregiver of such a person, if any, may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition. Except as otherwise provided in subsection 2, a person who possesses a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act and the designated primary caregiver of such a person, if any, may not collectively possess or deliver more than 2 ounces of usable marijuana.*
2. If the persons described in subsection 1 possess or deliver marijuana in an amount which exceeds the amount allowed pursuant to that subsection, those persons:
(a) Are not exempt from state prosecution for possession or delivery of marijuana.
(b) May establish an affirmative defense to charges of possession or delivery of marijuana in the manner set forth in section 25 of this act.

Sec. 19. *1. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.*
2. Except as otherwise provided in subsections 3 and 5, the department shall issue a registry identification card to a person who pays a fee in an amount established by the department, but not to exceed $150, and submits an application on a form prescribed by the department accompanied by the following:
(a) Valid, written documentation from the person's attending physician stating that:
(1) The person has been diagnosed with a chronic or debilitating medical condition;
(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and
(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, photograph, social security number and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number, photograph and social security number of the designated primary caregiver; and

(2) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

The department is not prohibited from imposing an additional fee for the issuance of a registry identification card to a designated primary caregiver.

3. The department shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person pays the fee and submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the department to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the department shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the department; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the central repository for Nevada records of criminal history; and

(4) One copy to the board of medical examiners.

5. The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The department may contact an applicant, his attending physician and designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The department may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish his chronic or debilitating medical condition; or

(2) Document his consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the department, including, without limitation, the regulations adopted by the director pursuant to section 32 of this act;

(c) The department determines that the information provided by the applicant was falsified;

(d) The department determines that the attending physician of the applicant is not licensed to practice medicine in this state or is not in good standing, as reported by the board of medical examiners;

(e) The department determines that the applicant, or his designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

(f) The department has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of section 24 of this act; or

(g) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the department to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the department. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the department or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the department has not yet approved or denied the application, the person, and his designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the department received the application.

Sec. 20. *1. If the department approves an application pursuant to subsection 5 of section 19 of this act, the department shall, as soon as practicable after approving the application:*

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the department.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the department.

4. A registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the department.

Sec. 21. *1. A person to whom the department has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act shall, in accordance with regulations adopted by the department:*

(a) Notify the department of any change in his name, address, telephone number, attending physician or designated primary caregiver, if any; and

(b) Submit annually to the department:

(1) Updated written documentation from his attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) He has explained to the person the possible risks and benefits of the medical use of marijuana;

(2) If he elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number, photograph and social security number of the designated primary caregiver; and

(II) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver; and

(3) The fee, not to exceed $100, for renewing his registry identification card, as established pursuant to the regulations of the department.

2. A person to whom the department has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department:

(a) Notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver; and

(b) Submit annually to the department the fee, not to exceed $100, for renewing his registry identification card, as established pursuant to the regulations of the department.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to him shall be deemed expired. If the registry identification card of a person to whom the department issued the card pursuant to paragraph (a) of subsection 1 of section 20 of this act is deemed expired pursuant to this subsection, a registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired.

Sec. 22. *If a person to whom the department has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act is diagnosed by his attending physician as no longer having a chronic or debilitating medical condition, the person and his designated primary caregiver, if any, shall return their registry identification cards to the department within 7 days after notification of the diagnosis.*

Sec. 23. *1. If a person who applies to the department for a registry identification card or to whom the department has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act desires to designate a primary caregiver, the person must:*

(a) To designate a primary caregiver at the time of application, submit to the department the fee required pursuant to subsection 2 of section 19

of this act and the information required pursuant to paragraph (d) of that subsection; or

(b) To designate a primary caregiver after the department has issued a registry identification card to him, submit to the department the fee required pursuant to subsection 2 of section 19 of this act and the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.

2. A person may have only one designated primary caregiver at any one time.

3. If a person designates a primary caregiver after the time that he initially applies for a registry identification card, the department shall, except as otherwise provided in subsection 5 of section 19 of this act, issue a registry identification card to the designated primary caregiver within 5 days after receiving the information submitted pursuant to paragraph (b) of subsection 1.

Sec. 24. *1. A person who is authorized to possess or deliver marijuana or drug paraphernalia to engage or assist in the medical use of marijuana pursuant to the provisions of this chapter is not exempt from state prosecution for, nor may he use his authorization to possess or deliver marijuana or drug paraphernalia for medical use to establish an affirmative defense to charges arising from, any of the following acts:*

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he knows does not lawfully hold a registry identification card issued by the department pursuant to section 20 or 23 of this act.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the department pursuant to section 20 or 23 of this act.

2. In addition to any other penalty provided by law, if the department determines that a person has willfully violated a provision of this chapter or any regulation adopted by the department or division to carry out the provisions of this chapter, the department may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 25. *1. Except as otherwise provided in this section and sections 24 and 31 of this act, it is an affirmative defense to a criminal charge of possession or delivery of marijuana, or any other criminal offense in which possession or delivery of marijuana is an element, that the person charged with the offense:*

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his arrest and has been advised by his attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses or delivers marijuana only in the amount allowed pursuant to subsection 1 of section 18 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses or delivers marijuana only in the amount allowed pursuant to subsection 1 of section 18 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.

2. A person need not hold a registry identification card issued to him by the department pursuant to section 20 or 23 of this act to assert the affirmative defense described in this section.

3. Except as otherwise provided in subsection 4, a person described in subsection 1 who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,

if the amount of marijuana at issue is not greater than the amount allowed pursuant to subsection 1 of section 18 of this act and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

A defendant who fails to provide notice of his intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.

Sec. 26. *1. The fact that a person possesses a registry identification card issued to him by the department pursuant to section 20 or 23 of this act does not, alone:*

(a) Constitute probable cause to search the person or his property; or

(b) Subject the person or his property to inspection by any governmental agency.

2. If officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other property from a person engaged or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, drug paraphernalia or other property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, drug paraphernalia or other property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, drug paraphernalia or other property was seized, or his designee, that the person from whom the marijuana, drug paraphernalia or other property was seized is entitled to engage or assist in the medical use of marijuana pursuant to the provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, drug paraphernalia or other property that was seized.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or his designee that a person is entitled to engage in the medical use of marijuana shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 27. *The board of medical examiners shall not take any disciplinary action against an attending physician on the basis that the attending physician:*

1. Advised a person whom the attending physician has diagnosed as having a chronic or debilitating medical condition, or a person whom the attending physician knows has been so diagnosed by another physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS:

(a) About the possible risks and benefits of the medical use of marijuana; or

(b) That the medical use of marijuana may mitigate the symptoms or effects of the person's chronic or debilitating medical condition,

if the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition.

2. Provided the written documentation required pursuant to paragraph (a) of subsection 2 of section 19 of this act for the issuance of a registry identification card or pursuant to subparagraph (1) of paragraph (b) of subsection 1 of section 21 of this act for the renewal of a registry identification card, if:

(a) Such documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition; and

(b) The physician has advised the person about the possible risks and benefits of the medical use of marijuana.

Sec. 28. *A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that:*

1. The person engages in or has engaged in the medical use of marijuana as authorized pursuant to the provisions of this chapter; or

2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act.

Sec. 29. *1. Except as otherwise provided in this section and subsection 4 of section 19 of this act, the department shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written documentation that the department creates or receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the department has issued a registry identification card.

2. The department may release the name and other identifying information of a person to whom the department has issued a registry identification card to:

(a) Authorized employees of the department as necessary to perform official duties of the department; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him pursuant to section 20 or 23 of this act.

Sec. 30. *1. A person may submit to the division a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions pursuant to section 6 of this act.*

2. The division shall adopt regulations setting forth the manner in which the division will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:

(a) The division will approve or deny a petition within 180 days after the division receives the petition;

(b) If the division approves a petition, the division will, as soon as practicable thereafter, transmit to the department information concerning the disease or condition that the division has approved; and

(c) The decision of the division to deny a petition is a final decision for the purposes of judicial review.

Sec. 31. ***The provisions of this chapter do not:***

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to accommodate the medical use of marijuana in the workplace.

3. Protect a person against state prosecution for any act involving the possession or delivery of marijuana or drug paraphernalia in a manner not authorized pursuant to the provisions of this chapter.

Sec. 32. ***The director of the department shall adopt such regulations as the director determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:***

1. The method pursuant to which a person who holds a registry identification card issued to him by the department pursuant to section 20 or 23 of this act may obtain marijuana; and

2. The amount of each fee required pursuant to the provisions of this chapter.

Sec. 33. ***The state must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person.***

Sec. 34. Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 35 and 36 of this act.

Sec. 35. ***The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of sections 2 to 33, inclusive, of this act.***

Sec. 36. ***1. A local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed in accordance with subsection 2.***

2. Money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to subsection 1 must be evenly allocated among:

(a) Nonprofit programs for the treatment of abuse of alcohol or drugs that are certified by the bureau of alcohol and drug abuse in the department of human resources;

(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and

(c) Local law enforcement agencies,

in a manner determined by the court.

3. As used in this section, "local authority" means the governing board of a county, city or other political subdivision having authority to enact laws or ordinances.

Sec. 37. NRS 453.336 is hereby amended to read as follows:

453.336 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, physician's assistant, dentist, podiatric physician, optometrist or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive ~~,~~ , ***and sections 35 and 36 of this act.***

2. Except as otherwise provided in subsections 3, 4 and 5 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, 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 1 year and a maximum term of not more than 6 years.

4. ~~[Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marijuana:~~

~~(a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~(b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.~~

~~5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:~~

~~(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and~~

~~(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.]~~ ***Unless a***

greater penalty is provided pursuant to NRS 212.160, a person 18 years of age or older who is convicted of the possession of 1 ounce or less of marijuana:

(a) For the first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than $600.

(b) For the second offense, is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000 and assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For a third or subsequent offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than $1,000 nor more than $2,000.

5. Unless a greater penalty is provided pursuant to NRS 212.160, a child under 18 years of age who possesses 1 ounce or less of marijuana in violation of the provisions of subsection 1 commits a delinquent act and the court shall order the child:

(a) For the first offense, to pay a fine of not more than $300, and require the child to undergo an evaluation pursuant to NRS 62.2275.

(b) For the second or subsequent offense, to pay a fine of not more than $500, or to be detained in a facility for the detention of children for not more than 10 days, or both to pay a fine and be detained, and assign the child to an appropriate program for the treatment of abuse of alcohol or drugs.

If a child is unable to pay a fine imposed pursuant to this subsection because of financial hardship, the court shall order the child to perform community service.

6. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

Sec. 38. 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, guilty but mentally ill, nolo contendere or similar plea to a charge pursuant to ***subsection 2 or 3 of*** NRS 453.336, ***NRS*** 453.411 or 454.351, 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 prisons.

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 motor vehicles and 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. 39. NRS 453.401 is hereby amended to read as follows:

453.401 1. Except as otherwise provided in subsections 3 and 4, if two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act or conspire to defraud the State of Nevada or an agency of the state in connection with its enforcement of the Uniform Controlled Substances Act, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator:

(a) For a first offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(b) For a second offense, or if, in the case of a first conviction of violating this subsection, the conspirator has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or of any state, territory or district which if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 10 years, and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, or if the conspirator has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 may be further punished by a fine of not more than $20,000 for each offense.

2. Except as otherwise provided in subsection 3, if two or more persons conspire to commit an offense in violation of the Uniform Controlled Substances Act and the offense does not constitute a felony, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator shall be punished by imprisonment, or by imprisonment and fine, for not more than the maximum punishment provided for the offense which they conspired to commit.

3. If two or more persons conspire to possess ***more than 1 ounce of*** marijuana unlawfully, except for the purpose of sale, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator is guilty of a gross misdemeanor.

4. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, the persons so conspiring shall be punished in the manner provided in NRS 207.400.

5. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 1.

Sec. 40. NRS 453.580 is hereby amended to read as follows:

453.580 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to ***subsection 4 of NRS 453.336,*** NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the bureau of alcohol and drug abuse in the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.

2. A program to which a court assigns a person pursuant to subsection 1 must include:

(a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;

(b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is assigned and the cost of any additional supervision required pursuant to

subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 41. NRS 455B.080 is hereby amended to read as follows:

455B.080 1. A passenger shall not embark on an amusement ride while intoxicated or under the influence of a controlled substance, unless in accordance with ~~[a]~~ *:*

(a) A prescription lawfully issued to the person ~~[.]~~ *; or*

(b) The provisions of sections 2 to 33, inclusive, of this act.

2. An authorized agent or employee of an operator may prohibit a passenger from boarding an amusement ride if he reasonably believes that the passenger is under the influence of alcohol, prescription drugs or a controlled substance. An agent or employee of an operator is not civilly or criminally liable for prohibiting a passenger from boarding an amusement ride pursuant to this subsection.

Sec. 42. NRS 52.395 is hereby amended to read as follows:

52.395 ***Except as otherwise provided in section 26 of this act:***

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 43. NRS 62.211 is hereby amended to read as follows:

62.211 1. Except as otherwise provided in this chapter ~~,~~ ***and NRS 453.336,*** if the court finds that a child is within the purview of this chapter, it shall so decree and may:

(a) Place the child under supervision in his own home or in the custody of a suitable person elsewhere, upon such conditions as the court may determine. A program of supervision in the home may include electronic surveillance of the child. The legislature declares that a program of supervision that includes electronic surveillance is intended as an alternative to commitment and not as an alternative to probation, informal supervision or a supervision and consent decree.

(b) Commit the child to the custody of a public or private institution or agency authorized to care for children, or place him in a home with a family. In committing a child to a private institution or agency the court shall select one that is required to be licensed by the department of human resources to care for such children, or, if the institution or agency is in another state, by the analogous department of that state. The court shall not commit a female child to a private institution without prior approval of the superintendent of the Caliente youth center, and shall not commit a male child to a private institution without prior approval of the superintendent of the Nevada youth training center.

(c) Order such medical, psychiatric, psychological or other care and treatment as the court deems to be for the best interests of the child, except as otherwise provided in this section.

(d) Order the parent, guardian, custodian or any other person to refrain from continuing the conduct which, in the opinion of the court, has caused or tended to cause the child to come within or remain under the provisions of this chapter.

(e) If the child is less than 18 years of age, order:

(1) The parent, guardian or custodian of the child; and

(2) Any brother, sister or other person who is living in the same household as the child over whom the court has jurisdiction,

to attend or participate in counseling, with or without the child, including, but not limited to, counseling regarding parenting skills, alcohol or substance abuse, or techniques of dispute resolution.

(f) Order the parent or guardian of the child to participate in a program designed to provide restitution to the victim of an act committed by the child or to perform public service.

(g) Order the parent or guardian of the child to pay all or part of the cost of the proceedings, including, but not limited to, reasonable attorney's fees, any costs incurred by the court and any costs incurred in the investigation of an act committed by the child and the taking into custody of the child.

(h) Order the suspension of the child's driver's license for at least 90 days but not more than 2 years. If the child does not possess a driver's license, the court may prohibit the child from receiving a driver's license for at least 90 days but not more than 2 years:

(1) Immediately following the date of the order, if the child is eligible to receive a driver's license.

(2) After the date he becomes eligible to apply for a driver's license, if the child is not eligible to receive a license on the date of the order.

If the court issues an order suspending the driver's license of a child pursuant to this paragraph, the judge shall require the child to surrender to the court all driver's licenses then held by the child. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses, together with a copy of the order. If, pursuant to this paragraph, the court issues an order delaying the ability of a child to receive a driver's license, the court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety a copy of the order. The department of motor vehicles and public safety shall report a suspension pursuant to this paragraph to an insurance company or its agent inquiring about the child's driving record, but such a suspension must not be considered for the purpose of rating or underwriting. The department of motor vehicles and public safety shall not require the child to submit to the tests and other requirements which are adopted by regulation pursuant to subsection 1 of NRS 483.495 as a condition of reinstatement or reissuance after a suspension of his license pursuant to this paragraph, unless the suspension resulted from his poor performance as a driver.

(i) Place the child, when he is not in school, under the supervision of:

(1) A public organization to work on public projects;

(2) A public agency to work on projects to eradicate graffiti; or

(3) A private nonprofit organization to perform other public service.

The person under whose supervision the child is placed shall keep the child busy and well supervised and shall make such reports to the court as it may require. As a condition of such a placement, the court may require the child or his parent or guardian to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which he performs the work, unless, in the case of industrial insurance, it is provided by the organization or agency for which he performs the work.

(j) Permit the child to reside in a residence without the immediate supervision of an adult, or exempt the child from mandatory attendance at school so that the child may be employed full time, or both, if the child is at least 16 years of age, has demonstrated the capacity to benefit from this

placement or exemption and is under the strict supervision of the juvenile division.

(k) Require the child to provide restitution to the victim of the crime which the child has committed.

(l) Impose a fine on the child. If a fine is imposed, the court shall impose an administrative assessment pursuant to NRS 62.2175.

(m) If the child has not previously been found to be within the purview of this chapter and if the act for which the child is found to be within the purview of this chapter did not involve the use or threatened use of force or violence, order the child to participate in a publicly or privately operated program of sports or physical fitness that is adequately supervised or a publicly or privately operated program for the arts that is adequately supervised. A program for the arts may include, but is not limited to, drawing, painting, photography or other visual arts, musical, dance or theatrical performance, writing or any other structured activity that involves creative or artistic expression. If the court orders the child to participate in a program of sports or physical fitness or a program for the arts, the court may order any or all of the following, in the following order of priority if practicable:

(1) The parent or guardian of the child, to the extent of his financial ability, to pay the costs associated with the participation of the child in the program, including, but not limited to, a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property during those periods in which the child participates in the program;

(2) The child to work on projects or perform public service pursuant to paragraph (i) for a period that reflects the costs associated with the participation of the child in the program; or

(3) The county in which the petition alleging the child to be delinquent or in need of supervision is filed to pay the costs associated with the participation of the child in the program.

2. If the court finds that a child who is less than 17 years of age has committed a delinquent act, the court may order the parent or guardian of the child to pay any fines and penalties imposed for the delinquent act. If the parent or guardian is unable to pay the fines and penalties imposed because of financial hardship, the court may require the parent or guardian to perform community service.

3. In determining the appropriate disposition of a case concerning a child found to be within the purview of this chapter, the court shall consider whether the act committed by the child involved the use of a firearm or the use or threatened use of force or violence against the victim of the act and whether the child is a serious or chronic offender. If the court finds that the act committed by the child involved the use of a firearm or the use or threatened use of force or violence against the victim or that the child is a serious or chronic offender, the court shall include the finding in its order and may, in addition to the options set forth in subsections 1 and 2 of this section and NRS 62.213:

(a) Commit the child for confinement in a secure facility, including a facility which is secured by its staff.

(b) Impose any other punitive measures the court determines to be in the best interests of the public or the child.

4. Except as otherwise provided in NRS 62.455 and 62.570, at any time, either on its own volition or for good cause shown, the court may terminate its jurisdiction concerning the child.

5. Whenever the court commits a child to any institution or agency pursuant to this section or NRS 62.213, it shall transmit a summary of its information concerning the child and order the administrator of the school that the child last attended to transmit a copy of the child's educational records to the institution or agency. The institution or agency shall give to the court any information concerning the child that the court may require.

6. In determining whether to place a child pursuant to this section in the custody of a person other than his parent, guardian or custodian, preference must be given to any person related within the third degree of consanguinity to the child whom the court finds suitable and able to provide proper care and guidance for the child.

Sec. 44. NRS 159.061 is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months ~~;~~ , ***except the use of marijuana as authorized pursuant to sections 2 to 33, inclusive, of this act;*** and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood or marriage of the proposed guardian to the proposed ward.

(e) Any recommendation made by a special master pursuant to NRS 159.0615.

Sec. 45. NRS 213.123 is hereby amended to read as follows:

213.123 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use ***, except the use of marijuana as authorized pursuant to sections 2 to 33, inclusive, of this act,*** or any failure or refusal to submit to a test is a ground for revocation of parole.

2. Any expense incurred as a result of any test is a charge against the division.

Sec. 46. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name ~~[.]~~ ***or for which he was not authorized to engage in the use of pursuant to the provisions of sections 2 to 33, inclusive, of this act,*** the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 47. NRS 630.3066 is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for ~~[prescribing]~~ ***:***

1. Prescribing or administering to a patient under his care:

~~[1.]~~ ***(a)*** Amygdalin (laetrile), if the patient has consented in writing to the use of the substance.

~~[2.]~~ ***(b)*** Procaine hydrochloride with preservatives and stabilizers (Gerovital H3).

~~[3.]~~ ***(c)*** A controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with accepted standards for the practice of medicine.

2. Engaging in any activity authorized pursuant to sections 2 to 33, inclusive, of this act.

Sec. 48. 1. There is hereby appropriated from the state general fund to the court administrator of the second judicial district of the State of Nevada the sum of $10,000 for the continuation of its program of treatment for the abuse of alcohol or drugs established pursuant to NRS 453.580.

2. There is hereby appropriated from the state general fund to the court administrator of the eighth judicial district of the State of Nevada the sum of $15,000 for the continuation of its program of treatment for the abuse of alcohol or drugs established pursuant to NRS 453.580.

3. The money appropriated by subsections 1 and 2 must be used to supplement and not supplant or cause to be reduced any other source of funding for the program of treatment established, respectively, in the Second and Eighth Judicial District Court pursuant to NRS 453.580.

4. Any remaining balances of the appropriations made by subsections 1 and 2 of this act must not be committed for expenditure after June 30, 2001, and revert to the state general fund as soon as all payments of money committed have been made.

Sec. 49. The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.

Sec. 50. 1. This section and section 48 of this act become effective upon passage and approval.

2. Sections 6, 20, 21, 30 and 32 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2001, for all other purposes.

3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 31, 33 to 47, inclusive, and 49 of this act become effective on October 1, 2001.

* A B 4 5 3 *

40-121

A.B. 453

S.B.

LOCAL GOVERNMENT

FISCAL NOTE

Date Prepared: April 5, 2001

Respondent local governments report the following fiscal effect:

Local Government	Fiscal Effect
Clark County	Indeterminate

Signature

Title Deputy Fiscal Analyst

FN-3 (Revised 12/00)

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MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-First Session
April 10, 2001

The Committee on Judiciary was called to order at 7:41 a.m. on Tuesday, April 10, 2001. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and by videoconference in Room 4412 of the Grant Sawyer Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. Mark Manendo, Vice Chairman
Mrs. Sharron Angle
Mr. Greg Brower
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Jerry Claborn
Mr. Tom Collins
Mr. Don Gustavson
Mrs. Ellen Koivisto
Ms. Kathy McClain
Mr. Dennis Nolan
Mr. John Oceguera
Ms. Genie Ohrenschall

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Senatorial District 7
Assemblywoman Christina Giunchigliani, Assembly District 9
Assemblyman David Parks, Assembly District 41
Assemblyman Lynn C. Hettrick, Assembly District 39
Assemblywoman Sheila Leslie, Assembly District 27

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Risa B. Lang, Committee Counsel

Sandra Albrecht-Johnson, Committee Secretary

OTHERS PRESENT:

Gene Segerblom, Former Legislator
Kent Lauer, Nevada Press Association
Stan Miller, Claims Manager, Litigation Division, Office of the Attorney General
Thomas M. Patton, First Assistant Attorney General, Office of the Attorney General
Bill Hoffman, General Counsel for the Clark County School District
Dan Geary, Cofounder of Nevadans for Medical Rights
Ed Foster, Compliance Branch, State Department of Agriculture
John O'Brien, Regional Manager, State Department of Agriculture, Reno Office
Gary Peck, Director, American Civil Liberties Union, Southern Nevada
Ulrich Smith, Former Appointed Member of Rose Commission, Former Member of Criminal Justice Committee, Private Defense Attorney, Former Clark County Prosecutor
Doctor Richard Siegel, Professor of Political Science, University of Nevada, Reno, and President of the American Civil Liberties Union
Janine Hansen, President, Nevada Eagle Forum
Floyd Krebbs, Concerned Citizen
Gemma Greene-Waldron, Nevada District Attorney's Association, Washoe County Deputy District Attorney, Criminal Division
Kristine Jensen, Concerned Citizen
James Kroshus, Concerned Citizen
Pam Roberts, Nevada Women's Lobby
Nancy Meredith, Registered Nurse
Christiana Bratiotis, Executive Director, Northern Nevada Region of National Conference for Community Injustice (NCCJ)
Reverend Doctor Phil Hansknecht, Ordained Minister, Evangelical Lutheran Church of America, President, Lutheran Advocacy Ministry of Nevada
Reverend Valerie Garrick, Pastor, Northwest Community Church, United Church of Christ, Las Vegas
Mark Nichols, Executive Director, National Association of Social Workers, Member of Executive Committee of the Progressive Leadership Alliance of Nevada (PLAN)
James Richardson, Concerned Citizen
Becky Harris, Coalition for the Protection of Marriage in Nevada

Richard Ziser, Chairman, Coalition for the Protection of Marriage in Nevada
John Wagner, Representative of the Nevada Republican Assembly
V. Robert Payant, Executive Director, Nevada Catholic Conference, and Catholic Legislative Liaison for the Diocese of Reno and the Diocese of Las Vegas
James L. Dunn, Concerned Citizen
William H. Stoddard, Attorney, Spokesman and Bishop for the Church of Jesus Christ of Later Day Saints
Joy Kendall, Concerned Citizen, President, Cunningham Elementary Parents and Teachers Association (PTA)
Bill Brady, Concerned Citizen, Assembly District 13
Ken Zang, Concerned Citizen
William K. Errico, Esquire, Las Vegas
Stephen A. Shaw, Administrator, Department of Human Resources, Division of Child and Family Services (DCFS)
John C. Morrow, Chief Deputy, Washoe County Public Defender
Lucille Lusk, Nevada Concerned Citizens
Nancy E. Hart, Deputy Attorney General, Office of the Attorney General
M. Veronica Frenkel, Domestic Violence Ombudsman, Office of the Attorney General,
Judge Mitch Wright, Chief Judge of the Washoe Tribe of Nevada and California, Member of Nevada Full Faith and Credit Project, Member, Board of Directors of the National American Indian Judges Association
Paula Berkley, Nevada Network Against Domestic Violence

Chairman Anderson declared that a quorum was present. He stated he would strictly adhere to time limits imposed on the testimony of each bill.

Assembly Bill 277: Revises provisions relating to settlement of certain claims or actions against governmental entities and officers and employees thereof. (BDR 3-378)

Chairman Anderson opened the hearing on A.B. 277, and called upon its primary sponsors for the introduction. Ms. Gene Segerblom, former legislator, summarized that the purpose of the bill was to allow the public to learn when public agencies had settlement agreements, as well as the amount of the settlement. She explained that there was controversy with regard to what information must be disclosed in those settlements. She cited that the position

Assembly Bill 453: Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

Chairman Anderson opened the hearing on A.B. 453 and called on Assemblywoman Christina Giunchigliani, Assembly District 9, to present her bill. Ms. Giunchigliani referred the committee to her handouts, "Simplifying the Maze" from 1994 (Exhibit G), as recommended by Supreme Court Associate Justice Robert E. Rose, and a statement from him, which expressed his position and recommendations of the Rose Commission on the decrease in degree of penalty for possession of small amounts of marijuana (Exhibit H).

Ms. Giunchigliani referred the committee to several articles that she downloaded from the Internet with regard to marijuana, and other information for their reading leisure (Exhibits J through EE). She explained Sections 34 through 36 of the bill reduced the possession of one ounce or less of marijuana to a misdemeanor with a fine. She noted the absence of opposition to the bill. She indicated Mr. Ulrich Smith, a member of the Rose Commission, was present in Las Vegas. She mentioned that in November of 2000 the measure on the ballots, to legalize marijuana for medicinal purposes, passed and received more votes than any elected official or legislator from southern Nevada. The bill was modeled after the Oregon Medical Marijuana Act of 1999.

Ms. Giunchigliani briefly explained the plan for state cultivation of medicinal marijuana, which could be included in A.B. 453. She opined it would be the safest and most equitable plan for the state to handle the distribution of medicinal marijuana. The Department of Agriculture would receive a registry form, which would then be verified by the Board of Medical Examiners, that the doctor was in good standing and properly licensed. It was part of a five-part series of forms. For ease of identification for the government and the consumer, a special photo identification card could be created and issued through the Department of Motor Vehicles, similar to drivers' licenses. She opined it maintained the safety and integrity of the measure the petitioners signed. She then asked to turn the presentation over to Mr. Dan Geary and Mr. Dan Hart, the founders of Nevadans for Medical Rights, who were the primary proponents of Measure 9 to legalize the use of marijuana for medicinal purposes.

Chairman Anderson inquired if Ms. Giunchigliani was in agreement with the proposed amendments (Exhibit FF). Ms. Giunchigliani briefly explained her proposed amendments and verified they had been circulated. The proposed amendments were to change the language of "fines" to "assessments," in order

for the money to be directed to the school districts rather than to the drug courts and rehabilitation programs. She also noted the money that was included in A.B. 577 of the Seventieth Session go to the drug courts needed to be diverted through A.B. 453, to the Department of Agriculture, for start-up costs of the state cultivation plan. Chairman Anderson inquired if the money was to be taken away from the drug courts. Ms. Giunchigliani clarified that it would not be, the money in question was included in A.B. 577 of the Seventieth Session, for the purpose of keeping the bill alive.

Mr. Dan Geary, Co-founder of Nevadans for Medical Rights, testified in support of A.B. 453. He explained the organization was formed together with Mr. Dan Hart, three years ago. He stated that a plan for state managed cultivation and distribution of medicinal marijuana would be the safest and most effective manner to implement the use of marijuana for medicinal purposes.

Mr. Geary explained the plan for state cultivation would be extremely beneficial for patients. He noted persons who would use the medicinal marijuana suffered from terminal and chronic illnesses that were extremely debilitating. The state cultivation plan would relieve those persons from obtaining seeds or clones of plants on their own, from the purchase of necessary equipment, and the preparation of ground for growth of their own plants. The technology the state plan would use would ensure the security, safety, and consistency of the plants, as well as eventually assisting law enforcement with the determination the plant was purchased in a safe and lawful manner. He stated that it would draw a clear and distinct line to help them determine if persons were legally or illegally in possession of marijuana. A state cultivation plan would also relieve law enforcement from the burden of monitoring patient's private and/or collective gardens.

Chairman Anderson clarified for the committee that Mr. Dan Hart's statement was included in Mr. Geary's testimony (Exhibit GG). The Chair then entered for the record, a letter from Mr. Robert Teuton, Chief Deputy, Juvenile Division, Clark County District Attorney's Office (Exhibit I). Ms. Giunchigliani noted the amendments he requested were included in the proposed amendment guidelines that she submitted (Exhibit FF). They were to exempt youths under 18 years of age, because they were handled differently in the court system.

Mr. Manendo stated the concerns he heard from constituents were if Measure 9 would affect laws with regard to driving under the influence. He requested clarification, for the record, that A.B. 453 would not weaken any laws with regard to persons driving under the influence of marijuana. Ms. Giunchigliani clarified the bill specifically would not excuse persons driving under the

influence, as well as persons working while intoxicated, from the medicinal marijuana for the purposes of workers' compensation. She assured the committee the issues of driving and working under the influence were addressed by A.B. 453.

Chairman Anderson instructed the witness in Las Vegas, to whom immunity was granted, not to sign in, not to give her name, and assigned her the fictitious name of "Rose." "Rose" explained her husband of five years was a T4 paraplegic. He was injured in an auto accident at the age of 18, which severed his spinal cord from the nipple line down. Since then, he suffered from severe spasms that echoed from his spinal cord. He had no feeling in his body from his nipple line down through his body. She explained his use of marijuana allowed him to function. His spasms were so severe that they would knock him out of his chair. The spasms made him unable to sit still and comfortably. She indicated they were struggling to survive. He needed the medicinal marijuana to be able to work and function, and she mentioned that he was a supervisor of a bank. She stated their goal was not to break the law, just to survive the best way possible with consideration of his condition. She wanted to place a face to the issue before the committee. She implored the committee to implement the will of the voters and pass A.B. 453.

Chairman Anderson thanked the witness for coming forth on the issue and testifying before the committee. Mr. Ed Foster, Compliance Branch, State Department of Agriculture, and Mr. John O'Brien, Regional Manager, State Department of Agriculture, Reno Office, introduced themselves to answer technical questions with regard to the plan for state cultivation of medicinal marijuana.

Chairman Anderson inquired how the Nevada Department of Agriculture (NDOA) would protect the marijuana plants. Mr. O'Brien described the marijuana would be grown in an indoor facility with grow lights that would have protections similar to those used in prisons, but to keep people outside instead of inside. He indicated the cost of the facility would be approximately $750,000. The chemical analysis of the safety and potency of the marijuana would require a one-time purchase of equipment that would be approximately $8,500. The cost per sample would be approximately $82. He noted, upon further research, there were several mechanisms the state could use to track the marijuana. He indicated the marijuana plants could be analyzed for "DNA fingerprinting." It would then be possible to later determine if a person was using a state-grown plant. He noted the cost to purchase equipment and supplies would be approximately $23,000 to $27,000. The cost per sample had not yet been

determined, but he estimated it would probably be the same as the chemical analysis of approximately $82.

Mr. Nolan inquired how the market value of the crop, the value of sale, and the fees would be determined. Mr. O'Brien explained they had attempted to research the market value, and had estimates that the market price was perhaps approximately $350 per ounce of marijuana. He indicated the accuracy of their estimates was undetermined. He stated if the assumption of the market value was accurate, they recommended the cost should be $250 per ounce. The cost would deter those who would possibly abuse the system, but still allow patients to purchase the legal and safe marijuana at a reasonable discount.

Mr. Nolan inquired if the plan for state cultivation would eventually be self-funded or subsidized. Mr. O'Brien opined the plan would pay for itself, with the assumption that the estimated consumption of the marijuana grown would be accurate. He explained the NDOA based their research on Oregon's studies. They estimated Nevada's population was approximately half that of Oregon's, and used that approximation throughout their research. Approximately 400 patients would participate in the first year of the program. Each patient would use approximately one ounce per month. Based on those numbers and the cost of $250 per ounce, the state would receive approximately $1.2 million from the state cultivation program, which would be more than sufficient to run it. He described an excess of funds would probably accumulate over the years, which could eventually be allocated elsewhere.

Chairman Anderson inquired how Section 14 of A.B. 453, which detailed the registration card process, would operate. Mr. Foster explained the process was loosely modeled after Oregon's qualification and registration process. The requirements to qualify for the medicinal marijuana registration card were as follows:

- Must be resident of the state of Nevada;
- Must have qualifying medical condition listed on the attending physician's statement form;
- Physician must be a medical doctor or doctor of osteopathy licensed to practice medicine in the state of Nevada;
- Naturopath, chiropractors, and nurse practitioners could not sign documentation;
- The state of Nevada could not refer patients to a doctor;
- Application fee could not be waived;
- Partial payments could not be accepted.

Mr. Foster mentioned that Oregon had problems with patients who felt they needed medicinal marijuana, but could not afford the registration fees. He

explained the program would not be able to run without some form of registration fee. The process of application would consist of the following:

- The patient would confirm medical condition with a doctor and receive a signed attending physician form;
- The attending physician form would then be sent to either a Medical Commission or Medical Marijuana Commission that would be established to oversee the program, or the Health Department, to verify the patient had a qualifying condition, and the doctor was properly licensed and in good standing;
- The patient would then complete the application for registration and submit it with the attending physician's form and a copy of their legal form of photo identification.

Mr. Brower opined the process seemed to be unnecessarily complicated. He inquired why it wouldn't be treated the same as other prescription drugs, and why the state had to be involved to the degree set forth in A.B. 453. Ms. Giunchigliani explained Measure 9, which was passed by the voters, called for the dissemination and distribution process, and for a registration card to be created. She informed the committee the Legal Department of the Legislative Counsel Bureau advised the state to allow patients to grow their own marijuana, rather than have the state cultivate and distribute the marijuana.

Ms. Giunchigliani explained the state cultivation program was included to genetically mark plants to prevent trafficking problems that might arise as an unintended result of legalizing marijuana for medicinal purposes. However, if the state established the cultivation plan, it risked drawing more attention and scrutiny from the Federal Drug Enforcement Agency (DEA). She explained the bill was drafted to meet the will of the people, but was structured to either allow for the state cultivation plan or a market-grown plan where the marijuana would be treated as other prescription drugs.

Mr. Brower again asked his question of why the medicinal marijuana couldn't be treated as other controlled substances. He posed the example of a controlled substance, Valium. To his knowledge, the state did not manage and control the distribution of Valium, other than by a general schedule for prescriptions as stated in the statutes. He asked if federal problems were the reason marijuana couldn't be treated as other controlled substances that were available by prescription. Ms. Giunchigliani responded in the affirmative. She explained the federal government had assumed the position of "don't ask, don't tell." The bill included language to provide immunity to the physicians who would recommend the use of medicinal marijuana. However, the problem that had not yet been resolved was the DEA had control over the physicians' licenses to practice

medicine. The state could not legislate the actions of the DEA, because they were a federal agency.

Mr. Collins expressed his concerns of the high costs to the patients who would use medicinal marijuana, since insurance companies would not cover it, and the mention of immunity granted to the state for hallucinogenic effects caused by the marijuana, and the possible future privatization of the growth of marijuana. Ms. Giunchigliani responded that Section 33 addressed the immunity issue. The language included in the section was inserted to provide protections, and was modeled from other states' legislation. She emphasized the intent of the state registration card was not to make money, but to create the registration card, as was included in the petition for Measure 9. The language of the bill limited the fee to no higher than $150. She opined the fee would not cost that much in reality, since the state would only be processing the forms. The forms would be submitted to the DMV, where their picture would be taken, and they could obtain their marijuana afterwards, wherever that would be.

Mr. Collins observed that there were persons who were sick and already used marijuana. He inquired what their incentive would be to become legal users when the registration fees were so high. He also inquired how the bill would address caregivers that would need to obtain the marijuana for many of the patients who were not physically able to obtain the marijuana themselves. Ms. Giunchigliani explained the bill had provisions for caregivers to be issued cards in the circumstances where the patients could not obtain the medicinal marijuana themselves. She stated it would be done as cheaply as possible, for possibly just $25 to $30.

Chairman Anderson observed that A.B. 453 specified illnesses that included the following:

- Acquired Immunity Deficiency Syndrome;
- Cancer;
- Glaucoma;
- Medical condition or treatment for medical condition that produced for a particular patient one or more of the following:
    - Cachexia, which means general physical wasting and malnutrition associated with chronic disease;
    - Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;
    - Seizures, including, without limitation, seizures caused by epilepsy;
    - Severe nausea;
    - Severe pain; or

- Any other medical condition or treatment for a medical condition that was:
    - Classified as a chronic or debilitating medical condition by regulation of the Health Division, of the Department of Human Resources; or
    - Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with Section 30 of A.B. 453.

Chairman Anderson also noted that the bill language was narrowly crafted to strictly limit the types of physicians allowed to sign the attending physician form to be physicians licensed pursuant to Chapter 630 of the NRS. He clarified that the bill specifically required registered patients, registered doctors, and persons specifically engaged in the care-giving process, to be examined carefully by the state to ensure federal requirements were met. Also, the bill addressed age requirements and guidelines for the use of medicinal marijuana by those under the age of 18.

Ms. Ohrenschall inquired how and if the state could assist patients, who could not afford the medicinal marijuana, to acquire it. She noted most patients that would be in need of the medicinal marijuana would have probably used up or were close to their insurance caps, and in financial need. She recommended the state set up a program such as the old methadone clinics. Ms. Giunchigliani explained Section 31 of A.B. 453 specifically prohibited insurance companies from being required to pay for the medicinal marijuana, as was included in the original petition of Measure 9. She stated her discomfort of straying from the will of the people.

Ms. Giunchigliani described the rates mentioned earlier for the cost of marijuana were guesstimates for the sole purpose of the state's possible cultivation and distribution of the medicinal marijuana. She mentioned people were already obtaining marijuana without state assistance. She stated there were protections for the individual included in the bill, which also prevented a person from being assumed guilty of trafficking marijuana simply because they did not have their registration card on their person. She noted that persons were not able to grow enough plants to treat themselves, but were already using marijuana for medicinal purposes, which is what warranted the measure being passed and the bill to be drafted. Ms. Ohrenschall clarified her concern that individuals who could benefit from the use of medicinal marijuana were suffering from such debilitating illnesses, and probably would not be able to afford it.

Mr. Nolan acknowledged that marijuana provided medicinal benefits that were not available in other pharmaceutical medications. He stated that he supported providing the medicinal marijuana in the situations specified in A.B. 453. He

expressed concerns with regard to the potential abuse of doctors prescribing marijuana before offering other pharmaceuticals that offered similar benefits, and were not as restricted and controlled as marijuana. Ms. Giunchigliani explained there was a drug available for prescription that contained a small amount of THC. She did not believe the legislation would prohibit doctors from attempting to use other medications before recommending marijuana. She noted some medications worked for some people but not others. She believed a doctor's regular medical regime would be to determine which prescription worked best for their patient before they recommended the use of medicinal marijuana.

Ms. Buckley opined that the legalization of medicinal marijuana was the will of the people and needed to be answered. She informed the committee of her concerns with the state cultivation plan. She believed the state lacked the funds for start-up costs of the plan. Also, she thought it was likely that the Supreme Court would come to a judgment that it was unconstitutional for the states to grow and distribute medicinal marijuana. Ms. Buckley stated it would be more prudent to implement the will of the people without the state becoming involved with the growth and distribution of the medicinal marijuana. She inquired how the state should be involved with the process in light of the potential Supreme Court ruling.

Ms. Giunchigliani explained the bill did not yet include the state-run cultivation of the medicinal marijuana. It was originally drafted to provide for the process of the registration card and implementation of the legalization of the use of marijuana for medicinal purposes. She noted the cost of the registration card could be reduced to a nominal fee. It was based on the Oregon fee for registration cards that was up to $150, which was to ensure any unforeseen costs were already covered. She noted if there was no need for administrative overhead, there would not be a need to legislate a minimal dollar amount, which was anticipated by the bill. She explained the only changes that would be needed, would be the amendments suggested by Mr. Teuton.

Ms. Buckley inquired where the patients would purchase the medicinal marijuana. Ms. Giunchigliani stated they would be permitted to grow their own marijuana for medicinal purposes, or purchase it where they could. She noted that although the degree of penalty decrease for possession of small amounts of marijuana was a separate issue, it was linked for that purpose, as a protection for the patients who would be in legal possession. She acknowledged there were not any cannabis clubs in Nevada to grow marijuana for member patients. She suggested the state could perhaps assist in the formation of clubs, and perhaps provide seeds to start crops.

Chairman Anderson requested clarification that if the bill was passed, the state's participation of cultivating the medicinal marijuana would be eliminated and would possibly remove the fiscal note from the bill. Ms. Giunchigliani explained there would still be a slight start-up cost for the administration of the registration cards, because a state division would need to be responsible for the receipt and processing of the applications. She explained that A.B. 453 proposed to use the Nevada Department of Agriculture (NDOA) to receive and process the applications, disseminate information to the State Board of Medical Examiners and the Criminal Repository, and to verify eligibility for the issuance of the registration cards. The NDOA would then pass the information to the Department of Motor Vehicles (DMV) for issuance of the registration card. Chairman Anderson clarified the passing of the bill, as it was, would not put the state in the business of growing marijuana.

Mr. Brower inquired if the Attorney General's Office changed their position with regard to the implementation of Measure 9. Ms. Giunchigliani responded that she did not believe Frankie Sue Del Papa, the Attorney General, had changed her position on the issue. They had agreed to disagree. Ms. Giunchigliani opined the passage of Measure 9 was the will of the people, and it should be carried out.

Mr. Gary Peck, Director, American Civil Liberties Union (ACLU), Southern Nevada, testified in support of A.B. 453. He disclosed that in general, the ACLU opposed laws that criminalized the cultivation, possession, and use or delivery of marijuana, for a variety of what he opined to be sound public policy and philosophical issues. He asserted that such laws diverted the resources, money, time, and manpower from the enforcement of laws against what he felt were more serious crimes that threatened public safety. He stated the recommendation from the Rose Commission to decriminalize the possession of small amounts of marijuana was a sound statement that echoed the opinions of many people throughout the country. He mentioned that at least 24 professional medical associations, which included the American Medical Association, American Public Health Association, and the New England Journal of Medicine, publicly supported the prescriptive access to marijuana. He stated that too many physicians and patients remained vulnerable to serious penalties up to and including imprisonment, and were unable to alleviate unnecessary suffering. He urged the committee to pass the enabling legislation, A.B. 453, with limited state involvement.

Mr. Ulrich Smith, former appointed member of the Rose Commission, former member of the Criminal Justice Committee, private defense attorney, and

former Clark County Prosecutor, testified in support of A.B. 453. He summarized that the Rose Commission evaluated the possible degree of penalty decrease for possession of small amounts of marijuana, and being under the influence of a controlled substance. They concluded that such degree of penalty decrease would result in the savings of over $1 million in Clark County alone from reductions in jail time, court time, et cetera. He also cited that 95 percent of the states in the United States of America treated possession of small amounts of marijuana, and being under the influence of a controlled substance, as misdemeanors, or not as a crime at all. He expressed that the Rose Commission strongly supported and recommended the degree of penalty decrease provisions of A.B. 453. He presented Exhibit HH about drug courts.

Mr. Brower inquired how typical first-time offenders of possession of small amounts of marijuana were treated in the state's court systems. Mr. Smith explained that 98 percent or more of the first-time offenders would have the charges reduced to a misdemeanor, and would receive a small fine of approximately $200 or $300, and would possibly be ordered to treatment, dependent upon the court.

Doctor Richard Siegel, Professor of Political Science, University of Nevada, Reno, and President of the American Civil Liberties Union, testified in support of the degree of penalty provisions of A.B. 453. He explained to the committee that the theory that marijuana was a gateway to other drugs had been debunked by research performed over the last ten years. People who drank alcohol had a much larger chance of proceeding to harder, more lethal drugs. He stressed the decriminalization of possession of marijuana was the prevailing movement throughout the country. He noted California and Arizona passed legislation to decriminalize the first and second drug offenses. He cited 14 states had voted in support of medicinal marijuana. He stated that the public recognized that millions of dollars were wasted on the prosecution of minor drug offenses. He attributed the statistics to the state's felony level charges for the use and possession of marijuana. He also pointed out the first-time offenders of the use and/or possession of small amounts of marijuana, were charged as felonies in the rural counties.

Mr. Brower inquired what the statistics were for such convictions of first-time offenders for use and/or possession of small amounts of marijuana. Dr. Siegel explained he did not have the official statistics but he was referring to instances of persons who approached him from locations such as Elko and Nye Counties. He emphasized such persons represented an inequity of justice when charged as felons for their first offense. He also called the committee's attention to the revocation of parole for possession and/or use of marijuana. He recommended

that the state review such provisions to prevent an overabundance of revocations of parole for the possession and/or use of marijuana, because such revocations were increasing in number, thus increasing the prison population and need for new prisons.

Chairman Anderson thanked the witnesses. Written testimony was accepted in lieu of oral testimony from Mr. Kendall Stagg, Northern Nevada Coordinator, American Civil Liberties Union of Nevada, in support of the bill (Exhibit II), along with written testimony from Ms. Juanita Cox, People to Protect America, (Exhibit JJ). The Chair then called for witnesses in opposition of A.B. 453.

Ms. Janine Hansen, President, Nevada Eagle Forum, testified in opposition of Section 37 of A.B. 453, with regard to the degree of penalty decrease for possession and use of small amounts of marijuana. She opined the propaganda that belittled marijuana in comparison to alcohol was spread by drug cartels since the 1960s. She stated the psychoactive ingredient of marijuana, THC, was strongly fat-soluble, but could not dissolve in water or blood, so it would be stored in the fatty tissues of the body for several weeks. She explained that the THC would gradually be released back into the blood, and users would slip into a state of continuous sedation. The steady presence of THC in the blood damaged the brain, lungs, immune system, hormones, chromosomes, reproductive system, and sexual development. The frequent user would thus become "passive and devoid of personal ambition." She stressed the most important point was that the user would be unaware of the effects.

Ms. Hansen disclosed her comments were limited to the illegal use of marijuana, not to the use of marijuana for medicinal purposes. She stated the content of THC in illegal marijuana was up to 25 percent more potent than it had been in the past. She explained in the 1960s the content of THC in marijuana rarely exceeded 1 percent. Today, the content of THC in marijuana was typically 12 percent to 25 percent. She mentioned that the research performed by Doctor Robert Heath, a world-renowned brain researcher, illustrated the drastic effect of marijuana on the brain. She said that Dr. Heath proved the effect of marijuana on the brain made it one of the most dangerous drugs available. She stated that the use of marijuana, which put users into a constant state of sedation, made users vulnerable to the use of cocaine and heroin. She opined that without marijuana use, the market for cocaine and heroin would disappear as addicts died.

Ms. Hansen encouraged the committee to consider the continuation of drug programs for users of marijuana when reviewing the degree of penalty decrease for the possession and use of marijuana. She called their attention to line 7 of

page 14 of the bill, which made drug treatment applicable only on the second offense. She encouraged more treatment, rehabilitation, and restitution programs to assist persons to rehabilitate. She submitted for the record an article from the *Nevada Families Voter Guide* for the year 2000 election, which contained the statistics and information quoted throughout her testimony (Exhibit KK).

Chairman Anderson then called for any other persons to testify in opposition to A.B. 453.

Mr. Floyd Krebbs, a concerned citizen, stated that Section 24 of A.B. 453 was too lenient. He opined that if a person violated any part of the chapter, they should be prohibited from ever obtaining or using a registry identification card, they should not be limited to just six months. He noted the persons who would use medicinal marijuana would be in a debilitated state that would require some sort of assistance for self-defense. He specifically encouraged the committee to combine the registry card with the driver's license to simplify the process, and allow legal users to grow their own marijuana plants. Chairman Anderson asked Mr. Krebbs' opinion of whether the presence of firearms in public, when combined with the psychedelic nature of marijuana, would present a dangerous and unusual situation. Mr. Krebbs explained that persons who were debilitated by cancer and other illnesses needed an equalizer, such as a firearm, for their protection, whether at home or in the public.

Chairman Anderson explained that A.B. 453 did not prohibit persons from possessing firearms. The bill stipulated that the use of marijuana for medicinal purposes could not be used as a defense for the unlawful possession of a firearm.

Ms. Gemma Greene-Waldron, Washoe County Deputy District Attorney, Criminal Division, disclosed that she had indicated a neutral position when she signed in, but was actually against A.B. 453. She referred the committee to an e-mail sent to the committee by Richard Gammick, Washoe County District Attorney, with regard to the prescription drug, Marinol. The District Attorney's Office opined that Marinol synthesized the effects of marijuana for medicinal purposes; therefore, the legalization of marijuana for medicinal purposes was not necessary. She pointed out that the United States Supreme Court was reviewing the issue of legalization of marijuana for medicinal purposes, and could possibly rule that states were not allowed to legalize such use for medicinal purposes. She cited the practice of prosecution for the first offense of possession and/or use of marijuana in Washoe County was to treat it as a misdemeanor. If there was a criminal history of drug use, it would then be

charged as a felony. She stated that it was classified as a Category E offense, which mandated probation. She also noted that in Washoe County the drug court was an option. She declared that they believed marijuana was a gateway drug despite previous testimony, and that the persons in possession or use of marijuana may need to appear in a drug court to address their problems. She stated the bill's provisions to make such possession and/or use of marijuana a misdemeanor would preclude the availability of drug court. She stated, from her experience as a two-time cancer survivor and loss of 100 pounds during the battles, that she never felt the use of marijuana was necessary. She recognized the will of the people had been spoken, and that opposition might be futile, but she wanted her personal opposition to be recorded.

Mr. Carpenter recommended that mandatory treatment for first-time offenders of the possession and/or use of marijuana, be included in A.B. 453. Ms. Waldron stated that it would be a drastic improvement of the bill. She recommended the evaluation of the first-time offender of possession and/or use of marijuana should be made to determine if a problem of drug abuse was present. Mr. Carpenter opined that the evaluation would perhaps relieve someone from responsibility of his or her actions, and that the option of drug court and possible private treatment should be mandatory.

The Chair re-called Ms. Giunchigliani to address the concerns expressed with regard to A.B. 453. She noted that the bill split money between drug courts and metropolitan and rehabilitation businesses, to ensure rural counties that did not have drug courts would be provided for. She cited that the judges had requested judicial discretion and flexibility for first-time offenders of possession and/or use of marijuana, which was why mandatory treatment was specified for the second offense, but not the first. Chairman Anderson noted the committee was of the opinion to not issue judges a great deal of flexibility. Ms. Giunchigliani clarified treatment was not precluded for the first offense, just not mandatory.

Mr. Carpenter opined that the judges "should maintain the discretion to absolutely order treatment" for first-time offenders of possession and/or use of marijuana.

Ms. Kristine Jensen testified in opposition to A.B. 453. She inquired how many "joints" were required throughout the day to obtain the effectiveness of the medicinal marijuana, and what the effects of such use were. She also inquired as to the necessity and effectiveness of THC, as well as the start-up costs of the state cultivation plan. She asked how the state would control the personal growth of marijuana plants, as well as the potency of such plants. She

summarized that the issue of whether marijuana was a gateway drug had not yet been concluded.

Mr. James Kroshus testified against A.B. 453 with regard to the issue that marijuana was a gateway drug. He compared the prohibition of marijuana to the prohibition of alcohol in the 1920s. He cited alcohol was a "gateway drug," it was a causative effect of spousal abuse, drunk driving, divorce, and irresponsibility. He indicated that the legalization of marijuana for medicinal purposes was not necessarily the right and moral thing to do, even though voters overwhelmingly supported it.

Chairman Anderson called for any other persons who wished to testify with regard to A.B. 453. There being none, he closed the hearing on A.B. 453.

Mr. Carpenter stated his position of support for the mandatory treatment of offenders of possession and/or use of drugs in all instances, to prevent repeat offenders. Chairman Anderson explained judicial discretion would not be left open by the passing of A.B. 453. He clarified that the committee could safely proceed with an amend and do pass motion for the bill without jeopardizing the treatment of offenders of possession and/or use of drugs. Ms. Buckley requested the bill be assigned to a work session. She expressed her wish for the research of the effective date of the bill to possibly coincide with the future Supreme Court decision, in order to address technicalities. Chairman Anderson assigned A.B. 453 to the work session on April 12, 2001.

Assembly Bill 496: Provides for recognition of reciprocal beneficiary relationships. (BDR 11-1283)

Chairman Anderson opened the hearing on A.B. 496. He informed the committee and the audience that not everybody who wanted to speak in support and opposition to the bill would be heard. There were far too many people to speak and not enough time.

Assemblyman David Parks, Assembly District 41, introduced his bill, which provided legal recognition of "reciprocal beneficiary relationships," A.B. 496. He informed the committee that nearly half of all marriages ended in divorce, and that most individuals lived long distances from family members. He explained that he had a friend by the name of "Lee," who was very ill and needed surgery for an aneurysm. He was separated from his family and had lost contact with his son. Mr. Parks explained that if "Lee" hadn't falsified his admission papers by listing Mr. Parks as a nephew and emergency contact, "Lee" would not have been able to receive any visitors while he was in the

Simplifying the Maze

A Fresh Look at Nevada's Court System

The Nevada Supreme Court
Judicial Assessment Commission

1999-2000

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33

ASSEMBLY JUDICIARY
DATE: 04/16/01 ROOM: 3138 EXHIBIT G
SUBMITTED BY: ASSEMBLYWOMAN GIUNCHIGLIANI

Preface

In 1993, the Nevada Supreme Court initiated the **Judicial Assessment Commission** – dubbed ***The Rose Commission*** for its sponsor, then-Chief Justice Bob Rose – and gave it authority to take a broad look at Nevada's justice system and laws. The assignment was simple: make recommendations for innovative and needed changes to ``simplify the maze'' of our urban courts without regard for politics or other special interests.

Four task forces were established by the Commission: ***Access to and Quality of Justice, Court Administration, Special Court Structures and Criminal Justice.***

Resulting recommendations led to the passage of new laws by the Legislature and new rules by the Nevada Supreme Court, enabling the court system at every level to work better for the people. The recommendations enacted included:

- Truth in sentencing legislation
- Establishment by Supreme Court Rule of Strong Chief Judge systems in Clark and Washoe Counties
- Funding for construction of an expanded Clark County jail
- Authorization and funding of new Family Court judges in Clark County
- Expansion of Drug Court programs
- Co-location of the Las Vegas Municipal Courts and Justice Courts in the Justice Center currently under construction
- Making the Municipal Court in Las Vegas a "court of record"
- Statewide collection of judicial workload statistics
- Creating a Division of Planning and Analysis at the Administrative Office of the Courts, Supreme Court of Nevada

Bolstered by that success, Justice Rose – when he again became Chief Justice in 1999 – reconvened the **Judicial Assessment Commission** and asked its members to take another look at a justice system that had gone through a series of changes in operating procedures and personalities during the previous five years.

This report describes the recommendations resulting from the 1999-2000 *Rose Commission's* fresh look at our justice system.

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Introduction

The 1999-2000 **Judicial Assessment Commission** reviewed and fine-tuned many of its prior recommendations, reaffirming its position on sometimes politically sensitive issues:

- The appointment rather than election of new judges
- Consolidation of Municipal and Justice Courts
- Re-categorizing minor traffic offenses and ''neighborhood dispute'' misdemeanors from crimes to civil infractions.

The *Rose Commission* also renewed its 1994 call to **reduce penalties for possession and use of small quantities of marijuana.** Such crimes are now felonies and the recommendation is they be reduced to misdemeanors or gross misdemeanors. This would reduce jail populations because violators would receive citations rather than being arrested. Although a controversial concept, the passage of such a law already has received support in newspaper editorials.

Perhaps the two Commission recommendations that will have the greatest impact on the future of the judicial system already have been implemented in response to the 1994 Commission report. They involve simple accountability through the **collection of uniform statistics** and the **establishment of a Division of Planning and Analysis at the Administrative Office of the Courts** to collect and analyze the data.

Commission members had noted in 1994 that the National Center for State Courts publishes periodic reports comparing judicial caseload statistics of the states and Nevada traditionally had the least comprehensive data. That was due in part to the lack of a standardized statistical model, resource problems at some courts in Nevada that hampered the gathering of the information and limited staffing at the Administrative Office of the Courts to process the statistics.

The Legislature, in response to a proposal from the Nevada Supreme Court, expanded the Administrative Office of the Courts and created a Division of Planning and Analysis, which set the statistical standards. In 1999, the Supreme Court issued an order establishing the **Uniform System for Judicial Records**, requiring every court in the state to collect caseload statistics and provide them to the Administrative Office of the Courts.

The courts must report statistics about the number of cases filed, number and type of dispositions, events occurring in each case and the status of pending cases.

Full implementation, however, will be on a staggered schedule because not all courts are immediately able to produce all statistics. Yet enough caseload statistics have been compiled for the publication of the Nevada judicial system's first Annual Report in December 2000.

Additional statistics will be added in future years, finally bringing Nevada in line with other states.

CHAPTER 2:

Commission Members

Membership of the **Judicial Assessment Commission** in 1999-2000, with few exceptions, was the same as in 1994.

Most members have connections to or experience in the legal community and, as such, are familiar with current laws and processes. Other members, however, were chosen from outside the justice system for their skills, business knowledge or community involvement. They brought a fresh perspective to a judicial structure steeped in formality and traditionally slow to change.

As in 1994, the Commission in 2000 was divided into four task forces – ***Access to and Quality of Justice, Court Administration, Special Court Structures and Criminal Justice***

Supreme Court of Nevada

1999-2000

JUDICIAL ASSESSMENT COMMISSION

CHIEF JUSTICE ROBERT E. ROSE
Commission Chair

TASK FORCE CHAIRS

Dr. Bill Berliner
Medical Director, Health Insight
Las Vegas
Access to and Quality of Justice

Anna Peterson
District Court Administrator (retired)
Las Vegas
Court Administration

Judge Nancy Oesterle
Las Vegas Township
Justice Court
Criminal Justice

Larry Hyde
Judicial College Dean (retired)
Reno
Special Court Structures

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MEMBERS

Judge Brent Adams
Second Judicial District, Reno

Assemblyman Morse Arberry (inactive)
Las Vegas

Sandra Lee Avants
Commissioner
Department of Business & Industry
Transportation Services Authority

Justice Nancy Becker
Nevada Supreme Court

District Judge Janet Berry
Second Judicial District, Reno

Sue Berfield
Assistant County Clerk
Las Vegas

Linda Bonicci
KLAS-TV marketing director
Las Vegas

Torris Brand, Esq.
Las Vegas

Judge Rodney Burr
Henderson Justice Court

Roxanne Clark-Murphy, PhD
Las Vegas Municipal Court
Evaluation Center

Carol Cohen
Nevada Parole and Probation
Las Vegas

Brian Doran
Deputy State Court Administrator
Nevada Supreme Court

Russ Eaton (inactive)
Court Administrator (Retired)
Las Vegas Justice Court

Walt Elliot
President
Nevada AFL-CIO

Judge Michelle Fitzpatrick
Las Vegas Municipal Court

Debra Gauthier
Metropolitan Police Department
Las Vegas

Michael Havemann
Court Administrator
Las Vegas Municipal Court

Dorothy Nash Holmes
Deputy Attorney General
Carson City

Joni Kaiser
Executive Director
Committee to Aid Abused Women

Karen Kavanau
State Court Administrator
Nevada Supreme Court

Cathy Krolak
Court Administrator
Sparks Municipal Court

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Michael L. Miller
Chief Deputy Public Defender
Las Vegas

Terry Miethe
Chair, Department
Of Criminal Justice
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Las Vegas

Steve Morris
Court Administrator
Las Vegas Justice Court

Steve Morris, Esq.
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Ulrich Smith, Esq.
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Tate & Snyder Architects
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Chief Deputy District Attorney
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Senator Dina Titus
Las Vegas

Judge James Van Winkle
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David Wall
Chief Deputy District Attorney
Las Vegas

Alfred Wiggs
Justice Court Bailiff
Las Vegas

Judge Robey Willis
Carson City Justice Court

STAFF

Bill Gang
Statewide Court Program Coordinator
Administrative Office of the Courts

Lynda Dill
Management Analyst
Administrative Office of the Courts

Beth Mammen
Management Analyst
Administrative Office of the Courts

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Simplifying the Maze

A Long Range Strategic Plan for Nevada's Court System

Report of the

Judicial Assessment Commission

December, 1994

Funding for the Commission is provided by the Nevada State Legislature, Clark County Board of Commissioners and Washoe County Board of Commissioners. Funding is also provided through a grant from the State Justice Institute. Points of view expressed herein are those of the Commission and do not necessarily represent the official positions or policies of the grantors.

C. Criminal Justice

Medicinal Use of Marijuana

Thirty-five states have passed legislation recognizing marijuana's medicinal value. Many counties and cities are also gaining approval on ballot initiatives declaring that marijuana be medicinally available. The absence of federal action moving marijuana from Schedule I to Schedule II Controlled Substance necessitates state legislation. At this time, there are only nine participants in the Compassionate Investigative New Drug (IND) program under therapeutic treatment.

Studies have already established the efficacy of this mode of treatment as being superior to other prescribed medications in individuals suffering from the painful effects of various illnesses or the treatment of those diseases (i.e. cancer, AIDS, glaucoma, spastic disorders, epilepsy, and multiple sclerosis). Patients do not need to be labelled as criminals in their attempt to grow or purchase this substance. An uncontaminated and dosage-adjusted tablet to THC can be made available at low cost.

Authorization by the state legislature for the use of marijuana as a prescribed medication (Schedule II Controlled Substance) is necessary to relieve chronic or terminally ill individuals of unnecessary pain and suffering.

Recommendations:

1) Through actions of the Nevada State Legislature and the State of Nevada Board of Pharmacy, marijuana should be reclassified from a Schedule I to a Schedule II Controlled Substance.

2) Nevada State Legislature should pass legislation enabling doctors to prescribe and pharmacists to dispense marijuana and/or THC tablets to chronically, incurably, or terminally ill patients.

3) Through the actions of the Nevada State Legislature and the State of Nevada Board of Pharmacy, marijuana for medicinal use should be approved for manufacture in the State of Nevada.

Enhancement to the Nevada Habitual Criminal Law

Crime is on the minds of Americans. Nationwide the battle cry is "Three Strikes and You're Out." Slogans win elections, leaving the complex issues of sentencing and reinventing the criminal justice system untouched. Criminal justice professionals are well aware that "Three Strikes" won't throw away the key on our most serious offenders, thus reducing crime. Instead, courts will be overwhelmed with skyrocketing caseloads, and prisons will be unable to cope with exploding inmate populations. Valuable tax dollars will be wasted locking up low-level drug criminals--those with n record of violence or involvement in sophisticated criminal activity. California expects its "Three Strikes" law to increase their inmate populatior by 85,000 over the next five years. Criminal justice professionals in Nevada cannot afford to sit idly by and allow some version of a "Three Strikes" law to be passed in future legislation.

The public and most criminal justice professionals agree prosecutiv energy should be focused on violent predators and career criminals, those two types of offenders who cause our communities the most harm. A violen predator normally has prior convictions for the same type of offense but always seems to get out of prison to strike again. Career criminals not only commit more crimes, they also commit a variety of crimes from burglary to robbery. For example, in 1982, the Rand Corporation formally identified career criminals in a survey of jail and prison inmates. Rand found that while the average robber commits four offenses a year, the career criminal commits 57.

Clearly these offenders deserve to be permanently removed from society, but our criminal justice system fails to properly deal with them. Why? Because "It's not what you do, it's what you get caught doing." Career criminals are labeled "High Rate Winners" because they are sophisticated and seldom get caught. When they do, their punishment is no worse than that of the "Low Rate Loser," the proverbial klutz who doesn't commit many crimes but almost always gets caught. The criminal justice system is blind to the difference between Low Rate Losers and High Rate Winners. Both serve about the same prison time, thus adding more low rate/non-violent drug offenders to our already overcrowded prisons. We're locking them up, but does the crime rate go down? The answer from almost every expert is "No!" The spiraling growth in our nation's prisons, coupled with the reluctance of voters to pay more taxes, begs a rethinking of our

SUPREME COURT OF NEVADA
ROBERT E. ROSE, JUSTICE
201 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701-4702

Statement of Robert E. Rose
Justice, Nevada Supreme Court
Remarks before the Judiciary Committee of the Nevada State Assembly
April 10, 2001

Dear Chairman and Committee Members:

In 1993, the Nevada Supreme Court created the Nevada Urban Court Workload Assessment Commission which consisted of 50 members representing all walks of life. About half of the members were non-lawyers, and they were charged with studying the Nevada judiciary without fear of political or special interest pressure. The Commission studied the operation of Nevada's urban courts for over a year and made many recommendations that it believed would improve the operation and efficiency of our urban courts. Since I asked for the creation of the Commission and chaired it, it became known as the Rose Commission.

One of the recommendations the Commission made in 1994 was to reduce the penalties for the possession of small amounts of marijuana. It recommended that an ounce or less of marijuana be a simple misdemeanor, that possession of more than one ounce but less than 4 ounces be a gross misdemeanor, and that possession of 4 ounces or more of marijuana remain a felony. In effect, the Commission recommended that the possession of small amounts of marijuana be a misdemeanor or gross misdemeanor.

The rationale for this recommendation were several. First, the Commission found that Nevada was "isolate" in its treatment of possession of small amounts of marijuana as a felony. It felt that defelonizing the possession of small amounts of marijuana would bring the penalty in line with almost every other state, in line with the criminal justice practice in most areas of Nevada, and that the punishment would better fit the crime.

Second, this penalty reduction would "benefit the whole judicial system by reducing its workload." At present, an arrest for the possession of any amount of marijuana is a felony and requires booking, detention at a jail facility, appointment of counsel, a preliminary hearing, trial and possible prison incarceration. Reducing the penalty would reduce the procedures and costs considerably. In this way, valuable resources could be devoted to handling more serious charges and jail or prison space would be left for those who commit more serious crimes.

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ASSEMBLY JUDICIARY
DATE: 04/10/01 ROOM: 3138 EXHIBIT H
SUBMITTED BY: SUPREME COURT JUSTICE ROBERT E. ROSE

I might add that the penalties for marijuana in the state result in disparate treatment throughout the state. In the urban areas of Nevada, simple possession of a small amount of marijuana is usually reduced to a gross misdemeanor or misdemeanor or resolved in Drug Court. It seldom results in a felony charge, let alone a conviction. In the rural counties, any possession of marijuana is usually charged as a felony and may or may not be dealt down to a gross misdemeanor, depending on the attitude of the prosecutor and law enforcement in the county. In the urban counties, possession will almost always be processed as a misdemeanor or a Drug Court case, while in the rural counties you probably will face felony charges.

I know some people say that while reducing the penalties for a small amount of marijuana may be appropriate, it will send the wrong message to our young people. My answer is that our young people are bright and quite informed nowadays. If we are worried about sending signals or signs to the public, I think we should be most concerned about sending realistic messages and that in our legislation the punishment should fit the crime.

The Rose Commission was reconvened when I became Chief Justice again in 1999. It reviewed its old recommendations and a few new areas of court operation. In 2000, it renewed its recommendation for the reduction of the penalties for a small amount of marijuana to a misdemeanor and cited the same reasons for the recommendation.

I want to make it clear that this recommendation is not that of the Nevada Supreme Court or any of its justices. It is the recommendation of 50 citizens of Nevada who believe that each recommendation will improve the justice system in our state.

MEMORANDUM

OFFICE OF THE DISTRICT ATTORNEY

STEWART BELL
DISTRICT ATTORNEY

JUVENILE DIVISION
601 North Pecos Road
Las Vegas, Nevada 89101-2417

ROBERT W. TEUTON
Chief Deputy
455-5320
455-5878 (Fax)

TO: **Members of the Assembly Judiciary Committee**

THRU: Assemblywoman Chris Giunchigliana and
Ben Graham, Chief Deputy District Attorney

FROM: Robert W. Teuton

RE: AB 453 - Revising Penalties for Possession of Marijuana

DATE: April 6, 2001

My name is Bob Teuton, Chief Deputy District Attorney in Clark County, Nevada. I have been in charge of our Juvenile Division since 1995 and, by background, served as the Assistant Director or Acting Director of the Clark County Department of Family and Youth Services from December of 1988 through February of 1995. I was a Deputy District Attorney in our Criminal Division from 1978 through 1988, becoming a Chief Deputy in 1984. I would like to confine my remarks to those sections of this bill which address the penalties for possession of marijuana.

I had the distinct pleasure of serving on the Judicial Assessment Commission of the Nevada Supreme Court, more commonly known as the Rose Commission, in both 1994 and 2000. Both Commissions were comprised of members of the judiciary, prosecutors, defense attorneys, educators, business persons and professionals from throughout our state. In September of 1994 and again in October of 2000 the Criminal/Juvenile Section of the Rose Commission(s) recommended, and the full Commission endorsed, the proposition that penalties for simple possession of one ounce of less of marijuana be reduced to a misdemeanor. This bill mirrors the

recommendation of the Rose Commission. In many respects, however, this bill is more stringent than the Rose Commission recommendations. For example:

AB 453	Rose Commission: 1994 & 2000
Authorizes either citation or arrest for possession of 1 ounce or less of marijuana	Would only allow citation to be issued
Provides enhanced penalty for second offense	Repeat offenders subject to same penalty
Provides enhanced penalty for third offense	Repeat offenders subject to same penalty
Mandates treatment and rehabilitation program for second offenders	No mandated program
Current penalties for possession of more than 1 ounce remain the same	Would create gross misdemeanor offense for possession of more than 1 but less than 4 ounces of marijuana

There are at least three reasons, from a law enforcement perspective, why the penalty provisions of this bill should be passed. First, police officers have discretion on whether or not to arrest, cite, or lecture and release most of these offenders (in reality if not in law). That discretion is currently exercised taking into account not only the fact of the offense, but also the amount of time it would take to effectuate a felony arrest (arrest, transport, booking, securing evidence, completing declaration of arrest) and the nature and number of pending calls for service. A police officer with calls pending for assaults, battery, burglary, etc., is more likely to seize and destroy (or book for safekeeping) a joint or marijuana, lecture the offender and **not** make an arrest than make an arrest. Second, in those cases where an arrest is made, similar discretion causes these cases to be screened out of the justice system with the police designation of "no charges filed." That is, a screening detective, when prioritizing his or her time, as well as lab time and costs to do a chemical analysis, with the nature of the offense, is more likely to expend resources on cocaine, heroin, and other controlled substances than on possession of 1 ounce or less or marijuana. Third, it is common practice, at least in Clark County, for law enforcement personnel to avoid the first two issues by simply citing the offender into a municipal court for the offense of Possession of a Dangerous Drug Not to be Introduced into Interstate Commerce. In fairness to police officers, this practice is the result of years of plea bargaining first offense Possession of Marijuana (violations of NRS Chapter 453) into Dangerous Drug violations (NRS Chapter 454) and is tacit recognition that subjecting an offender to misdemeanor sanctions for possession of small amounts of marijuana is more appropriate than ignoring the offense entirely. These are the primary reasons that the Rose Commission recommended de-felonizing the simple possession of one ounce or less of marijuana and the reasons why we support passage of AB 453.

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Author: Don Thompson, Associated Press

POLICE DEFEND LOCALS AGAINST DRUG AGENTS

Two Mendocino County Officials Have Set Up One Of The Nation's First Licensing Programs For Medical Users Of Marijuana

UKIAH -- Here in the Emerald Triangle, where marijuana sprouts like mushrooms from the forest floor, Mendocino County's two top cops see themselves as a buffer between drug agents and an often-freewheeling citizenry.

District Attorney Norman Vroman and Sheriff Tony Craver won office two years ago with campaign pledges to set up one of the nation's first medical marijuana licensing programs.

Their goal, they said, is to keep police from seizing legal pot gardens and hassling legitimate growers who register under a 4-year-old California law.

Now both men are promising to enforce state and federal drug laws, in part to keep outside drug agents from stepping in after 58 percent of residents in this North Coast county voted last fall to bar police from targeting small-time marijuana growers.

Measure G instructs county supervisors not to spend money pursuing those growing fewer than 25 marijuana plants, and directs Vroman and Craver to make enforcement and prosecution of small-time growers their lowest priority.

No problem, they say.

Neither the DA nor the sheriff has enough staff or money to go after those they call "mom and pop growers."

Not when drug cartels are importing armed workers to tend and guard thousands of marijuana plants hidden in national forests and other remote areas of the region.

"Twenty-five plants is a hellacious amount of marijuana. Some of the stuff they grow here, you can get two and three pounds off a plant," Vroman says. However, "as a practical matter, nobody in the county got prosecuted for 25 plants or 30 plants."

The only time arrests were made for small numbers of plants was when police were called in for other reasons, for instance, on a domestic-violence complaint, and saw the marijuana, Vroman and Craver say.

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Las Vegas SUN

Today: March 28, 2001 at 16:11:29 PST

Nevada measures tougher on DUIs, easier on pot possession

By Siobhan McDonough
ASSOCIATED PRESS

CARSON CITY, Nev. (AP) - If Nevada is a seeming paradox, with its round-the-clock gambling and drinking but harsh criminal laws, its lawmakers are no different - proposing tougher drunken driving laws but softer marijuana statutes.

"It reflects the uniqueness of Nevada. It almost seems like a contradiction," said Assemblywoman Sheila Leslie, D-Reno. "It shows our Libertarian bent - a 'you do your thing as long as you aren't hurting me' attitude."

This session, Assemblywoman Chris Giunchigliani's AB453 would authorize medical use of marijuana and decriminalize possession of small amounts of pot - while Assemblyman Mark Manendo's AB166 would lower the permitted blood-alcohol limit for drivers from 0.10 to 0.08.

"It's unusual we'd have the harshest law on marijuana possession on the books - it conflicts with our Libertarian way. But it doesn't conflict with our tradition of being conservative and strict on crime," Leslie said. "Alcohol kills far more than marijuana."

Manendo wants to reduce the deaths caused by drunken driving. He says if the blood-alcohol limit in drivers is lowered to 0.08 nationally, each year up to 600 DUI-related fatalities would be prevented around the country.

"This is a lifesaving measure," Manendo said, adding that the bill faced strong casino industry opposition in the past but has a good chance this year because Congress mandated the lower blood-alcohol level.

Nineteen states already have imposed the 0.08 level, and if Nevada doesn't do the same by 2003 it will lose millions of dollars in federal highway funds.

In 2000, there were 255 fatal crashes resulting in 309 deaths reported across the state, according to the state Office of Traffic Safety. About a third of the deaths were alcohol-related.

Assemblyman John Carpenter, R-Elko, said he resents the federal government's intrusive manner, adding, "We need to be passing laws on the basis of whether the law is good."

But Assembly Judiciary Chairman Bernie Anderson, D-Sparks, hopes the Legislature acts on the lower DUI standard now "before it's pushed in our face. We have an opportunity to be more thoughtful."

Harvey Whittemore, representing the Nevada Beer Wholesalers' Association, said that states with lower DUI levels don't necessarily have fewer fatal drunken-driving accidents, and that other factors such as educating people about drunken driving and building safe roads also reduce the number of fatalities.

"We're concerned about the continued attempt by many to turn this into a Prohibition," he adds.

But others, including Assemblywoman Barbara Cegavske, R-Las Vegas, don't think the bill is tough enough.

"If we want to tell people not to drink and drive, we need to have a limit of 0.0," she said. "We're sending the wrong message - that a little bit of alcohol is OK to have and drive. The message really is: don't drink and drive."

While the penalties for drunken driving might get stricter, getting caught with small amounts of marijuana could result in softer sentences than the current felony penalties that can be imposed.

Giunchigliani, D-Las Vegas, says her strategy to get the possession penalty eased was to link it with the medical marijuana plan mandated by the state's voters.

The ballot plan, approved by nearly two of every three voters, allows use of marijuana by cancer, AIDS, glaucoma victims and others with painful and potentially terminal illnesses.

"We don't want to nail people who are using it for medical purposes," Giunchigliani said.

She adds that while those who don't have a medical excuse for possessing marijuana will have a price to pay, it won't be high.

Giunchigliani wants a misdemeanor fine for people caught with an ounce or less of marijuana. A second offense would result in a higher fine and assignment to a treatment or rehabilitation program. Third-time offenders would be charged with a gross misdemeanor and have to pay an even steeper fine.

As the law stands now, she says, "It ends up being a bunch of paperwork for police. They need to focus their energies on violent criminals, and cocaine and crack addicts."

"Maybe it's a reflection that our drug policy has failed."

Carpenter tends to vote conservatively, but favors decriminalizing possession of small amounts of pot.

"The only way to make inroads on the drug problem is through treatment and to some, that is punishment. They need to have the fear of the devil put into them."

Veteran Assemblyman Joe Dini, D-Yerington, also backs decriminalization, saying he's concerned about the mark a felony leaves on the record of a young person caught with marijuana.

"That's a bad rap. The rest of their life they have that on their record. Maybe the law is too strict, and

we're not winning the war."

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Las Vegas SUN main page

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ch 29, 2001

ıpreme Court Hears U.S. Argue Against Medical Marijuana

LINDA GREENHOUSE

WASHINGTON, March 28 — Although the Supreme Court is usually solicitous of states' rights, that attitude appeared today to stop well short of endorsing the medical use of marijuana, which California voters authorized in a 1996 referendum despite a federal law that considers marijuana to have "no currently accepted lical use."

› lower federal courts in California have held that a marijuana distribution center in Oakland could invoke "medical ɛssity" as a defense against the federal government's effort to get an injunction to stop the operation of the "cannabis ıs." The clubs sprang up around the state after passage of California's Proposition 215, entitled the Compassionate Act.

ring the government's appeal, the justices were openly skeptical that a defense of "medical necessity" could be ɔerly recognized.

ɛn Gerald F. Uelmen, the lawyer for the Oakland Cannabis Buyers' Cooperative, said the lower courts had ıgnized only a "limited exception" for people who could show that they had a serious need for marijuana and lacked reasonable alternative, Justice Anthony M. Kennedy interjected, "It doesn't sound limited at all."

ice Kennedy said the lower courts had effectively engaged in a "huge rewriting" of the federal law that places ijuana within schedule I of controlled substances, those with no accepted medical use.

federal government responded to the adoption of Proposition 215 not with criminal prosecutions of marijuana ıders and users, but by seeking a federal court injunction to stop the cannabis clubs from distributing the drug. As a l matter, the argument today was not directly about the validity of Proposition 215 itself but about what discretion the ɛr courts had in responding to the request for the injunction.

ɛn this narrow focus, the Supreme Court is unlikely to issue a definitive ruling on the future of the growing number ıedical marijuana initiatives, which have now been adopted by nine states. The medical use of marijuana by individual ɛnts and doctors, as opposed to distribution through the pharmacy- like cooperatives, is not directly at issue.

ɛral justices today questioned the government's approach, suggesting that its reasons for pursuing a civil injunction ɛr than criminal prosecution were not only tactical but cynical, perhaps even a misuse of the federal courts' authority sue injunctions.

t the real concern behind this that with the passage of the California proposition and the popularity within the fornia population that that necessarily entails, it will be very, very difficult for the government ever to get a criminal ıviction in a jury trial?" Justice David H. Souter asked Barbara D. Underwood, the acting solicitor general.

Underwood said that because in the government's view "there simply is no medical necessity defense at all," it was ɛ efficient to "get it resolved systemically in a civil proceeding that simply presents that legal question" by means of an ıction rather than in a series of criminal prosecutions.

fornia itself was not a party to the case, but the California attorney general, Bill Lockyer, filed a brief on behalf of the land cooperative. "The federal government threatens to cross the line of state sovereignty and interfere with a tional state right," the attorney general said. Mr. Lockyer said states had a "traditional right to regulate for the health welfare of their citizens."

California Medical Association also supported the Oakland group, as did civil liberties and drug policy organizations a group of local sheriffs and officials from other states that have adopted medical marijuana initiatives.

briefs contain considerable information about current practices of using marijuana to combat glaucoma, the nausea of ıotherapy, and the wasting syndrome of AIDS. There is also debate in the briefs over whether a legal drug called nol, a synthetic version of the active ingredient in marijuana, offers the relief that some patients find in smoking juana.

ce Ruth Bader Ginsburg, who endured a course of chemotherapy last year as treatment for colon cancer, made it that she had read the briefs with care and interest. Addressing Ms. Underwood, the government's lawyer, Justice ourg referred to one description of one cancer patient "who was constantly vomiting, and the only thing that calmed down" was marijuana. "That is not an uncommon experience," she said, asking: "Am I wrong in thinking that there ɔeen quite a bit of this going on in the medical profession?"

Underwood replied, "I don't know how much of it has been going on." She added that although federal agencies

e not yet persuaded of the benefits of medical marijuana, they were continuing to study it to determine "whether it has effect that's described."

medical-necessity defense recognized by Judge Charles Breyer of Federal District Court in San Francisco is narrowly ned. It applies only to those who suffer from a "serious medical condition"; who will "suffer imminent harm" without ss to marijuana; whose condition or symptoms will be eased by marijuana; and who had "no reasonable legal native" to the drug.

ause Judge Breyer is the younger brother of Justice Stephen G. Breyer, Justice Breyer has recused himself from the , United States v. Oakland Cannabis Buyers' Cooperative, No. 00-151, and only eight justices heard the argument morning.

NCSL

Health Policy Tracking Service

Subject:	**Pharmaceuticals**	**Date: 11/25/2000**
Title:	**Medical Marijuana**	

By: Jacob Herstek and Amanda Watson

During the last few years, the debate over the use of marijuana for medical purposes has moved from the legislative arena into the public forum. Since 1996, eight states have passed ballot initiatives that allow people with certain medical conditions to use marijuana, and now most of those states are wrestling with ways to implement the laws. During the past 24 years, 35 states have enacted laws on medical marijuana; however, several states have either repealed their laws or allowed them to sunset.

LEGISLATIVE OVERVIEW

The successful ballot initiatives in 1996 in **California** and **Arizona** brought national attention to the medical use of marijuana; however, most states have had medical marijuana laws for years. Currently, **Alabama, Alaska, Arizona, California, Colorado, Connecticut, Georgia, Hawaii, Illinois, Iowa, Louisiana, Maine, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin** and the **District of Columbia** have statutes that address the medical utility of marijuana.

One example is a 1979 **Virginia** measure--one of the first of its kind--that allows physicians who practice in the state to prescribe marijuana for cancer and glaucoma. Since 1981, **Connecticut** has had a medical marijuana law that permits state-licensed physicians to prescribe marijuana for either glaucoma or chemotherapy side effects. In 1991, **Louisiana** lawmakers also permitted physicians to prescribe marijuana.

In 1997, buoyed by their success in **Arizona** and **California**, advocates for the medical use of marijuana lobbied for new laws in several states and placed a ballot initiative before the voters in **Washington**. However, none of these efforts were successful. The Arizona Legislature enacted legislation that year that negated the state's 1996 ballot initiative.

The issue once again was before voters in November 1998 in five states--**Alaska, Arizona, Nevada, Oregon** and **Washington**, and in 1999, in one state--**Maine**. Voters approved all six ballot initiatives, and most of these states have been working on implementation of the laws ever since. In 2000, voters approved ballot initiatives in **Nevada** (a second vote was needed to uphold the 1998 measure) and **Colorado**.

Also in 2000, **Hawaii** became the first state to approve medical marijuana through a legislative measure. Governor Ben Cayetano (D) signed the law in June.

PROS AND CONS

Proponents of medical marijuana say it has been used as a therapeutic remedy for centuries, and affirm its abilities to alleviate the pain and suffering associated with certain serious illnesses. They claim that marijuana's active ingredient, tetrahydrocannabinol (THC), reduces vomiting and nausea caused by cancer therapies and that marijuana increases the appetite of AIDS patients. Other suggested

therapeutic values include the reduction of intraocular pressure associated with glaucoma and mild relief from muscle spasms. Some physicians assert that, for certain patients, marijuana is the only effective medication.

Many national and regional drug abuse organizations strongly oppose medical marijuana legislation. These groups say there is no medically accepted use for smoked marijuana and claim that those who argue for its legalization do so only because they favor the legalization of all uses of the drug. Opponents raise concerns about the dangers and long-term hazardous effects of smoking marijuana, such as bronchitis and asthma. They also claim that passage of the recent ballot propositions sends a message to children that conflicts with the federal government's long-time campaign to reduce drug use. Finally, some critics assert that state initiatives regarding the use of medical marijuana are constitutionally illegal because federal law bans all use of the drug.

Dronabinol/Marinol

Often ignored in the pro and con debate over medicinal marijuana is the existence of dronabinol, a synthetic form of THC known by its trade name, Marinol. Proponents of the drug, which has been approved by the Food and Drug Administration (FDA), claim it offers the same relief as smoked marijuana without harmful side effects. Furthermore, dronabinol is reimbursed by all third-party payers--including Medicaid and Medicare--for its approved indications, including nausea in cancer chemotherapy patients and AIDS wasting syndrome.

In July 1999, federal officials moved dronabinol from the list of Schedule II drugs to the list of Schedule III drugs. (The federal Controlled Substances Act of 1970 created five schedules for the control of certain substances. Schedule I substances are subject to the most restrictions and Schedule V are subject to the least restrictions.) Once it is classified as a Schedule III substance, dronabinol is easier for physicians to prescribe. For example, physicians can phone in a prescription to a pharmacy for a Schedule III drug and can prescribe refills with the initial prescription.

Since July 1999, at least 32 states have followed the federal government's lead and moved dronabinol to Schedule III. They are **Alabama, Alaska, California, Colorado, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia** and **Washington**.

Many medical marijuana advocates claim that, although it is useful for some patients, dronabinol is not as effective as smoked marijuana for many other patients. According to the National Organization to Reform Marijuana Laws (NORML), dronabinol is a powerful "psychoactive" drug with far more side effects than smoked marijuana, its benefits are not as immediate, and it is not as effective as smoked marijuana in increasing lean body mass in AIDS patients.

FEDERAL ACTIVITY

In February 1997, the National Institutes of Health (NIH) convened a panel of medical experts and researchers to review the scientific data concerning the potential therapeutic uses for marijuana. In its final report, the panel concluded,

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> "There are varying degrees of enthusiasm to pursue smoked marijuana for several indications. This enthusiasm was tempered by the fact that, for many of these disorders, effective alternative treatments are already available. Given the general consensus among the experts that the number, design and documentation of studies performed to date with smoked marijuana did not provide definitive answers, it was difficult to compare marijuana with products that had received regulatory approval under more rigorous experimental conditions. This does not mean, however, that the issue should be foreclosed. It simply means that in order to evaluate various hypotheses concerning the potential utility of marijuana in various therapeutic areas, more and better studies would be needed (1)."

The panel also stated that the risks associated with marijuana, especially smoked marijuana, must be considered not only in terms of immediate adverse effects on the lungs, but also in terms of the long-range effects in patients who have chronic diseases. Panel members felt that the possibility of frequent and prolonged marijuana use might lead to clinically significant impairments of immune system function. In other words, monitoring patients' immune system activity must be part of any experimental research.

Members of the panel also were concerned about the effects of the dangerous combustion byproducts of smoked marijuana on patients who have chronic diseases. To deal with these concerns, a group consensus favored the development of a smoke-free inhaled delivery system that could deliver purer forms of marijuana's most active ingredient, delta-cannabinoids, or its related compounds (known as cannabinoids).

In response to the panel, the Clinton administration announced in May 1999 that it would sell government-grown marijuana to scientists who want to study the drug. To gain access to the marijuana, researchers must submit study proposals to a Public Health Service medical committee for review. Experts expressed hope that eased access to the drug could produce one of the 1997 panel's primary goals: alternative delivery systems--such as an inhalers--that would enable patients to benefit without suffering the toxic effects of smoke.

Also in 1999, the Institute of Medicine (IOM), a branch of the National Academy of Sciences, released the results of its study, which showed that marijuana is " ... potentially effective in treating pain, nausea, the anorexia of AIDS wasting, and other symptoms, and should be tested rigorously in clinical trials." The White House Office of National Drug Control Policy commissioned the study two years earlier but has yet to address or implement the study's recommendations. Officials kept the federal ban on marijuana in place and continue to prosecute those who use the drug. Late in 1999, the Department of Health and Human Services issued guidelines on medical marijuana research that did not incorporate the IOM recommendations on compassionate use of the drug.

STATE MEDICAL MARIJUANA LAWS

State medical marijuana laws can be categorized into three broad groups: therapeutic research programs, the right of a physician to prescribe marijuana/medical necessity defense, and rescheduling of marijuana so it can be more easily obtained for medical reasons (see table 1).

Therapeutic Research

Currently, 14 states have laws authorizing marijuana therapeutic research programs. During the past 20 years, 25 states have enacted such laws. However, the laws in four states have expired and the laws in another seven states have been repealed. States established therapeutic research programs in the late 1970s and early 1980s in conjunction with the federal government's position to test the medical utility of marijuana. Each state program required federal approval and close monitoring of those in the study; the marijuana was supplied by federal agencies. In the mid-1980s, the nation's federal drug policy changed and marijuana no longer was considered a viable medical treatment.

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During the 1970s and 1980s, therapeutic research programs in at least six states obtained the necessary federal permission to distribute marijuana to qualified patients. By 1991, however, the therapeutic research programs in 13 states had expired or ceased operating. Some groups attribute this phenomenon to the availability of the THC medication, dronabinol, and to the federal government's long-time policy of not granting states permission to use marijuana.

Late in 1999, however, legislators in **California** passed a law to allow the University of California to establish a three-year marijuana research program. The law went into effect immediately after Governor Gray Davis (D) signed the legislation in October 1999 (see **1999 Activity**). In the state's 2000-2001 budget, enacted in late June 2000, lawmakers set aside $3 million for the program.

Physician's Prescriptive Authority/Medical Necessity Defense

Laws in several states permit physicians to prescribe, dispense or distribute (in some cases all three) marijuana to be used as medicine. Most specify that marijuana is to be used to treat serious illnesses, such as cancer and glaucoma. The significance of these laws lies in the courtroom. Advocates for the use of marijuana argue that, in some cases, these laws permit a patient or defendant to tell the court that marijuana as a treatment option was suggested through consultation with a licensed physician. Courts in **Florida, Washington** and the **District of Columbia** have allowed the medical necessity defense in cases brought before them.

Reclassifying Marijuana from Schedule I to Schedule II

The third category of laws includes those that have downgraded the control of marijuana to differ from the federal government's Schedule I status. As mentioned previously, the Controlled Substances Act of 1970 established five schedules for the control of certain substances. Marijuana was included in Schedule I, along with other drugs the government determined to have a high potential for abuse, no current medical use, or a lack of accepted safety. In most cases, changing the schedule under which marijuana is classified is a procedural move to meet other state statutes that make medical marijuana legal. Currently, **Iowa, Montana** and **Tennessee** have laws that reschedule marijuana.

1997 LEGISLATIVE ACTIVITY

In 1997, following the November 1996 successful ballot initiatives in **Arizona** and **California**, 28 bills relating to medical marijuana were introduced in 17 states. The start of the 1997 legislative session produced a flurry of legislative activity and debate. As media attention to the issue waned, legislative activity at the state level correspondingly decreased.

Legislators in **Arizona, Georgia, Ohio** and **Virginia** introduced bills that would prohibit the use of medical marijuana in their states. In **Virginia**, legislators acted to repeal the state's medical marijuana law that allowed physicians to prescribe the drug. Although separate bills passed through both houses of the legislature, the Senate Committee on Education and Health effectively killed the movement to repeal.

Arizona legislators nullified the medicinal marijuana ballot measure approved by the voters in 1996 by passing House Bill 2518. Signed into law by former Governor Fife Symington (R) on April 21, 1997, the measure states that all physician-prescribed medications must be approved by the FDA; marijuana is not. This law was later overturned by the 1998 ballot initiative.

An **Ohio** bill corrected what was called a "mistake" when legislators in the previous session overlooked bill language that legalized a medical necessity defense for marijuana. Senate Bill 2 was signed by former Governor George Voinovich (R) on March 21 after it overwhelmingly passed both houses.

The remainder of the legislation centered around expanding the use of marijuana as a medical treatment. Eleven legislatures considered bills that either would allow a physician to prescribe marijuana or to

develop a marijuana therapeutic research program. The end of the 1997 legislative session brought no change in existing state law to include marijuana as a medical therapy. For the most part, legislators shied away from acting on the controversial issue. A bill in **Wyoming** that rescheduled the drug from Schedule I to Schedule II passed out of committee, but ultimately was defeated on the floor.

1998 BALLOT INITIATIVES

The issue of legalizing medical marijuana made its way back to the voters in November 1998 in the form of ballot initiatives. Voters in **Alaska, Arizona, Colorado, Nevada, Oregon, Washington** and the **District of Columbia** approved various measures on the issue, but not all of these states have been able to move toward implementation.

In the **District of Columbia**, officials did not count results of Initiative 59 until almost a year after voters cast their ballots in favor of medical marijuana (see **1999 Activity**). In **Colorado**, the secretary of state's office announced shortly before the election that petitioners failed to gain the required number of signatures necessary to qualify for the ballot. A Colorado judge had ordered the measure placed on the ballot before state officials had completed their signature count. Although no votes were counted, exit polls revealed that the measure would have been approved by a 58 percent vote. Medical marijuana proponents appealed the secretary of state's findings and a judge ruled in September 1999 that, in fact, enough signatures had been collected. Soon after, the secretary of state announced that the referendum would be placed on the ballot in November 2000.

In **Nevada**, voters passed a constitutional amendment approving the use of medical marijuana, but a second "yes" vote in 2000 was required before the initiative could become law.

Arizona's initiative reaffirmed the 1996 vote and overturned the law passed by the Legislature in 1997. Legally, physicians in the state may recommend marijuana to patients if another doctor concurs in their opinion; however, patients are not exempted from drug-crime prosecution.

Laws passed in **Alaska** and **Oregon** legalize the possession of specified amounts of medical marijuana for patients enrolled in a state identification program. Patients who are not enrolled in the program, but who possess marijuana under their doctor's supervision, may raise an affirmative defense of medical necessity against state criminal marijuana charges.

Washington's endorsement came a year after voters vetoed a broader plan that some say would have left the door open to legalizing other drugs. "We worked hard to bring back a very tightly worded, specific medical marijuana initiative. It's a model for the rest of the country," said Rob Killian, the Seattle physician who sponsored the Washington measure.

1999 ACTIVITY

In November 1999, through a ballot initiative, **Maine** voters approved the use of medical marijuana by a margin of 62 percent to 39 percent. The measure legalized the possession of marijuana for AIDS and cancer patients, as well as for those suffering from glaucoma, epileptic seizures and persistent muscle spasms brought on by chronic diseases like multiple sclerosis. The law allows physicians who administer continuing care to a patient to recommend the drug, but not to prescribe it. Patients must buy or grow their own marijuana, but may possess no more than 1 ounce of harvested marijuana and six plants, of which only three may be flowering.

In May 1999, the Maine House and Senate defeated a bill to legalize marijuana for medicinal purposes. State Representative Thomas Kane (D), co-chair of the committee on Health and Human Services, said, "People essentially felt that it ought to be a referendum issue and we should let the people speak on it." With the exception of Maine's initiative, most of the activity in 1999 centered around implementation of the 1998 ballot initiatives, although a few states considered legislation.

Only six months after nearly 60 percent of **Alaska** voters approved an initiative legalizing medical marijuana, the Legislature passed a measure in 1999 that requires patients to complete regular doctor visits to maintain permission to use marijuana, to limit their possession of marijuana to 1 ounce and six plants in all cases and to register with the state before obtaining the drug.
State Senator Loren Leman (R), the bill's sponsor, said the law was " ... needed to prevent recreational marijuana users from exploiting the voter-approved initiative," and would preserve patients' rights while enabling police to distinguish between legal and illegal marijuana use. Senator Leman also distinguished the Alaska law from the Arizona law enacted in 1997 that nullified the public approval of that state's ballot initiative. Opponents of the law argued that it will violate users' medical privacy and unfairly burden people suffering from serious illness. Governor Tony Knowles (D) signed the law in June 1999.

As mentioned previously, the **California** Legislature approved Assembly Bill 847 in September 1999, which appropriates $3 million to the University of California to study the medical effects of marijuana over a three-year period. The California Marijuana Research Program is charged with conducting studies that will " ... ascertain the general medical safety and efficacy of marijuana" and possibly developing " ... medical guidelines for the appropriate administration and use of marijuana."

A measure that did not make it through the California Legislature in 1999 would have allowed qualified patients to cultivate and possess marijuana without fear of prosecution. The Assembly Committee on Health approved Senate bill 848, after Attorney General Bill Lockyer (D) testified that the bill "provides for responsible implementation of Proposition 215," the medicinal marijuana ballot initiative approved by California voters in 1996.

The bill was based on the recommendations of a task force convened by Lockyer in January to come up with a method of clarifying and implementing the initiative, which has been interpreted differently by different counties. The panel recommended that the state establish a voluntary registry of medical marijuana users and finalize regulations on growing the plant. In September 1999, the bill was placed in the Assembly's inactive file, and legislators have not yet taken it up in 2000.

Officials in the **District of Columbia** did not count the ballots from Initiative 59 until 1999, when a federal judge ruled that an amendment to the 1998 D.C. Appropriations Act, intended to prevent the city from using funds for a medical marijuana ballot initiative, did not prevent the city from counting the votes and releasing the results. In September 1999, voters learned that the measure had passed by a 69 percent margin, but because the U.S. Congress has authority over the District, Initiative 59 did not become law. If it had been allowed to stand, the measure would have permitted marijuana use for the treatment of a serious illness, as long as a patient has a physician's recommendation.

Another event that contributed to the medical marijuana debate in 1999 came in June, when **Florida's** Supreme Court ruled that a patient in possession of marijuana still may use the medical necessity defense. The case involved a retiree who was convicted of possession of marijuana in 1995 after smoking the drug to keep his glaucoma under control. The patient argued in court that he needed marijuana to control the pain associated with the condition, but the trial judge refused to allow the defense.

On appeal, the First District Court of Appeals overturned the conviction, ruling that the man's defense was valid. State Attorney General Bob Butterworth (D) then asked the State Supreme Court to reverse the decision of the appeals court. The Supreme Court heard arguments in early April, but in June " ... unanimously agreed that the issue deals with 'an extremely narrow principle of law' and therefore doesn't belong in the high court."

2000 ACTIVITY

Four states--**Colorado, Hawaii, Maine** and **Nevada**--enacted laws in 2000 on medical marijuana.

In May, legislators in **Colorado** adopted a resolution opposing medical use of the drug. **Colorado** House Joint Resolution 1033 expresses the opposition of the General Assembly to "any effort to mandate in the Constitution of Colorado that marijuana be described as a medicine or that the possession and use of it be decriminalized for medicinal or any other purpose." The measure further states that any information that "attempts to mislead the public into believing that marijuana has medicinal uses that would justify the legalization of its use for such purposes is hereby rejected."

Voters in the state, however, disagreed with the General Assembly. In November, they cast their ballots to legalize medical marijuana. **Nevada** voters approved a similar initiative. Both measures amend the states' Constitutions to permit people with serious and/or chronic illnesses to use marijuana to treat the symptoms of their conditions. In addition, both of the new laws require patients to obtain a doctor's written recommendation and to then register with the state to become legally authorized to possess or grow the drug.

Hawaii's law (Senate Bill 862) removes criminal penalties for people who obtain a doctor's approval to use marijuana. The measure defines medical use as "the acquisition, possession, cultivation, use, distribution, or transportation" of marijuana or its related paraphernalia "to alleviate the symptoms of a qualifying patient's debilitating medical condition." Such conditions listed in the law include:

- Cancer, glaucoma, HIV/AIDS;
- Chronic or debilitating diseases or medical conditions that produce cachexia or wasting syndrome, severe pain, severe nausea, seizures, severe and persistent muscle spasms; or
- Medical conditions approved by the Department of Health, pursuant to administrative rules in response to a request from a physician or qualifying patient.

Under the new law, a patient must be diagnosed by a physician as having a debilitating medical condition and the physician must have written documentation pertaining to the patient. The amount of marijuana possessed by the patient must not exceed an "adequate supply," defined as no more than three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

Senate Bill 862 is very similar to the medical marijuana laws passed in other states over the last few years, but it is the first to be enacted by a state legislature rather than by voters. Said Governor Ben Cayetano (D), "The fact that Hawaii is the first to pass the use of medical marijuana through the Legislature, shows that people here know and understand the medicinal value of marijuana." But he also said, "If the law is abused I will not be surprised to see a move to repeal the law. So I hope the practitioners who believe in the medicinal value of marijuana are aware of this and take precautions."

Maine Senate Bill 1012, enacted in May, directs officials to look at ways to more effectively implement the initiative passed last year that legalized medical marijuana. Sponsored by Senator Anne Rand (D), the law creates a task force to develop recommendations on how to provide access to marijuana for patients who may legally possess it. (See **Implementation Issues** for more information).

In its original version, the bill specified that the state would allow the Maine Drug Enforcement Agency to distribute confiscated marijuana to medical users listed on a state registry. Legislators later replaced that version with the more moderate study bill described above.

In June, the **Oregon** Department of Human Services added "Agitation of Alzheimer's Disease" to the list of conditions covered under the state medical marijuana law. A seven-member panel of public health experts voted to allow those people suffering from the condition to use medical marijuana if they have a doctor's statement of support. The original law gives the Oregon Health Division the power to accept petitions for the addition of new qualifying conditions. Originally, the law covered eight diseases and conditions: cancer, glaucoma, HIV/AIDS, cachexia, severe pain, severe nausea, seizures and persistent muscle

spasms.

In **Arizona**, a proposed initiative that would have established a state registry for authorized medical marijuana users failed to gain enough signatures to be placed on the November ballot. The measure also would have exempted from drug prosecution anyone with a prescription for marijuana and would have lifted minimum sentences for nonviolent drug users.

State legislatures also were active this year on the issue of rescheduling dronabinol, or Marinol, the synthetic marijuana drug. At least 12 states--**California, Colorado, Florida, Hawaii, Idaho, Kansas, Maryland, Mississippi, Ohio, South Dakota, Utah** and **Virginia**--enacted laws to move dronabinol to the list of Schedule III controlled substances. As mentioned previously, at least 32 states have passed laws to reschedule the drug.

IMPLEMENTATION ISSUES

Officials in most of the states that have passed medical marijuana initiatives have encountered stumbling blocks in their attempt to implement the laws. Because federal law still prohibits the use, possession and distribution of marijuana, physicians who prescribe the drug risk losing their licenses, and users face federal and state prosecution for attempting to fill their prescriptions. If a patient is unable to grow marijuana, he or she must purchase the drug through illegal means.

Further, many state and local police departments are finding it difficult to determine which users are protected under the new laws. For this reason, many states require patients to register as legal medical marijuana users. Some states are having more success with their registries than others. Many medical marijuana users are afraid to place their name on a state-administered list for fear that they will be subject to federal prosecution.

In **Oregon**, medical marijuana users are required to pay the state a $150 annual fee to receive registration cards that became available in May 1999. Many advocates say this cost is prohibitive, but Dr. Grant Higginson, the health officer who approved the fee, said it was necessary because the voter initiative that legalized medical marijuana left the department with a significant, unbudgeted expense.

At the time, officials at the department said they needed about $100,000 to set up the registration program. Dr. Richard Bayer, chief petitioner for the law, believed it would be highly unlikely that the legislature would allocate funds for the program. He said, "I think it's pretty clear that asking the taxpayers to bear the burden of Oregon's medical marijuana act might have created political problems. We felt the law would be more palatable if everyone paid their own way." The law's backers had projected between 500 and 600 participants in the marijuana program, and about 700 have come forward so far.

According to the original law passed in **Alaska**, registration with the state was optional. However, the 1999 law passed by the Legislature made that provision mandatory. Although registration costs only $25 per patient, per year, sources in the state say the registration process has taken a long time to become functional. According to state health officials, about 150 people are now on the registry, which is required by law to be confidential (2).

In **Washington**, policymakers, law enforcement officials and health care providers also have met with difficulties in implementing the state's medical marijuana law. The law allows for a "medical necessity" legal defense and a 60-day supply of the drug for patients with documentation from their doctors. Unfortunately for those patients, however, the state has not defined what amounts to a 60-day supply. A bill that would have directed the Department of Health to set a standard amount failed to make it through the Legislature.

Like other states' laws, Washington's is also silent on how a patient can obtain marijuana. This has led to cases where legal users (under state law) are being investigated and prosecuted. Further complicating

matters is the fact that oversight of the medical marijuana law has yet to be assigned to any specific state agency.

Maine's Medical Marijuana Task Force began its meetings in June 2000 and reported to the Legislature in October. Made up of legislators, law enforcement representatives and health officials, the Task Force was charged with developing recommendations for implementation of the medical marijuana law that would satisfy both users and law enforcers. In late September, the Task Force adopted its final report, which included a proposal to establish a non-profit medical marijuana distribution center in the state.

The proposal, recommended to the Joint Standing Committee on Health and Human Services and Criminal Justice, outlines a plan for a pilot program to create a centralized distribution center for registered marijuana users that would be opearated by a board of community members. Seven of the 10 legislators who served on the Task Force approved the proposal. If legislation is approved in the upcoming session, Maine will be the first state to legally authorize a medical marijuana distribution center.

In **California**, implementation of the medical marijuana law is being taken up by the cities. Because the Legislature has not passed a law to guide the process, cities such as Oakland, San Francisco and Santa Cruz are forging ahead with their own plans.

Early in 2000, the Board of Supervisors in San Francisco approved a plan to distribute identification cards to medical marijuana users, and in July, the program officially began. For $25, eligible patients can now obtain an identification card from the city Department of Public Health. Cards contain a patient's picture and a serial number instead of a name to protect the person's privacy. Officials say the cards will allow patients easier access to marijuana and will shield them from arrests (3).

In Santa Cruz, the City Council voted in March to allow patients suffering from a wide range of ailments to grow and use marijuana. The local chamber of commerce and the law enforcement community supported the measure, which was modeled after one in Oakland and was scheduled to go into effect in May (4).

Medical marijuana users in California now seem better able to gain access to the drug than are users in the other states where laws have been passed. In San Francisco, several medical marijuana dispensaries--such as the San Francisco Patients Resource Center--are in operation, and in Santa Cruz, users belong to groups that aid members in growing marijuana, such as the Santa Cruz Wo/Men's Alliance for Medical Marijuana (5).

FUTURE INITIATIVES

The next battle over medical marijuana could take place in any number of states. Efforts to bring referendums to the public have been reported in **Arkansas, Florida, Massachusetts, Michigan and Ohio**. In **New Mexico**, Governor Gary Johnson (R) has been outspoken in his support of medical marijuana use and recently directed state health officials to try to reestablish a therapeutic research program.

In **Minnesota**, 16 state legislators signed a July 2000 letter stating their support for a therapeutic marijuana research program, allowed under state law but not currently in operation. The primary intent of the letter was to ask Governor Jesse Ventura (R) and officials from the Department of Public Health to work with them to develop medical marijuana legislation. Lawmakers introduced bills in the past two legislative sessions that never made it through the Legislature (6).

Table 1.

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STATE MEDICAL MARIJUANA LAWS

STATE/JURISDICTION	LAWS
ALABAMA	1979[1]
ALASKA	1998[2] Ballot initiative
ARIZONA	1996 Ballot initiative--nullified by 1997 law 1998[2] Ballot initiative
ARKANSAS	--
CALIFORNIA	1996 Ballot initiative 1999[1]
COLORADO	2000[2] Ballot initiative
CONNECTICUT	1981[2]
DELAWARE	--
DISTRICT OF COLUMBIA	1981[2]
FLORIDA	--
GEORGIA	1980[1]
HAWAII	2000[2] Legislation
IDAHO	--
ILLINOIS	1978[1]
INDIANA	--
IOWA	1979[3]
KANSAS	--
KENTUCKY	--
LOUISIANA	1991[2]
MAINE	1999[2] Ballot initiative
MARYLAND	--
MASSACHUSETTS	1991[1]
MICHIGAN	--
MINNESOTA	1980[1]
MISSISSIPPI	--
MISSOURI	--
MONTANA	1979[3]
NEBRASKA	--
NEVADA	1998 Ballot initiative 2000[2] Ballot initiative
NEW HAMPSHIRE	1981[2]
NEW JERSEY	1981[1]
NEW MEXICO	1978[1]
NEW YORK	1980[1]
NORTH CAROLINA	--
NORTH DAKOTA	--
OHIO	1981[2]
OKLAHOMA	--
OREGON	1998[2] Ballot Initiative
PENNSYLVANIA	--
RHODE ISLAND	1980[1]

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SOUTH CAROLINA	1980[1]
SOUTH DAKOTA	--
TENNESSEE	1981[1]
TEXAS	1980[1]
UTAH	--
VERMONT	1981[2]
VIRGINIA	1979[4]
WASHINGTON	1979[1] 1998 Ballot initiative
WEST VIRGINIA	1979[1]
WISCONSIN	1982[2]
WYOMING	--

Sources: Marijuana Policy Project, March 31, 1997; Health Policy Tracking Service, National Conference of State Legislatures, November 2000.

Key:
1 = therapeutic research program;
2 = physician prescription/medical necessity defense;
3 = classifies marijuana out of Schedule I
– = no law

Notes

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2. Alaskans for Medical Rights, "Medical Marijuana in Alaska," http://www.alaskalife.net.
3. NORML, "San Francisco Issues Medical Marijuana ID Cards," July 20, 2000.
4. Join Together Online, "ID Cards for Medical Marijuana Users," February 2, 2000.
5. Santa Cruz Sentinel, "Use of marijuana OK'd without prescription from physician," March 29, 2000.
6. Marijuana Policy Project, "Minnesota State Legislators Call for Action on Medical Marijuana," July 10, 2000.

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Comments:

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Analyst: Amanda Watson
Updated By: Amanda Watson
Readers: LTS Readers; ylPharmaceuticals; Notes Administrators; amamsva

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they've witnessed violence or sexual abuse against a child. The legislation authored by Perkins, a policeman, certainly has a noble intention. But it has some serious shortcomings.

Aside from the criminal penalties, the bill also would permit civil lawsuits to be filed against someone who witnessed a crime but failed to intervene. We already live in a lawsuit-happy society. Is it really necessary to provide a vehicle for civil lawsuits, including the prospect of punitive damages, to be filed because somebody didn't act?

Another problem is that someone could be tried even if the person who was alleged to have committed the crime was found not guilty. Talk about turning the law upside down. How could someone possibly be tried for witnessing an event that ultimately a judge or jury determined wasn't a crime?

Even if these concerns could be addressed, there are other reasons why such legislation has critical flaws. For instance, the bill also could tie the hands of prosecutors, unintentionally hampering efforts by the district attorney to convict the alleged attacker. As Washoe County District Attorney Richard Gammick noted last year after Perkins said he would introduce the bill, threatening a potential witness with an arrest -- and possible jail time for failing to report the incident immediately -- may only backfire. Once a witness is prosecuted, then the district attorney may no longer have a witness who is willing to tell a jury about the crime.

Citizens should be encouraged to report crimes, but this legislative solution in its present form is too extreme. Although it was written with good intentions it could end up doing more harm than good.

Editorial: Marijuana study could aid rational dialogue

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Those who support the medical use of marijuana got a boost Wednesday when a government study found that the active ingredients in the drug may help alleviate the extreme pain and nausea some patients feel, which could be particularly helpful for those who have AIDS or are undergoing chemotherapy. It is difficult to overstate the significance of the study by the Institute of Medicine, which is an affiliate of the prestigious National Academy of Sciences.

For years there has been strident opposition to using marijuana for medical purposes, with fears

that it doesn't have real medical benefits and is just an attempt by pro-drug advocates to get more marijuana into circulation. But this simplistic notion probably will lose the resonance it once had. The institute said marijuana should be tested in scientific trials, but it did acknowledge that smoking marijuana can cause respiratory disease. The institute said to avoid this a standardized form of the drug, which could be taken by using an inhaler, should be developed.

Nevadans passed a ballot initiative in November that would legalize marijuana for medical uses (it must be passed again by voters in 2000 before it becomes effective). The public benefits when science -- not rhetoric -- assumes the importance it deserves in what has been an emotional debate.

Let your opinion be known. Mail us a letter. Letters should be no more than 250 words and may be shortened by the editor. All letters and faxes must include the writer's name, signature, address and telephone number. All e-mail letters must include the writer's name address and telephone number. Anonymous letters will not be printed and names will not be withheld.

Nevada CURE

POB 27291
Las Vegas, NV 89126-7291
Tel 702 221 9337 Fax 702 221 9079
Email maharis@lvdi.net

April 9, 1999

Chris Giunchigliani, Assemblyperson
Nevada Legislature
Carson City, NV 89701-4717

Dear Assemblyperson Giunchigliani,

We are pleased that you have submitted your marijuana sentencing reform AB 577.

We wholeheartedly support your efforts at this first step in decriminalizing this medical, not criminal, problem affecting so many people.

The Physician Leadership on National Drug Policy can provide you with extensive scientific information substantiating treatment, not incarceration for marijuana issues.

We thank you for your hard work and dedication in legislative issues.

Sincerely yours,

Mercedes Maharis

Mercedes Maharis, MA, MS, MA
Director
Nevada CURE

Which States Have Decriminalized Marijuana Possession?

By Chris Suellentrop

Posted **Wednesday, Feb. 14, 2001, at 1:05 p.m. PT**

New Mexico Gov. Gary Johnson, a Republican, has sent to the state legislature a bill that would decriminalize possession of 1 ounce of marijuana. The *New York Times* reported today that 10 other states have already done that. Which states are they? And what does it mean to "decriminalize possession"?

The states are Alaska, California, Colorado, Nebraska, New York, North Carolina, Maine, Minnesota, Ohio, and Oregon. These state legislatures (except Alaska's) decriminalized marijuana possession in the 1970s. Oregon was the first, in 1973, following the recommendations of the Nixon administration's National Commission on Marijuana Use (also known as the Shafer Commission). Nebraska was the last, in 1979. Another state, Mississippi, decriminalized marijuana possession in the '70s but later recriminalized it as a misdemeanor offense.

The state of decriminalization in Alaska is unclear. A 1975 state Supreme Court decision decriminalized marijuana possession, but voters approved a state referendum in 1990 that recriminalized all possession. Subsequent court rulings have upheld the 1975 decision, but the state's high court hasn't ruled on the matter, so the law remains ambiguous.

currently

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Which States Have Decriminalized Marijuana Possession?

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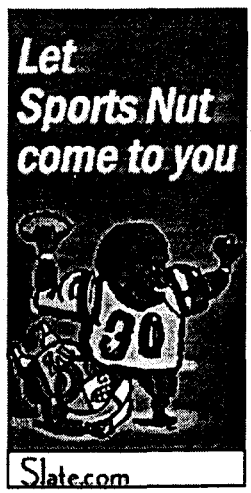

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What does it mean to decriminalize possession? Decriminalization treats the possession of small amounts of marijuana (such as 1 ounce) as a civil, rather than a criminal, offense. Offenders are given a citation and fined, and their marijuana is confiscated. Possession of larger amounts is still a criminal offense because it implies an intent to sell. (The laws differ from state to state. Ohio, for example, decriminalizes possession of up to 100 grams, or 3.5 ounces. Click here for a state-by-state guide to marijuana penalties.)

Legalization, as opposed to decriminalization, would create a legal, regulated market for marijuana, presumably with age limits and quality controls similar to those placed on alcohol. Decriminalizing possession is also different from the decriminalization of "medical marijuana," which allows patients to use and sometimes cultivate marijuana for therapeutic purposes, with the permission of a doctor.

Next question?

Explainer thanks Keith Stroup, executive director of the National Organization for the Reform of Marijuana Laws.

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child. The court shall, within 5 days after issuing the order, forward to the department of motor vehicles and public safety the licenses and a copy of the order.

2. The judge shall require the child to submit to the tests and other requirements which are adopted by regulation pursuant to subsection 1 of NRS 483.495 as a condition of reinstatement of the driver's license of the child.

3. If the child is found to have committed a subsequent unlawful act as set forth in subsection 1, the court shall order an additional period of revocation to apply consecutively with the previous order.

4. The judge may authorize the department to issue a restricted driver's license pursuant to NRS 483.490 to a child whose driver's license is revoked pursuant to this section. (1995, ch. 555, § 1, p. 1914.)

62.2275. Unlawful acts involving alcohol or controlled substances: Evaluation of child; program of treatment; confidentiality of evaluation.

1. If a child within the jurisdiction of the juvenile court is found by the juvenile court to have committed the unlawful act of:

(a) Driving under the influence of intoxicating liquor or a controlled substance in violation of NRS 484.379 or 484.3795;

(b) Using, possessing, selling or distributing a controlled substance; or

(c) Purchasing, consuming or possessing an alcoholic beverage in violation of NRS 202.020,

the judge, or his authorized representative, shall require the child to undergo an evaluation to determine if the child is an abuser of alcohol or other drugs.

2. The evaluation of a child pursuant to this section:

(a) Must be conducted by:

(1) A counselor certified to make that classification by the bureau of alcohol and drug abuse;

(2) A physician certified to make that classification by the board of medical examiners; or

(3) A person who is approved to make that classification by the bureau of alcohol and drug abuse,

who shall report to the judge the results of the evaluation and make a recommendation to the judge concerning the length and type of treatment required by the child.

(b) May be conducted at an evaluation center.

3. The judge shall:

(a) Order the child to undergo a program of treatment as recommended by the person who conducted the evaluation pursuant to subsection 2.

(b) Require the treatment facility to submit monthly reports on the treatment of the child pursuant to this section.

(c) Order the child, if he is at least 18 years of age or an emancipated minor, or the parent or legal guardian of the child, to the extent of the financial resources of the child or his parent or legal guardian, to pay any charges relating to the evaluation and treatment of the child pursuant to this section. If the child, or his parent or legal guardian, does not have the financial resources to pay all of those charges:

(1) The judge shall, to the extent possible, arrange for the child to receive treatment from a treatment facility which receives a sufficient amount of federal or state money to offset the remainder of the costs; and

(2) The judge may order the child to perform supervised work for the benefit of the community in lieu of paying the charges relating to his evaluation and treatment. The work must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of the State of Nevada or a charitable organization that renders service to the community or its residents. The court may require the child or his parent or legal guardian to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which the child performs the work, unless, in the case of industrial insurance, it is provided by the authority for which he performs the work.

4. A treatment facility is not liable for any damages to person or property caused by a child who drives while under the influence of an intoxicating liquor or a controlled substance after the treatment facility has certified to his successful completion of a program of treatment ordered pursuant to this section.

5. The provisions of this section do not prohibit a judge from:

(a) Requiring an evaluation to be conducted by a person who is employed by a private company if the company meets the standards of the bureau of alcohol and drug abuse. Such an evaluation may be conducted at an evaluation center pursuant to paragraph (b) of subsection 2.

(b) Ordering the child to attend a program of treatment which is administered by a private company.

6. All information relating to the evaluation or treatment of a child pursuant to this section is confidential and, except as otherwise authorized by the provisions of this chapter or the juvenile court, must not be disclosed to any person other than the juvenile court, the child and his attorney, if any, his parents or guardian, the prosecuting attorney and any other person for whom the communication of that information is necessary to effectuate the evaluation or treatment of the child. A record of any finding that a child has violated the provisions of NRS 484.379 or 484.3795 must be included in the driver's record of that child for 7 years after the date of the offense.

RJ 12/17/00

Common sense on drugs

Nevada lawmakers have traditionally lacked the guts to implement more rational approaches to minor drug crimes — witness how Assemblywoman Chris Giunchigliani's biennial effort to soften the state's toughest-in-the-nation marijuana law ends up in the circular file each session.

Privately, many legislators agree that Ms. Giunchigliani's effort is a worthy one. But publicly they tremble at the notion of seeing an opponent's campaign flier paint them as soft on crime or drug use.

On Monday, though, a panel of the state Supreme Court offered the Legislature a bit of cover. The court's Judicial Assessment Commission recommended that possessing a small amount of marijuana be treated as a misdemeanor rather than a felony and that certain minor drug users be diverted to treatment programs instead of sent to prison.

These reforms make eminent sense. And if lawmakers still erroneously believe the public won't tolerate such change, how do they account for the fact that Nevada voters have twice overwhelmingly approved a ballot question supporting the medicinal use of marijuana? And why, despite vociferous opposition from law enforcement groups, did California voters just last month give the go-ahead to an initiative that sends minor drug users to treatment rather than jail?

Lawmakers should do the right thing and heed the state Supreme Court panel's suggestions. They'll be surprised at the reaction.

LAS VEGAS
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Legislators must revisit medical marijuana issue

By John Wilkerson
ASSOCIATED PRESS

Nevadans voted overwhelmingly last year to approve using marijuana for medical purposes. Now the state's lawmakers — however reluctant — must rehash the issue to implement the voters' will.

That some legislators are less than enthusiastic isn't surprising: Despite the medical marijuana vote, Nevada still has some of the nation's harshest criminal penalties for drug use and possession.

Also, marijuana use remains a federal law violation. The Justice Department has gone to court to challenge medical marijuana distribution programs in other states.

"This ballot measure was strictly emotionalism and an entire waste of time," Dr. Arnold Wax, a Las Vegas oncologist, said after the measure passed. "It's an issue of state's rights and federalism. The federal government has shut down efforts to prescribe it in other states, it will do the same thing here."

The ballot initiative approved by nearly two of every three voters allows use of marijuana by cancer, AIDS, glaucoma victims and others with painful and potentially terminal illnesses. The amendment to the Nevada Constitution first won voter approval in 1998 and Question 9 passed a second time last November.

The 2-to-1 voter mandate is no problem for Assemblywoman Chris Giunchigliani, D-Las Vegas. She says Nevada should set up a state registry of marijuana users similar to a program operated by state health officials in Oregon.

Unlike Oregon, which lets authorized users grow marijuana plants, she wants the state to provide marijuana, possibly through a state-run farm.

Giunchigliani says the medical marijuana program could be worked into her proposal to ease Nevada's harsh penalties. Currently simple possession can still be punished as a felony.

Senate Judiciary Chairman Mark James, R-Las Vegas, also says there's no reason to interfere with the voters' mandate that the Legislature set up a method of distributing medical marijuana.

"We will consider making an appropriate exemption to implement the medical marijuana law," James said. "It wouldn't be right to make criminals out of people who are trying to implement the medical marijuana law."

Associated Press file

IN FEBRUARY: Mark James, R-Las Vegas, said it isn't right to make criminals out of people trying to implement the law.

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2001

Panel calls for softer laws on pot possession

Associated Press
June 22nd, 2000

A Nevada panel headed by Chief Justice Bob Rose is going to recommend reduced penalties for possession of small amounts of marijuana and being under the influence of drugs.

The Judicial Assessment Commission of the Nevada Supreme Court made the same recommendation five years ago, but the Legislature didn't buy it.

Nevada has one of the nation's toughest laws on marijuana possession, making it a felony punishable by prison time. The recommendation from the commission is to make it a misdemeanor, which carries a maximum of six months in jail and a $1,000 fine.

The recommendation is to bring Nevada law "in line with the other 49" states — "a more realistic penalty," Rose said.

Rose said Tuesday the 40-member commission's final report will be out in September. Half of the commission members are judges and lawyers, the other half lay persons.

Judicial officials point out that many cases of possession of 4 ounces or less of marijuana are reduced to misdemeanors in Clark and Washoe counties but are prosecuted to the fullest extent in rural Nevada.

The commission also recommended the penalty for a person who uses or is under the influence of a controlled substance be lowered from a felony to a misdemeanor. Under current law, a person who drives while under the influence of drugs is charged with a misdemeanor. But people who walk down the street while high on drugs can be charged with a felony.

The commission also recommended minor traffic offenses be decriminalized from misdemeanors to civil offenses. That would clear the court calendars to hear more serious offenses, the panel reasoned.

The commission also plans to encourage Gov. Kenny Guinn to pump more money into mental health programs. Commission members reason that mentally ill people are clogging the courts, because Nevada does not have an adequate mental health system to deal with them.

The panel also suggested a major change in the way Nevada elects judges. Vacant judicial seats would be filled by a regular election. But sitting judges would face re-election with no opponents. Voters would simply decide whether to retain or bounce the judges from office. All judges now can face opponents in every election.

Medical marijuana

By Jason Hidalgo
Reno Gazette-Journal
October 14th, 2000

Is it high time for help -- or a law enforcement nightmare?
Michael Cook smokes marijuana.

The 43-year-old San Francisco resident doesn't do it to get high.

Cook says he smokes to make the pain go away: the throbbing headaches, the numbing nausea, the pangs of a body breaking down.

"I was diagnosed with AIDS wasting syndrome in 1991," Cook says. "I'm a 6-foot-tall man and I was down to 120 pounds."

Cook says he tried different medications and pharmaceutical appetite enhancers to fight the ravaging effects of wasting. Some didn't work. Others caused side effects such as vomiting and insomnia.

It was at this point that his doctor suggested using marijuana.

"It worked," Cook says. He says his appetite is normal and he doesn't wake up in the middle of the night.

"I'm back to around 175-180 pounds. It made all the difference in the world for me."

To smoke or not to smoke
Cook now works as a coordinator at the Oakland Cannabis Buyers' Cooperative, advocating for the legalization of medical marijuana.

Cook is not alone — not by a long shot.

Voters in Arizona, Alaska, Oregon, Washington and Cook's home state, California, approved laws that allow the medical use of marijuana.

And nearly 70 percent of voters supported a medical marijuana initiative in the District of Columbia, according to exit polls.

Medical marijuana initiatives are on the ballot this November in Nevada and Colorado. If approved, the initiatives would pave the way for medical marijuana laws in both states.

The Nevada initiative, Question 9, has to be approved twice.

The first proposal was approved by 59 percent of Nevada voters in 1998. Polls indicate the initiative will probably be approved again.

If the question is approved, the Nevada legislature would begin the process of setting up a distribution and regulatory system for medical use of the drug.

While popular support for the medical use of marijuana runs high, the initiatives by Nevada and other states also have strong opponents.

Gen. Barry McCaffrey, director of the U.S. office of National Drug Control Policy, and the Justice Department's Drug Enforcement Administration oppose legalizing marijuana for medical purposes. Congress recently adopted a resolution stating that marijuana was dangerous and addictive and should not be legalized for medical use.

"It's a complicated issue, obviously," says Nevada Attorney General Frankie Sue Del Papa. "(It has) lots of

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different ramifications."

Study shows results
To sink some scientific teeth into the marijuana debate, the White House drug control policy office asked the Institute of Medicine, an affiliate of the National Academy of Sciences, to assess the potential health benefits and risks of marijuana and its derivatives, called cannabinoids.

The result? While not exactly a ringing endorsement of medical marijuana, it wasn't the marijuana dispelling report anti-marijuana advocates hoped it would be either.

For one, the report shoots down previous remarks by McCaffrey that "there's not a shred of scientific evidence that (says) marijuana is a useful medicine."

The report provides not only "a shred" but also several pages worth of evidence that marijuana potentially has therapeutic value for pain relief, control of nausea and vomiting and appetite stimulation.

It also puts a wrinkle in the federal government's argument that marijuana is a gateway to more serious drugs such as cocaine and heroine. Most drug users start with alcohol and nicotine, the study says.

It does say that marijuana poses some risks as well.
Intake through smoking presents the most serious risk and could lead to respiratory disease. The psychological effects, while desirable for some patients, can also be undesirable for others.

Marijuana dependence can also be a possibility, although a rare one.

Except for risks from smoking, the study states that the adverse effects of marijuana "are within the range of effects tolerated for other medications."

It also says those risks, including smoking, shouldn't be of great concern for patients who are terminally ill or suffer from a debilitating condition.

The study concludes that more research should be done to study marijuana and its different effects on the body. It also states the need for developing safer, rapid-onset delivery methods to replace smoking.

"It's a fair report," said Gina Pesulima, communications director for Americans for Medical Rights, a pro-medical marijuana advocacy group that also sponsors the medical marijuana drive in Nevada. "It didn't say marijuana was a miracle drug. It had an extensive report on risks but it also showed proof (that it has medical benefits). You don't hear public officials quoting it so much."

McCaffrey, on the other hand, interprets the study differently. He says in a statement that the future of cannabinoid drugs lies in other prescribed forms, such as inhalers — not in smoked marijuana.

Pot holes
At the center of the marijuana debate, advocates say, is a patient's medical rights.

"(We need to) pass laws that protect patients who need to use medical marijuana for various ailments," Pesulima says.

But the issue is complicated by the nation's problem with illegal drugs.

Law enforcement agencies, tackling a drug war on several fronts, say they don't want to make an already tough job even tougher by adding yet another front to worry about at home.

Marijuana is the most widely used illicit drug in the United States. About 77 percent of the nation's drug users use marijuana, according to the National Household Survey on Drug Abuse.

Cook, however, says the government has a double standard, tolerating some substances like alcohol and nicotine and forbidding others arbitrarily.

"The biggest hypocritical thing I find is when they say marijuana is dangerous," Cook says. "I want the federal

government to show me research in black and white, showing the number of deaths from marijuana and alcohol. I want them to show the American public."

Meanwhile, the DEA, in a guide distributed to police chiefs, states medical marijuana drives are just fronts for proponents' true agenda — the legalization of all drugs.

Just because a state legalizes marijuana, for example, doesn't mean patients have immediate access to it. In nothern Nevada, local physicians are hesitant to discuss the controversial topic. Seven area oncologists wouldn't comment on whether they'd be willing to prescribe marijuana for patients. Several others didn't return phone calls.

And, even with a prescription in hand, patients may not be able to obtain marijuana legally. Hawaii allows medical marijuana use but doesn't provide any legal means for distribution — a Catch 22. California allows patients to grow their own plants — a policy that's proven to be a quagmire for law enforcers.

The Nevada statute is different, Pesulima says, in that it requires the state legislature to provide safe and legal ways to distribute marijuana to patients.
But all that would be moot if the Supreme Court eventually overrules state marijuana laws, Del Papa says. Recently, a stay requested by the Justice Department against the Oakland Cannabis Buyers' Cooperative was granted, preventing the cooperative from distributing marijuana. The Court is also considering an appeal of the case, which could have nationwide ramifications.

"I think society needs to take a look at the bigger picture," Del Papa says. "If the federal government ends up taking a position ... there's a supremacy clause in the Constitution and federal law would prevail (over state law)."

Rights & responsibilities
Cook ponders a life that would have been devoid of the substance he says has done wonders for his quality of life.

"Most likely, I would be six feet under," Cook says.
The Oakland coop, while not allowed to give patients marijuana, can still process patient information and print marijuana cards for people who have a letter of recommendation. Dispensaries in the state are still allowed to supply medical marijuana, Cook says.

Cook says he doesn't favor growing plants at home. He believes marijuana should be controlled the way pharmacies do with prescription drugs. This method, he says, also lessens chances of abusing the system.

Cook doesn't like the thought of going back to shady dealings to get his marijuana, which at times smelled like gas because it was smuggled from Mexico in gas tanks.

"I didn't appreciate having to go out and look for an illegal way of doing it," Cook says, recounting the days he went out to the streets to get marijuana before California's Proposition 215 made it legal. "It's much safer this way. And you're not getting any junk."

Cook says he doesn't consider marijuana to be a panacea. Like all things, there's good and evil in it, he says. But if it can alleviate the suffering of many Americans, he asks, why should those people be denied relief?

It all boils down to survival, Cook says.

"I'm determined," Cook says. "I've seen it all. I live day to day. You have to keep going until you can't go anymore. At least you know that you tried to beat it as much as you could."

Medical marijuana advocate blasts Nevada research plan

ASSOCIATED PRESS
January 11th, 2001

A medical marijuana advocate said Wednesday that Nevada officials are in for a fight if they try to limit a voter-endorsed initiative allowing use of marijuana by cancer, AIDS and glaucoma victims.

Question 9 was approved by a 2-to-1 margin in November, and the 2001 Legislature is required to set up a distribution method so people with such medical conditions can use marijuana for pain relief.

But a task force of medical experts instead recommended a research program to permit limited marijuana distribution and avoid a confrontation with the federal government's anti-marijuana laws that conflict with the state initiative.

Dan Hart, who led the effort to get the constitutional amendment on medical marijuana approved by voters, said in a letter to the state Board of Pharmacy, which was involved in the task force effort, that the research plan is too restrictive.

Hart wrote Louis Ling, a deputy attorney general and the board's general counsel, that the research project could exclude some qualified, terminally ill patients and instead get medical marijuana only to "a chosen few."

"Who will you choose, Mr. Ling," Hart said. "What patient will you deny their rights under the state Constitution? Which physician will you notify that their constitutional right to approve the treatment of their patient has been denied by your ad hoc 'research' approval committee?

"Rest assured that the proponents of Question 9 will vigorously defend the will of the people in the Legislature, the executive branch and in every necessary court, including the court of public opinion."

The report criticized by Hart came from the Nevada Medical Marijuana Initiative Work Group, formed last year after Nevada voters in 1998 passed the ballot initiative a first time. The initiative passed a second time in November and now becomes part of the Nevada Constitution.

The group issued its recommendations as guidelines to Gov. Kenny Guinn and the Legislature, which also will be considering bills to reduce the felony penalty for possession of a small amount of marijuana.

The group recommended the formation of a committee of health care professionals. Doctors or medical groups could apply to the committee for permission to study marijuana's effects.

If the committee sanctions the plan, the research proposal would have to receive federal approval from the Drug Enforcement Administration, the Food and Drug Administration and the National Institute of Drug Abuse.

"Marijuana would be purchased by the research study through federally approved providers," the report says. "Marijuana would not be grown, processed or manufactured in Nevada. The federally approved provider would provide uniform, predictable and uncontaminated marijuana, thus protecting patients from the vagaries of illegal or homegrown marijuana."

The physician conducting the research would write the prescription and it would be filled by participating pharmacies that would purchase marijuana from the federal government.

This plan, said the work group, "would allow physicians, not state bureaucrats, to decide which patients would have access to marijuana for medical purposes."

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Las Vegas SUN

June 16, 1998

Advocates of medical marijuana file petition signatures on deadline

By Brendan Riley
ASSOCIATED PRESS

CARSON CITY, Nev. - Advocates of a plan to authorize marijuana for medical treatment in Nevada met a Tuesday deadline for securing a spot on the November ballot.

Petitions were handed to clerks in 13 of Nevada's 17 counties, the bare minimum under state law. Ballot status won't be known until the clerks check to see if the petitions have at least 46,764 signatures.

Counties that didn't get the "Nevadans for Medical Rights" petitions included Carson City, Lincoln, Storey and Eureka, the secretary of state's office said.

The proposal would have to win voter approval this November and again in November 2000 before it could take effect.

The big concern for backers of the petition was whether they'd comply with the law that requires the minimum number of petition signers to include 10 percent of the voters in at least 13 counties.

NMR spokesman Dan Hart of Las Vegas said the number of signatures wasn't the problem - but the geographical requirement presented a roadblock.

NMR is part of the same group that launched a successful 1996 medical marijuana petition in California. But a big legal battle developed over distribution through "cannabis clubs."

However, Hart has said the problems in California shouldn't happen here.

"The way this is worded, once it is passed it will be policed appropriately," he added.

And even though Nevada's laws against marijuana are much harsher than California's, Hart predicted the initiative would succeed because the state's voters are "fiercely protective of individual rights."

Under the plan, marijuana could be used by anyone suffering from cancer, glaucoma, AIDS, epilepsy, multiple sclerosis, or from severe nausea caused by other "chronic or debilitating medical conditions."

A person who wants to use marijuana would need a go-ahead from a doctor, and any use of the drug by a minor would have to be approved in writing both by a doctor and the minor's parents.

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A registry of patients authorized to use marijuana for medical purposes would be available to police if they needed to verify a claim of legal use.

A final section says an insurer wouldn't have to reimburse a health care policyholder for the cost of buying marijuana, and an employer wouldn't have to make accommodations for pot-smoking by sick employees.

Despite the careful wording, the Nevada Medical Association and some law enforcement groups have said they won't back the initiative petition.

The 1,100-member NMA says it doesn't believe there have been enough scientific studies to show marijuana is a valuable tool in helping people with diseases such as cancer.

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Las Vegas SUN

August 04, 1998

Medical use of marijuana reaches ballot

By Cy Ryan
<cy@lasvegassun.com>
SUN CAPITAL BUREAU

CARSON CITY -- The initiative petition to allow ailing people to use marijuana has qualified for the November election ballot and now the battle begins.

Secretary of State Dean Heller said Monday a recount of signatures in Nye and Lyon counties revealed the petition had gained sufficient names to put the question before the voters.

"This has a lot of support," said Dan Hart, spokesman for Nevadans for Medical Rights, which started the petition.

Asked about opposition of district attorneys, Hart said, "There are some factions that misunderstand this. It's a matter of compassion."

This is about helping people with "catastrophic illnesses and nothing more," Hart said.

But Carson City District Attorney Noel Waters said, "As shown in California, this in large is a dodge for a whole lot of people to get high legally. We have enough ways to get high legally."

Marijuana, Waters said, "isn't the worse drug in the world" but it opens the door to life damaging drugs such as methamphetamine, cocaine and heroin.

Advocates of medical marijuana gathered 74,466 signatures in 13 of the 17 counties to put the issue on the ballot. There were 46,764 signatures required statewide and ten percent of the voters in 13 of the 17 counties.

Initially it didn't qualify in two counties. It fell seven signatures short in Lyon County and 36 in Nye County. The medical rights organization appealed the findings, saying there were adequate signatures in those two counties.

A re-examination showed another 25 valid signatures on the Lyon County petition and 51 in Nye County, putting the petition over the top. These are signatures that have been initially disqualified or miscounted.

Heller said, "In this entire process from the inception to this conclusion, two principles stand without question. The first is the right to petition. The second is that the end result be valid.

"This is the first time the signature verification appeal process -- added to the law in 1993 -- has

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reversed the results of a petition drive. In both previous cases filed in the last two months, the investigation of appeals verified the original results."

Hart said, "We were confident we would be ruled legal," and now a campaign must be put together to convince Nevadans to back the measure, which is similar to California's.

He had no estimate of the money that is expected to be spent on behalf of the proposed constitutional amendment.

Waters said the Nevada District Attorneys Association has not taken a formal stand but he has not talked to one district attorney who favors the ballot measure.

It will be a topic of discussion at its next meeting in a month or two, Water said.

Waters said there are a number of reasons he opposes the legalization of marijuana for medical use. It complicates the law, making possession a crime on one hand and on the other it's legal. He said it would conflict with federal law, as has happened in California with many doctors declining to prescribe marijuana, fearing they could be disciplined.

If enacted, Waters said it would cause another problem in prosecutions. The legalization for medical use would be another thing that would have to be considered in any marijuana case.

"I'm not convinced this legislation is medically necessary in view of the other drugs," that are available, Waters said.

If it passes in November, it must be approved again by the voters in 2000.

The petition says a patient, upon the advice of his physician, can use marijuana for "treatment or alleviation" of cancer, glaucoma, AIDS, persistent nausea, epilepsy multiple sclerosis or any other medical condition approved in the law.

It would require the Legislature to provide by law for the protection of the growing of the marijuana for medical purposes. And a registry of patients who are authorized to use the plant must be kept. Law enforcement officials could have access to the list.

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Las Vegas SUN

January 11, 2001

Medical marijuana advocate blasts Nevada research plan

By Brendan Riley
ASSOCIATED PRESS

CARSON CITY, Nev. (AP) - A medical marijuana advocate said Wednesday that Nevada officials are in for a fight if they try to limit a voter-endorsed initiative allowing use of marijuana by cancer, AIDS and glaucoma victims.

Question 9 was approved by a 2-to-1 margin in November, and the 2001 Legislature is required to set up a distribution method so people with such medical conditions can use marijuana for pain relief.

But a task force of medical experts instead recommended a research program to permit limited marijuana distribution and avoid a confrontation with the federal government's anti-marijuana laws that conflict with the state initiative.

Dan Hart, who led the effort to get the constitutional amendment on medical marijuana approved by voters, said in a letter to the state Board of Pharmacy, which was involved in the task force effort, that the research plan is too restrictive.

Hart wrote Louis Ling, a deputy attorney general and the board's general counsel, that the research project could exclude some qualified, terminally ill patients and instead get medical marijuana only to "a chosen few."

"Who will you choose, Mr. Ling," Hart said. "What patient will you deny their rights under the state Constitution? Which physician will you notify that their constitutional right to approve the treatment of their patient has been denied by your ad hoc 'research' approval committee?"

"Rest assured that the proponents of Question 9 will vigorously defend the will of the people in the Legislature, the executive branch and in every necessary court, including the court of public opinion," Hart added.

The report criticized by Hart came from the Nevada Medical Marijuana Initiative Work Group, formed last year after Nevada voters in 1998 passed the ballot initiative a first time. The initiative passed a second time in November and now becomes part of the Nevada Constitution.

The group issued its recommendations as guidelines to Gov. Kenny Guinn and the Legislature, which also will be considering bills to reduce the felony penalty for possession of a small amount of marijuana.

The group recommended the formation of a committee of health care professionals. Doctors or

medical groups could apply to the committee for permission to study marijuana's effects.

If the committee sanctions the plan, the research proposal would have to receive federal approval from the Drug Enforcement Administration, the Food and Drug Administration and the National Institute of Drug Abuse.

"Marijuana would be purchased by the research study through federally approved providers," the report says. "Marijuana would not be grown, processed or manufactured in Nevada. The federally approved provider would provide uniform, predictable and uncontaminated marijuana, thus protecting patients from the vagaries of illegal or homegrown marijuana."

The physician conducting the research would write the prescription and it would be filled by participating pharmacies that would purchase marijuana from the federal government.

This plan, said the work group, "would allow physicians, not state bureaucrats, to decide which patients would have access to marijuana for medical purposes."

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Las Vegas SUN

February 21, 2001

Calif. Atty. General Backs Cannabis

ASSOCIATED PRESS

OAKLAND, Calif. (AP) -- California Attorney General Bill Lockyer is backing an Oakland cannabis distribution club in its fight with the federal government over medical marijuana.

Lockyer filed a brief with the California Supreme Court on Tuesday arguing that the state has the right to enforce its medical marijuana law, which was approved by voters in 1996.

The law allows seriously ill patients to use marijuana, conflicting with federal anti-drug laws.

The brief was filed in case scheduled to go before the Supreme Court on March 28. The Clinton administration sued the Oakland Cannabis Buyers Club and five other California pot clubs in 1998.

A federal district judge sided with the government in its efforts to halt the Oakland club from distributing the drug. But last year, an appeals court ruled that "medical necessity" is a legal defense.

The Oakland club, the only one of the original six still functioning, is not distributing marijuana, but is issuing identification cards to be ready if it does get a favorable court ruling.

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Trends in Teen Drug Use

After several years of increase, illicit drug use among adolescents may be stabilizing. A University of Michigan survey released in December shows that while a growing number of older high school students are smoking marijuana, fewer are using other illegal drugs such as cocaine. In addition, eighth graders are less interested in flirting with drugs than they have been. The survey found that the percentage of eighth graders who tried an illegal drug (usually marijuana) at least once was 29.4 percent in 1997, down from 31.2 percent in 1996. Experimentation with heroin dropped from 2.4 percent in 1996 to 2.1 percent last year. The number trying cocaine also fell slightly, and experiments with stimulants and hallucinogens declined.

The 1997 Monitoring the Future survey, conducted for the National Institute of Drug Abuse and regarded as the most accurate measure of illegal drug use by teenagers, confirmed that while the rate of drug experimentation is higher than in the early 1990s, the upward movement may be leveling off. (Cocaine experimentation did increase slightly among high school seniors; 8.7 percent said they had tried powder cocaine in 1997, compared with 7.1 percent in 1996.)

Alcohol remains the largest problem. Thirty-one percent of high school seniors, 25 percent of sophomores, and 15 percent of eighth graders said they consumed at least five consecutive drinks one or more times in the previous two weeks.

-- Janet Firshein

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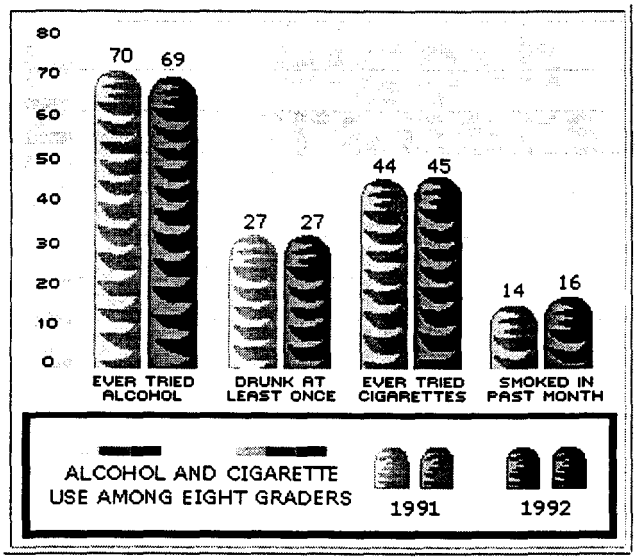
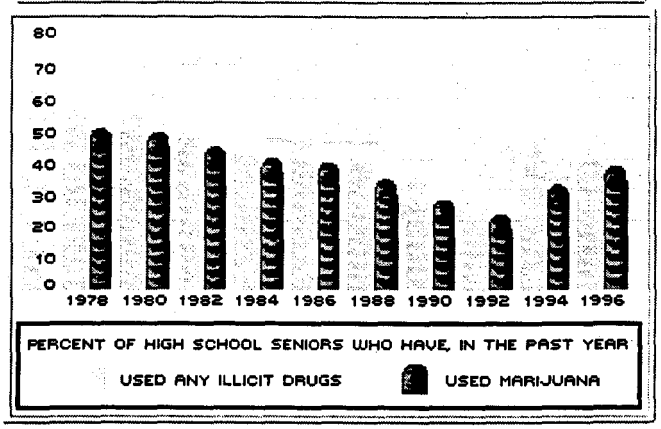


Legal Drugs



Illicit Drugs

Courtesy of the Robert Wood Johnson Foundation
Source: The University of Michigan News and Information Service, press release, April 9, 1993.

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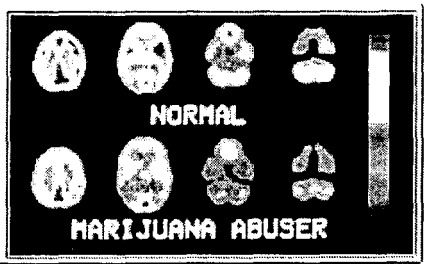
"Gateway" Drugs?

"Gateway drugs" is a term for drugs that supposedly lead to abuse of other substances. Marijuana, for instance, is considered by some to be a gateway to harder drugs. George Koob, M.D., of the Scripps Research Institute says that studies of long-term exposure to cannabinoids, the active ingredient in marijuana, suggest that addiction to one drug could make a person vulnerable to abuse and addiction to other drugs. Cannabis abuse, he says, appears to activate corticotropin-releasing factor, a brain chemical that increases during periods of stress. Consequently, Koob says, this could "lead to a subtle disruption of brain processes that are then 'primed' for further and easier disruption by other drugs of abuse."



PET scans show long-term changes in glucose metabolism in the brain of a marijuana abuser, compared to that of a normal brain.

Whether there is such a thing as a gateway drug is still very controversial, however. Critics of the idea note that even if people who use cocaine started with marijuana, it is not clear that the marijuana use caused or encouraged the cocaine use: The person may simply have encountered marijuana first, and/or is the sort of person more inclined than others to experiment with a variety of illegal drugs. Fewer than one percent of marijuana users go on to become cocaine addicts. What is known is that long-term use of marijuana can produce changes in the brain comparable to that seen after long-term use of other major drugs of abuse such as cocaine, heroin, and alcohol.

However, there does appear to be a link of some kind between nicotine dependence and alcohol dependence. Whether the link is causal or not is still unclear. Some researchers hypothesize that since alcohol can cause depression, alcoholics may be using nicotine as an anti-depressant. "Most alcohol-dependent people are nicotine-dependent. I don't understand why that association is, but there are a bunch of theories being tested," says Marc Schuckit, M.D., a psychiatrist who teaches at the University of California at San Diego Medical School.

-- Janet Firshein

Scans: Courtesy of Brookhaven National Laboratory Center for Imaging and Neurosciences

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Giunchigliani, Chris Assemblywoman

From: Beers, Bob Assemblyman
Sent: Tuesday, March 23, 1999 4:45 PM
To: Giunchigliani, Chris Assemblywoman
Subject: Is pot a 'gateway'? (http://www.usatoday.com/news/washdc/ncssun06.htm)

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03/21/99- Updated 10:24 PM ET

Debate is re-ignited: Is pot a 'gateway'?

By Patrick McMahon, USA TODAY

The major study on medical marijuana released last week did more than conclude that marijuana may help treat certain sick and dying patients. Eminent researchers also tackled the long-debated question of whether marijuana leads users to abuse hard drugs such as cocaine and heroin.

Their finding: "There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs."

This statement elicited sweet satisfaction from marijuana proponents, but it infuriated many drug abuse experts and prosecutors and some lawmakers.

"In my mind, there is no question about the statistical relationship" between marijuana and the abuse of hard drugs, says Joseph Califano, a former U.S. secretary of Health, Education and Welfare. Califano cites studies showing that a child who uses marijuana before age 12 is 79 times more likely to use harder drugs than a child who never smokes marijuana.

Califano says the connection is more statistically significant than the 1964 surgeon general's report that first linked smoking and lung cancer. "To say there is no relationship - that is preposterous."

Califano is currently head of the National Center on Addiction

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and Substance Abuse (CASA) at Columbia University in New York, perhaps the nation's foremost promoter of the "gateway theory" - that marijuana is a gateway drug that leads to heroin and cocaine.

The medical director of CASA, Herbert Kleber, says research on the brain's pleasure center may provide more evidence of a direct link. "We don't have the smoking gun yet, but we are closing in," he says.

Portland, Ore., medical professor John Benson, co-director of the Institute of Medicine study, defends it, but also stresses, "We are, of course, worried about the association between marijuana and further drug use, particularly among teen-agers."

He also noted that the study, commissioned and paid for by the White House Office of National Drug Control Policy, "came out strongly against smoking" marijuana.

In the report, Benson and University of Michigan researcher Stanley Watson say that because marijuana use usually precedes hard drugs , "it is indeed a 'gateway' drug" in some sense.

But, they continued, "because underage smoking and alcohol use typically precede marijuana use, marijuana is not the most common and rarely the first 'gateway' to illicit drug use."

The factors that best predict use of illicit drugs beyond marijuana are actually "age of first alcohol or nicotine use, heavy marijuana use and psychiatric disorders," the study said.

The most frequent explanation for marijuana as a gateway drug is that youths who use it enter the world of illegal drugs, where they have a greater opportunity and are under greater social pressure to try other illegal drugs.

This interpretation "is supported by - although not proven by - the available data," the report conceded.

But, the report also argued, the data is unconvincing. Too often, the data provides no indication of what proportion of marijuana users become serious drug abusers, only that drug abusers usually use marijuana before they smoke crack cocaine or inject heroin.

Chuck Thomas of the Marijuana Policy Project says that if there is anything about marijuana that drives teen-agers to hard drugs, it is the likelihood they'll have to buy it from drug dealers. His group, based in Washington, D.C., seeks to eliminate jail penalties for marijuana use.

Lynn Zimmer, a sociologist at Queens College in New York and co-author of the book *Marijuana Myths , Marijuana Facts* , says the gateway theory is as likely to be true as the

idea that early bicycle riding "causes" motorcycling.

Marijuana use "may give you a hint that your kid might be interested in other drugs," she said.

Zimmer favors an approach used in the Netherlands that separates the marijuana market from other drugs by allowing small amounts of marijuana to be sold to people over 18 at certain businesses.

Zimmer's attitude is not shared by most law enforcement officials. "People who work in our drug court tell me" that marijuana and more serious drugs are connected, says Doug Moreau, the district attorney in Baton Rouge.

"It's only common sense. There's a natural human tendency" once you are a regular user of one drug "to start looking for something that gives you a bigger kick."

Santa Fe District Attorney Henry Valdez says that "almost every case we've had" of major drug use began with marijuana, and he thinks social pressure as much as anything leads people to use hard drugs after they're tried marijuana.

The Institute of Medicine report drew criticism from Rep. John Mica, R-Fla., chairman of the House Government Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources.

Mica announced plans to hold hearings in late April on drug legalization and medical marijuana, and called the Institute of Medicine report "the biggest waste of money in the entire war on drugs."

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NEW

Oregon Medical Marijuana Program

One Year Anniversary

May 1, 2000

The Oregon Medical Marijuana Act was passed by Oregon voters on November 3, 1998, and went into effect on December 3, 1998. The Oregon Health Division was given the responsibility of developing a registration system for patients and caregivers by May 1, 1999.

On May 21, 1999, the first registration cards were issued. Since that date, more than 900 registration cards have been issued to 600 patients and their caregivers. More than 300 physicians are participating in the program. These physicians are Medical Doctors and Doctors of Osteopathy who are in private or group practice, or are in large Health Maintenance Organizations such as Kaiser Permanente. The program operates statewide, with registered patients from every county in Oregon.

All patient and physician names and records are maintained in confidential files and a database. However, as outlined in the Act, state and local law enforcement may contact the Health Division to verify if a person is registered with the program. Law enforcement personnel must provide a specific name or address, and the Health Division may verify if the person is registered, or has an application pending.

To date, no registered patient or caregiver has been convicted of a marijuana-related offense, and the Health Division has not revoked any issued cards. Annual renewal notices have been sent out for cards issued last May and June, and renewal applications are being sent back in.

In addition to administering the registration system, the Health Division was charged with accepting petitions to add conditions to the list of qualifying conditions/symptoms covered in the original Act. During the past year, the Division received petitions to add anxiety, depression, bipolar disorder, schizophrenia, adult attention-deficit disorder, sleep disorder, and post-traumatic stress disorder to the list of qualifying conditions. A panel of physicians, nurses, and patient advocates held meetings to consider these conditions, and have made recommendations to the State Health Officer, Dr. Grant Higginson. He will likely decide which, if any, conditions to add by the end of May.

Another component of the Oregon Medical Marijuana Program is public education. As Program Manager, I have spoken to many groups over the past year: employers, attorneys, law enforcement, college classes, patient groups (e.g., HIV and multiple sclerosis patients), other state agencies, and health care professionals. The Health Division also hosted a satellite downlink of the First Annual Cannabis Therapeutics Conference which was held at the University of Iowa on April 7& 8, 2000.

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There are still some barriers to participation in the program. The program did not receive any general funds during the last legislative budget session, so it is entirely supported by patient fees of $150 per application. This presents a financial hardship to many patients who are too ill to work. Some doctors are still reluctant to allow their patients to participate, fearing federal reprisals. Some patients are unable to grow medical marijuana at their homes, or find a caregiver to grow for them. The patient networks that have developed are staffed by volunteers, who are themselves patients, and who have a difficult job coordinating a statewide effort.

However, on balance, the program is working better than either the proponents, or the opponents, anticipated. With larger-than-expected patient registration and physician participation, and with no wide-scale criminal abuses, it would be safe to deem the program quite successful to date. Other states (and Canada) have requested information on Oregon's program to use as a model for their own initiatives and registration systems. The Health Division receives regular feedback from patients who tell us that the program is working well for them.

Kelly Paige, Medical Marijuana Program Manager

Oregon Health Division
800 NE Oregon St. Portland, OR 97232 503.731.4000

elly Paige - (503) 731-8310
Program Manager
Oregon Health Division - (503) 731-4000

Oregon Medical Marijuana Program

Chapter 475 -- 1999 EDITION

OREGON MEDICAL MARIJUANA ACT

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475.346 Short title

OREGON MEDICAL MARIJUANA ACT

475.300 Findings. The people of the state of Oregon hereby find that:
(1) Patients and doctors have found marijuana to be an effective treatment for suffering caused by debilitating medical conditions, and therefore, marijuana should be treated like other medicines;
(2) Oregonians suffering from debilitating medical conditions should be allowed to use small amounts of marijuana without fear of civil or criminal penalties when their doctors advise that such use may provide a medical benefit to them and when other reasonable restrictions are met regarding that use;
(3) ORS 475.300 to 475.346 are intended to allow Oregonians with debilitating medical conditions who may benefit from the medical use of marijuana to be able to discuss freely with their doctors the possible risks and benefits of medical marijuana use and to have the benefit of their doctor's professional advice; and
(4) ORS 475.300 to 475.346 are intended to make only those changes to existing Oregon laws that are necessary to protect patients and their doctors from criminal and civil penalties, and are not intended to change current civil and criminal laws governing the use of marijuana for nonmedical purposes. [1999 c.4 s.2]

Note: 475.300 to 475.346 were adopted by the people by initiative petition but were not added to or made a part of ORS chapter 475 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

475.302 Definitions for ORS 475.300 to 475.346. As used in ORS 475.300 to 475.346:
(1) "Attending physician" means a physician licensed under ORS chapter 677 who has primary responsibility for the care and treatment of a person diagnosed with a debilitating medical condition.
(2) "Debilitating medical condition" means:
(a) Cancer, glaucoma, positive status for human immunodeficiency virus or acquired immune deficiency syndrome, or treatment for these conditions;
(b) A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:
(i) Cachexia;
(ii) Severe pain;
(iii) Severe nausea;
(iv) Seizures, including but not limited to seizures caused by epilepsy; or
(v) Persistent muscle spasms, including but not limited to spasms caused by multiple sclerosis; or
(c) Any other medical condition or treatment for a medical condition adopted by the division by rule or approved by the division pursuant to a petition submitted pursuant to ORS 475.334.
(3) "Delivery" has the meaning given that term in ORS 475.005.
(4) "Designated primary caregiver" means an individual eighteen years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the

division. "Designated primary caregiver" does not include the person's attending physician.
(5) "Division" means the Health Division of the Oregon Department of Human Services.
(6) "Marijuana" has the meaning given that term in ORS 475.005.
(7) "Medical use of marijuana" means the production, possession, delivery, or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his or her debilitating medical condition.
(8) "Production" has the same meaning given that term in ORS 475.005.
(9) "Registry identification card" means a document issued by the division that identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
(10) "Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture or preparation thereof, that are appropriate for medical use as allowed in ORS 475.300 to 475.346. "Usable marijuana" does not include the seeds, stalks and roots of the plant.
(11) "Written documentation" means a statement signed by the attending physician of a person diagnosed with a debilitating medical condition or copies of the person's relevant medical records. [1999 c.4 s.3]

Note: See note under 475.300.

475.305 [1977 c.636 s.1; 1979 c.674 s.1; repealed by 1993 c.571 s.30]

475.306 Medical use of marijuana; limits on amount possessed, delivered or produced.
(1) A person who possesses a registry identification card issued pursuant to ORS 475.309 may engage in, and a designated primary caregiver of such a person may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's debilitating medical condition. Except as allowed in subsection
(2) of this section, a registry identification cardholder and that person's designated primary caregiver may not collectively possess, deliver or produce more than the following:
(a) If the person is present at a location at which marijuana is not produced, including any residence associated with that location, one ounce of usable marijuana; and
(b) If the person is present at a location at which marijuana is produced, including any residence associated with that location, three mature marijuana plants, four immature marijuana plants and one ounce of usable marijuana per each mature plant.
(2) If the individuals described in subsection (1) of this section possess, deliver or produce marijuana in excess of the amounts allowed in subsection (1) of this section, such individuals are not excepted from the criminal laws of the state but may establish an affirmative defense to such charges, by a preponderance of the evidence, that the greater amount is medically necessary to mitigate the symptoms or effects of the person's debilitating medical condition.
(3) The Health Division shall define by rule when a marijuana plant is mature and when it is immature for purposes of this section. [1999 c.4 s.7]

Note: See note under 475.300.

475.309 Registry identification card; issuance; eligibility; duties of cardholder.
(1) Except as provided in ORS 475.316 and 475.342, a person engaged in or assisting in the medical use of marijuana is excepted from the criminal laws of the state for possession, delivery or production of marijuana, aiding and abetting another in the possession, delivery

or production of marijuana or any other criminal offense in which possession, delivery or production of marijuana is an element if the following conditions have been satisfied:
(a) The person holds a registry identification card issued pursuant to this section, has applied for a registry identification card pursuant to subsection (9) of this section, or is the designated primary caregiver of a cardholder or applicant; and
(b) The person who has a debilitating medical condition and his or her primary caregiver are collectively in possession of, delivering or producing marijuana for medical use in the amounts allowed in ORS 475.306.
(2) The division shall establish and maintain a program for the issuance of registry identification cards to person who meet the requirements of this section. Except as provided in subsection
(3) of this section, the division shall issue a registry identification card to any person who pays a fee in the amount established by the division and provides the following:
(a) Valid, written documentation from the person's attending physician stating that the person has been diagnosed with a debilitating medical condition and that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition;
(b) The name, address and date of birth of the person;
(c) The name, address and telephone number of the person's attending physician; and
(d) The name and address of the person's designated primary caregiver, if the person has designated a primary caregiver at the time of application.
(3) The division shall issue a registry identification card to a person who is under 18 years of age if the person submits the materials required under subsection (2) of this section, and the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement that:
(a) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;
(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;
(c) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and
(d) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.
(4) A person applying for a registry identification card pursuant to this section may submit the information required in this section to a county health department for transmittal to the division. A county health department that receives the information pursuant to this subsection shall transmit the information to the division within five days of receipt of the information. Information received by a county health department pursuant to this subsection shall be confidential and not subject to disclosure, except as required to transmit the information to the division.
(5) The division shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within thirty days of receipt of the application.
(a) The division may deny an application only for the following reasons:
(i) The applicant did not provide the information required pursuant to this section to

establish his or her debilitating medical condition and to document his or her consultation with an attending physician regarding the medical use of marijuana in connection with such condition, as provided in subsections (2) and (3) of this section; or
(ii) The division determines that the information provided was falsified.
(b) Denial of a registry identification card shall be considered a final division action, subject to judicial review. Only the person whose application has been denied, or, in the case of a person under the age of 18 years of age whose application has been denied, the person's parent or legal guardian, shall have standing to contest the division's action.
(c) Any person whose application has been denied may not reapply for six months from the date of the denial, unless so authorized by the division or a court of competent jurisdiction.
(6)(a) If the division has verified the information submitted pursuant to subsections (2) and (3) of this section and none of the reasons for denial listed in subsection (5)(a) of this section is applicable, the division shall issue a serially numbered registry identification card within five days of verification of the information. The registry identification card shall state:
(i) The cardholder's name, address and date of birth;
(ii) The date of issuance and expiration date of the registry identification card;
(iii) The name and address of the person's designated primary caregiver, if any; and
(iv) Such other information as the division may specify by rule.
(b) When the person to whom the division has issued a registry identification card pursuant to this section has specified a designated primary caregiver, the division shall issue an identification card to the designated primary caregiver. The primary caregiver's registry identification card shall contain the information provided in paragraph (a) of this subsection.
(7)(a) A person who possesses a registry identification card shall:
(i) Notify the division of any change in the person's name, address, attending physician or designated primary caregiver; and
(ii) Annually submit to the division:
(A) Updated written documentation of the person's debilitating medical condition; and
(B) The name of the person's designated primary caregiver if a primary caregiver has been designated for the upcoming year.
(b) If a person who possesses a registry identification card fails to comply with this subsection, the card shall be deemed expired. If a registry identification card expires, the identification card of any designated primary caregiver of the cardholder shall also expire.
(8) A person who possesses a registry identification card pursuant to this section and who has been diagnosed by the person's attending physician as no longer having a debilitating medical condition shall return the registry identification card to the division within seven calendar days of notification of the diagnosis. Any designated primary caregiver shall return his or her identification card within the same period of time.
(9) A person who has applied for a registry identification card pursuant to this section but whose application has not yet been approved or denied, and who is contacted by any law enforcement officer in connection with his or her administration, possession, delivery or production of marijuana for medical use may provide to the law enforcement officer a copy of the written documentation submitted to the division pursuant to subsections (2) or (3) of this section and proof of the date of mailing or other transmission of the documentation to the division. This documentation shall have the same legal effect as a registry identification card until such time as the person receives notification that the application has been approved or denied. [1999 c.4 s.4; 1999 c.825 s.2]

Note: See note under 475.300.

475.312 Designated primary caregiver. (1) If a person who possesses a registry identification card issued pursuant to ORS 475.309 chooses to have a designated primary caregiver, the person must designate the primary caregiver by including the primary caregiver's name and address:
(a) On the person's application for a registry identification card;
(b) In the annual updated information required under ORS 475.309; or
(c) In a written, signed statement submitted to the division.
(2) A person described in this section may have only one designated primary caregiver at any given time. [1999 c.4 s.13]

Note: See note under 475.300.

475.315 [1977 c.636 s.2; 1979 c.674 s.2; repealed by 1993 c.571 s.30]

475.316 Limitations on cardholder's immunity from criminal laws involving marijuana.
(1) No person authorized to possess, deliver or produce marijuana for medical use pursuant to ORS 475.300 to 475.346 shall be excepted from the criminal laws of this state or shall be deemed to have established an affirmative defense to criminal charges of which possession, delivery or production of marijuana is an element if the person, in connection with the facts giving rise to such charges:
(a) Drives under the influence of marijuana as provided in ORS 813.010;
(b) Engages in the medical use of marijuana in a public place as that term is defined in ORS 161.015, or in public view or in a correctional facility as defined in ORS 162.135 (2) or youth correction facility as defined in ORS 162.135 (6);
(c) Delivers marijuana to any individual who the person knows is not in possession of a registry identification card;
(d) Delivers marijuana for consideration to any individual, even if the individual is in possession of a registry identification card;
(e) Manufactures or produces marijuana at a place other than one address for property under the control of the patient and one address for property under the control of the primary caregiver of the patient that have been provided to the Health Division; or
(f) Manufactures or produces marijuana at more than one address.
(2) In addition to any other penalty allowed by law, a person who the division finds has willfully violated the provisions of ORS 475.300 to 475.346, or rules adopted under ORS 475.300 to 475.346, may be precluded from obtaining or using a registry identification card for the medical use of marijuana for a period of up to six months, at the discretion of the division. [1999 c.4 s.5; 1999 c.825 s.3]

Note: See note under 475.300.

475.319 Affirmative defense to certain criminal laws involving marijuana available to cardholder. (1) Except as provided in ORS 475.316 and 475.342, it is an affirmative defense to a criminal charge of possession or production of marijuana, or any other criminal offense in which possession or production of marijuana is an element, that the person charged with the offense is a person who:
(a) Has been diagnosed with a debilitating medical condition within 12 months prior to arrest and been advised by his or her attending physician the medical use of marijuana may mitigate the symptoms or effects of that debilitating medical condition; (b) Is engaged in the medical

use of marijuana; and
(c) Possesses or produces marijuana only in the amounts allowed in ORS 475.306 (1), or in excess of those amounts if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's debilitating medical condition.
(2) It is not necessary for a person asserting an affirmative defense pursuant to this section to have received a registry identification card in order to assert the affirmative defense established in this section.
(3) No person engaged in the medical use of marijuana who claims that marijuana provides medically necessary benefits and who is charged with a crime pertaining to such use of marijuana shall be precluded from presenting a defense of choice of evils, as set forth in ORS 161.200, or from presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition, provided that the amount of marijuana at issue is no greater than permitted under ORS 475.306 and the patient has taken a substantial step to comply with the provisions of ORS 475.300 to 475.346.
(4) Any defendant proposing to use the affirmative defense provided for by this section in a criminal action shall, not less than five days before the trial of the cause, file and serve upon the district attorney a written notice of the intention to offer such a defense that specifically states the reasons why the defendant is entitled to assert and the factual basis for such affirmative defense. If the defendant fails to file and serve such notice, the defendant shall not be permitted to assert the affirmative defense at the trial of the cause unless the court for good cause orders otherwise. [1999 c.4 s.6; 1999 c.825 s.4]

Note: See note under 475.300.

475.323 Effect of possession of registry identification card or designated primary caregiver card on search and seizure rights. (1) Possession of a registry identification card or designated primary caregiver identification card pursuant to ORS 475.309 shall not alone constitute probable cause to search the person or property of the cardholder or otherwise subject the person or property of the cardholder to inspection by any governmental agency.
(2) Any property interest possessed, owned or used in connection with the medical use of marijuana or acts incidental to the medical use of marijuana that has been seized by state or local law enforcement officers shall not be harmed, neglected, injured or destroyed while in the possession of any law enforcement agency. A law enforcement agency has no responsibility to maintain live marijuana plants lawfully seized. No such property interest may be forfeited under any provision of law providing for the forfeiture of property other than as a sentence imposed after conviction of a criminal offense. Usable marijuana and paraphernalia used to administer marijuana that was seized by any law enforcement office shall be returned immediately upon a determination by the district attorney in whose county the property was seized, or his or her designee, that the person from whom the marijuana or paraphernalia used to administer marijuana was seized is entitled to the protections contained in ORS 475.300 to 475.346. Such determination may be evidenced, for example, be a decision not to prosecute, the dismissal of charges, or acquittal. [1999 c.4 s.8; 1999 c.825 s.5]

Note: See note under 475.300.

475.325 [1977 c.636 s.3; 1979 c.674 s.3; repealed by 1993 c.571 s.30]

475.326 Attending physician; limitation on civil liability and professional discipline. No attending physician may be subjected to civil penalty or discipline by the Board of Medical Examiners for:
(1) Advising a person whom the attending physician has diagnosed as having a debilitating medical condition, or a person who the attending physician knows has been so diagnosed by another physician licensed under ORS chapter 677, about the risks and benefits of medical use of marijuana or that the medical use of marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, provided the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition; or
(2) Providing the written documentation necessary for issuance of a registry identification card under ORS 475.309, if the documentation is based on the attending physician's personal assessment of the applicant's medical history and current medical condition and the physician has discussed the potential medical risks and benefits of the medical use of marijuana with the applicant. [1999 c.4 s.9]

Note: See note under 475.300.

475.328 Limits on professional licensing board's authority to sanction licensee for medical use of marijuana. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based on the licensee's medical use of marijuana in accordance with the provisions of ORS 475.300 to 475.346 or actions taken by the licensee that are necessary to carry out the licensee's role as a designated primary caregiver to a person who possesses a lawful registry identification card issued pursuant to ORS 475.309. [1999 c.4 s.10]

Note: See note under 475.300.

475.331 List of persons issued registry identification cards and designated primary caregivers; disclosure. (1) The division shall create and maintain a list of the persons to whom the division has issued registry identification cards pursuant to ORS 475.309 and the names of any designated primary caregivers. Except as provided in subsection (2) of this section, the list shall be confidential and not subject to public disclosure.
(2) Names and other identifying information from the list established pursuant to subsection (1) of this section may be released to:
(a) Authorized employees of the division as necessary to perform official duties of the division; and
(b) Authorized employees of state or local law enforcement agencies, only as necessary to verify that a person is a lawful possessor of a registry identification card or that a person is the designated primary caregiver of such a person. [1999 c.4 s.12]

Note: See note under 475.300.

475.334 Adding diseases or conditions that qualify as debilitating medical conditions. Any person may submit a petition to the division requesting that a particular disease or condition be included among the diseases and conditions that qualify as debilitating medical conditions under ORS 475.302. The division shall adopt rules establishing the manner in which the division will evaluate petitions submitted under this section. Any rules adopted pursuant to

this section shall require the division to approve or deny a petition within 180 days of receipt of the petition by the division. Denial of a petition shall be considered a final division action subject to judicial review. [1999 c.4 s.14]

Note: See note under 475.300.

475.335 [1977 c.636 s.4; 1979 c.674 s.4; repealed by 1993 c.571 s.30]

475.338 Rulemaking. The division shall adopt all rules necessary for the implementation and administration of ORS 475.300 to 475.346. [1999 c.4 s.15]

Note: See note under 475.300.

475.340 Limitations on reimbursement of costs and employer accommodation. Nothing in ORS 475.300 to 475.346 shall be construed to require:
(1) A government medical assistance program or private health insurer to reimburse a person for costs associated with the medical use of marijuana; or
(2) An employer to accommodate the medical use of marijuana in any workplace. [1999 c.4 s.16]

Note: See note under 475.300.

475.342 Limitations on protection from criminal liability. Nothing in ORS 475.300 to 475.346 shall protect a person from a criminal cause of action based on possession, production, or delivery of marijuana that is not authorized by ORS 475.300 to 475.346. [1999 c.4 s.11]

Note: See note under 475.300.

475.345 [1977 c.636 s.5; 1979 c.674 s.5; repealed by 1993 c.571 s.30]

475.346 Short title. ORS 475.300 to 475.346 shall be known as the Oregon Medical Marijuana Act. [1999 c.4 s.1]

Note: See note under 475.300.

Amendments to AB 453
From: Assemblywoman Chris Giunchigliani
4/10/01

Add where appropriate Department of Motor Vehicle and Public Safety as assisting with the issuance of a registry card.Sec. 19 Subsection 5, pg. 5, May need to insert language that requires the Board of Medical Examiners and Criminal records must notify the department of agriculture within 21 days of accuracy of the application.
Sec. 21 add a letter (c) they expire
Sec. 36 Change "fines" to assessments
Sec. 37 subsection 5, delete
Sec. 48 delete subsection 1, 2, 3 and insert 50,000 for the Deaprtment of Agriculture to carry out implementation of legislative intent.

Mr. Chairman, members of the committee, my name is Dan Geary and I am here today on behalf of Nevadans for Medical Rights – the proponents of Question 9. Last November, nearly two out of three Nevada voters approved what is now Article 14, Section 38 of our constitution.

I want to thank you, Mr. Chairman, and this committee for beginning the implementation of this directive from the people of our state – an act of compassion for those who suffer from terminal and debilitating illness.

I wish to extend a very special thank you to Assemblywoman Chris Giunchigliani. Her leadership, her compassion for those who are suffering without relief and her desire to execute the will of the people has brought us to this point.

Mr. Chairman, among the components outlined by the medicinal marijuana amendment is a requirement to establish a method for the cultivation and distribution of marijuana for medical purposes to patients who qualify under the act. I want to take a few minutes to explain why a model for state-managed cultivation and distribution is the safest, most effective manner with which to implement the amendment.

Chief among these benefits would be the security of marijuana cultivated for medicinal purposes and the safety and consistency of the plant made available for qualified patients. The plan before you today provides for the cultivation of medicinal marijuana in a trouble-free facility, secured from those who would abuse the system. We can never lose sight of the fact that this act is for the benefit of persons who are terminally ill and suffering from

debilitating, chronic illness. A state cultivation model relieves patients from the onerous burden of obtaining seeds or "clones", purchasing the necessary equipment and preparing ground to grow and cultivate their own medication. Additionally, today's technology affords the opportunity to test for safety and track through DNA markers the source of marijuana and whether or not that marijuana was obtained in a secure and lawful manner under state law.

Also at issue is the ability for doctors and patients to work together and regulate the patients' dosage to treat their particular condition. A patient suffering from cancer might need to utilize medicinal marijuana only in conjunction with chemotherapy or radiation treatments. Another patient and doctor may determine that medicinal marijuana should be used for the control of chronic seizures on a more regular basis. A state managed cultivation facility would insure the consistency and potency of the plants used for medical purposes. This consistency would help patients and doctors to effectively determine the amounts and dosages necessary to treat that particular patient.

A state cultivation model has the additional advantage of relieving law enforcement of the burden of monitoring private patient groves or patient collectives. The model gives our police and prosecutors the advantage of determining the source of marijuana when a suspect is investigated for illegal possession. It draws a clear and distinct line between the cultivation and possession of marijuana for medicinal or illegal purposes.

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Mr. Chairman, I'd like to make an additional point and then I stand ready to answer any questions from the committee. When deliberating this measure we absolutely must keep in mind the intent of the voters. I respectfully ask this committee to judge this measure in the manner with which our citizens did – the focus must be on the method for best relieving the suffering of those in need. Shortly, you will hear testimony from a family that is emblematic of those that this amendment is intended to serve.

Thank you once again for your leadership, Mr. Chairman, and I would be happy to answer any questions from the committee.

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ULRICH

MEMORANDUM

TO: Criminal Justice Subcommittee Members

FROM: Judge Nancy C. Oesterle

RE: Drug-Related Cases

DATE: February 11, 2000

DRUG COURTS:

PRIOR RECOMMENDATIONS: *The use of drug courts should be expanded in a manner consistent with the following proposals:*

1. Amend NRS 453.580 (the current statute empowering the existence of drug court) by adding the following paragraph numbered "5":

> *"5. The court shall, within the limits of available funds, including, but not limited to, legislative appropriation, develop and implement such an appropriate treatment program as certified by the State of Nevada Bureau of Alcohol and Drug Abuse to assist those persons who do not have the financial resources to pay all of the related costs."*

2. Enlarge the criteria for a person to avail himself/herself of the drug court option. The current criteria for Possession of a Controlled Substance (PCS), Under the Influence of a Controlled Substance (UICS), or a misdemeanor PCS should be expanded to include other controlled substance violations, other non-violent criminal offenses, and non-violent probation transgressions.

Rationale:

The criminal justice system, having limited resources, needs to reduce its efforts to process and punish non-violent drug offenders in order to increase focus and reallocate resources upon violent offenders. The Commission recommends to the Nevada State Legislature that state and local funding should be secured for drug courts in order to maximize that program's efficacy. Such funding for drug-court type programs for the

juvenile criminal justice system should also be considered. If drug courts can be given adequate funding, a significant amount of resources will be freed that can be devoted to violent crime--crime that is a much larger threat to the public's safety.

Drug courts in Miami and Las Vegas have been extremely successful. Since beginning in November of 1992, 689 individuals have been in the Las Vegas program and 100 have graduated. To date, none of the graduates have experienced recidivism, 100 percent success rate indicating that none of the graduates have suffered a subsequent arrest. Since 1988, approximately 5,000 persons have graduated from the Miami program with a recidivism rate of 23 percent. This compares with a recidivism rate of 50-60 percent for other rehabilitation programs and an 85 percent recidivism rate for jail. In terms of costs, incarceration costs as much as $20,000 per year per inmate, but the drug court costs only $1,200 per individual per year. Drug court has proven to be a successful and more cost effective alternative to incarceration. The keys to its success are education, rehabilitation, and enlarging the scope to get others involved. Funding should be a top priority for the drug court and the eligibility criteria for people who can enter the program should be expanded.

UPDATE:

The 1999 version of NRS 453.580 provides as follows:

> NRS 453.580 Program for treatment of certain offenders: Powers and duties of court; contents; payment of costs.
>
> 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the bureau of alcohol and drug abuse in the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.
> 2. A program to which a court assigns a person pursuant to subsection 1 must include:
>
> (a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;
>
> (b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is assigned and the cost of any additional supervision required pursuant to subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

(Added to NRS by 1993, 1233; A 1995, 557; 1999, 1872)

Clark County Adult Drug Court

In January of 2000, new qualifying rules for entry into the Clark County Adult Drug Court Program were ratified. They are as follows:

The Offender:

1. Should have a discernible substance addiction.
2. Should be admitted without a plea if he/she is a first-time offender charged with Under the Influence or simple Possession of a Controlled Substance. This should include dismissal of the complaint and direct petition to Drug Court from Justice Court.
3. Must be charged with a crime. (Significant others of current participants also qualify.)
4. Does not qualify if:
   (a) He/she pleads guilty to a violent felony or gross misdemeanor offense, defined as the following:
      (1) The person carried, possessed, or used a firearm or other dangerous weapon;
      (2) There occurred the use or threat of force against the person of another; or
      (3) There occurred the death of, or serious bodily injury to, any person.
   (b) He/she is currently being supervised for a violent felony or gross misdemeanor offense.
   (c) He/she has been convicted within the last seven years of a violent felony or gross misdemeanor offense.

5. Exceptions to exclusion by Rule #4 may only be made through presentation of valid reasons to the Drug Court Task Force or its Designees: the Drug Court Deputy District Attorney and the Drug Court Deputy Public Defender. Such a finding of exception must be made within one week of an attempted negotiation so as not to congest Justice Court calendars. **All negotiations between the prosecution and the defense involving exceptions to Rule #4 are considered conditional negotiations until approved by the Drug Court Task Force or its designees.**
6. Exceptions to exclusion by Rule #4 by a sentencing judge may only be made through presentation of valid reasons for the exception to the drug court judge.

Ratified by:

Jack Lehman, District Court Judge
Douglas E. Smith, Justice Court Judge
Billy R. Moma, Justice Court Judge
Marley P. Robinson, Justice Court Judge
Stewart P. Bell, District Attorney
Morgan D. Harris, Public Defender

Judge Lehman has prepared the following background information about the Clark County Drug Court:

> Since October 19, 1992, Clark County has had a drug treatment program called "Drug Court." The primary purpose of Drug Court is to act as a diversion program which takes defendants out of the criminal system and puts them into drug treatment. Our Drug Court is patterned after the highly successful Miami, Florida program, which started in 1988. Attorney General Janet Reno was instrumental in getting the Miami Drug Court started. This program resulted from a study that was evidently ordered by the Florida Supreme Court which showed that in spite of the literally tons of cocaine that are interdicted in that city annually by the FBI, DEA, and ATF agencies, the price of cocaine had not fluctuated on the streets of Miami during the period of a year. The Court, therefore, became convinced that something new had to be tried, and that was spending a reasonable amount of energy and funding going after the drug user.
>
> Defendants participating in the Clark County Drug Court program consist of first time drug offenders, multiple drug offenders, defendants on probation, and offenders committing other crimes to support their drug habit. The cost of the program is $1,800.00 for the full year of treatment, and is paid by funds provided by the County Commission, the State Legislature, and some federal funding.
>
> The program consists of regular treatments of acupuncture, group, and, where necessary, individual counseling, and regular appearances before a person called a "Drug Judge." The Drug Judge has multiple roles as a combination authority and father figure, a psychologist, social worker, and Judge. He sees the people in the program not less than once a month if they are doing well. If they are not complying with the program requirements, he sees them on a more

frequent basis. The Drug Judge praises those participants who are doing well and either chastises or punishes those who are not doing well. The punishment may consist of more frequent appearances in Court, or a period of time (usually four days) spent in the Clark County Detention Center. Thus, the Drug Judge has the ability to immediately reward or punish the participants based on their performance in the program on an ongoing basis.

The Clark County Drug Court program commenced on October 19, 1992. By that time, we had signed a contract with a clinic called Choices Unlimited to administer the acupuncture treatments, the urinalysis and the counseling.

Program participants go to the clinic for acupuncture and counseling on a daily basis for approximately two weeks or until they have six consecutive clean urines--whichever is longer. Urine specimens must be left at the clinic every other day during the first two phases of the program so that the participants' progress can be monitored. No new charges can be brought against a participant for any positive urinalysis given in the program.

Once the participant has left six consecutive clean urines, he or she moves on to Phase II. During this phase, acupuncture is no longer required, but is still available if the participant requests it. Attendance is reduced to three days a week, and regular appearances before the Drug Judge continue--once a month if they are doing well, and more often if they are not. On each Court visit, the Drug Judge continues to praise the participants who are doing well and chastise or sanction the participants who are doing poorly.

The program lasts for at least one year. In order to graduate, however, the participant must be totally free of all drugs, and must have attended every counseling sessions for at least the last six months. Graduations take place at the beginning of Drug Court sessions. This is purposely done so that everyone in the program, particularly those who may be appearing in custody because of a bench warrant or sanction, and participants who are appearing for the first time may see those who have successfully completed the program. The graduations consist of the Drug Judge praising the graduate, reciting the accomplishments of the participant while in the program, and awarding a diploma along with a T-shirt and a key chain, both bearing the slogan "2 Smart 4 Drugs." Further, the graduates who are first-time offenders charged with either possession or under the influence of controlled substance have their charges dismissed and their record sealed. The other graduates receive whatever benefits were negotiated for them at the time they enrolled in Drug Court, which can include having their charges reduced to a simple misdemeanor with credit for time served, having the charges reduced to a gross misdemeanor, or guaranteeing the graduate probation at sentencing.

Each participant is required to pay between $10.00 and $40.00 per week to the program, depending on what the Drug Judge determines the participant can afford. The money is collected in Court by a deputy county clerk and is earmarked to be used in the program so that additional participants can enter the program. From 1992 through 1999, participants have paid over $912,288.00 into the program.

At this point, a little of the history of the Clark County Drug Court is appropriate. The most difficult part of getting the program started here was finding a source of money. Miami managed to get Dade County to come up with approximately $1 million a year. That allowed them to establish a complete organization, their own clinic, and to put through 1,000 people a year.

Here, in 1990, the money problem was brought to the Clark County Criminal Justice Task Force, a group formed by the County Commission. To begin with, the Task Force unanimously

approved the concept of starting such a program and determined that it would be happy to participate in any way it could. Fortunately, one of the members of that Task Force was Russ Eaton, the Administrator of our Justice Courts in Clark County. Russ pointed out that all of the Justices of the Peace here had been extremely dissatisfied with the private DUI and traffic schools that the JP's were using to send people who had committed those offenses. He and the JP's had discussed the question of having the County start its own DUI and traffic schools, and had already done some analysis of what the cost might be and how much income could be generated by operating these schools. They had determined that after all operating expenses, there would still be a net income of approximately $300,000 to $400,000 annually. The County Commission unanimously agreed to dedicate this net income to the Drug Court program.

The next step was for a group from the Task Force to observe the Miami program first hand. Since the task force contained representatives from the offices of the County Manager, District Attorney, Public Defender, Metro, District Court, and Justice Court, nine of us, representing all of these agencies, traveled to Miami for two days in late July of 1991. The date was not arbitrarily picked. To avoid being accused of going on a "junket" to Miami, we picked a time for the visit when almost no one goes to Miami for a vacation because of the high temperature and high humidity.

As a result of the visit, all of us became absolutely sold on the effectiveness of the Drug Court program. We had an opportunity to watch their Drug Judge in action for a day, and then spent the next day going through their clinic. While there, all of us volunteered to have an acupuncture treatment. I now tell participants who are concerned about the needling required in acupuncture that I am not asking them to do anything that I have not already done.

The next problem was whether to set up our own clinic, as Miami did, or to contract with an independent clinic. Because of the shortage of funds it was clearly not feasible for us to establish our own clinic. Fortunately, I learned of an outstanding board certified internist in Reno named Graham Simpson who had heard of the Miami Drug Court program and decided to set up a clinic on his own in Reno. He did this by hiring acupuncturists and counselors and then treating patients on a purely private enterprise basis for drug addiction and alcoholism, as well as some smokers who were trying to get off cigarettes. At the same time, Dr. Simpson decided that one of the critical things that his clinic should do in Washoe County was to treat pregnant addicts. As such, he notified various agencies about his clinic and treated those people for free if they had no money to pay. The cost of going through the drug or alcohol program in his clinic was $2,800 for the year.

I next went to Reno and went through Dr. Graham's program. I was very much impressed. I convinced him that we were serious about starting a Drug Court in Las Vegas and asked him to please open a branch clinic here. He agreed to do that, and to treat participants at a cost to the County of $1,000 per participant. This fee would cover the acupuncture treatments, counseling, urinalysis, liaison with the Court, participation at each weekly Court session, and finally, preparing a report of each participant's activity in counseling and the results of his or her urinalysis, each time they appeared.

The final step was to put on the County Commission agenda the question of starting the County traffic and DUI schools and earmarking the profits therefrom for Drug Court. This was done and the County Commissioners passed the resolution necessary to clear the way for everything to proceed. The Clark County Drug Court became a reality October, 1992.

We currently have approximately 1,500 people in the Drug Court program, and we are successfully getting addicts off of drugs. We started graduating participants in November, 1993, and since then are graduating participants nearly every week. So far, we have had 1,264 graduates, with only 237 recidivists--a recidivism rate of only 18%. Drug addicts who are sent to jail or prison have a recidivism rate of 80%.

In May, 1994, the Justice Department requested the 24 existing Drug Courts in the United States to gather in Alexandria, Virginia, and form a National Association of Drug Courts. What resulted was the National Association of Drug Court Professionals. The purpose of this association is to exchange information among the existing Drug Courts and be a source of hands-on assistance for those communities that wish to start Drug Court programs. The first National Conference of the NADCP was held in Las Vegas, Nevada, January 8-11, 1995, at the Golden Nugget Hotel. 625 delegates from 42 states attended. The interest and enthusiasm generated at the conference were substantial. Nearly 300 people attended the Drug Court sessions held on the 9th, 10th, and 11th at the Clark County Courthouse.

The interest in Drug Courts nationally has been and continues to be very high. Clark County Drug Court was the 5th in the nation. There were approximately 45 by the time of the first NADCP conference in January, 1995. Today, there are approximately 400 in the nation. California alone has 80, and Nevada has 8.

The most recent NADCP conference was held in Miami, Florida, the first week in June of 1999. There were nearly 3,000 delegates attending. Truly, this has been a snowballing program that has far exceeded the wildest expectations of those of us that put together the NADCP. The reason for the popularity and success of the National Drug Court program is that these programs truly work, by not only getting addicts off drugs, but helping graduates to stay off drugs. The low recidivism rate has caused city, county, and state governments as well as our national government to significantly expand the financial and other assistance available to communities that wish to start or enlarge their Drug Court programs.

Those of us who are involved with Drug Courts are convinced that this is the best method found so far to treat drug addicts. We are convinced this is the only way the war on drugs can ever be won. Unless we continue to expand the number and effectiveness of Drug Courts, we will certainly have to continue to build prisons and expand the judicial systems and police forces at an ever increasing rate in order to keep up with the demand on federal, state, and local resources. Economically, Drug Courts make great financial sense. It presently costs us $1,800 to put a person through the Clark County Drug Court program; it costs approximately $13,000 a year to keep a person in the Clark County Detention Center, and approximately $23,000 a year to put them in state prison. Even more importantly, putting them in the detention center or state prison does not get them off drugs. You put an addict in and you get an addict out, who usually goes back onto the streets to buy and/or sell drugs. Our program has a very significant percentage of individuals who get off and stay off drugs.

Conclusion

The U.S. Justice Department estimates that the average addict commits 50 to 100 crimes per year to support his or her habit. It is clear that getting addicts off drugs can be a significant means of reducing crime in our communities and our country. Drug Courts are doing just that.

The latest statistics for the Clark County Drug Court are for the period between October 1992 and February 2000. These statistics can be summarized as follows:

TOTAL ADMISSIONS	5,488
TOTAL GRADUATES	1,490
TOTAL ON BENCH WARRANT	432
ACTIVE IN PROGRAM	1,549
RECIDIVISM	19%

AGE	N	%
13-17	768	14
18-29	2,250	41
30-39	1,756	32
40-49	659	12
50+	55	1

SEX	N	%
Female	1,701	31
Male	3,785	69
Transsexual	2	--

RACE	N	%
African/American	1,152	21
Caucasian	3,222	59
Hispanic	604	11
Pacific Island	197	4
Other	313	5

OFFENSE	N	%
Under the influence	713	13
Poss. of controlled subst.	2,634	48
Poss. w/intent to sell	439	8
Trafficking	274	5
Violation of probation	439	8
Burglary	272	5
Robbery	7	--
Forgery	53	1
Obtain prescription by fraud	73	1
Manufacturing	97	2
Other	110	2
None (significant other)	384	7

DRUG OF CHOICE	N	%
Alcohol	369	7
Barbiturates	14	--
Cocaine	1,098	20
Methamphetamine	1,819	33
Heroin	236	4
Marijuana	1,712	31
Prescription medications	130	2
Phencycladine	29	1
LSD	10	--
Other	35	1
Denied any use	36	1

Reno Drug Court

Introduction

Since its inception in July of 1995, the Washoe County Adult Drug Court has graduated nearly 400 people. These are all men and women who were facing a felony conviction for a drug crime, but rose to the opportunity provided by this program to rehabilitate themselves and re-enter society with the tools needed to become productive, law-abiding citizens.

With the generous funding provided by the County and State this coming year, the Adult Drug Court will be able to keep pace with increased costs and provide treatment to 20% more clients. In addition, due to the dedicated work of Senator Raggio, Assemblyman Anderson, and Governor Guinn, Nevada will be the first state to introduce a Drug Court Re-Entry program that will take qualified prisoners out of custody and manage their re-entry into society. It is anticipated that close supervision of these re-entry clients by Parole and Probation and the Drug Court Judge will result in many of these men and women successfully re-entering society when they leave prison. This exciting program is being considered in numerous other jurisdictions, but only Nevada has it in place.

As a new century begins, the Washoe County Adult Drug Court will provide the most remarkable, successful and innovative program in the criminal justice system. The scope of cooperation by all the various governmental agencies and private parties involved in Drug Court makes this program effective, efficient and unique.

Program Statistics from July 1, 1995--June 30, 1999

Clients who interviewed for the program	1283
Clients who enrolled in the program	1004
Self-pay clients (current)	177
County-pay clients (current)	212
Current active clients	389
Clients remanded from program	153
Clients graduated from program	389

Of the clients who remain in the program for 12 months or more, the graduation rate is 82%

Client Statistics

Male	629
Female	375

Ages

18-25	335 (33%)
26-39	862 (50%)
40+	130 (13%)

Ethnicity

Caucasian	778 (78%)
African American	69 (7%)
Hispanic	83 (8%)
Other	74 (7%)

Became employed during program	215
Employed on entry	256
Completing education	78
Disabled or unemployed	384
Mental health enrolled	126
Mental health graduated	68
Graduated extended over one year	71

Primary drug of choice

Methamphetamine	663 (65%)
Marijuana	139 (14%)
Cocaine	114 (11%)
Heroin	88 (10%)

Financial Overview

Funding from Washoe County 1998/1999	$220,000
Funding from State of Nevada 1998/1999	$ 50,000
Total program funding 1998/1999	$270,000

Number of self-pay clients	117
Number of county-pay clients	212

Expended (County pay clients and testing)[1]		$248,429.00
Amount collected from County pay clients	1998/1999	$ 56,822.00
Amount collected from County pay clients	1995-1999	$205,300.53

The latest statistics for the Reno Drug Court are provided by "Choices Unlimited" for 1999. These statistics can be summarized as follows:

296 Total Clients--Quarterly Report

DRUG OF CHOICE:	
Methamphetamines	216
Marijuana	38
Cocaine	21
LSD	2
PCP	1
Heroin	18
RACE:	
Caucasian	241
African American	25
Hispanic	25
American Indian	2
Asian	1
Filipino	1
Islander	1

[1] Excludes June 1999.

Average Age: 32.61

Female Participants 97

Male Participants 199

Charges--These participants could have multiple charges. The primary charge is as follows:

Possession	68
Under the influence	228
Sales	1

According to statistics from Judge McGee of the Family Drug Court of the Second Judicial District Court, the total participants from 9/94 through 2/00 are as follows:

TOTAL PARTICIPANTS (Choices, Step II and NASAC)	212
TOTAL CHILDREN	329
TOTAL GRADUATES	109
TOTAL TERMINATIONS FOR NON-COMPLIANCE	37
TOTAL TERMINATIONS FOR PERSONAL CHOICE	21

Re-Arrest Statistics from July 1995 to July 1999

From July 1995 to July 1999, the Washoe County Adult Drug Court had graduated 389 persons from the program. The D.A.'s records search on these individuals revealed 46 who had sustained one or more re-arrests in the local area for criminal offenses, both misdemeanor and felony. These 46 sustained 53 arrests for a total of 99 charges: 22 graduates sustained 48 felony charges; 39 graduates sustained 76 misdemeanor charges. The following is a breakdown of those offenses.

1. The Adult Drug Court has graduated 389 persons since 1995. If 46 of these sustained one or more re-arrests, then the local recidivism rate is 46 divided by 389 to equal an 11.8% re-arrest rate for graduates.

2. Of the 46 graduates who were arrested:
   - A. A total of 53 arrests were made (7 were arrested on more than one occasion).
   - B. 22 of the graduates sustained 48 felony charges (see below for breakdown).
   - C. 39 of the graduates sustained 76 misdemeanor charges (see below for breakdown).

* The records search had incomplete data about convictions.

1. Of the 22 graduates, the felony arrests were:

A.	Possession of a controlled substance	14
B.	Using or being under the influence	4
C.	Possession for sales	5
D.	Sales	1
E.	Trafficking	2
F.	BDW/ADW	3
G.	Burglary	5
H.	Grand larceny	2
I.	Sexual assault	1
J.	Possession of an illegal firearm	1
K.	Stalking	1
L.	Robbery	1

* Of these felony arrests, at least 5 were reduced to misdemeanors.

2. Of the 39 graduates arrested for misdemeanors, the charges were:

A.	Paraphernalia	14
B.	Open and gross lewdness (gross)	1
C.	Domestic violence	11
D.	Ex-felon failure to register	3
E.	Obstructing an officer	3
F.	DUI	11
G.	Contributing to the delinquency	1
H.	Petty larceny	4
I.	Possession of stolen property	4
J.	Impersonating an officer (gross)	1
K.	Trespassing	2
L.	Child neglect (gross)	1
M.	Disturbing the peace	2
N.	Misd. drug possession	2
O.	Battery	1
P.	False ID	1

Washoe County Adult Drug Court Defendant Eligibility

Due to the success of the Washoe County Adult Drug Court, the District Attorney has approved a limited expansion of the number of defendants who may participate in the program. While possession, possession for sale, use and being under the influence cases will continue to be admitted to the program, two new classes of defendants are now also

eligible. These are: 1) defendants who apply for and receive a 453 or 458 diversion and 2) those who are already on probation, but have struggled and would benefit from the increased counseling and supervision of the Drug Court. All of these defendants must have a demonstrated drug problem and cannot have any prior crimes of violence (except misdemeanors) or serious property offenses (such as residential burglary). The following is a brief summary of the proposed procedures in these cases:

1. 453/458 Programs. Once the Defendant has been deemed eligible for a 453 or 458 diversion, the Court may determine that the increased supervision of the Adult Drug Court is necessary. This may occur at the time the program is granted, or later, if the defendant is not complying to the Court's satisfaction. Enrollment in Drug Court will be by stipulation with the Assistant District Attorney, John Helzer. If the Court wishes the Defendant to apply for admission, the case should be continued one or two weeks, so the defendant can attend the Drug Court orientation held each Monday at 9:00 a.m. in Department 7 with David Spitzer. After orientation, Mr. Spitzer will present the application to Mr. Helzer who will accept or reject it. If the defendant is accepted, Mr. Spitzer will appear at the next court hearing with a signed stipulation ready for the court's signature. The Defendant will begin counseling immediately and the case will be transferred to Department 7 where the Defendant will appear within two weeks before Judge Breen. If the Defendant completes the Drug Court program (a minimum of one year), the case will be returned to the original department for further proceedings. If the Defendant fails Drug Court, the case will be remanded to the original department for further proceedings.

2. Probation Cases. Those defendants who will receive probation or who have struggled on probation may be admitted to drug court if: a) Assistant District Attorney Helzer approves, b) the defendant has no prior crimes of violence (except misdemeanors) and c) the Division of Parole and Probation does not object. Prior to the hearing, any defense attorney may contact Mr. Spitzer, who will interview the defendant and submit his/her application to Mr. Helzer. If the defendant is approved, the Court will be notified that there is no objection to Drug Court as an added condition of the defendant's probation. Once the condition is in place, the defendant will be ordered to attend the Monday orientation in Department 7, begin the counseling and be set for a first appearance before Judge Breen. Supervision of the case will be transferred to Department 7. P&P will be informed of the defendant's progress and may institute revocation proceedings at any time. A revocation hearing will be set in the original department. Upon successful completion of the Drug Court, the case will be returned to the original department for further proceedings.

These new eligibility criteria are meant to increase the number of criminal defendants who successfully address their drug addictions. The Drug Court has demonstrated its

ability to effectively assist those whose underlying motivation for criminal activity is addiction. Recent statistics show that while 80% of Drug Court participants graduate from the program, only 11.8% have been re-arrested for any criminal offense. It is hoped that by increasing the number of participants in Drug Court, more criminal defendants will become active, crime-free, clean and sober members of our community.

Draft Recommendations

On January 6, 2000, Judge Jack Lehman, Judge Nancy Oesterle, Deputy District Attorney David Wall, Assemblywoman Chris Giunchigliani attended a meeting with Steve Morris, Court Administrator for the Las Vegas Justice Court, and Rick Loop, Assistant Court Administrator for the Eighth Judicial District Court. Everyone who attended this meeting agreed that Drug Court is in dire need of additional funding, and funding sources must be located from various entities. As a result of this meeting, the group prepared the following draft recommendations on drug courts for the Rose Commission:

(1) Legislative Action:

--All drug-related cases should have a $10 fee imposed as part of the sentence.

A bill amending NRS Chapter 176 should be drafted and submitted through the Administrative Office of the Courts (AOC).

By analogy, in the Las Vegas Justice Court, a substantial amount of revenue is generated by the $10 facility AA fee currently in existence. This fee is added to every fine on which a guilty plea or a finding of guilt occurs. In the last six months of 1999, the revenue was itemized as follows:

July	$115,070.00
August	$130,250.00
September	$117,550.00
October	$124,010.00
November	$116,800.00
December	$110,160.00
TOTAL	$713,840.00

Even if an administrative fee was narrowed to drug-related cases only, such as Possession of a Controlled Substance, Sale of a Controlled Substance, Manufacture of a Controlled Substance, or Possession of Narcotics Paraphernalia, etc., this would raise a substantial amount of money per year, estimated to be in the hundreds of thousands of dollars.

--There should be a line item in State budget for Drug Courts.

This should be proposed by the Governor's office and administered by the AOC so that money would be allocated to Drug Courts every legislative session.

--Drug Court should be a component of any expanded early release program.

If the State Prison early release pilot program is successful, then future legislative sessions should consider allocating State Prison funds towards adding a Drug Court component to the early release program.

(2) Grants:

The AOC should work with State agencies, such as the State Drug Commission, to obtain federal grant monies.

General and limited jurisdiction courts should pursue local, state, and federal grant funds.

The Commission needs to look at and study all money coming into the prisons and school system for drug prevention and education so that the group can determine what works and what does not work.

A review of all recipients of block grant money must be conducted. The same agencies have been getting the same amounts of block grant money for lengthy periods of time. They now feel that they are entitled to the same allocation of money and rely upon it for their agency's administrative expenses. Drug Court should prepare grant requests for this money.

(3) AOC:

Supervise expansion of Drug Courts to Juvenile.

Supervise expansion of Drug Courts to Rural Courts.

Coordinate overall operation of Drug Courts within the State.

Work with State and Local agencies to identify all monies coming into the various jurisdictions related to drug education and treatment to determine if they can be diverted to support Drug Courts.

(4) General Recommendation:

All Drug Courts should be required to provide regular annual statistics on the number of defendants and recidivism rates to support funding requests at all levels.

POSSESSION OF A CONTROLLED SUBSTANCE--MARIJUANA

PRIOR RECOMMENDATION: *The Commission recommends to the Nevada Legislature to defelonize[2] the simple possession of small amounts of marijuana. NRS 453.336 should be amended by inserting the new paragraph "3" to read:*

> "3. (a) Any person who is found to be in possession, actual or constructive, of 1 ounce or less of marijuana, shall be issued a citation as provided in NRS 171.1773, in conformance with NRS 171.122, and thereafter, shall, if convicted of said offense, be punished as a misdemeanor.
> (b) Any person who is found to be in possession, actual or constructive, of more than 1 ounce, but less than 4 ounces of marijuana, shall be punished as a gross misdemeanor.
> (c) Any person who is found to be in possession, actual or constructive, of 4 ounces or more of marijuana, shall be punished as a felony, by imprisonment in the state prison for not less than one year nor more than six years and may be further punished by a fine of not more than $5,000."

Rationale:

This recommendation is based on two sources. The first, *A Guide to State Controlled Substances Acts*[3], was published by the National Criminal Justice Association in 1991. The second source was a phone survey of 28 defense agencies, e.g., Offices of County

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[2] It should be noted that the term "defelonize" is not synonymous with the term "decriminalize." The term defelonize means that a felony offense is reduced to a misdemeanor offense. While it becomes a misdemeanor offense, it is still a criminal charge. Conversely, the term decriminalize refers to removing incarceration as a possible penalty upon conviction of a law violation. The offense becomes regulated rather than prohibited.

[3] National Criminal Justice Association, *A Guide to State Controlled Substances Acts*. Washington , D.C.: U.S. Department of Justice, Bureau of Justice Assistance and National District Attorney's Association, January, 1991.

Public Defender, and 23 prosecutorial agencies, e.g., Offices of County District Attorney, as follows: one agency from each state and the District of Columbia was contacted between December, 1993, and January, 1994. At least one attorney from each office was asked how their jurisdiction penalized possession of varying amounts of marijuana, e.g., fine, misdemeanor, felony.

Comparing Nevada to these other jurisdictions revealed that Nevada, which makes it a felony to possess even a small amount of marijuana, was, comparatively speaking, isolated in its treatment as a felony of small amounts of marijuana for personal use. The treatment as a felony of small amounts of marijuana for personal use strains the judicial system with cases that are, frequently, plead down to misdemeanors or dismissed. Reducing possession of marijuana as recommended would benefit the judicial system by reducing its workload. For example, at present, arrest for possession of any amount of marijuana is an arrest on a felony charge; detention at a jail facility, booking, appointment of counsel, a preliminary hearing, trial and prison incarceration are legally potential outcomes. Treatment as recommended above, could call for a citation, a Justice Court trial and incarceration at a detention facility. "Defelonization" would reduce costs and permit valuable resources to be reallocated to violent offenses that are of greater concern to the public.

UPDATE:

The 1999 version of NRS 453.336 provides as follows:

> NRS 453.336 Unlawful possession not for purpose of sale; penalties.
> 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, physician's assistant, dentist, podiatric physician, optometrist or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive.
> 2. Except as otherwise provided in subsections 3, 4 and 5 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:
> (a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.
> (b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as

provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, 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 1 year and a maximum term of not more than 6 years.
4. Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marihuana:
   (a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.
   (b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.
5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:
   (a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and
   (b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.
6. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

(Added to NRS by 1971, 2019; A 1973, 1214; 1977, 1413; 1979, 1473; 1981, 740, 1210, 1962; 1983, 289; 1987, 759; 1991, 1660; 1993, 2234; 1995, 1285, 1719; 1997, 521, 525, 903; 1999, 1917)

FISCAL IMPACT

According to recent information provided by Paul Martin, the Clark County Detention Center (CCDC) averages 465 individuals in custody on narcotics-related charges. Of that number, an average of 62 individuals are in custody for Possession of a Controlled Substance. The average cost of incarcerating an individual at the CCDC is approximately $66.00 per inmate per day; with 62 individuals a day in custody for Possession of a Controlled Substance, this translates into a total cost of $4,092.00 per day

300K for jail alone

20%
800
365
4000
4800
2400

for the CCDC.[4] Moreover, the CCDC has contracts with local municipal detention facilities to rent available inmate beds, and the CCDC pays those jurisdictions $50.00 per inmate per day. All of these costs could be avoided if the severity of the PCS charge was lessened.

No statistics are readily available that determine what amount the criminal justice system as a whole spends per day on PCS charges. In addition to the incarceration charges, other costs would include, but are not limited to, district attorney expenses, public defender expenses, judicial staff expenses, computer input expenses, law enforcement expenses, and crime lab expenses.

LEGISLATIVE ATTEMPTS

In 1999, Assemblywoman Giunchigliani offered AB 577, a bill that would have altered the relevant law as follows:

> "Unless a greater penalty is provided pursuant to NRS 212.160, a person 18 years of age or older who is convicted of the possession of less than 1 ounce of marihuana:
>
> (a) For the **first offense**, is guilty of a misdemeanor and shall be punished by a fine of not more than $500; or
>
> (b) For the **second or subsequent offense**, is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000, and assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.
>
> Unless a **greater penalty** is provided pursuant to NRS 212.160, **a child under 18 years of age** who possesses less than 1 ounce of marihuana in violation of the provisions of subsection 1 commits a delinquent act and the court shall order the child:
>
> (a) For the **first offense**, to pay a fine of not more than $300, and require the child to undergo an evaluation pursuant to NRS 62.2275; or
>
> (b) For the **second or subsequent offense**, to pay a fine of not more than $500, or to be detained in a facility for the detention of children for not more than 10 days, or both to pay a fine and be detained, and assign the child to an appropriate program of treatment for the treatment of abuse of alcohol or drugs."

The bill also stated that "a local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local

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[4] When the new jail is completed, the anticipated cost of incarceration will rise to $70 per person per day.

ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed." "Local authority" was defined as the governing board of a county, city, or other political subdivision having authority to enact laws or ordinances.

Under AB 577, money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to the preceding paragraph was to be evenly allocated among:

(a) Facilities for the treatment of abuse of alcohol or drugs established by a local government, if any;
(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and
(c) Local law enforcement agencies,

in a manner determined by the court.

AB 577 did not pass. However, two excerpts of legislative history illustrate that the Rose Commission made its presence felt during the bill's debates.

First, on April 7, 1999, the following discussion occurred in the Assembly Committee on Judiciary:

> **Assemblywoman Chris Giunchigliani**, Assembly District 9, explained the intent of A.B. 577 to the committee. She stated it was not intended to send a message that drug use was okay but an attempt to focus on rehabilitation if a person was found in possession of an ounce or less of marijuana. It would also allow local jurisdictions to collect fines that could then be directed to rehabilitation programs. Ms. Giunchigliani's prepared written testimony was attached as Exhibit C. She then drew the committee's attention to an amendment, which would address a concern raised after the original drafting of the bill which she would review later in the hearing (see page 4 of Exhibit C).
>
> **The Honorable Robert E. Rose, Chief Justice of the Nevada Supreme Court**, explained he was not speaking for himself personally one way or another or for the Nevada Supreme Court as a whole. He was simply relating the one recommendation made by the workload assessment commission after 1 year of study as the chairman of that commission. He noted in 1993 and 1994, the commission was created by the legislature and the Nevada Supreme Court to study the urban courts in Nevada, specifically their operation, effectiveness, and to make recommendations concerning how the system could be made more taxpayer and user friendly. Referring to page 46 of the report from the Judicial Assessment Commission titled "Simplifying the Maze", Chief Justice Rose announced "The Commission recommends to the Nevada Legislature to defelonize the simple possession of small amounts of marijuana." The commission's report was attached as Exhibit D. It recommended that the law be amended to provide that 1 ounce or less of marijuana result in a citation and that it be punished as a misdemeanor. It also recommended that more than 1 ounce but less than 4 ounces be punished as a gross misdemeanor and that 4 ounces or more of marijuana be punished as a felony, as it is now.

Chief Justice Rose stated the rationale behind the recommendation was twofold. First, it cited "A Guide to State Controlled Substances Acts" which was published by the National Criminal Justice Association in 1991. The second source was a phone survey conducted whereby the office of the prosecutor or the office of the public defender was called in each state. The conclusion was that in comparing Nevada to other jurisdictions, Nevada "was, comparatively speaking, isolate in its treatment as a felony of small amounts of marijuana for personal use." The treatment of possession of small amounts for personal use as a felony strained the judicial system with cases that were, frequently, pled down to misdemeanors or dismissed.

Assemblywoman Leslie inquired why it would be easier for people to get the help they need by enacting the bill. Referring to the proposed amendment, Ms. Giunchigliani replied the local government could add up to the amount of what was allowed for a fine at the state level. The money would then be diverted to rehabilitation programs or the drug court at the local level.

Referring to page 4 of Exhibit C, **Ms. Giunchigliani** pointed out the language was modeled, in part, after legislation used by California in order to expedite drafting but mostly after the recommendations from "Simplifying the Maze". In regard to amending Nevada Revised Statutes (NRS) 453.336 to read "Any person who is found to be in possession, actual or constructive, of 1 ounce or less of marijuana, shall be issued a citation", she noted the "shall" should have been a "may". Ms. Giunchigliani explained that would give law enforcement the flexibility they needed. She proceeded to review the additional penalties for conviction of a first offense as well as for a second offense. She further noted, if a person under the age of 18 was convicted of possession of 1 ounce or less, he or she would be fined and required to undergo an evaluation pursuant to NRS 62.2275. That was a recommendation from the drug commission in order to get youth into drug rehabilitation programs. It was modeled after what was done to treat alcohol abuse and that was the reason for the reference to NRS 62.2275. For a second or subsequent offense, the child could be ordered to pay a fine of not more than $500, or be detained in a facility for detention, or to both pay a fine and be referred to drug court if one existed. The penalty was to allow for some flexibility but to make sure that population was targeted.

She further reviewed subsection 5(b) of section 1 allowing a local government to collect a penalty under NRS 484.778. She noted all fines in the State of Nevada were required to go to the distributive school account. That reference was made in order to allow for a city to enact an ordinance for a penalty equal to the same amount the state could impose, allowing the money collected to be directed to rehabilitation programs. Ms. Giunchigliani emphasized the focus would be on the issue of rehabilitation rather than "simply locking people up and taking up bed space for violent criminals."

Chairman Anderson questioned if the change to "may" would also refer to the language regarding the penalty. Ms. Giunchigliani clarified it would not apply to penalties.

Ms. Giunchigliani told the committee a piece of legislation from 1997 required an examination of the effectiveness of Nevada school-based substance abuse and violence prevention programs. After looking at programs such as Drug Awareness Resistance Education (DARE), Here's Looking at You 2000, Natural Helpers, and various student assistance and counseling programs, it was determined that some of them were effective while others that were assumed to be effective were not. Out of the five primary prevention programs, one was considered to be an effective program, two were promising practices, one program was not effective, and one program had not been researched. The additional fine revenue would go into making the programs better and allow for more youth to be affected.

Ms. Giunchigliani drew attention to a letter in support of A.B. 577 from Nevada CURE, a rehabilitation program in southern Nevada. The letter was attached as Exhibit E.

Assemblyman Nolan commented the committee had received testimony from the director of prisons about the high incidence of marijuana usage and other drugs in the prison. Random drug testing resulted in an approximate 15 percent positive rate. He wondered if the penalties would apply to prison inmates who were caught using and distributing. He did not want to see the penalties that could be imposed on them lightened in any way.

Ms. Giunchigliani stated she would address that issue with the prison system and provide the committee with any information she could obtain.

Chairman Anderson clarified the prison system was able to establish their own set of rules. He explained while alcohol was a permissible product in the open market, it was not permissible in prison.

Assemblyman Carpenter asked for clarification of the amendments. He noted in the original bill, a larger penalty would be imposed if an individual was found to be in possession of more than 28.5 grams. He asked what the punishment would be if an individual possessed more than 1 ounce in accordance with the proposed amendment.

Ms. Giunchigliani explained she wished to replace the language of the original bill with the proposed amendment. She had assumed 28.5 was an ounce, but in reality, 28.35 was an ounce. It was not her intent to deal with more than an ounce so the language was changed back. The charges would be the same as they were currently for possessing over an ounce; a class E felony.

Ms. Giunchigliani also pointed out the fines in California were lower than what were being proposed. She opined fines of $500 and $1,000 were steep penalties.

Richard Siegel, a professor of political science from the University of Nevada, Reno, testified as the Vice President of the American Civil Liberties Union of Nevada. He notified the committee 15 years ago, a book on the marijuana penalties in Nevada was written called "Morals, Legislation without Morality, the Case of Nevada". The premise of the book was based on the opinion, "Nevada's marijuana law is perhaps the most repressive and punitive in the United States". People were interviewed including the leadership of the Nevada Legislature, and the authors concluded it was essentially a symbolic act; because Nevada was embarrassed by its prostitution and alcohol laws, the state wanted to be able to say at least it was "tough on pot." Professor Siegel stated if the bill passed, Nevada's marijuana laws would still be as punitive as any in the United States. Adding to Ms. Giunchigliani's testimony, he explained a report on marijuana was done in 1995. In Nevada, it was found that 88 percent of funds spent on drug control were devoted to prosecution and incarceration. Only 12 percent was allocated to health and education programs. He believed wanting to correct what he felt was an inadequate proportion and the fact that Nevada was so over-incarcerated were major reasons to pass A.B. 577. Another reason to pass the bill was because of the inefficiency created for the judicial system and the jail system. "We don't mean it when we call marijuana possession in small amounts a felony. We don't intend that and we don't have credibility when we say that to youth." Professor Siegel reminded the committee after being convicted of a felony, an individual lost his or her right to vote for the rest of their life.

Chairman Anderson pointed out there was a process where an individual could get their voting rights restored.

Professor Siegel said Chairman Anderson was correct and rephrased his last sentence. He added it was possible to do, but the State of Nevada was clearly not prepared to process those requests. Concluding his testimony, he reiterated Nevada would still have the most repressive marijuana laws in the country and if, A.B. 577 was passed, the state would have a more efficient judicial and jail system and more credibility for its law.

Assemblyman Brower asked if Professor Siegel was trying to say he favored the legalization of marijuana in Nevada. Professor Siegel clarified he was not testifying on that issue. On a personal note, he remarked he would favor decriminalization but not legalization, stating there was a difference. "We have processes of fines and citations that would not represent criminal fines in small amounts." He opined, "We are light years away from that in this discussion and in this bill."

Assemblyman Gustavson said the State of Nevada had sent a clear message that it would not tolerate possession of marijuana and pondered if the bill would be the first step towards decriminalizing or legalizing the use of marijuana. Professor Siegel responded it could be interpreted that way, but he did not believe it was a significant step in that direction. He repeated it was a step to make it more rational and efficient and to put a more appropriate balance between punitive and rehabilitative measures.

Ms. Giunchigliani came forward to make sure the bill was not misrepresented. "It is not to legalize marijuana. It is still a crime even under this amendment. It will be a misdemeanor. That was the exact recommendation of the Rose report."

John Morrow, representing the Washoe County Public Defender's Office, came forward in support of A.B. 577. Responding to Mr. Nolan's previous question, he referred him to NRS 212.160 which was a separate statute dealing with possession of drugs in the prison system. He pointed out it was much more punitive than what was currently being discussed. Mr. Morrow offered as far as enforcement was concerned, possession of a minor amount of marijuana was typically dealt with as a misdemeanor. Usually, possession of a small amount of marijuana was plea-bargained, and the offender was treated as a misdemeanant. He expressed concern that the lack of observance of the laws compromised the integrity of the judicial system. Mr. Morrow opined the bill would bring the statute into conformity with what was happening in the real world. He said the other positive part of the legislation was it would add rehabilitation at the misdemeanor level. There had not been a formal requirement where a person could be directed into drug court or diversion programs at the misdemeanor level.

Thomas Whitehead read written testimony indicating his support of A.B. 577. His prepared testimony was attached as Exhibit F.

David Hosmer, Deputy Chief of the Nevada Department of Motor Vehicles and Public Safety Investigation Division, testified in opposition to A.B. 577. He explained the Division of Investigation was charged with the statewide enforcement of the controlled substance statutes and was opposed to any reduction in the penalties for the possession of marijuana. Working as a narcotics officer for 8 years had taught him that marijuana was seldom abused singularly. It was almost always part of a multi-substance abuse problem. He also expressed concern that the threat of a felony conviction helped some abusers to seek counseling. Without that threat, he believed the voluntary requests for assistance through drug abuse problems would decline. He pointed out that was the case when the Lincoln County Sheriff's Office was no longer able to participate in the Eastern Nevada Narcotics Task Force. Request for assistance had declined from 86 in 1996 to 12 to 15 in 1998. Mr. Hosmer also stated it was his belief that the felony charge did not

overburden the prisons or the courts. He stated only 6 inmates out of the approximate 9,000 people in prison had been incarcerated for marijuana offenses only. Also, according to a national study done by the United States Department of Justice, drug possession charges resulted in a guilty plea 94 percent of the time. He also expressed concern that the bill did nothing to address being under the influence of marijuana.

Mr. Nolan inquired if Mr. Hosmer had any statistics in regard to people who had been charged but were then convicted of misdemeanors. Mr. Hosmer did not have those figures. He advised Mr. Nolan that he had also asked the Department of Prisons for a breakdown of how many people were in prison for violent offenses that had marijuana in their system. They were only able to give him the marijuana specific offenses.

Mr. Nolan further inquired if Mr. Hosmer found people with poly-substance abuse problems generally started by smoking marijuana or lighter substances and then graduated into heavier drugs. Mr. Hosmer believed marijuana was a gateway drug to other abuses.

Nicholas Lombardo came forward **representing the Nevada Narcotics Officers Association** consisting of approximately 250 law enforcement officers. He noted he had also served as a delegate to the National Narcotic Officer's Association Coalition, which represented 33 states and approximately 50,000 police around the nation. As president of the Nevada association, he opposed A.B. 577. He emphasized the association contended and almost unilaterally agreed marijuana was a gateway drug and the bill sent a message that Nevada was lessening its aversion to it. He agreed with the studies which found marijuana to be symptomatic of poly-drug use and the best way to treat those addictions was through rehabilitation. He remarked the Harvard School of Government had concluded the best way to get people into rehabilitation was through the criminal justice system. Mr. Lombardo contended the bill was an effort to eventually decriminalize or legalize marijuana. In regard to some of the other states participating in a decriminalization movement, particularly in Alaska, he pointed out drug abuse and marijuana use among teenagers had increased. He told the committee the psychoactive drug of marijuana was currently reaching 20 percent where in the 1960's it was only about 5 percent. It was much more potent. Mr. Lombardo stated most importantly, as a law enforcement officer, he had seen lives that were ruined. He had seen the workplace and highway accidents. He contended society had already made that mistake with alcohol and the acceptance of that substance had cost billions of dollars in health care funds and related issues. He did not want to see the same mistake made with marijuana.

Mr. Nolan indicated he had supported the concept of keeping first and second-time offenders out of prison because he believed that the problem was exacerbated once they were in prison. He asked if in Mr. Lombardo's experience, he found that charging offenders with a felony gave the court greater ability to place them into substance abuse programs.

Mr. Lombardo told the committee of a survey done in California and New Jersey of high school students which showed about 70 percent of them felt marijuana laws were a deterrent. A more severe law would be a greater deterrent and would therefore, prevent youth from becoming first-time offenders. He also agreed that by bringing offenders into the court system under a more serious offense, the courts had more authority in getting them through the criminal justice system and off the substance.

Janine Hansen, representing the Nevada Eagle Forum, testified in opposition to A.B. 577. Referring to testimony from Ms. Giunchigliani, she expressed satisfaction for the ineffectiveness of the anti-drug DARE program finally being recognized. She explained it was very important to

find education and rehabilitation programs that were actually scientifically proven to work. The programs should tell the public drug abuse was wrong and against the law and yet many of the school programs did not do that. She encouraged the committee to continue to analyze the programs being offered. Ms. Hansen also pointed out the high correlation between crimes and substance abuse problems. Reading from an article titled "Medical Marijuana Debate, Smoke & Fire", she noted in California where marijuana was decriminalized in 1976, arrests for driving under the influence of drugs rose 46 percent for adults and 71.4 percent for juveniles. She acknowledged the bill did not call for decriminalization but merely reduced the penalties yet she emphasized the importance of sending the message that usage of marijuana was wrong and harmful. The article was attached as Exhibit G.

Later, on April 9, 1999, another discussion occurred in the Assembly Committee on Judiciary:

Chairman Anderson complimented Ms. Giunchigliani for having the courage to bring A.B. 577.

Ms. Giunchigliani thanked him for his kind words. She noted the key piece of the legislation would allow local jurisdictions to assess additional penalties for the purposes of reestablishing rehabilitation programs and assistance with drug courts. In response to testimony submitted by opponents of the bill, a letter written by Ms. Giunchigliani was attached as Exhibit K. She further noted testimony showed the bill was not an attempt to decriminalize or legalize marijuana. Even with the lower penalty, Nevada would have the toughest law on the books because its fines were higher and steeper. She remarked felonies did not apply to our youth, they were simply adjudicated as a delinquent. The bill would allow for the opportunity to immediately refer kids into rehabilitation programs. It paralleled how youth were treated for alcohol problems, which was why Nevada Revised Statutes (NRS) Chapter 62 was referenced.

Chairman Anderson said he would accept a motion.

ASSEMBLYWOMAN LESLIE MOVED AMEND AND DO PASS A.B. 577.
ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

Responding to a previous question posed in the initial hearing by Mr. Nolan, **Ms. Giunchigliani** said she had conferred with Bob Bayer, Director of the Department of Prisons, and he indicated that the bill would not restrict his ability to impose any penalties he felt necessary within the prison.

Ms. Buckley decided she would like further clarification of the proposed amendment. She inquired if Ms. Giunchigliani had discussed it with law enforcement. Ms. Giunchigliani replied she had worked with individuals within the law enforcement area. She elucidated currently, all fines went to the Distributive School Account. The amendment would change the penalty from a class E felony to a misdemeanor with a fine of up to $500 on a first offense involving less than an ounce of marijuana. It would also allow a local jurisdiction to assess a penalty under NRS Chapter 478. The assessed penalty could be up to the same amount of $500. That would generate revenue for the drug court and rehabilitation programs. Law enforcement would also be given some additional revenue at the local level, rather than the money going to the school account.

Because she still believed marijuana was a gateway drug, **Ms. Leslie** clarified she was not minimizing the related problems. But, because she appreciated a realistic attempt to get money into rehabilitation, she would support the bill.

Mr. Carpenter stated, "We are not winning the war on drugs." He said focusing on rehabilitation might be better than what was currently being done. He would support the bill.

Mr. Collins and Mr. Nolan also expressed support for the bill.

Chairman Manendo reminded the committee a motion to amend and do pass had been made and seconded. After an informal vote, a roll call vote was called for.

THE MOTION CARRIED. THERE WERE 11 YEAS AND 3 NAYS. ASSEMBLYMEN BROWER AND GUSTAVSON AND ASSEMBLYWOMAN ANGLE VOTED NO.

AB 577 eventually stalled in the Assembly Ways and Means Committee.

Our subcommittee must decide whether to reaffirm its prior recommendation, to recommend similar legislation as that which was prepared by Assemblywoman Giunchigliani (AB 577), or some new type of legislation in this area.

UNDER THE INFLUENCE OF A CONTROLLED SUBSTANCE

PRIOR RECOMMENDATION: *The Commission recommends to the Nevada Legislature to repeal NRS 453.411, which felonizes the conduct of a person who uses or is under the influence of a controlled substance. NRS 453.411(3) should be amended to read:*

> *"3. Any person who violates this section shall be punished as a misdemeanor, in addition to which, the court may refer the person to a treatment program as certified by the State of Nevada Bureau of Alcohol and Drug Abuse in accordance with the provisions of NRS 453.580."*

Rationale: As with the previous recommendation, this recommendation is based upon a phone survey of 28 public defender offices and 23 prosecutor offices. At least one attorney from each office was asked if that jurisdiction penalized under the influence of a controlled substance (e.g., individual is walking down the street, posing no danger to himself, others or property, but is obviously "loaded," or acts as if "high" on something) and if penalized, what was the penalty, e.g., fine, misdemeanor, felony.

Comparing Nevada, which makes it a felony to be under the influence of a controlled substance (UICS) to these other jurisdictions revealed that NEVADA WAS THE ONLY JURISDICTION IN THE NATION TO DO SO. Nevada's UICS law increases demands on the courts, jails, prosecutors, and public defenders. For example, during a one week period, the Clark County jail had 27 people in custody for being convicted of UICS (at a cost of $64 per day). Drug offenders represent the largest category of offenders housed in the Clark County jail. Over the past four years, the number of drug offenders in custody at any one time always hovers around 290 offenders. The county jail currently has 1,479 beds, but routinely maintains a population of over 1,700 inmates. With the problem of jail overcrowding, the issue of what class of offenders to incarcerate becomes even more important. The Commission believes that this recommendation, combined with the recommendation on drug courts, would save at least $500,000 per year to the Clark County Detention Center alone. This is not to mention the decreased burden on other criminal justice entities such as the courts, prosecutors, public defenders, probation and parole officers, law enforcement/police, jail and prison officials, other detention facilities; as well as all of the many criminal justice personnel and staff who work within these institutions.

The current law is unnecessary. UICS cases, initially treated as felonies, are almost always plead down to a misdemeanor or dismissed. Yet, arrest for UICS is, at present, an arrest on a felony charge: detention at a jail facility, booking, appointment of counsel, a preliminary hearing, trial and prison incarceration are legally potential outcomes.

Treatment as recommended above would reduce costs and permit valuable resources to be reallocated to violent offenses that are of greater concern to the public.

UPDATE:

The latest version of NRS 453.411 provides as follows:

> NRS 453.411 Unlawful use of controlled substance; penalties.
> 1. It is unlawful for a person knowingly to use or be under the influence of a controlled substance except in accordance with a lawfully issued prescription.
> 2. It is unlawful for a person knowingly to use or be under the influence of a controlled substance except when administered to the person at a rehabilitation clinic established or licensed by the health division of the department of human resources, or a hospital certified by the department.
> 3. Unless a greater penalty is provided in NRS 212.160, a person who violates this section shall be punished:
> (a) If the controlled substance is listed in schedule I, II, III or IV, 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.
> (Added to NRS by 1971, 2023; A 1973, 1406; 1979, 1475; 1981, 745; 1993, 2236; 1995, 1290, 1723; 1997, 546)

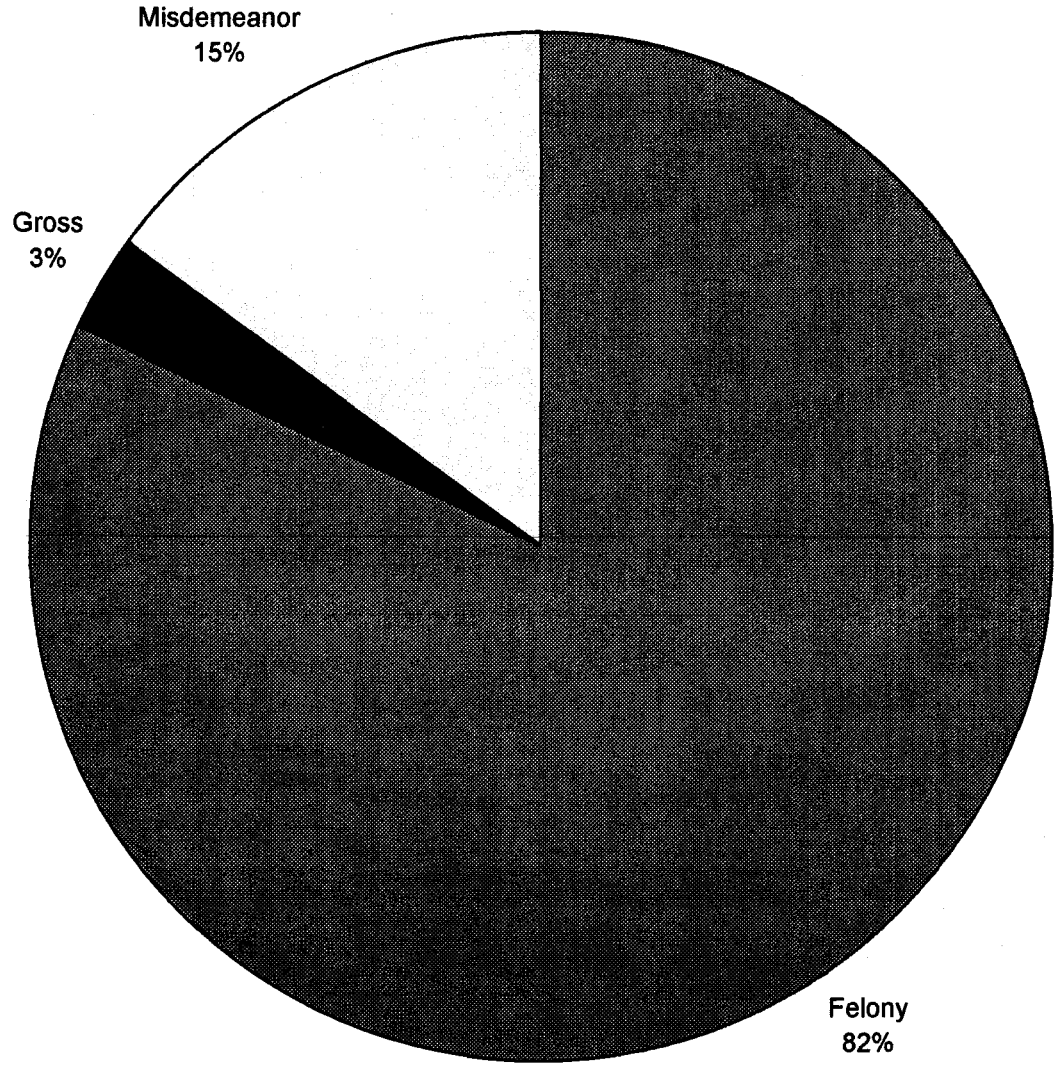
According to Bob Caruso, Deputy Public Defender who prepared the research and rationale for the prior recommendation in this area, he is not aware of any additional studies or changes by any state regarding their policy in this area.

According to recent information provided by Paul Martin, no one is being held in custody on a daily basis for the charge of Under the Influence of a Controlled Substance. However, these individuals are booked, fingerprinted, photographed, and put in holding cells while an intake investigation occurs and a judge on duty is contacted for release requests. If the person qualifies for release from custody, the release process begins which, depending on the backlog at the jail, could take up to 24 hours.

This booking and release procedure is repeated often as these defendants usually do not appear in court for their court appearances, and bench warrants are thereafter issued for their arrest. Thus, although there are no reported measurable expenses for this charge, there are a number of undocumented expenses to the criminal justice system.

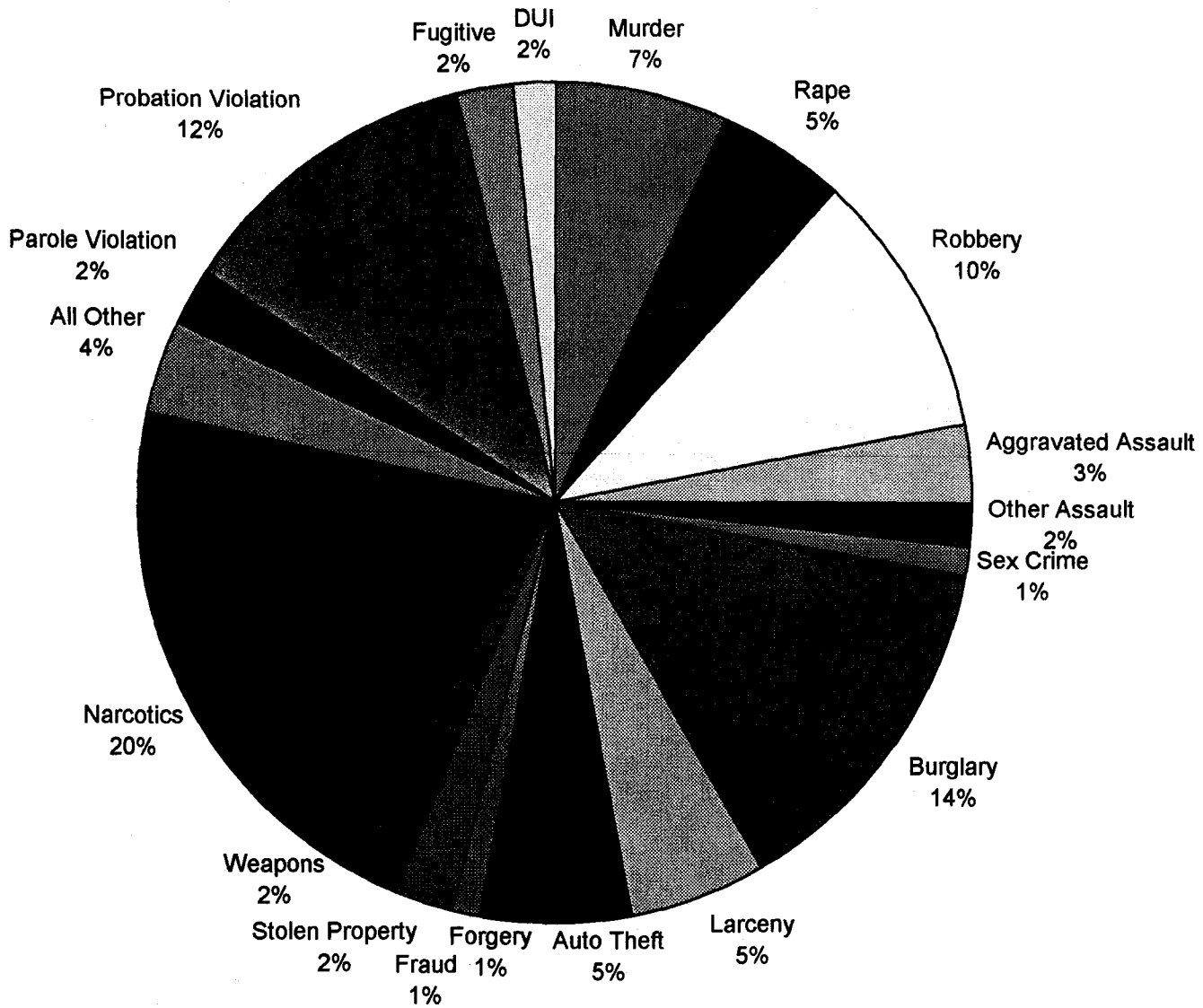
Our subcommittee must decide if we want to reaffirm our prior recommendation based on the considerations stated above.

Felony / Gross Misd / Misd
Clark County Detention Center
January - February 2000



HH- 30 of 33

Breakdown of Felonies
Clark County Detention Center
January - February 2000



0% = Liquor / Vagrancy / Disorderly / Contempt of Court / Miscellaneous
Less than 1% = Family Offense / Gambling / Vandalism / Embezzlement / Arson / Traffic / Prostitution

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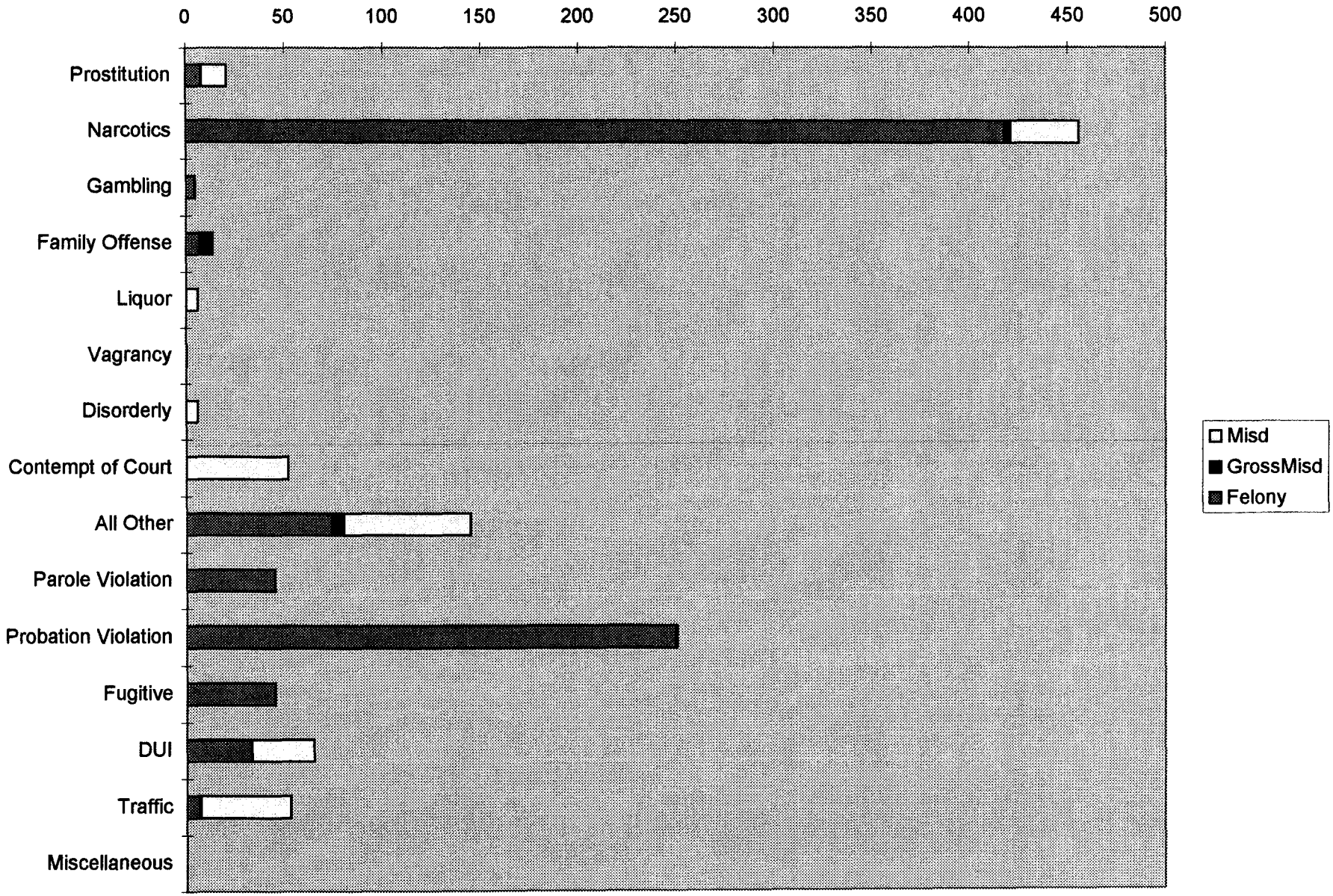
Felony / Gross Misd / M. Charges By Category
Clark County Detention Center
January - February 2000



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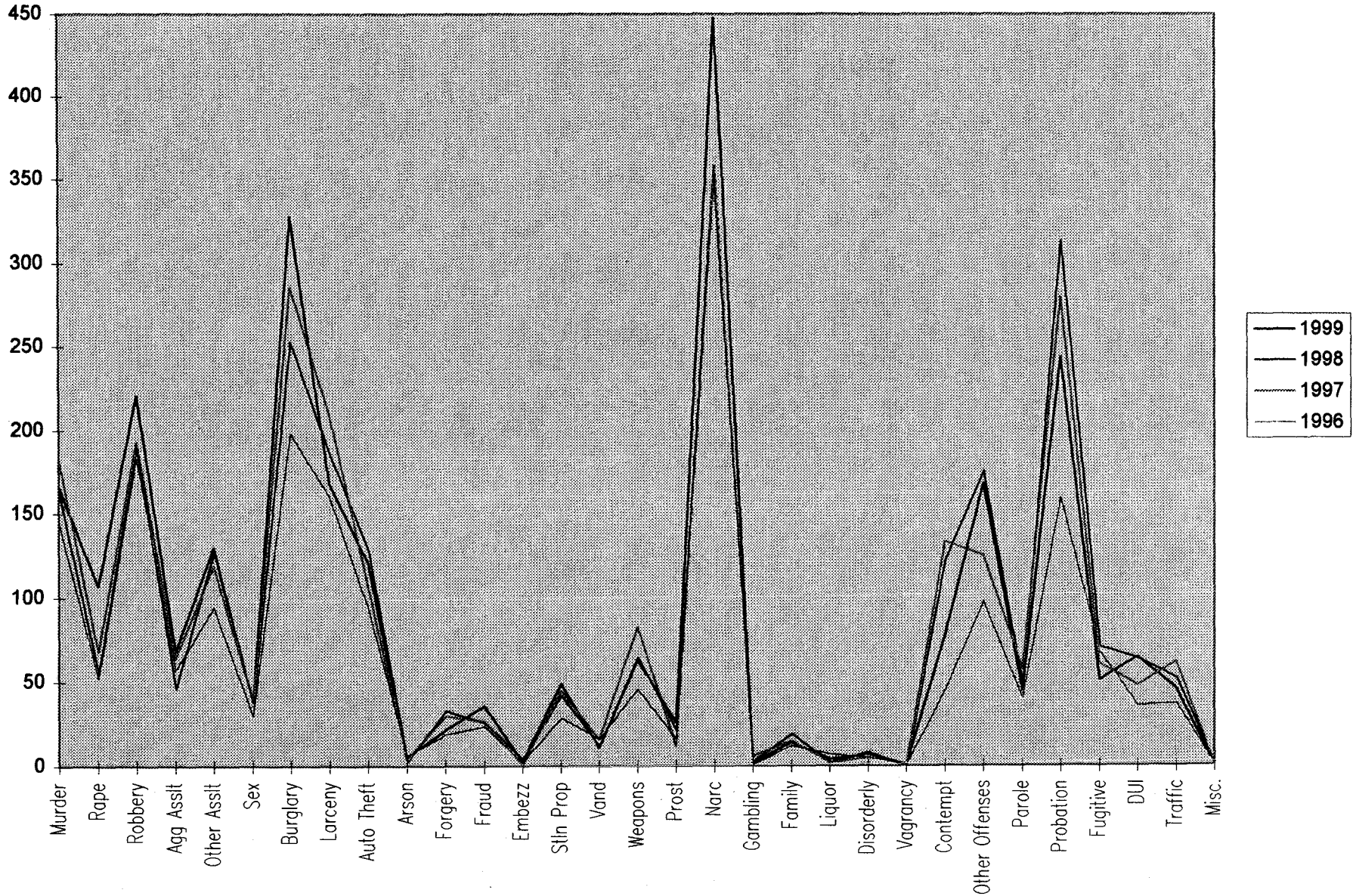
CLARK COUNTY DETENTION CENTER

CRIME CATEGORIES - YEARLY AVERAGES

1996 / 1997 / 1998 / 1999



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American Civil Liberties Union of Nevada

Kendall Stagg, Northern Nevada Coordinator
775.333.9431 (H) 775.786.0805 (O) kendall@unr.edu (e-mail)

Tuesday, April 10, 2001
Assembly Committee on Judiciary
Re: Assembly Bill 453

The ACLU has opposed marijuana prohibition since 1968. Since then, some things have changed, but too much has remained the same. In the past 30 years, 10 million people have been arrested for marijuana offenses in the U.S., the vast majority of them for possession and use. Indeed, in 1996, the most recent year for which figures are available, there were 641,600 marijuana arrests in this country, 85% of them for possession—more than in any previous year!

Why should you care about this issue? First and foremost, because it is wrong in principle for the government to criminalize such personal behavior. A government that cannot make it a crime for an individual to drink a martini should for the same reasons not be permitted to make it a crime to smoke marijauna. John Stuart Mill said it perfectly back in 1857 in his famous essay, On Liberty: "Over himself," he wrote, "over his own body and mind, the individual is sovereign." And Americans certainly behave as if they believe that: marijuana is the third most popular drug in America after alcohol and nicotine. Approximately 18 million adults used it in 1997, and more than ten million are regular smokers.

The criminal prohibition of marijuana represents an extraordinary degree of government intrusion into the private, personal lives of those adults who choose to use it. Moreover, marijuana users are not the only victims of such a policy because a government that crosses easily over into this zone of personal behavior will cross over into others. The right to personal automony—what Mill called individual sovereignty—in matters of religion, political opinion, sexuality, reproductive decisions, and other private, consensual activities is at risk so long as the state thinks it can legitimately punish people for choosing a marijuana joint over a martini.

Second, marijuana prohibition is the cause of a host of other very serious civil liberties violations, including the drug testing of millions of innocent employees, and the civil forfeiture of people's homes, cars and other assets on the grounds they were "used in the commission of " a marijuana offense.

Ever since 1937, when it adopted the "Marihuana Tax Act," the government has justified the criminalization of marijuana use on the grounds that it is a dangerous drug. But this claim looks more and more ludicrous with each passing year. Every independent commission appointed to look into this claim has found that marijuana is relatively benign. For example, President Nixon's National Commission on Marihuana and Drug Abuse concluded in 1972 that, "There is little proven danger of physical or psychological harm from the experimental or intermittent use of natural preparations of cannibis," and recommended that marijuana for personal use be decriminalized. Ten years later, the National Academy of Sciences issued its finding that, "Over the past forty years, marijuana has been accused of causing an array of anti-social effects including ... provoking crime and violence ... leading to heroin addiction ... and destroying the American work ethic in young people. [These] beliefs... have not been substantiated by scientific evidence."

Now here we are in 2001 and the government, along with anti-marijuana organizations like the Partnership for a Drug Free America, still persist in distorting the evidence, claiming, for example, that marijuana "kills brain cells" and that it is a "gateway" to hard drugs like cocaine and heroin. These fear tactics are a linchpin in the government's effort to maintain prohibition and the civil liberties violations that flow from it.

In 1998, voters in Nevada overwhelmingly approved the concept of medicinal marijuana by (59%) a larger margin than any other state that had similar ballot initiatives. Again, the concept of medicinal marijuana was approved in 2000 by an even bigger margin (65%). The will of Nevada's voters is clear!

With the passage of Question 9, Nevada voters have authorized one of the most sensible, compassionate, and progressive marijuana initiatives in U.S. history. Ironically, Nevada has some of the most ill-reasoned and restrictive drug policies in the nation. For example, in Nevada, possession and use of small amounts of marijuana is punishable by up to six years in prison. Currently, there are inmates in Nevada burgeoning prison system who are serving the maximum penalty under this law for first time offenses! Nevada is only one of two states that considers possession and use of small quantities of marijuana to be a felony.*

Clearly, Nevada's marijuana laws are in direct conflict with, and polarized to, the directive that the voters gave elected officials during the last two election cycles. It is time for Nevada's Legislators to reform these extreme laws and reconcile them with the needs, wants, and best interests of Nevadans. Passing Assembly Bill 453 would be a major step in the right direction.

On behalf of the American Civil Liberties Union, I urge you to carry out the will of your constituents and support this much-needed legislation.

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* With the exception of Nevada, the only other state in the Nation that classifies the use and possession of small amounts of marijuana as a felony is Arkansas.

People to Protect America
675 Fairview Drive #246-218
Carson City, Nevada 89701

P.P.A.

JUANITA COX Testimony for **PEOPLE TO PROTECT AMERICA**

April 10, 2001

To: Assembly Judiciary

From: Juanita Cox, Lobbyist

Subject: Support AB 453 Medical Marijuana.

We Support AB 453. The use of medical marijuana is a personal choice between a sick or dying person and his doctor. Lowering penalties for the possession to a misdemeanor seems a very logical and cost beneficial proposition for Nevada. This state has one of the most strict laws and as tax payers the voters in this state have stated they do not feel as hard line on marijuana as Nevada's laws seem to be.

Support AB 453. Let the medical doctors determine which drug to give to their patients and lets get out of the business of prosecuting those patients. Let Nevada spend it's limited funds on education or other needed goals.

Thank you.

Phone: 775-885-1949 Fax: 775-885-1949 PPA@justice.com

ASSEMBLY JUDICIARY
DATE: 04/10/01 ROOM: 3138 EXHIBIT JJ
SUBMITTED BY: JUANITA COX

Recommendations for Questions on the Statewide Ballot

In reviewing our recommendations for the ballot questions Nevada Families considered the following questions. Does the question harmonize with or violate Constitutional principles? Is there a compelling reason to change the Constitution? Will the question increase taxes? Will the question increase or decrease government accountability? Is the question "family friendly"?

Statewide Questions

Question 1 - NO

Shall the Nevada Constitution be amended to allow the investment of State money in a company, association, or corporation to assist economic development and the creation of new high-quality jobs?

Government should safeguard our freedoms so that free-enterprise can flourish, free from the excessive regulation and taxation that now exists. This would stimulate economic development and create new jobs. However, as the authors of the Nevada Constitution recognized, government should not be involved in providing tax dollars to private enterprise where certain businesses and individuals stand to profit. This leads to graft, corruption, and fraud. Big monied interests would be able to sway the Legislature to approve their projects, which would not necessarily benefit all Nevadans. This question blurs the important Constitutional lines between public and private, which protect liberty. Vote NO on Question 1.

Question 2 - YES, YES, YES

Shall the Nevada Constitution be amended to provide that: "Only a marriage between a male and female person shall be recognized and given effect in this state?"

In 1996 the U.S. Congress overwhelmingly passed the Defense of Marriage Act which defined marriage in federal law as the "legal union of one man and one woman as husband and wife" and clarified that no state shall be required to recognize same-sex "marriages" from other states if their state had public policy upholding marriage only between a man and a woman. Congress required states to protect themselves. Other states have had their public policy challenged and overturned by the courts, requiring the people to amend their state constitutions in order to retain the definition of marriage as between a man and a woman. So far, 34 states have passed laws to keep marriage between a man and a woman. This Constitutional amendment will protect Nevada from having to recognize same-sex marriages from other states like Vermont which has passed a same-sex marriage law called "civil union." It will protect Nevada's definition of marriage as between a man and a woman from being overturned by the courts. Vote YES on Question 2 to keep marriage between a man and a woman.

Question 9 - NO

Shall the Nevada Constitution be amended to allow the possession and use of a plant of the genus Cannabis (marijuana) for the treatment or alleviation of certain illnesses upon advice of a physician, to require parental consent for such use by minors, and to authorize appropriate methods of supply to patients authorized to use it?

Legalization of medical marijuana opens the door legally and psychologically for the increased abuse of marijuana and other dangerous drugs. U.S. drug czar General Barry McCaffrey believes that passage of medical marijuana referenda will result in more abuse. "By our judgement increased drug abuse in every category will be the inevitable result of the referenda." Vote NO on Question 9 medical marijuana. Please see article below on "Marijuana Myths."

Clark County Ballot Question 1 - YES

Should the water authority and each public water system in the county that serves a population of 100,000 persons or more cease the fluoridation of the water?

During the 1999 Legislature AB 284 was passed which required fluoridation of each public water system that serves a population of 100,000 in a county whose population is 400,000 or more (Clark County only). The proponents of fluoridation forced this on Clark County before they allowed the people to vote. The question is confusing because in order to vote against fluoride in the water you must vote YES on the question. Please see the related article "Fluoride - Rat Poison" on page 8. Vote YES on Clark County Question 1 to stop fluoride.

Dispelling the Marijuana Myth

Minds Going Up in Smoke

Excerpt from Phyllis Schlafly Report, July 2000

It is tragic that most drug education curricula fail to warn students about the insidious and seductive dangers of marijuana (also called pot). Drug education over the past 25 years has left youngsters with the false notion that marijuana is a harmless or "soft" drug, like alcohol, safe if used in moderation.

The myth that marijuana is no more dangerous than alcohol has been aggressively promoted by the international drug cartels since the 1960s. Teenagers find this easy to believe because they see many adults who drink alcohol without apparent harm (even though many lives have been destroyed by alcohol). So, some teens feel free to experiment by smoking a little pot and drinking a little alcohol.

In fact, marijuana is radically different from alcohol and far more dangerous. Marijuana is very deceptive and perhaps as harmful as heroin.

Alcohol is water soluble and so, when it is absorbed into the body, it dissolves in the blood and stays in the blood as it is carried around the body to various organs. It is gradually eliminated, primarily by being metabolized in the liver and, within hours, no alcohol is left in the body. The hangover that lasts a day or so after heavy drinking is caused by poisons generated by alcohol in the body, not by the alcohol itself.

Marijuana, on the other hand, acts on the body in a very different way. Marijuana's psychoactive ingredient, THC, is strongly fat soluble but cannot dissolve in water or in blood. THC is stored for many weeks in the fatty tissues of the body.

THC is extremely slow acting. THC is one million times more potent than alcohol, but appears to be mild because very little reaches the brain during the "high" and, unlike alcohol, doesn't leave a hangover.

When marijuana is smoked regularly, THC accumulates in body fat. The THC is slowly fed back into the blood, and the user gradually slips into a state of continual sedation. In time, the steady presence of THC in the blood damages the brain, the lungs, the immune system, the chromosomes, the hormones, the

Continued on page 15

Continued from page 3

Marijuana Myth

reproductive system, and sexual development. The frequent pot user becomes passive and devoid of personal ambition.

Most important, the pot user doesn't realize what has happened to him because he is sedated all the time. The daily marijuana smoker is in a perpetual fog but doesn't realize it.

Because THC is continually present, the body rapidly builds up tolerance to it, and so the pot user is led to smoke more and more to regain the original high. Eventually, the high from pot fails to satisfy, and he may turn to other drugs, including alcohol, to achieve a high. Nevertheless, he usually continues to smoke pot as he uses the other drugs, because pot makes him "feel good all the time."

When using alcohol, a regular pot smoker typically drinks to excess because he is constantly numb from his steady THC blood level and requires several drinks to feel an effect. Also, pot strongly inhibits nausea and he can drink heavily without getting sick. Normally, a teenager vomits from excessive alcohol, but one who regularly uses pot can easily hold down a lethal alcohol overdose. Since THC insidiously builds up in the body, experimenting with pot often lures a youngster into a trap of escalating drug and alcohol abuse. It is not alcohol that leads to marijuana abuse; it is marijuana that leads to alcohol abuse.

Withdrawal symptoms are mild when pot use is abruptly ended because THC cannot be withdrawn rapidly; the body has its own supply. It takes one week of abstinence for the THC stored in fat to drop to half, and one month to drop to 5%.

Data from scientific studies have been analyzed to describe quantitatively the storage of THC in the body. These data show that the steady THC blood level from smoking one "joint" per day, with 2% THC, would evoke a high in a beginning marijuana smoker. The experienced pot smoker does not feel a constant high, but he is continually sedated.

The THC in marijuana today is up to 25 times more potent than it used to be. In the 1960s, the THC in pot rarely exceeded 1%, but today may be 12% to 25%.

Landmark research by Dr. Robert Heath, a world renowned brain researcher, shows the drastic effect of marijuana on the brain. He proved that marijuana's effect on the brain makes it one of the most dangerous drugs available.

Public attitudes toward drugs are continually clouded by propaganda from the drug cartels, whose profits from illegal drugs are so immense that they nearly equal the annual expenditures of the U.S. Federal Government. The major drug profits come from heroin and cocaine, but the drug kingpins know that marijuana users, in a constant state of sedation, are their prime market for cocaine and heroin. Without marijuana use, the demand for cocaine and heroin would tend to dry up as the addicts die. As long as the severe dangers of marijuana are obscured, they are assured a steady market for cocaine and heroin.

Of course, all marijuana smokers do not turn to cocaine and heroin, but a large proportion do. This is why the drug cartels want to legalize marijuana — they would give it away if they could. The drug kingpins know that those inclined to experiment with drugs no longer first try cocaine or heroin (as was common in the 1960s); they go first to marijuana, an insidious trap, and then escalate their drug use to get a bigger high. Since pot is stored in the body for weeks, the user is seductively dragged into a state of continual sedation, his mind becomes confused, and in time his brain is permanently damaged.

It is vital that teenagers be given the truth about the deception and the dangers of marijuana and its fundamental difference from alcohol. But school-based drug courses are not giving them the truth. Some of the curricula give the impression that casual or moderate use of marijuana and alcohol is acceptable. Other curricula simply omit information about marijuana.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-First Session
April 12, 2001

The Committee on Judiciary was called to order at 7:30 a.m., on Thursday, April 12, 2001. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. Mark Manendo, Vice Chairman
Ms. Sharron Angle
Mr. Greg Brower
Ms. Barbara Buckley
Mr. John Carpenter
Mr. Jerry Claborn
Mr. Tom Collins
Mr. Don Gustavson
Mrs. Ellen Koivisto
Ms. Kathy McClain
Mr. Dennis Nolan
Mr. John Oceguera
Ms. Genie Ohrenschall

GUEST LEGISLATORS PRESENT:

Assemblywoman Vonne Chowning, District 28
Assemblyman Doug Bache, District 11
Assemblywoman Christina Giunchigliani, District 9
Assemblyman John Lee, District 3
Assemblyman Richard Perkins, District 23

ROLL CALL VOTE WAS CALLED.

MOTION PASSED 11-2 WITH MR. CARPENTER AND MR. COLLINS VOTING NO WITH MS. BUCKLEY ABSENT.

Chairman Anderson said the amendment would be prepared and A.B. 166 would be sent to the Assembly Committee on Ways and Means.

Chairman Anderson said A.B. 294 would be held for a Work Session on April 13, 2001.

Assembly Bill 294: Revises provisions pertaining to sealing of juvenile records. (BDR 5-690)

Chairman Anderson opened the hearing on A.B. 453. He queried the committee for any problems with A.B. 453 and asked Assemblywoman Giunchigliani to approach the witness table.

Assembly Bill 453: Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

Assemblywoman Giunchigliani stated revised amendments (Exhibit M) were submitted to answer questions raised at the original hearing. After a meeting with bill drafters, modifications were made to assure that there was no "state-run" intent language contained within the bill. In Section 13 "production" was defined to include planting, growing and harvesting. The Oregon model would be adopted regarding registered cardholders being allowed to have a certain number of plants and quantity of usable marijuana.

Chairman Anderson verified the amendments; taking the state out of the production of marijuana. Assemblywoman Giunchigliani also said there would be no reference regarding an Internet line for purchases of seeds. Chairman Anderson said the amendments took into consideration Assemblyman Carpenter's concerns for first-time offenders who might have an addiction problem. Assemblyman Carpenter felt it should be mandatory that first-time offenders receive an evaluation. Then if an addiction problem existed, there should be mandatory treatment. Ms. Lang said it would probably need to be included in Chapter 453.

Assemblyman Nolan was concerned that nothing had changed the current statute in regards to trafficking and subsequent penalties. Assemblywoman Giunchigliani reassured the committee that no changes had been made to that

statute; if caught with more than that deemed the appropriate number of plants or usable marijuana, the person would be "busted." Assemblyman Nolan asked who would be monitoring the patients as to growing what they were supposed to be growing and using what they were supposed to be using? Assemblywoman Giunchigliani said DEA would leave the monitoring to the states; local law enforcement would handle it with normal enforcement.

Assemblyman Collins asked, besides growing their own, if the state was out of the business, where would patients get the marijuana? Assemblywoman Giunchigliani said the legislation did not address distribution; the patients would continue obtaining the marijuana by whatever means they had in the past.

Assemblywoman Buckley said the amendments looked good, and there was no doubt that the legislation would implement the will of the people. She was concerned about the state running "pot" farms. Following the Oregon model was a good choice and she believed the amendments still sent the message that Nevada was tough on crime. Assemblywoman Buckley wanted to entertain a motion to amend and rerefer to the Assembly Committee on Ways and Means. It would provide time to get the proper language into the amendments.

ASSEMBLYWOMAN BUCKLEY MOVED TO AMEND AND REREFER A.B. 453.

ASSEMBLYMAN COLLINS SECONDED THE MOTION.

Assemblyman Oceguera reserved the right to vote no on the floor.

Assemblyman Nolan said he would vote for the bill although he still had concerns.

Chairman Anderson said this particular issue had already passed the voters in Nevada and there was an indication that this should be done.

Assemblyman Brower said he would vote no. He recognized the majority of Nevadans voted in favor of the concept that medical marijuana be allowed for certain people; he supported that. But he did not think A.B. 453 would effectively do that. Also the ballot initiative that was referenced did not address the second part of the bill, there was not a consensus that defelonization was the way to go. Washoe County judges who dealt with this problem every day felt the current system was required to effectively deal with those charged with small amounts.

ROLL CALL VOTE WAS CALLED.

MOTION PASSED 11-2 WITH MS. ANGLE AND MR. BROWER VOTING NO AND MR. GUSTAVSON ABSENT.

Chairman Anderson adjourned the meeting at 1:15 p.m.

RESPECTFULLY SUBMITTED:

Deborah Rengler
Committee Secretary

APPROVED BY:

Assemblyman Bernie Anderson, Chairman

DATE: May 24, 2001

Amendments to AB 453
From: Assemblywoman Chris Giunchigliani
4/11/01

Sec. 13 Define production (includes planting, growing and harvesting.)
Make adjustments to Sec. 15 to add language to permit registry card holders to have a certain number of plants and a certain quantity of usable marijuana. (Oregon Model)

Sec. 32 would be narrowed so its clear that the director may not set up a state run program in regulation. Add that the department will work with the Department of Motor Vehicle and Public Safety as assisting with the issuance of a registry card.
By regulation, establish a time period that requires the Board of Medical Examiners and Criminal records to notify the department of agriculture within a specified number of days as to the accuracy of the application.

Sec. 36 Change "fines" to assessments

Sec. 37 (a) add and ordered to seek an evaluation pursuant to 484.37937 (I think is the correct reference.) Per Mr. Carpenter
Sec. 37 subsection 5, delete This was requested by Clark County DA juvenile director, Bob Tueton. He requested this because the various juvenile directors already have procedures for youth. Apparently, we don't charge them with felonies anyway.
Sec. 48 delete subsection 1, 2, 3 and insert $50,000 for the Department of Agriculture to carry out implementation of legislative intent.
I believe that these amendments will bring us into line with Oregon and its program which allows grow your own in answer to the distribution issue.

1. At an establishment in which the operation of slot machines is incidental to the primary business of the establishment ~~.~~ *; or*

2. On a historic railroad train as defined in section 1 of this act.".

Amend sec. 2, page 2, line 10, by deleting "purchase and".

Amend the title of the bill, fourth line, by deleting "purchase and".

Amend the summary of the bill to read as follows:

"Summary—Provides for licensing and operation of railroad gaming and makes appropriation to White Pine County for repair of trains and renovation of track. (BDR 41-1066).".

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblymen Anderson and Dini.

Amendment adopted.

Bill ordered reprinted, engrossed and to the Concurrent Committee on Ways and Means.

Assembly Bill No. 453.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 351.

Amend sec. 13, page 2, by deleting lines 31 through 34 and inserting:

"Sec. 13. *"Medical use of marijuana" means:*

1. The possession, delivery, production or use of marijuana;

2. The possession, delivery or use of paraphernalia used to administer marijuana; or

3. Any combination of the acts described in subsections 1 and 2,

as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.".

Amend the bill as a whole by adding a new section designated sec. 13.5, following sec. 13, to read as follows:

"Sec. 13.5. *"Production" has the meaning ascribed to it in NRS 453.131.*".

Amend sec. 14, page 2, line 36, after "*department*" by inserting: "*or its designee*".

Amend sec. 17, page 3, by deleting lines 6 through 10 and inserting:

"*(a) Possession, delivery or production of marijuana;*

(b) Possession or delivery of drug paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element,".

Amend sec. 18, page 3, by deleting lines 25 through 33 and inserting: "*the designated primary caregiver of such a person, if any, may not, at any one time, collectively possess, deliver or produce more than:*

(a) One ounce of usable marijuana;

(b) Three mature marijuana plants; and

(c) Four immature marijuana plants.

2. If the persons described in subsection 1 possess, deliver or produce marijuana in an amount which exceeds the amount allowed pursuant to that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.".

Amend sec. 19, page 3, by deleting lines 38 through 40 and inserting: "*department or its designee shall issue a registry identification card to a person who submits an application on a form prescribed by the department*".

Amend sec. 19, page 4, line 1, by deleting "*photograph,*".

Amend sec. 19, page 4, line 7, by deleting ", *photograph*".

Amend sec. 19, page 4, by deleting lines 12 through 17 and inserting:

"*3. The department or its designee shall issue a registry identification card to a person who is under 18 years of age if:*

(a) The person submits the materials required".

Amend sec. 19, page 5, between lines 5 and 6, by inserting: "*The central repository for Nevada records of criminal history shall report to the department its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The board of medical examiners shall report to the department its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).*".

Amend sec. 20, page 6, by deleting lines 14 and 15 and inserting: "*subsection 5 of section 19 of this act, the department or its designee shall, as soon as practicable after the department approves the application:*".

Amend sec. 21, page 6, line 41, after "*department*" by inserting: "*or its designee*".

Amend sec. 21, page 7, line 8, after "*marijuana;*" by inserting "*and*".

Amend sec. 21, page 7, line 12, by deleting ", *photograph*".

Amend sec. 21, page 7, by deleting lines 16 through 29 and inserting: "*caregiver.*

2. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department, notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver.".

Amend sec. 21, page 7, line 33, before "*issued*" by inserting: "*or its designee*".

Amend sec. 21, page 7, line 36, after "*expired.*" by inserting: "*Upon the deemed expiration of a registry identification card pursuant to this subsection:*

(a) The department shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his registry identification card to the department within 7 days after receiving the notice sent pursuant to paragraph (a).".

Amend sec. 22, page 7, line 37, after "*department*" by inserting: "*or its designee*".

Amend sec. 23, page 7, line 45, after "*department*" by inserting: "*or its designee*".

Amend sec. 23, pages 7 and 8, by deleting lines 48 and 49 on page 7 and lines 1 through 7 on page 8 and inserting:

"*(a) To designate a primary caregiver at the time of application, submit to the department the information required pursuant to paragraph (d) of subsection 2 of section 19 of this act; or*

(b) To designate a primary caregiver after the department or its designee has issued a registry identification card to him, submit to the department the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.".

Amend sec. 23, page 8, line 11, after "*department*" by inserting: "*or its designee*".

Amend sec. 23, page 8, line 14, by deleting: "*within 5 days*" and inserting: "*as soon as practicable*".

Amend sec. 24, page 8, by deleting lines 16 through 21 and inserting:

"Sec. 24. *1. A person who is authorized to engage or assist in the medical use of marijuana pursuant to the provisions of this chapter is not exempt from state prosecution for, nor may he use his authorization to engage or assist in the medical use of marijuana to establish an affirmative defense to charges arising from, any of the following acts:*".

Amend sec. 24, page 8, line 40, before "*pursuant*" by inserting: "*or its designee*".

Amend sec. 24, page 8, line 43, after "*department*" by inserting: "*or its designee*".

Amend sec. 25, page 9, by deleting lines 3 and 4 and inserting: "*charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that*".

Amend sec. 25, page 9, line 13, by deleting "*or delivers*" and inserting: "*, delivers or produces*".

Amend sec. 25, page 9, line 22, by deleting "*or delivers*" and inserting: "*, delivers or produces*".

Amend sec. 25, page 9, by deleting line 29 and inserting: "*by the department or its designee pursuant to section 20 or 23 of this act to assert an*".

Amend sec. 25, page 9, by deleting lines 31 and 32 and inserting:

"*3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use*".

Amend sec. 26, page 10, line 6, after "*department*" by inserting: "*or its designee*".

Amend sec. 26, page 10, by deleting lines 11 and 12 and inserting:

"*2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other related property from a person engaged*".

Amend sec. 26, page 10, line 15, after "*other*" by inserting "*related*".

Amend sec. 26, page 10, line 18, after "*other*" by inserting "*related*".

Amend sec. 26, page 10, line 23, after "*other*" by inserting "*related*".

Amend sec. 26, page 10, line 25, after "*other*" by inserting "*related*".

Amend sec. 26, page 10, by deleting lines 28 and 29 and inserting: "*person any usable marijuana, marijuana plants, drug paraphernalia or other related property that was seized.*

The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.".

Amend sec. 29, page 11, line 29, after "*department*" by inserting: "*or its designee*".

Amend sec. 29, page 11, line 32, after "*department*" by inserting: "*or its designee*".

Amend sec. 31, page 12, by deleting line 14 and inserting: "*possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia in a manner*".

Amend sec. 32, page 12, by deleting lines 19 through 23 and inserting:

"*1. Procedures pursuant to which the state department of agriculture will, in cooperation with the department of motor vehicles and public safety, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the state department of agriculture will:*

(a) Issue a registry identification card to a qualified person after the card has been prepared by the department of motor vehicles and public safety; or

(b) Designate the department of motor vehicles and public safety to issue a registry identification card to a person if:

(1) The person presents to the department of motor vehicles and public safety valid documentation issued by the state department of agriculture indicating that the state department of agriculture has approved the issuance of a registry identification card to the person; and

(2) The department of motor vehicles and public safety, before issuing the registry identification card, confirms by telephone or other reliable means that the state department of agriculture has approved the issuance of a registry identification card to the person.

2. Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.".

Amend sec. 36, page 12, by deleting line 41 and inserting "*department;*".

Amend sec. 37, pages 13 and 14, by deleting line 49 on page 13 and lines 1 through 26 on page 14 and inserting: "~~possibility of rehabilitation and any other relevant information.~~

~~6.~~] *Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:*

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; and

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; and

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For a third or subsequent offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than $1,000 nor more than $2,000.

5. As used in this section, "controlled substance" includes".

Amend the bill as a whole by deleting sec. 43 and adding:

"Sec. 43. (Deleted by amendment.)".

Amend sec. 48, page 23, by deleting lines 22 through 37 and inserting:

"Sec. 48. 1. There is hereby appropriated from the state general fund to the state department of agriculture the sum of $50,000 to carry out the provisions of sections 2 to 33, inclusive, of this act.

2. The money appropriated pursuant to subsection 1 must be used to supplement and not supplant or cause to be reduced any other source of funding available to the state department of agriculture to carry out the provisions of sections 2 to 33, inclusive, of this act.

3. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2003, and reverts to the state general fund as soon as all payments of money committed have been made.".

Amend the title of the bill to read as follows:

"AN ACT relating to controlled substances; authorizing the medical use of marijuana in certain circumstances; revising the penalties for possessing marijuana; making an appropriation; and providing other matters properly relating thereto.".

Assemblyman Anderson moved the adoption of the amendment.

Remarks by Assemblyman Anderson.

Amendment adopted.

Bill ordered reprinted, engrossed and to the Concurrent Committee on Ways and Means.

Assembly Bill No. 460.

Bill read second time.

The following amendment was proposed by the Committee on Transportation:

Amendment No. 592.

Amend section 1, pages 1 through 3, by deleting lines 8 through 21 on page 1, lines 1 through 49 on page 2 and lines 1 and 2 on page 3, and inserting:

"2. On or before ~~[January 31 of each year,]~~ *the last day of the month following each calendar quarter,* the short-term lessor shall:

(REPRINTED WITH ADOPTED AMENDMENTS)
FIRST REPRINT **A.B. 453**

ASSEMBLY BILL NO. 453–ASSEMBLYWOMAN GIUNCHIGLIANI

MARCH 19, 2001

Referred to Concurrent Committees on Judiciary and Ways and Means

SUMMARY—Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Contains Appropriation not included in Executive Budget.

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

AN ACT relating to controlled substances; authorizing the medical use of marijuana in certain circumstances; revising the penalties for possessing marijuana; making an appropriation; 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. Title 40 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Administer" has the meaning ascribed to it in NRS 453.021.***

Sec. 4. ***"Attending physician" means a physician who:***

1. Is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS; and

2. Has primary responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Sec. 5. ***"Cachexia" means general physical wasting and malnutrition associated with chronic disease.***

Sec. 6. ***"Chronic or debilitating medical condition" means:***

1. Acquired immune deficiency syndrome;

2. Cancer;

3. Glaucoma;

4. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;

(b) Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;

(c) Seizures, including, without limitation, seizures caused by epilepsy;

(d) Severe nausea; or

(e) Severe pain; or

5. Any other medical condition or treatment for a medical condition that is:

(a) Classified as a chronic or debilitating medical condition by regulation of the division; or

(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with section 30 of this act.

Sec. 7. *"Deliver" or "delivery" has the meaning ascribed to it in NRS 453.051.*

Sec. 8. *"Department" means the state department of agriculture.*

Sec. 9. *1. "Designated primary caregiver" means a person who:*

(a) Is 18 years of age or older;

(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and

(c) Is designated as such in the manner required pursuant to section 23 of this act.

2. The term does not include the attending physician of a person diagnosed with a chronic or debilitating medical condition.

Sec. 10. *"Division" means the health division of the department of human resources.*

Sec. 11. *"Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.*

Sec. 12. *"Marijuana" has the meaning ascribed to it in NRS 453.096.*

Sec. 13. *"Medical use of marijuana" means:*

1. The possession, delivery, production or use of marijuana;

2. The possession, delivery or use of paraphernalia used to administer marijuana; or

3. Any combination of the acts described in subsections 1 and 2,

as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.

Sec. 13.5. *"Production" has the meaning ascribed to it in NRS 453.131.*

Sec. 14. *"Registry identification card" means a document issued by the department or its designee that identifies:*

1. A person who is authorized to engage in the medical use of marijuana; or

2. The designated primary caregiver, if any, of a person described in subsection 1.

Sec. 15. *1. "Usable marijuana" means the dried leaves and flowers of a plant of the genus Cannabis, and any mixture or preparation thereof, that are appropriate for medical use as allowed pursuant to the provisions of this chapter.*

2. The term does not include the seeds, stalks and roots of the plant.

Sec. 16. *"Written documentation" means:*

1. A statement signed by the attending physician of a person diagnosed with a chronic or debilitating medical condition; or

2. Copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition.

Sec. 17. *1. Except as otherwise provided in sections 18, 24 and 31 of this act, a person engaged in or assisting in the medical use of marijuana is exempt from state prosecution for:*

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of drug paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element,

if the person holds a registry identification card issued to him pursuant to section 20 or 23 of this act.

2. In addition to the provisions of subsection 1, no person may be prosecuted for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana as authorized pursuant to the provisions of this chapter.

Sec. 18. *1. A person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act may engage in, and the designated primary caregiver of such a person, if any, may assist in, the medical use of marijuana only as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition. Except as otherwise provided in subsection 2, a person who possesses a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act and the designated primary caregiver of such a person, if any, may not, at any one time, collectively possess, deliver or produce more than:*

(a) One ounce of usable marijuana;

(b) Three mature marijuana plants; and

(c) Four immature marijuana plants.

2. If the persons described in subsection 1 possess, deliver or produce marijuana in an amount which exceeds the amount allowed pursuant to that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.

Sec. 19. *1. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.*

2. Except as otherwise provided in subsections 3 and 5, the department or its designee shall issue a registry identification card to a person who submits an application on a form prescribed by the department accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The department or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the department to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the department shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the department; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the central repository for Nevada records of criminal history; and

(4) One copy to the board of medical examiners.

The central repository for Nevada records of criminal history shall report to the department its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The board of medical examiners shall report to the department its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).

5. The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The department may contact an applicant, his attending physician and designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The department may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish his chronic or debilitating medical condition; or

(2) Document his consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the department, including, without limitation, the regulations adopted by the director pursuant to section 32 of this act;

(c) The department determines that the information provided by the applicant was falsified;

(d) The department determines that the attending physician of the applicant is not licensed to practice medicine in this state or is not in good standing, as reported by the board of medical examiners;

(e) The department determines that the applicant, or his designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

* A B 4 5 3 R 1 *

(f) The department has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of section 24 of this act; or

(g) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the department to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the department. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the department or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the department has not yet approved or denied the application, the person, and his designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the department received the application.

Sec. 20. *1. If the department approves an application pursuant to subsection 5 of section 19 of this act, the department or its designee shall, as soon as practicable after the department approves the application:*

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the department.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the department.

4. A registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the department.

Sec. 21. *1. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act shall, in accordance with regulations adopted by the department:*

(a) Notify the department of any change in his name, address, telephone number, attending physician or designated primary caregiver, if any; and

(b) Submit annually to the department:

(1) Updated written documentation from his attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) He has explained to the person the possible risks and benefits of the medical use of marijuana; and

(2) If he elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number and social security number of the designated primary caregiver; and

(II) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

2. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department, notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to him shall be deemed expired. If the registry identification card of a person to whom the department or its designee issued the card pursuant to paragraph (a) of subsection 1 of section 20 of this act is deemed expired pursuant to this subsection, a registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired. Upon the deemed expiration of a registry identification card pursuant to this subsection:

(a) The department shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his registry identification card to the department within 7 days after receiving the notice sent pursuant to paragraph (a).

Sec. 22. *If a person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act is diagnosed by his attending physician as no longer having a chronic or debilitating medical condition, the person and his designated primary caregiver, if any, shall return their registry identification cards to the department within 7 days after notification of the diagnosis.*

Sec. 23. *1. If a person who applies to the department for a registry identification card or to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act desires to designate a primary caregiver, the person must:*

(a) To designate a primary caregiver at the time of application, submit to the department the information required pursuant to paragraph (d) of subsection 2 of section 19 of this act; or

(b) To designate a primary caregiver after the department or its designee has issued a registry identification card to him, submit to the department the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.

2. A person may have only one designated primary caregiver at any one time.

3. If a person designates a primary caregiver after the time that he initially applies for a registry identification card, the department or its designee shall, except as otherwise provided in subsection 5 of section 19 of this act, issue a registry identification card to the designated primary caregiver as soon as practicable after receiving the information submitted pursuant to paragraph (b) of subsection 1.

Sec. 24. *1. A person who is authorized to engage or assist in the medical use of marijuana pursuant to the provisions of this chapter is not exempt from state prosecution for, nor may he use his authorization to engage or assist in the medical use of marijuana to establish an affirmative defense to charges arising from, any of the following acts:*

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he knows does not lawfully hold a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

2. In addition to any other penalty provided by law, if the department determines that a person has willfully violated a provision of this chapter or any regulation adopted by the department or division to carry out the provisions of this chapter, the department may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 25. *1. Except as otherwise provided in this section and sections 24 and 31 of this act, it is an affirmative defense to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that*

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his arrest and has been advised by his attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses, delivers or produces marijuana only in the amount allowed pursuant to subsection 1 of section 18 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses, delivers or produces marijuana only in the amount allowed pursuant to subsection 1 of section 18 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.

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2. A person need not hold a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act to assert an affirmative defense described in this section.

3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,

if the amount of marijuana at issue is not greater than the amount allowed pursuant to subsection 1 of section 18 of this act and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

A defendant who fails to provide notice of his intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.

Sec. 26. *1. The fact that a person possesses a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act does not, alone:*

(a) Constitute probable cause to search the person or his property; or

(b) Subject the person or his property to inspection by any governmental agency.

2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other related property from a person engaged or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, drug paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, drug paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, drug paraphernalia or other related property was seized, or his designee, that the person from whom the marijuana, drug paraphernalia or other related property was seized is entitled to engage or assist in the medical use of marijuana pursuant to the provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, marijuana plants, drug paraphernalia or other related property that was seized.

The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or his designee that a person is entitled to engage in the medical use of marijuana shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 27. *The board of medical examiners shall not take any disciplinary action against an attending physician on the basis that the attending physician:*

1. Advised a person whom the attending physician has diagnosed as having a chronic or debilitating medical condition, or a person whom the attending physician knows has been so diagnosed by another physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS:

(a) About the possible risks and benefits of the medical use of marijuana; or

(b) That the medical use of marijuana may mitigate the symptoms or effects of the person's chronic or debilitating medical condition,

if the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition.

2. Provided the written documentation required pursuant to paragraph (a) of subsection 2 of section 19 of this act for the issuance of a registry identification card or pursuant to subparagraph (1) of paragraph (b) of subsection 1 of section 21 of this act for the renewal of a registry identification card, if:

(a) Such documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition; and

(b) The physician has advised the person about the possible risks and benefits of the medical use of marijuana.

Sec. 28. *A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that:*

1. The person engages in or has engaged in the medical use of marijuana as authorized pursuant to the provisions of this chapter; or

2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act.

Sec. 29. *1. Except as otherwise provided in this section and subsection 4 of section 19 of this act, the department shall maintain the confidentiality of and shall not disclose:*

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(a) The contents of any applications, records or other written documentation that the department creates or receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the department or its designee has issued a registry identification card.

2. The department may release the name and other identifying information of a person to whom the department or its designee has issued a registry identification card to:

(a) Authorized employees of the department as necessary to perform official duties of the department; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him pursuant to section 20 or 23 of this act.

Sec. 30. *1. A person may submit to the division a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions pursuant to section 6 of this act.*

2. The division shall adopt regulations setting forth the manner in which the division will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:

(a) The division will approve or deny a petition within 180 days after the division receives the petition;

(b) If the division approves a petition, the division will, as soon as practicable thereafter, transmit to the department information concerning the disease or condition that the division has approved; and

(c) The decision of the division to deny a petition is a final decision for the purposes of judicial review.

Sec. 31. *The provisions of this chapter do not:*

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to accommodate the medical use of marijuana in the workplace.

3. Protect a person against state prosecution for any act involving the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia in a manner not authorized pursuant to the provisions of this chapter.

Sec. 32. *The director of the department shall adopt such regulations as the director determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:*

1. Procedures pursuant to which the state department of agriculture will, in cooperation with the department of motor vehicles and public safety, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the state department of agriculture will:

(a) Issue a registry identification card to a qualified person after the card has been prepared by the department of motor vehicles and public safety; or

(b) Designate the department of motor vehicles and public safety to issue a registry identification card to a person if:

(1) The person presents to the department of motor vehicles and public safety valid documentation issued by the state department of agriculture indicating that the state department of agriculture has approved the issuance of a registry identification card to the person; and

(2) The department of motor vehicles and public safety, before issuing the registry identification card, confirms by telephone or other reliable means that the state department of agriculture has approved the issuance of a registry identification card to the person.

2. Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.

Sec. 33. *The state must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person.*

Sec. 34. Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 35 and 36 of this act.

Sec. 35. *The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of sections 2 to 33, inclusive, of this act.*

Sec. 36. *1. A local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed in accordance with subsection 2.*

2. Money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to subsection 1 must be evenly allocated among:

(a) Nonprofit programs for the treatment of abuse of alcohol or drugs that are certified by the bureau of alcohol and drug abuse in the department;

(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and

(c) Local law enforcement agencies,

in a manner determined by the court.

3. As used in this section, "local authority" means the governing board of a county, city or other political subdivision having authority to enact laws or ordinances.

Sec. 37. NRS 453.336 is hereby amended to read as follows:

453.336 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, physician's assistant, dentist, podiatric physician, optometrist or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive ~~.~~ , *and sections 35 and 36 of this act.*

2. Except as otherwise provided in subsections 3, 4 and 5 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, 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 1 year and a maximum term of not more than 6 years.

~~4. [Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marijuana:~~

~~(a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~(b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.~~

~~5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:~~

~~(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and~~

~~(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.~~

~~6.]~~ ***Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:***

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; and

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; and

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For a third or subsequent offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than $1,000 nor more than $2,000.

5. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

Sec. 38. 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, guilty but mentally ill, nolo contendere or similar plea to a charge pursuant to ***subsection 2 or 3 of*** NRS 453.336, ***NRS*** 453.411 or 454.351, 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 prisons.

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 motor vehicles and 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.

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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. 39. NRS 453.401 is hereby amended to read as follows:

453.401 1. Except as otherwise provided in subsections 3 and 4, if two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act or conspire to defraud the State of Nevada or an agency of the state in connection with its enforcement of the Uniform Controlled Substances Act, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator:

(a) For a first offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(b) For a second offense, or if, in the case of a first conviction of violating this subsection, the conspirator has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or of any state, territory or district which if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 10 years, and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, or if the conspirator has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 may be further punished by a fine of not more than $20,000 for each offense.

2. Except as otherwise provided in subsection 3, if two or more persons conspire to commit an offense in violation of the Uniform Controlled Substances Act and the offense does not constitute a felony, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator shall be punished by imprisonment, or by imprisonment and fine, for not more than the maximum punishment provided for the offense which they conspired to commit.

3. If two or more persons conspire to possess ***more than 1 ounce of*** marijuana unlawfully, except for the purpose of sale, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator is guilty of a gross misdemeanor.

4. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, the persons so conspiring shall be punished in the manner provided in NRS 207.400.

5. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 1.

Sec. 40. NRS 453.580 is hereby amended to read as follows:

453.580 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to ***subsection 4 of NRS 453.336,*** NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the bureau of alcohol and drug abuse in the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.

2. A program to which a court assigns a person pursuant to subsection 1 must include:

(a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;

(b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is assigned and the cost of any additional supervision required pursuant to subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 41. NRS 455B.080 is hereby amended to read as follows:

455B.080 1. A passenger shall not embark on an amusement ride while intoxicated or under the influence of a controlled substance, unless in accordance with ~~[a]~~ *:*

(a) A prescription lawfully issued to the person ~~[.]~~ ***; or***

(b) The provisions of sections 2 to 33, inclusive, of this act.

2. An authorized agent or employee of an operator may prohibit a passenger from boarding an amusement ride if he reasonably believes that the passenger is under the influence of alcohol, prescription drugs or a controlled substance. An agent or employee of an operator is not civilly or criminally liable for prohibiting a passenger from boarding an amusement ride pursuant to this subsection.

Sec. 42. NRS 52.395 is hereby amended to read as follows:

52.395 ***Except as otherwise provided in section 26 of this act:***

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 43. (Deleted by amendment.)

Sec. 44. NRS 159.061 is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months ~~;~~ , ***except the use of marijuana as authorized pursuant to sections 2 to 33, inclusive, of this act;*** and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood or marriage of the proposed guardian to the proposed ward.

(e) Any recommendation made by a special master pursuant to NRS 159.0615.

Sec. 45. NRS 213.123 is hereby amended to read as follows:

213.123 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use , ***except the use of marijuana as authorized pursuant to sections 2 to 33, inclusive, of this act,*** or any failure or refusal to submit to a test is a ground for revocation of parole.

2. Any expense incurred as a result of any test is a charge against the division.

Sec. 46. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name ~~;~~ ***or for which he was not***

authorized to engage in the use of pursuant to the provisions of sections 2 to 33, inclusive, of this act, the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 47. NRS 630.3066 is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for ~~[prescribing]~~ ***:***

1. Prescribing or administering to a patient under his care:

~~[1.]~~ ***(a)*** Amygdalin (laetrile), if the patient has consented in writing to the use of the substance.

~~[2.]~~ ***(b)*** Procaine hydrochloride with preservatives and stabilizers (Gerovital H3).

~~[3.]~~ ***(c)*** A controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with accepted standards for the practice of medicine.

2. Engaging in any activity authorized pursuant to sections 2 to 33, inclusive, of this act.

Sec. 48. 1. There is hereby appropriated from the state general fund to the state department of agriculture the sum of $50,000 to carry out the provisions of sections 2 to 33, inclusive, of this act.

2. The money appropriated pursuant to subsection 1 must be used to supplement and not supplant or cause to be reduced any other source of funding available to the state department of agriculture to carry out the provisions of sections 2 to 33, inclusive, of this act.

3. Any remaining balance of the appropriation made by subsection 1 must not be committed for expenditure after June 30, 2003, and reverts to the state general fund as soon as all payments of money committed have been made.

Sec. 49. The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.

Sec. 50. 1. This section and section 48 of this act become effective upon passage and approval.

2. Sections 6, 20, 21, 30 and 32 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2001, for all other purposes.

3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 31, 33 to 47, inclusive, and 49 of this act become effective on October 1, 2001.

(30)

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Seventy-First Session
May 7, 2001

The Committee on Ways and Means was called to order at 7:30 a.m. on Monday, May 7, 2001. Chairman Morse Arberry Jr. presided in Room 3137 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry Jr., Chairman
Ms. Chris Giunchigliani, Vice Chairwoman
Mr. Bob Beers
Mrs. Barbara Cegavske
Mrs. Vonne Chowning
Mrs. Marcia de Braga
Mr. Joseph Dini, Jr.
Mr. David Goldwater
Mr. Lynn Hettrick
Ms. Sheila Leslie
Mr. John Marvel
Mr. David Parks
Mr. Richard D. Perkins
Ms. Sandra Tiffany

COMMITTEE MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Mark Stevens, Fiscal Analyst
Rick Combs, Program Analyst
Carla Watson, Program Analyst
Connie Davis, Committee Secretary
Carol Thomsen, Committee Secretary

Assembly Bill 554: Provides for establishment of Nevada college-savings program as authorized by federal law. (BDR 31-357)

Chairman Arberry recognized Brian Krolicki, State Treasurer. Mr. Krolicki introduced David Clapsaddle, Executive Director, Nevada Prepaid College Tuition Program, and extended his appreciation to the committee in hearing A.B. 554 out of agenda order.

Mr. Krolicki reported that A.B. 554 preserved the pre-paid college tuition program that was originally drafted and adopted to sunset June 30, 2001, and established an additional Section 529 program, called a college-savings plan.

Section 7 (3), which addressed physical education teachers and pointed out that physical education in elementary schools was funded with a teacher and one aide at a ratio of 1:60. Ms. Tittle asked for the committee's understanding that reducing the ratio, by increasing the number of teachers and eliminating aides, would have a fiscal impact on the district of $4 million.

Hearing no requests for further discussion, the Chairman closed the hearing on A.B. 416.

Assembly Bill 453: Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40 121)

Assemblywoman Chris Giunchigliani, District 9, identified herself for the record and reported that A.B. 453 was voted out of the Assembly Committee on Judiciary and referred to the Assembly Committee on Ways and Means as it contained an appropriation not included in The Executive Budget.

Ms. Giunchigliani stated that the A.B. 453 legislation served two purposes:

- Enactment of the medical marijuana petition voted on by the public and supported overwhelmingly on two separate occasions; and

- Codified current practices concerning defelonization of marijuana use for an ounce or less.

Ms. Giunchigliani discussed the suggested amendments and explained that osteopaths had not been anticipated to participate or permitted under the legislation. While Ms. Giunchigliani indicated a comfort level with doctors licensed under *Nevada Revised Statutes* (NRS) 630, she indicated it was acceptable to her if the committee wanted to "entertain allowing doctors licensed under NRS 633." Additionally, Ms. Giunchigliani turned to page 3, Section 15, and indicated that while she had not yet received a response from the Legal Division, line 2 might have to be deleted. Ms. Giunchigliani also called attention to Section 36, (1), which deleted "may" and inserted "must" to make the section compatible with the remainder of the section.

Ms. Giunchigliani provided a packet of articles and letters (Exhibit N) in support of A.B. 453 and referred to the Rose Commission, which was created and chaired by the Honorable Justice Robert Rose and represented by other law enforcement officials. Ms. Giunchigliani pointed out that the Rose Commission had dealt with the defelonization issue on two separate occasions and had asked that the legislature look at reducing the penalty to a misdemeanor for an ounce or less of marijuana. Ms. Giunchigliani cited 1999 Clark County statistics that indicated there were 1,467 possessions of marijuana "almost all reduced to a misdemeanor," and explained that while the legislation did not excuse behavior or allow trafficking, it simply recognized the practice and prohibited a penalty that could be used to discriminate against individuals "out on the street."

In reference to the medical marijuana portion of the bill, Ms. Giunchigliani compared the 223,892 votes Governor Guinn received in his election to office with the 380,926 votes Question 9 received and also pointed out that Question 9, on a statewide-basis, received more votes than most legislators. It was Ms. Giunchigliani's opinion that the public reacted intelligently to whom and on what they were voting and understood approving legislation did not

condone drug use, however, recognized that there were some treatments that needed to be made available.

Ms. Giunchigliani explained that the bill was established through the Department of Agriculture and that the Department of Motor Vehicles (DMV) and the Health Division would assist with implementation of the program. Ms. Giunchigliani indicated she had met with representatives of the three agencies, and it had been determined that up to $150 could be charged for a registry card. Past testimony provided information that some very ill people would find the fee too expensive. Ms. Giunchigliani explained that Oregon provided their database and application forms which could be modified for Nevada's use and would help reduce costs. Ms. Giunchigliani said it was felt that if the program began with a registration fee of $50, the fee could be escalated on an as-needed basis.

Ms. Giunchigliani pointed out that Oregon's program had a deficit during the first two years that had been attributed to not having start-up dollars. Nevada's Department of Agriculture indicated the program could be sustained for the first two years with a $25,000 one-shot appropriation that would be considered start-up dollars and registry fees that would cover the balance of the cost. Funds that were not utilized would be reverted. Additionally, Ms. Giunchigliani explained that the DMV would need $2,250 to develop a State of Nevada type of identification card that would be used until DMV moved to a digitized licensing program. It was Ms. Giunchigliani's opinion that the $50,000 one-shot appropriation could be reduced to about $30,000.

Mrs. Chowning testified that a friend's life had been extended by several years through the use of medical marijuana provided in a tablet. Mrs. Chowning asked if the drug would be dispensed in tablet form. Ms. Giunchigliani responded that the drug in a tablet was dispensed as Marinol and the Drug Enforcement Administration (DEA) had recently reduced Marinol from a schedule 4 to a schedule 3 drug, which meant it could be legally dispensed. Ms. Giunchigliani explained that not all individuals were affected in the same way by a medication. Medical doctors in California and Oregon had determined that if Marinol provided relief for an individual, there would be no need to smoke the drug. However, if relief was not provided, smoking would be the treatment of last resort. Ms. Giunchigliani noted that Oregon started their medical marijuana program with about 400 people which had increased to 1,900 with only two reported instances of fraudulent issues concerning registry cards.

Chairman Arberry asked if medical marijuana could be used anywhere. Ms. Giunchigliani referred to Section 24 (1) on page 8, and indicated "a person who was authorized to engage or assist in the medical use of marijuana could not drive, operate, or be in control of a vehicle or vessel under power or sail or engage in any other conduct that was already prohibited in statute." Additionally, Ms. Giunchigliani said that individuals could not possess a firearm while smoking, nor could the drug be used in any public place or any place open to the public or exposed in any public view.

Mrs. Cegavske called attention to the fact that the members of the public had voted for Ballot Question 9, not the amended version of the bill and asked for information on how the proposed legislation differed from the ballot question. Ms. Giunchigliani responded that a criminal repository check and defelonization for an ounce or less of marijuana had been included in the bill.

Mrs. Cegavske indicated that in her work with treatment programs, it appeared that problems for the majority of adolescents began with alcohol and marijuana. While not everyone agreed that marijuana was a gateway drug, Mrs. Cegavske

expressed concern that the defelonization issue would send the wrong message to adolescents.

Mrs. Cegavske expressed support for the medical use of marijuana, dispensed as Marinol, however, raised issues that addressed regulating growing the plant. Ms. Giunchigliani referred to page 14 of the bill, which covered the sections on the defelonization issue, and also commented on Assemblyman Carpenter's supportive legislation that requested an initial assessment for an individual with a first-time prescription to actually determine if there was a drug problem. Unlike other states, Ms. Giunchigliani said a second offense in Nevada required referral to drug court or rehabilitation. Additionally, any fines collected must be allocated to nonprofit drug programs, drug court, and law enforcement. Ms. Giunchigliani indicated that Nevada did not want to be perceived as condoning the use of marijuana, but, through the bill, recognized the occurrence and the need for intervention. Additionally, Ms. Giunchigliani explained that juvenile offenders were not addressed in the bill because juveniles charged with a felony were automatically referred to drug rehabilitation programs. Ms. Giunchigliani expressed her belief that marijuana was not a gateway drug and that scientific studies were beginning to show that alcohol and tobacco were more likely to lead to hard-core drugs. The legislation attempted to recognize the need to avoid making an individual a felon for an ounce or less of marijuana and recognized what other states had done.

In reference to the question on growing the plant, Ms. Giunchigliani indicated she had presented a state-run program, which she found would not be feasible after speaking with officials at the DEA. However, individuals growing plants in their own home would be permitted to do so.

Mrs. Cegavske continued to express concern in reference to the wrong message being sent to adolescents. Ms. Giunchigliani pointed out that possession would remain a crime, but not a felony and indicated she did not believe a person should be labeled a felon for a lapse in judgment. Ms. Giunchigliani reiterated once again that the legislation did not condone the use of the drug but simply recognized its occurrence and that the state was looking at the long-term impact on those individuals who had chosen to use it. However, Ms. Giunchigliani pointed out that an individual caught trafficking would go to jail.

Mrs. Cegavske continued to express concern in reference to what appeared to be unresolved issues and potential problems. Ms. Giunchigliani responded that she had relied on information from California and Oregon based on their passage of similar legislation and the fact that they did not have any of the problems or abuses that had been anticipated. Additionally, Ms. Giunchigliani commented on the protections built into the legislation and the fact that the members of the public had spoken.

Mr. Goldwater commented that drugs such as Prozac, Xanex, and Ritalin were more likely to be considered gateway drugs.

Ms. Giunchigliani indicated she had learned from studies that marijuana was an habitual drug but was not addictive.

In response to questions from Chairman Arberry, Ms. Giunchigliani advised that an incarcerated individual, diagnosed with cancer, would not be permitted to apply for medical marijuana, nor permitted to grow plants in prison.

Mr. Beers questioned the fiscal note and was referred to page 21, Section 48, which indicated a one-time $50,000 appropriation. Ms. Giunchigliani pointed out that in her earlier remarks, the fiscal note could be reduced to $30,000.

In response to a question from Mrs. de Braga concerning funding, Ms. Giunchigliani explained that the one-time appropriation and fees generated by the registry process would provide the operating expenses for the Department of Agriculture, DMV, and the Health Division. Ms. Giunchigliani commended the work of all three state agencies that culminated in a simple, inexpensive, and streamlined process authorizing the use of medical marijuana.

Hearing no requests for further discussion, the Chairman closed the hearing on A.B. 453.

PRISON INDUSTRY (525-3719) – BUDGET PAGE PRISONS-210

Carla Watson, Program Analyst, Legislative Counsel Bureau (LCB), identified herself for the record and discussed the following technical adjustment by staff:

- Increased revenue for license plate charges by $34,584 in FY2002 and $49,393 in FY2003 based on information provided by the Department of Motor Vehicles and Public Safety (DMV&PS).

Mr. Marvel asked if reconciliation had occurred with the DMV concerning the license plate issue. Ms. Watson had recently learned that the DMV did not separate the reissues from the regular plates and indicated that it appeared uncertain reconciliation could take place.

> MS. GIUNCHIGLIANI MOVED TO CLOSE THE PRISON INDUSTRY BUDGET AS RECOMMENDED BY STAFF WITH TECHNICAL ADJUSTMENTS.
>
> MRS. CHOWNING SECONDED THE MOTION.
>
> THE MOTION CARRIED. (Mr. Perkins was not present for the vote.)
>
> BUDGET CLOSED.

****

PRISON DAIRY (BUDGET ACCOUNT 525-3727) – BUDGET PAGE PRISONS-218

Ms. Watson discussed the following technical adjustment:

- Adjusted reserve and balance forward in FY2003 to include the General Fund loan payback.

Ms. Watson addressed the following decision units:

- M-200 – The M-200 module recommended increases to the reserve of $87,050 in each year of the biennium due to the expansion of two programs: 1) The Feeder Steer Program proposed to increase the herd size by 80 steers for a total of 150. The revenue from the program grossed an average of $860 per steer which would generate $68,800 in each year of the 2001-03 biennium. 2) The Department of Agriculture requested additional corrals to hold 40 additional horses. It was

Amendments to AB 453
Chris Giunchigliani

Section 4, 27, and 47 Add " and NRS 633;"

Delete, Section 15, subsection 2, line 2

Section 36, line 23, delete may and insert "must." This makes the section compatible with the rest of the section. (see line 25)

SUPREME COURT OF NEVADA
ROBERT E. ROSE, JUSTICE
201 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701-4702

Statement of Robert E. Rose
Justice, Nevada Supreme Court
Remarks before the Judiciary Committee of the Nevada State Assembly
April 10, 2001

Dear Chairman and Committee Members:

In 1993, the Nevada Supreme Court created the Nevada Urban Court Workload Assessment Commission which consisted of 50 members representing all walks of life. About half of the members were non-lawyers, and they were charged with studying the Nevada judiciary without fear of political or special interest pressure. The Commission studied the operation of Nevada's urban courts for over a year and made many recommendations that it believed would improve the operation and efficiency of our urban courts. Since I asked for the creation of the Commission and chaired it, it became known as the Rose Commission.

One of the recommendations the Commission made in 1994 was to reduce the penalties for the possession of small amounts of marijuana. It recommended that an ounce or less of marijuana be a simple misdemeanor, that possession of more than one ounce but less than 4 ounces be a gross misdemeanor, and that possession of 4 ounces or more of marijuana remain a felony. In effect, the Commission recommended that the possession of small amounts of marijuana be a misdemeanor or gross misdemeanor.

The rationale for this recommendation were several. First, the Commission found that Nevada was "isolate" in its treatment of possession of small amounts of marijuana as a felony. It felt that defelonizing the possession of small amounts of marijuana would bring the penalty in line with almost every other state, in line with the criminal justice practice in most areas of Nevada, and that the punishment would better fit the crime.

Second, this penalty reduction would "benefit the whole judicial system by reducing its workload." At present, an arrest for the possession of any amount of marijuana is a felony and requires booking, detention at a jail facility, appointment of counsel, a preliminary hearing, trial and possible prison incarceration. Reducing the penalty would reduce the procedures and costs considerably. In this way, valuable resources could be devoted to handling more serious charges and jail or prison space would be left for those who commit more serious crimes.

I might add that the penalties for marijuana in the state result in disparate treatment throughout the state. In the urban areas of Nevada, simple possession of a small amount of marijuana is usually reduced to a gross misdemeanor or misdemeanor or resolved in Drug Court. It seldom results in a felony charge, let alone a conviction. In the rural counties, any possession of marijuana is usually charged as a felony and may or may not be dealt down to a gross misdemeanor, depending on the attitude of the prosecutor and law enforcement in the county. In the urban counties, possession will almost always be processed as a misdemeanor or a Drug Court case, while in the rural counties you probably will face felony charges.

I know some people say that while reducing the penalties for a small amount of marijuana may be appropriate, it will send the wrong message to our young people. My answer is that our young people are bright and quite informed nowadays. If we are worried about sending signals or signs to the public, I think we should be most concerned about sending realistic messages and that in our legislation the punishment should fit the crime.

The Rose Commission was reconvened when I became Chief Justice again in 1999. It reviewed its old recommendations and a few new areas of court operation. In 2000, it renewed its recommendation for the reduction of the penalties for a small amount of marijuana to a misdemeanor and cited the same reasons for the recommendation.

I want to make it clear that this recommendation is not that of the Nevada Supreme Court or any of its justices. It is the recommendation of 50 citizens of Nevada who believe that each recommendation will improve the justice system in our state.

AMERICANS FOR MEDICAL RIGHTS

Making Effective Medical Marijuana Policy

Successful Ballot Initiatives:

Alaska *Question 8*

Arizona *Proposition 200*

California *Proposition 215*

Colorado *Amendment 20*

Maine *Question 2*

Nevada *Question 9*

Oregon *Measure 67*

Washington *Initiative 692*

FOR RELEASE: March 26, 2001

CONTACT: Debi Waterstone at (310) 394-2952

On Eve of Supreme Court Medical Marijuana Case, 'Contradiction and Cowardice' Mark Federal Policy

LOS ANGELES, March 26 — President **George W. Bush** opposes legalizing marijuana for medical use, but supports states' rights to decide the issue themselves.

Federal agencies, led by the Drug Enforcement Administration (DEA), have rebuffed efforts to reclassify marijuana as a medically useful drug. Yet seven patients still receive monthly shipments of marijuana at their local pharmacies, under a federal program begun in 1976.

A frequently heard federal agency position is that "science should decide" whether marijuana is made available medically. But the findings and advice in a **landmark 1999 Institute of Medicine (IOM) report** – which found both that marijuana clearly helps patients and should be studied further – have largely been ignored.

Bill Zimmerman, executive director of Americans for Medical Rights, said, "Wherever you look in federal policy on medical marijuana, there is contradiction and cowardice. There are tiny glimmers of compassion amid a long-standing policy of hard-line opposition. It seems no one in Washington, D.C., will actually defend what the government is doing: inhibiting or destroying patients' access to a beneficial medicine."

Despite vehement opposition from former drug czar Barry McCaffrey and other federal officials, efforts to make medical marijuana available have progressed at the state level. Since 1996, nine states have passed laws allowing patients to grow and use marijuana with a doctor's approval – eight by ballot initiative. In two of those states, Maine and Nevada, legislation to authorize state-sponsored methods of distribution of marijuana to patients is under active consideration.

(continued)

1250 Sixth Street #202 • Santa Monica, CA 90401 • (310) 394-2952 • fax (310) 451-7494
www.medmjscience.org • www.drugreform.org

N-4 of 17

President Bush seemed to recognize the states' progress when, at an October 19, 1999, campaign appearance in Seattle, he answered questions about medical marijuana by saying, **"I believe each state can choose that decision as they so choose."** He later said he personally opposed legalizing medical marijuana, offering the hope that the drug's constituent chemicals could be refined for medical use at some point in the future.

Zimmerman said, "Bush's position on medical marijuana is well-rooted in our tradition of respect for states' rights. On difficult issues, especially, it is best to let the states innovate."

Zimmerman continued, "Nine states are now working out the details of regulating medical marijuana without legalizing it for recreational use."

"It's a series of experiments that will continue," Zimmerman said, "regardless of the outcome of the pending U.S. Supreme Court case. For as long as thousands of patients have no real alternative to marijuana, legalizing it for medical use will remain an urgent issue at both the state and federal levels."

On Wednesday, March 28, the U.S. Supreme Court will hear oral arguments in a case entitled *United States vs. Oakland Cannabis Buyers' Cooperative*. At issue is a Ninth Circuit Court of Appeals decision that permitted a group of patients and caregivers – the Oakland cooperative – to grow and distribute marijuana to patients with a medical need for the drug.

Neither the California state law permitting patients to grow and use marijuana, known as Proposition 215 in 1996, nor any other state law is at issue in the case. None of these state laws expressly provides a method for distribution of marijuana.

"The Supreme Court is taking up this issue at a time when voters have given clear expression to the national will," Zimmerman said. "Voters want patients to have access to marijuana if they need it. We hope to see some respect for that fact when the court decides this issue."

###

United States vs. Oakland Cannabis Buyers' Cooperative

CASE SUMMARY

Fourteen months after California voters approved Proposition 215, the Oakland Cannabis Buyers' Cooperative was one of six medical marijuana distribution centers in Northern California named in a federal civil suit brought by the U.S. Justice Dept. in January 1998. The government obtained an injunction in 1999 ordering all the centers to cease distributing marijuana, but the Oakland center appealed, arguing that its members had the right to distribute the drug to patients with a documented "medical necessity."

In separate rulings in 1999 and 2000, the U.S. Court of Appeals for the Ninth Circuit cleared the way for the Oakland center to resume distributing marijuana to a narrowly defined class of patients. Citing both patients' rights to use a medically necessary drug and the public interest, the Ninth Circuit ordered the lower court to modify its injunction to permit the Oakland center to reopen. The lower court was to craft rules for oversight of the center's operations.

Before the Oakland center could take advantage of these rulings and resume operations, the Justice Dept. obtained Supreme Court intervention to stay the Ninth Circuit ruling and review it. Oral arguments take place March 28.

WHAT IS AT ISSUE

- Does the doctrine of "medical necessity" permit seriously ill patients to use marijuana as a medicine? Does "medical necessity" also exempt from federal drug laws those who grow and distribute marijuana to these patients?
- Are medical marijuana cooperatives a legal means of distributing the drug to patients? Might there be other legal means of regulating distribution?
- Do Ninth and Tenth Amendment protections of the rights of the people, and of the states, permit state- or local-level regulation of medical marijuana distribution?

WHAT IS NOT AT ISSUE

- The *Oakland CBC* case is not a constitutional challenge of California's Proposition 215, the medical marijuana initiative that serves as the backdrop to the case; in fact, none of the newly enacted state laws on medical marijuana have been challenged on constitutional or federal "supremacy" grounds.
- The rights of patients to use, cultivate or possess marijuana for medical use under nine state laws (AK, AZ, CA, HI, ME, NV, OR, WA) are not being challenged.
- Medical marijuana distribution bills now being considered by legislators in **Maine** and **Nevada** propose state-sanctioned, rather than "cooperative" distribution; therefore it is uncertain how these legislative efforts might be affected, even by an adverse ruling in the *Oakland CBC* case.

Jerry Cade, MD

To Whom It May Concern:

I am expressing my strong and unqualified support for Assembly Bill 453 (AB453).

For over 15 years, it has been my privilege to take care of the majority of Southern Nevadans with HIV/AIDS. AIDS is a demoralizing illness—physically, emotionally, psychologically and spiritually. I am unsure if I could confront my own mortality with the courage that I have witnessed in my patients.

This devastating illness is further complicated by profound weight loss, nausea and inability to eat. The wonderful, life-saving medications that are now available have a host of side effects. Among the most common side effects are nausea and vomiting, making these medications difficult to take. Furthermore, if the medications don't stay down, they can't work.

Over the years, I have tried every possible prescription medication to assist my patients with the nausea, vomiting and weight loss that attends HIV infection. For many of my patients, nothing has worked as well as marijuana in countering these problems. Of course, I am concerned that the street marijuana that my patients must obtain is laced with impurities. But, they have no choice. In addition to the risk that my patients take with purity, is the unnecessary legal risk my patients take buying a medication that has been unjustly criminalized.

The people of Nevada have wisely said this should change. The Nevada legislature should help expedite this change by passing AB 453.

Sincerely,

Jerry Cade, MD

APPOINTMENTS:
702.877.5319

OFFICE:
702.877.8600

AFTER HOURS:
702.877.8600

2300 WEST
CHARLESTON BLVD.
SUITE 259
LAS VEGAS, NEVADA
89102

MAILING ADDRESS:
PO BOX 15645
LAS VEGAS, NEVADA
89114-5645

LambdaHealthCare

Simplifying the Maze

A Fresh Look at Nevada's Court System

The Nevada Supreme Court
Judicial Assessment Commission

1999-2000

Preface

In 1993, the Nevada Supreme Court initiated the **Judicial Assessment Commission** – dubbed ***The Rose Commission*** for its sponsor, then-Chief Justice Bob Rose – and gave it authority to take a broad look at Nevada's justice system and laws. The assignment was simple: make recommendations for innovative and needed changes to ''simplify the maze'' of our urban courts without regard for politics or other special interests.

Four task forces were established by the Commission: ***Access to and Quality of Justice, Court Administration, Special Court Structures and Criminal Justice.***

Resulting recommendations led to the passage of new laws by the Legislature and new rules by the Nevada Supreme Court, enabling the court system at every level to work better for the people. The recommendations enacted included:

- Truth in sentencing legislation
- Establishment by Supreme Court Rule of Strong Chief Judge systems in Clark and Washoe Counties
- Funding for construction of an expanded Clark County jail
- Authorization and funding of new Family Court judges in Clark County
- Expansion of Drug Court programs
- Co-location of the Las Vegas Municipal Courts and Justice Courts in the Justice Center currently under construction
- Making the Municipal Court in Las Vegas a "court of record"
- Statewide collection of judicial workload statistics
- Creating a Division of Planning and Analysis at the Administrative Office of the Courts, Supreme Court of Nevada

Bolstered by that success, Justice Rose – when he again became Chief Justice in 1999 – reconvened the **Judicial Assessment Commission** and asked its members to take another look at a justice system that had gone through a series of changes in operating procedures and personalities during the previous five years.

This report describes the recommendations resulting from the 1999-2000 *Rose Commission's* fresh look at our justice system.

N-9817

Introduction

The 1999-2000 **Judicial Assessment Commission** reviewed and fine-tuned many of its prior recommendations, reaffirming its position on sometimes politically sensitive issues:

- The appointment rather than election of new judges
- Consolidation of Municipal and Justice Courts
- Re-categorizing minor traffic offenses and ``neighborhood dispute'' misdemeanors from crimes to civil infractions.

The *Rose Commission* also renewed its 1994 call to **reduce penalties for possession and use of small quantities of marijuana.** Such crimes are now felonies and the recommendation is they be reduced to misdemeanors or gross misdemeanors. This would reduce jail populations because violators would receive citations rather than being arrested. Although a controversial concept, the passage of such a law already has received support in newspaper editorials.

Perhaps the two Commission recommendations that will have the greatest impact on the future of the judicial system already have been implemented in response to the 1994 Commission report. They involve simple accountability through the **collection of uniform statistics** and the **establishment of a Division of Planning and Analysis at the Administrative Office of the Courts** to collect and analyze the data.

Commission members had noted in 1994 that the National Center for State Courts publishes periodic reports comparing judicial caseload statistics of the states and Nevada traditionally had the least comprehensive data. That was due in part to the lack of a standardized statistical model, resource problems at some courts in Nevada that hampered the gathering of the information and limited staffing at the Administrative Office of the Courts to process the statistics.

The Legislature, in response to a proposal from the Nevada Supreme Court, expanded the Administrative Office of the Courts and created a Division of Planning and Analysis, which set the statistical standards. In 1999, the Supreme Court issued an order establishing the **Uniform System for Judicial Records**, requiring every court in the state to collect caseload statistics and provide them to the Administrative Office of the Courts.

The courts must report statistics about the number of cases filed, number and type of dispositions, events occurring in each case and the status of pending cases.

Full implementation, however, will be on a staggered schedule because not all courts are immediately able to produce all statistics. Yet enough caseload statistics have been compiled for the publication of the Nevada judicial system's first Annual Report in December 2000.

Additional statistics will be added in future years, finally bringing Nevada in line with other states.

CHAPTER 2:

Commission Members

Membership of the **Judicial Assessment Commission** in 1999-2000, with few exceptions, was the same as in 1994.

Most members have connections to or experience in the legal community and, as such, are familiar with current laws and processes. Other members, however, were chosen from outside the justice system for their skills, business knowledge or community involvement. They brought a fresh perspective to a judicial structure steeped in formality and traditionally slow to change.

As in 1994, the Commission in 2000 was divided into four task forces – ***Access to and Quality of Justice, Court Administration, Special Court Structures and Criminal Justice***

Supreme Court of Nevada

1999-2000

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RJ 12/17/00

Common sense on drugs

Nevada lawmakers have traditionally lacked the guts to implement more rational approaches to minor drug crimes — witness how Assemblywoman Chris Giunchigliani's biennial effort to soften the state's toughest-in-the-nation marijuana law ends up in the circular file each session.

Privately, many legislators agree that Ms. Giunchigliani's effort is a worthy one. But publicly they tremble at the notion of seeing an opponent's campaign flier paint them as soft on crime or drug use.

On Monday, though, a panel of the state Supreme Court offered the Legislature a bit of cover. The court's Judicial Assessment Commission recommended that possessing a small amount of marijuana be treated as a misdemeanor rather than a felony and that certain minor drug users be diverted to treatment programs instead of sent to prison.

These reforms make eminent sense. And if lawmakers still erroneously believe the public won't tolerate such change, how do they account for the fact that Nevada voters have twice overwhelmingly approved a ballot question supporting the medicinal use of marijuana? And why, despite vociferous opposition from law enforcement groups, did California voters just last month give the go-ahead to an initiative that sends minor drug users to treatment rather than jail?

Lawmakers should do the right thing and heed the state Supreme Court panel's suggestions. They'll be surprised at the reaction.

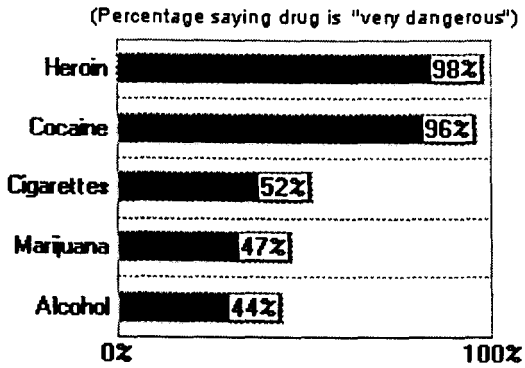
LAS VEGAS
REVIEW-JOURNAL
a member of the Donrey Media Group

N-13 & 17

Drugs: Red Flags

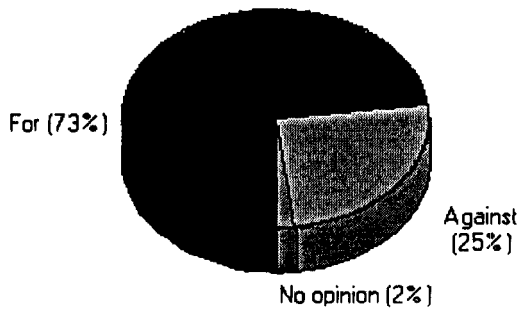
The public does not consider marijuana as dangerous as cocaine or heroin and support its use for medical reasons

For each of the following drugs, please tell me if you believe use of the drug is very dangerous...



Source: Gallup Organization/ CNN/ USA Today 6/95

Suppose on Election Day this year, you could vote on key issues as well as candidates. Please tell me whether you would vote for or against each one of the following proposals: making marijuana legally available for doctors to prescribe in order to reduce pain and suffering?



Source: Gallup Organization 3/00

For more details

Understanding the Issue:
Overview | Notable & Newsworthy | Fact File | Framing the Debate | Quick Takes | Sources & Resources

Public Opinion:
People's Chief Concerns | Major Proposals | A Nation Divided? | Red Flags | Selection Criteria

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Las Vegas SUN

March 29, 2001

Nevada measures tougher on DUIs, easier on pot possession

By Siobhan McDonough
ASSOCIATED PRESS

CARSON CITY, Nev. (AP) - If Nevada is a seeming paradox, with its round-the-clock gambling and drinking but harsh criminal laws, its lawmakers are no different - proposing tougher drunken driving laws but softer marijuana statutes.

"It reflects the uniqueness of Nevada. It almost seems like a contradiction," said Assemblywoman Sheila Leslie, D-Reno. "It shows our Libertarian bent - a 'you do your thing as long as you aren't hurting me' attitude."

This session, Assemblywoman Chris Giunchigliani's AB453 would authorize medical use of marijuana and decriminalize possession of small amounts of pot - while Assemblyman Mark Manendo's AB166 would lower the permitted blood-alcohol limit for drivers from 0.10 to 0.08.

"It's unusual we'd have the harshest law on marijuana possession on the books - it conflicts with our Libertarian way. But it doesn't conflict with our tradition of being conservative and strict on crime," Leslie said. "Alcohol kills far more than marijuana."

Manendo wants to reduce the deaths caused by drunken driving. He says if the blood-alcohol limit in drivers is lowered to 0.08 nationally, each year up to 600 DUI-related fatalities would be prevented around the country.

"This is a lifesaving measure," Manendo said, adding that the bill faced strong casino industry opposition in the past but has a good chance this year because Congress mandated the lower blood-alcohol level.

Nineteen states already have imposed the 0.08 level, and if Nevada doesn't do the same by 2003 it will lose millions of dollars in federal highway funds.

In 2000, there were 255 fatal crashes resulting in 309 deaths reported across the state, according to the state Office of Traffic Safety. About a third of the deaths were alcohol-related.

Assemblyman John Carpenter, R-Elko, said he resents the federal government's intrusive manner, adding, "We need to be passing laws on the basis of whether the law is good."

But Assembly Judiciary Chairman Bernie Anderson, D-Sparks, hopes the Legislature acts on the lower DUI standard now "before it's pushed in our face. We have an opportunity to be more thoughtful."

Harvey Whittemore, representing the Nevada Beer Wholesalers' Association, said that states with lower DUI levels don't necessarily have fewer fatal drunken-driving accidents, and that other factors such as educating people about drunken driving and building safe roads also reduce the number of fatalities.

"We're concerned about the continued attempt by many to turn this into a Prohibition," he adds.

But others, including Assemblywoman Barbara Cegavske, R-Las Vegas, don't think the bill is tough enough.

"If we want to tell people not to drink and drive, we need to have a limit of 0.0," she said. "We're sending the wrong message - that a little bit of alcohol is OK to have and drive. The message really is: don't drink and drive."

While the penalties for drunken driving might get stricter, getting caught with small amounts of marijuana could result in softer sentences than the current felony penalties that can be imposed.

Giunchigliani, D-Las Vegas, says her strategy to get the possession penalty eased was to link it with the medical marijuana plan mandated by the state's voters.

The ballot plan, approved by nearly two of every three voters, allows use of marijuana by cancer, AIDS, glaucoma victims and others with painful and potentially terminal illnesses.

"We don't want to nail people who are using it for medical purposes," Giunchigliani said.

She adds that while those who don't have a medical excuse for possessing marijuana will have a price to pay, it won't be high.

Giunchigliani wants a misdemeanor fine for people caught with an ounce or less of marijuana. A second offense would result in a higher fine and assignment to a treatment or rehabilitation program. Third-time offenders would be charged with a gross misdemeanor and have to pay an even steeper fine.

As the law stands now, she says, "It ends up being a bunch of paperwork for police. They need to focus their energies on violent criminals, and cocaine and crack addicts."

"Maybe it's a reflection that our drug policy has failed."

Carpenter tends to vote conservatively, but favors decriminalizing possession of small amounts of pot.

"The only way to make inroads on the drug problem is through treatment and to some, that is punishment. They need to have the fear of the devil put into them."

Veteran Assemblyman Joe Dini, D-Yerington, also backs decriminalization, saying he's concerned about the mark a felony leaves on the record of a young person caught with marijuana.

"That's a bad rap. The rest of their life they have that on their record. Maybe the law is too strict, and

we're not winning the war."

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Las Vegas SUN main page

Questions or problems? Click here.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-First Session
May 9, 2001

The Committee on Judiciary was called to order at 8:09 a.m. on Wednesday, May 9, 2001. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. Mark Manendo, Vice Chairman
Mrs. Sharron Angle
Mr. Greg Brower
Mr. John Carpenter
Mr. Jerry Claborn
Mr. Tom Collins
Mr. Don Gustavson
Mrs. Ellen Koivisto
Ms. Kathy McClain
Mr. Dennis Nolan
Mr. John Oceguera
Ms. Genie Ohrenschall

COMMITTEE MEMBERS ABSENT:

Ms. Barbara Buckley (Excused)

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Risa B. Lang, Committee Counsel
Sandra Albrecht-Johnson, Committee Secretary

OTHERS PRESENT:

Gemma Greene-Waldron, Nevada District Attorney's Association, Deputy District Attorney, Washoe County
Captain Jim Nadeau, Washoe County Sheriffs Office, Nevada Sheriffs and Chiefs Association
John P. Fowler, Chair, Executive Committee, Business Law Section, State Bar of Nevada, and Lawyer, Marshall Hill Cassas and de Lipkau
Renee L. Lacey, Chief Deputy Secretary of State
James L. Wadhams, Nevada State Board of Architecture, Interior Design and Residential Design
Greg Erny, Chairman, State Board of Architecture, Interior Design and Residential Design, Licensed Architect
Frank W. Daykin, National Conference of Commissioners on Uniform State Laws (NCCUSL), former Legislative Counsel, Legislative Counsel Bureau
Alan B. Rabkin, General Counsel and Executive Director, Commission on Judicial Discipline, former General Counsel for Sierra West Bank and former in-state counsel for Bank of the West
Ted Wehking, Nevada Bankers Association
John Sande, Nevada Bankers Association

Chairman Anderson declared that a quorum was present. He encouraged testimony before the committee and requested persons who wished to speak to sign-in at the door.

Senate Bill 242: Prohibits growing, cultivating or propagating of marijuana. (BDR 40-469)

Chairman Anderson opened the hearing on S.B. 242 and called forth Ms. Gemma Greene-Waldron, Nevada District Attorneys' Association, Washoe County Deputy District Attorney, to introduce the bill. Ms. Waldron explained that the purpose of the bill was to close loopholes in the law with regard to the growth, cultivation, and propagation of marijuana, and to make it illegal. She described that it had previously been illegal until the drug laws were revamped in a past session. Somehow during the process of the last legislative session, it inadvertently became legal to grow marijuana in Nevada. She clarified that the bill should not interfere with A.B. 453, a bill that would legalize the medicinal use of marijuana, since S.B. 242 would start by covering persons growing one pound or more.

Ms. Waldron referred the committee to Section 1 of the bill, which would make it a felony to grow one pound or more of marijuana. She explained that the

category of felony for the growth of marijuana would range from a Category E up to a Category A felony, depending upon the amount of marijuana grown. Sections 2 through 4 aligned the statutes throughout the *Nevada Revised Statutes* (NRS) with S.B. 242. She summarized that the purpose of the bill was to close the loopholes in the law and make it illegal to grow marijuana. Chairman Anderson clarified that S.B. 242 would not interfere with A.B. 453. He inquired if the bill would expand the laws, in any way, to impact persons who had not previously been in violation of the law, but would be under S.B. 242. He wanted reassurance that the bill would not have unintended consequences.

Ms. Waldron clarified that the bill was to bring the law back to where it was before it was inadvertently removed from statute.

Chairman Anderson observed that the final penalty contained in the bill was a Category E felony. Ms. Waldron reiterated that it ranged from a Category E felony up to a Category A felony, depending upon the amount of marijuana grown. She pointed out that if a person was growing 10,000 pounds, he would be an obvious trafficker and not merely using it for medicinal purposes.

Assemblyman Gustavson inquired what the street value would be for 2,000 pounds of marijuana. Mr. Gustavson added that the fine of up to $50,000 and approximately 10 years in prison might be too low for growing such a large amount of marijuana. Ms. Waldron explained that she had previously dealt with drug cases and occasionally still did when they involved domestic violence, and she stated that the value of 2,000 pounds of marijuana was a very sizable amount of money. She referred the question to Captain Jim Nadeau, Washoe County Sheriffs Office and Nevada Sheriffs' and Chiefs' Association. Captain Nadeau responded that he would retrieve the answer shortly.

Assemblyman Brower inquired what the crime would be for growing and propagating less than one pound of marijuana. Ms. Waldron stated that her office would charge it as possession of a controlled substance. Mr. Brower clarified that the charge of possession would be used rather than the charge of growing the marijuana. Ms. Waldron agreed.

Chairman Anderson referred to the monetary fine scale, which was dependent upon the category of felony. He observed that Category B felonies usually carried fines that ranged from $5,000 to not more than $10,000. He inquired if the scale listed in the bill was consistent with that of a Category B felony. Ms. Lang responded that a Category B felony could carry a penalty of imprisonment for up to 20 years. She stated that the fines varied from $5,000 and higher, and occasionally were not specified at all; however, Ms. Waldron

added that the fines for drug offenses were generally high. She cited that fines for trafficking were approximately $100,000.

Captain Nadeau informed the committee that the street value of marijuana ranged from approximately $150 to $400 per ounce, depending upon the quality. He explained that he had retrieved the information from a lieutenant in Washoe County Sheriff's Narcotics Division. He voiced their support of S.B. 242.

Mr. Brower stated that if the growth of less than one pound of marijuana could be prosecuted as a possession offense, then so could the growth of more than a pound. He requested clarification as to whether a loophole existed. Ms. Waldron responded that an argument could be made that possession of under a pound of marijuana could be for personal use. She explained that if somebody had over a pound of marijuana, it would be more likely that he was trafficking it, and he would not be able to effectively make the argument that it was for personal use. She pointed out that it would take several plants to get up to a pound of marijuana, and A.B. 453 allowed persons using the marijuana for medicinal purposes to have up to seven plants, which would probably still not amount to a full pound.

Mr. Brower clarified the loophole that existed did not allow for the prosecution of growing and propagating marijuana. It just allowed prosecution for possession, which was a different crime with different penalties than growing and propagating. Ms. Waldron agreed. She stated that the penalty for possession of a controlled substance was only a Category E, with mandatory probation, and the offender would probably appear in drug court. She asserted that if a person was growing several plants, it was a much more serious crime that would require more of a penalty than merely appearing in drug court and going to counseling.

Vice Chair Manendo inquired how many marijuana cigarettes could be made from an ounce of marijuana. Captain Nadeau disclosed that he was not a narcotics expert. Based upon his experience of working on the streets, he described that an ounce of marijuana was approximately a baggie that was a quarter to one-third full; however, he could not accurately estimate how many marijuana cigarettes would be made from it.

Chairman Anderson pointed out that line 9, page 2 of the bill, stated, "marijuana means all parts of any plant of the genus Cannabis, whether or not growing." He mentioned that he was under the impression that the bill was to prosecute persons who were actually growing the materials, not somebody who was in possession of some marijuana cigarettes. Ms. Waldron responded that the

Chair's assumption was correct. She referred the committee to page 1, Section 1, line 5 of the bill, and she pointed out that it covered persons growing, cultivating, and propagating marijuana. She explained that the intent of line 9, on page 2 of the bill was to cover persons who had marijuana seeds that had not yet sprouted, as well as to cover the various stages of growth of the plant. Chairman Anderson clarified that the bill would not unintentionally capture a person who was in possession of ashes from the plant, for instance. Ms. Waldron clarified that under the laws governing possession of a controlled substance, such a person could be arrested for the possession of just the residue of the marijuana cigarette, but they would not be prosecuted under S.B. 242.

Mr. Gustavson calculated that a pound of marijuana would range from $2,400 to $6,400, and 2,000 pounds of marijuana would range from $4.8 million to $12.8 million dollars.

Chairman Anderson called for persons to testify in support of, against, or neutral to the bill. There being none, he closed the hearing on S.B. 242.

Senate Bill 51: Makes various changes pertaining to business associations. (BDR 7-255)

Chairman Anderson opened the hearing on S.B. 51. Mr. John P. Fowler, Chair, Executive Committee, Business Law Section, State Bar of Nevada, and Lawyer, with Marshall Hill Cassas and de Lipkau, introduced the bill. He referred the committee to a letter dated May 8, 2001, from the Office of the Secretary of State (Exhibit C). Chairman Anderson acknowledged that he had received the letter the previous evening and had already reviewed it. Mr. Fowler explained that the bill originated as a result of the interim committee that was formed by Senate Concurrent Resolution 19 of the 70th Session, designed to encourage businesses to incorporate in Nevada.

Mr. Fowler explained that the bill made changes to corporate law in order to simplify business transactions. He noted that one of the common transactions that would be allowed by the bill was a "conversion." He explained that a conversion allowed a business entity to become another kind of business entity by filing a document with the Secretary of State. Without conversions, businesses had to form subsidiaries and then merge them in order to change the kind of business entity they were. He indicated that the conversion would both simplify and reduce expenses of the process. He informed the committee that he had received several calls from lawyers of American and Canadian companies, inquiring if Nevada was going to allow domestications. Since the North American Free Trade Agreement (NAFTA) was signed, domestications

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON WAYS AND MEANS

Seventy-First Session
May 17, 2001

The Committee on Ways and Means was called to order at 7:36 a.m. on Thursday, May 17, 2001. Chairman Morse Arberry Jr. presided in Room 3137 of the Legislative Building, Carson City, Nevada. The meeting was simultaneously videoconferenced in Room 4412 of the Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Morse Arberry Jr., Chairman
Ms. Chris Giunchigliani, Vice Chairwoman
Mr. Bob Beers
Mrs. Barbara Cegavske
Mrs. Vonne Chowning
Mrs. Marcia de Braga
Mr. Joseph Dini, Jr.
Mr. David Goldwater
Mr. Lynn Hettrick
Ms. Sheila Leslie
Mr. John Marvel
Mr. David Parks
Mr. Richard D. Perkins
Ms. Sandra Tiffany

COMMITTEE MEMBERS ABSENT:

None

STAFF MEMBERS PRESENT:

Mark Stevens, Fiscal Analyst
Steve Abba, Principal Deputy Fiscal Analyst
Brian Burke, Senior Program Analyst
Rick Combs, Program Analyst
Russell Guindon, Deputy Fiscal Analyst
Georgia Rohrs, Program Analyst
Connie Davis, Recording Secretary
Reba Coombs, Transcribing Secretary

Assembly Bill 594: Makes appropriations to Culinary and Hospitality Academy of Las Vegas for design and planning of facility for vocational training in Southern Nevada and to Department of Cultural Affairs for distribution to Las Vegas Performing Arts Center Foundation for planning and design of performing arts center in City of Las Vegas. (BDR S-42)

Chairman Arberry recognized Steven Horsford who said he was appearing on behalf of the Culinary and Hospitality Academy of Las Vegas. Mr. Horsford

If brokers had agreed to fund the commission and it was later determined in front of the Interim Finance Committee that six CPAs would be needed to perform the examinations at a large cost, there would be a problem unless the brokers stepped up to the plate and agreed to pay the cost. Mr. Hettrick did not want to be forced into taking money from the Contingency Fund to pay these costs.

Chairman Arberry stated he would like to bring the bill back before the committee in the morning so that representatives of the Division of Financial Institutions could be present to discuss the bill and the committee could take action.

Mr. Goldwater wished to answer Mr. Hettrick's question before the discussion was finished. He explained that at every stage of the bill, the industry had said they would fund the commission out of their own fees. Mr. Goldwater had the same concerns and he did not want to increase the burden on the state. The industry had represented their willingness to pay the cost both publicly and privately to Mr. Goldwater. With reference to the exit review portion, this was a concession to the industry. Previously, the Division of Financial Institutions would perform an examination and make a rating but never inform anyone as to what had happened.

Chairman Arberry closed the hearing on A.B. 324 and opened the hearing on A.B. 453.

Assembly Bill 453: Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

Mr. Stevens commented this was the medical marijuana bill and he had just received the amendments. Ms. Giunchigliani disclosed the amendments added a definition for state prosecution, based on the ruling handed down by the United States Supreme Court. This made it very clear the federal government did not have jurisdiction in this issue. Additionally, the amendment removed the $30,000 appropriation and allowed the acceptance of gifts, grants, and donations to operate the program. The fee had been removed, and if the legislature found in two years there was not enough funding to cover the cost of the program, the issue could be addressed at that time. Ms. Giunchigliani indicated she had received calls offering donations, which the state would gladly accept for the program.

MS. LESLIE MOVED TO AMEND AND DO PASS A.B. 453.

MR. PARKS SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

****

Assembly Bill 567: Revises provisions governing state financial administration. (BDR 30-358)

Mr. Stevens pointed out A.B. 567 was the bill which would authorize lease-purchase agreements based on the recent Supreme Court decision. If lease-purchase agreements were going to happen, either A.B. 567 or another bill would have to pass during the session. This was a relatively complex bill, so

Amend the title of the bill to read as follows:

"AN ACT relating to educational personnel; revising provisions governing the evaluation and admonition of probationary and postprobationary employees of school districts; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"SUMMARY—Makes various changes regarding educational personnel. (BDR 34-297)".

Assemblywoman Giunchigliani moved the adoption of the amendment.

Remarks by Assemblymen Giunchigliani and Dini.

Amendment adopted.

Assemblywoman Giunchigliani moved that Senate Bill No. 297 be taken from the General File and placed on the Chief Clerk's desk.

Motion carried.

Assembly Bill No. 453.

Bill read second time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 887.

Amend sec. 14, page 2, line 42, by deleting: "*authorized to engage*" and inserting: "*exempt from state prosecution for engaging*".

Amend the bill as a whole by adding a new section designated sec. 14.5, following sec. 14, to read as follows:

"Sec. 14.5. *"State prosecution" means prosecution initiated or maintained by the State of Nevada or an agency or political subdivision of the State of Nevada.*".

Amend sec. 15, page 2, by deleting lines 48 and 49 and inserting: "*thereof, that are appropriate for the medical use of marijuana.*".

Amend the bill as a whole by deleting sections 17 and 18 and adding new sections designated sections 17 and 18, following sec. 16, to read as follows:

"Sec. 17. *1. Except as otherwise provided in this section and section 24 of this act, a person who holds a valid registry identification card issued to him pursuant to section 20 or 23 of this act is exempt from state prosecution for:*

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of drug paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element.

2. In addition to the provisions of subsection 1, no person may be subject to state prosecution for constructive possession, conspiracy or any other

criminal offense solely for being in the presence or vicinity of the medical use of marijuana in accordance with the provisions of this chapter.

3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act, and the designated primary caregiver, if any, of such a person:

(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and

(b) Do not, at any one time, collectively possess, deliver or produce more than:

(1) One ounce of usable marijuana;

(2) Three mature marijuana plants; and

(3) Four immature marijuana plants.

4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.

Sec. 18. (Deleted by amendment.)".

Amend sec. 24, page 8, by deleting lines 35 through 38 and inserting:

"Sec. 24. *1. A person who holds a registry identification card issued to him pursuant to section 20 or 23 of this act is not exempt from state prosecution for, nor may he establish an*".

Amend sec. 25, page 9, line 22, by deleting: "*sections 24 and 31*" and inserting "*section 24*".

Amend sec. 25, page 9, line 34, by deleting: "*allowed pursuant to subsection 1 of section 18*" and inserting: "*described in paragraph (b) of subsection 3 of section 17*".

Amend sec. 25, page 9, line 43, by deleting: "*allowed pursuant to subsection 1 of section 18*" and inserting: "*described in paragraph (b) of subsection 3 of section 17*".

Amend sec. 25, page 10, line 12, by deleting: "*allowed pursuant to subsection 1 of section 18*" and inserting: "*described in paragraph (b) of subsection 3 of section 17*".

Amend sec. 26, page 10, by deleting lines 48 and 49 and inserting: "*paraphernalia or other related property was seized is engaging in or assisting in the medical use of marijuana in accordance with the provisions of*".

Amend sec. 26, page 11, by deleting line 8 and inserting: "*engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter shall be deemed to be*".

Amend sec. 28, page 11, line 41, by deleting: "*as authorized pursuant to*" and inserting: "*in accordance with*".

Amend sec. 31, page 12, by deleting lines 37 through 40.

Amend the bill as a whole by adding new sections designated sections 31.3 and 31.7, following sec. 31, to read as follows:

"Sec. 31.3. *1. The director of the department may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of this chapter.*

2. Any money the director receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 31.7 of this act.

Sec. 31.7. *1. Any money the director of the department receives pursuant to section 31.3 of this act or that is appropriated to carry out the provisions of this chapter:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of this chapter, including the dissemination of information concerning the provisions of sections 2 to 33, inclusive, of this act and such other information as determined appropriate by the director; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The director of the department shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.".

Amend sec. 36, page 13, line 40, by deleting "*laws or*".

Amend sec. 37, page 13, by deleting lines 44 and 45 and inserting: "pursuant to, a prescription or order of a physician, osteopathic physician's assistant, physician assistant, dentist, podiatric physician, optometrist, advanced practitioner of nursing or veterinarian while acting in the".

Amend sec. 40, page 17, line 6, by deleting: "bureau of alcohol and drug abuse in" and inserting: "health division of".

Amend sec. 44, page 19, line 7, by deleting: "*as authorized pursuant to*" and inserting: "*in accordance with the provisions of*".

Amend sec. 45, page 19, lines 33 and 34, by deleting: "*as authorized pursuant to*" and inserting: "*in accordance with the provisions of*".

Amend sec. 46, pages 19 and 20, by deleting line 49 on page 19 and line 1 on page 20, and inserting: "lawful prescription issued in his name ~~[,]~~ *or that he was not using in accordance with the provisions of sections*".

Amend sec. 47, page 20, by deleting lines 37 through 48 and inserting:

"*1. Prescribing* or administering to a patient under his care a controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with regulations adopted by the board.

2. Engaging in any activity in accordance with the provisions of sections 2 to 33, inclusive, of this act.".

Amend the bill as a whole by deleting sec. 48 and adding:

"Sec. 48. (Deleted by amendment.)".

Amend sec. 50, page 21, line 14, by deleting: "and section 48 of this act become" and inserting "becomes".

Amend sec. 50, page 21, by deleting line 20 and inserting: "31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, and 49 of this act become effective on October 1, 2001.

4. Section 37 of this act becomes effective at 12:01 a.m. on October 1, 2001.".

Amend the title of the bill to read as follows:

"AN ACT relating to controlled substances; exempting the medical use of marijuana from state prosecution in certain circumstances; revising the penalties for possessing marijuana; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"SUMMARY—Exempts medical use of marijuana from state prosecution in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)".

Assemblywoman Giunchigliani moved the adoption of the amendment.

Remarks by Assemblywoman Giunchigliani.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 558.

Bill read third time.

Remarks by Assemblymen Leslie, Kovisto, Parks, Neighbors and Humke.

Potential conflict of interest declared by Assemblymen Humke, Koivisto, Neighbors and Parks.

Roll call on Assembly Bill No. 558:

YEAS—42.

NAYS—None.

Assembly Bill No. 558 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 54.

Bill read third time.

Remarks by Assemblywoman Cegavske.

Roll call on Senate Bill No. 54:

YEAS—29.

NAYS—Arberry, Bache, Buckley, Collins, de Braga, Freeman, Giunchigliani, Goldwater, Koivisto, Leslie, Marvel, Neighbors, Perkins—13.

Senate Bill No. 54 having received a two-thirds majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 57.

Bill read third time.

Remarks by Assemblymen Giunchigliani, Gustavson, Parnell and Collins.

Roll call on Senate Bill No. 57:

YEAS—36.

NAYS—Angle, Cegavske, Gustavson, Tiffany, Von Tobel—5.

Not Voting—Goldwater.

(REPRINTED WITH ADOPTED AMENDMENTS)
SECOND REPRINT **A.B. 453**

ASSEMBLY BILL NO. 453–ASSEMBLYWOMAN GIUNCHIGLIANI

MARCH 19, 2001

Referred to Concurrent Committees on Judiciary and Ways and Means

SUMMARY—Exempts medical use of marijuana from state prosecution in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Contains Appropriation not included in Executive Budget.

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

AN ACT relating to controlled substances; exempting the medical use of marijuana from state prosecution in certain circumstances; revising the penalties for possessing marijuana; 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. Title 40 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. ***As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.***

Sec. 3. ***"Administer" has the meaning ascribed to it in NRS 453.021.***

Sec. 4. ***"Attending physician" means a physician who:***

1. Is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS; and

2. Has primary responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Sec. 5. ***"Cachexia" means general physical wasting and malnutrition associated with chronic disease.***

Sec. 6. ***"Chronic or debilitating medical condition" means:***

1. Acquired immune deficiency syndrome;

2. Cancer;

3. Glaucoma;

4. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;
(b) Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;
(c) Seizures, including, without limitation, seizures caused by epilepsy;
(d) Severe nausea; or
(e) Severe pain; or
5. Any other medical condition or treatment for a medical condition that is:
(a) Classified as a chronic or debilitating medical condition by regulation of the division; or
(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with section 30 of this act.

Sec. 7. *"Deliver" or "delivery" has the meaning ascribed to it in NRS 453.051.*

Sec. 8. *"Department" means the state department of agriculture.*

Sec. 9. *1. "Designated primary caregiver" means a person who:*
(a) Is 18 years of age or older;
(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and
(c) Is designated as such in the manner required pursuant to section 23 of this act.
2. The term does not include the attending physician of a person diagnosed with a chronic or debilitating medical condition.

Sec. 10. *"Division" means the health division of the department of human resources.*

Sec. 11. *"Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.*

Sec. 12. *"Marijuana" has the meaning ascribed to it in NRS 453.096.*

Sec. 13. *"Medical use of marijuana" means:*
1. The possession, delivery, production or use of marijuana;
2. The possession, delivery or use of paraphernalia used to administer marijuana; or
3. Any combination of the acts described in subsections 1 and 2,
as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.

Sec. 13.5. *"Production" has the meaning ascribed to it in NRS 453.131.*

Sec. 14. *"Registry identification card" means a document issued by the department or its designee that identifies:*
1. A person who is exempt from state prosecution for engaging in the medical use of marijuana; or
2. The designated primary caregiver, if any, of a person described in subsection 1.

Sec. 14.5. *"State prosecution" means prosecution initiated or maintained by the State of Nevada or an agency or political subdivision of the State of Nevada.*

Sec. 15. *1. "Usable marijuana" means the dried leaves and flowers of a plant of the genus Cannabis, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana.*
2. The term does not include the seeds, stalks and roots of the plant.

Sec. 16. *"Written documentation" means:*
1. A statement signed by the attending physician of a person diagnosed with a chronic or debilitating medical condition; or
2. Copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition.

Sec. 17. *1. Except as otherwise provided in this section and section 24 of this act, a person who holds a valid registry identification card issued to him pursuant to section 20 or 23 of this act is exempt from state prosecution for:*
(a) Possession, delivery or production of marijuana;
(b) Possession or delivery of drug paraphernalia;
(c) Aiding and abetting another in the possession, delivery or production of marijuana;
(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;
(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and
(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element.
2. In addition to the provisions of subsection 1, no person may be subject to state prosecution for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana in accordance with the provisions of this chapter.
3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act, and the designated primary caregiver, if any, of such a person:
(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and
(b) Do not, at any one time, collectively possess, deliver or produce more than:
(1) One ounce of usable marijuana;
(2) Three mature marijuana plants; and
(3) Four immature marijuana plants.
4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:
(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.

Sec. 18. (Deleted by amendment.)

Sec. 19. *1. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.*

2. Except as otherwise provided in subsections 3 and 5, the department or its designee shall issue a registry identification card to a person who submits an application on a form prescribed by the department accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The department or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the department to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the department shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the department; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the central repository for Nevada records of criminal history; and

(4) One copy to the board of medical examiners.

The central repository for Nevada records of criminal history shall report to the department its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The board of medical examiners shall report to the department its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).

5. The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The department may contact an applicant, his attending physician and designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The department may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish his chronic or debilitating medical condition; or

(2) Document his consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the department, including, without limitation, the regulations adopted by the director pursuant to section 32 of this act;

(c) The department determines that the information provided by the applicant was falsified;

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(d) The department determines that the attending physician of the applicant is not licensed to practice medicine in this state or is not in good standing, as reported by the board of medical examiners;

(e) The department determines that the applicant, or his designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

(f) The department has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of section 24 of this act; or

(g) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the department to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the department. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the department or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the department has not yet approved or denied the application, the person, and his designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the department received the application.

Sec. 20. *1. If the department approves an application pursuant to subsection 5 of section 19 of this act, the department or its designee shall, as soon as practicable after the department approves the application:*

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the department.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the department.

4. A registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the department.

Sec. 21. *1. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act shall, in accordance with regulations adopted by the department:*

(a) Notify the department of any change in his name, address, telephone number, attending physician or designated primary caregiver, if any; and

(b) Submit annually to the department:

(1) Updated written documentation from his attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) He has explained to the person the possible risks and benefits of the medical use of marijuana; and

(2) If he elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number and social security number of the designated primary caregiver; and

(II) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

2. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department, notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to him shall be deemed expired. If the registry identification card of a person to whom the department or its designee issued the card pursuant to paragraph (a) of subsection 1 of

section 20 of this act is deemed expired pursuant to this subsection, a registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired. Upon the deemed expiration of a registry identification card pursuant to this subsection:

(a) The department shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his registry identification card to the department within 7 days after receiving the notice sent pursuant to paragraph (a).

Sec. 22. *If a person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act is diagnosed by his attending physician as no longer having a chronic or debilitating medical condition, the person and his designated primary caregiver, if any, shall return their registry identification cards to the department within 7 days after notification of the diagnosis.*

Sec. 23. *1. If a person who applies to the department for a registry identification card or to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act desires to designate a primary caregiver, the person must:*

(a) To designate a primary caregiver at the time of application, submit to the department the information required pursuant to paragraph (d) of subsection 2 of section 19 of this act; or

(b) To designate a primary caregiver after the department or its designee has issued a registry identification card to him, submit to the department the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.

2. A person may have only one designated primary caregiver at any one time.

3. If a person designates a primary caregiver after the time that he initially applies for a registry identification card, the department or its designee shall, except as otherwise provided in subsection 5 of section 19 of this act, issue a registry identification card to the designated primary caregiver as soon as practicable after receiving the information submitted pursuant to paragraph (b) of subsection 1.

Sec. 24. *1. A person who holds a registry identification card issued to him pursuant to section 20 or 23 of this act is not exempt from state prosecution for, nor may he establish an affirmative defense to charges arising from, any of the following acts:*

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he knows does not lawfully hold a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

2. In addition to any other penalty provided by law, if the department determines that a person has willfully violated a provision of this chapter or any regulation adopted by the department or division to carry out the provisions of this chapter, the department may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 25. *1. Except as otherwise provided in this section and section 24 of this act, it is an affirmative defense to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that*

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his arrest and has been advised by his attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.

2. A person need not hold a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act to assert an affirmative defense described in this section.

3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,

if the amount of marijuana at issue is not greater than the amount described in paragraph (b) of subsection 3 of section 17 of this act and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

A defendant who fails to provide notice of his intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.

Sec. 26. *1. The fact that a person possesses a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act does not, alone:*

(a) Constitute probable cause to search the person or his property; or

(b) Subject the person or his property to inspection by any governmental agency.

2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other related property from a person engaged or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, drug paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, drug paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, drug paraphernalia or other related property was seized, or his designee, that the person from whom the marijuana, drug paraphernalia or other related property was seized is engaging in or assisting in the medical use of marijuana in accordance with the

provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, marijuana plants, drug paraphernalia or other related property that was seized.

The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or his designee that a person is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 27. *The board of medical examiners shall not take any disciplinary action against an attending physician on the basis that the attending physician:*

1. Advised a person whom the attending physician has diagnosed as having a chronic or debilitating medical condition, or a person whom the attending physician knows has been so diagnosed by another physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS:

(a) About the possible risks and benefits of the medical use of marijuana; or

(b) That the medical use of marijuana may mitigate the symptoms or effects of the person's chronic or debilitating medical condition,

if the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition.

2. Provided the written documentation required pursuant to paragraph (a) of subsection 2 of section 19 of this act for the issuance of a registry identification card or pursuant to subparagraph (1) of paragraph (b) of subsection 1 of section 21 of this act for the renewal of a registry identification card, if:

(a) Such documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition; and

(b) The physician has advised the person about the possible risks and benefits of the medical use of marijuana.

Sec. 28. *A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that:*

1. The person engages in or has engaged in the medical use of marijuana in accordance with the provisions of this chapter; or

2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act.

Sec. 29. *1. Except as otherwise provided in this section and subsection 4 of section 19 of this act, the department shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written documentation that the department creates or receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the department or its designee has issued a registry identification card.

2. The department may release the name and other identifying information of a person to whom the department or its designee has issued a registry identification card to:

(a) Authorized employees of the department as necessary to perform official duties of the department; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him pursuant to section 20 or 23 of this act.

Sec. 30. *1. A person may submit to the division a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions pursuant to section 6 of this act.*

2. The division shall adopt regulations setting forth the manner in which the division will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:

(a) The division will approve or deny a petition within 180 days after the division receives the petition;

(b) If the division approves a petition, the division will, as soon as practicable thereafter, transmit to the department information concerning the disease or condition that the division has approved; and

(c) The decision of the division to deny a petition is a final decision for the purposes of judicial review.

Sec. 31. *The provisions of this chapter do not:*

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to accommodate the medical use of marijuana in the workplace.

Sec. 31.3. *1. The director of the department may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of this chapter.*

2. Any money the director receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 31.7 of this act.

Sec. 31.7. *1. Any money the director of the department receives pursuant to section 31.3 of this act or that is appropriated to carry out the provisions of this chapter:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of this chapter, including the dissemination of information concerning the provisions of sections 2 to 33, inclusive, of this act and such other information as determined appropriate by the director; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The director of the department shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 32. *The director of the department shall adopt such regulations as the director determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:*

1. Procedures pursuant to which the state department of agriculture will, in cooperation with the department of motor vehicles and public safety, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the state department of agriculture will:

(a) Issue a registry identification card to a qualified person after the card has been prepared by the department of motor vehicles and public safety; or

(b) Designate the department of motor vehicles and public safety to issue a registry identification card to a person if:

(1) The person presents to the department of motor vehicles and public safety valid documentation issued by the state department of agriculture indicating that the state department of agriculture has approved the issuance of a registry identification card to the person; and

(2) The department of motor vehicles and public safety, before issuing the registry identification card, confirms by telephone or other reliable means that the state department of agriculture has approved the issuance of a registry identification card to the person.

2. Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.

Sec. 33. *The state must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person.*

Sec. 34. Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 35 and 36 of this act.

Sec. 35. *The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of sections 2 to 33, inclusive, of this act.*

Sec. 36. *1. A local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed in accordance with subsection 2.*

2. Money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to subsection 1 must be evenly allocated among:

(a) Nonprofit programs for the treatment of abuse of alcohol or drugs that are certified by the bureau of alcohol and drug abuse in the department;

(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and

(c) Local law enforcement agencies,

in a manner determined by the court.

3. As used in this section, "local authority" means the governing board of a county, city or other political subdivision having authority to enact ordinances.

Sec. 37. NRS 453.336 is hereby amended to read as follows:

453.336 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, osteopathic physician's assistant, physician assistant, dentist, podiatric physician, optometrist, advanced practitioner of nursing or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive ~~.~~ , ***and sections 35 and 36 of this act.***

2. Except as otherwise provided in subsections 3, 4 and 5 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, 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 1 year and a maximum term of not more than 6 years.

4. ~~[Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marijuana:~~

~~(a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~(b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.~~

~~5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:~~

~~(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and~~

~~(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.~~

~~6.]~~ ***Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:***

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; and

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; and

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For a third or subsequent offense, is guilty of a gross misdemeanor and shall be punished by a fine of not less than $1,000 nor more than $2,000.

5. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

Sec. 38. 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, guilty but mentally ill, nolo contendere or similar plea to a charge pursuant to ***subsection 2 or 3 of*** NRS 453.336, ***NRS*** 453.411 or 454.351, 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 prisons.

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 motor vehicles and 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. 39. NRS 453.401 is hereby amended to read as follows:

453.401 1. Except as otherwise provided in subsections 3 and 4, if two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act or conspire to defraud the State of Nevada or an agency of the state in connection with its enforcement of the Uniform Controlled Substances Act, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator:

(a) For a first offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(b) For a second offense, or if, in the case of a first conviction of violating this subsection, the conspirator has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or of any state, territory or district which if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 10 years, and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, or if the conspirator has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 may be further punished by a fine of not more than $20,000 for each offense.

2. Except as otherwise provided in subsection 3, if two or more persons conspire to commit an offense in violation of the Uniform Controlled Substances Act and the offense does not constitute a felony, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator shall be punished by imprisonment, or by imprisonment and fine, for not more than the maximum punishment provided for the offense which they conspired to commit.

3. If two or more persons conspire to possess ***more than 1 ounce of*** marijuana unlawfully, except for the purpose of sale, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator is guilty of a gross misdemeanor.

4. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, the persons so conspiring shall be punished in the manner provided in NRS 207.400.

5. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 1.

Sec. 40. NRS 453.580 is hereby amended to read as follows:

453.580 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to ***subsection 4 of NRS 453.336,*** NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the health division of the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.

2. A program to which a court assigns a person pursuant to subsection 1 must include:

(a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;

(b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is

assigned and the cost of any additional supervision required pursuant to subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 41. NRS 455B.080 is hereby amended to read as follows:

455B.080 1. A passenger shall not embark on an amusement ride while intoxicated or under the influence of a controlled substance, unless in accordance with ~~[a]~~ *:*

(a) A prescription lawfully issued to the person ~~[.]~~ *; or*

(b) The provisions of sections 2 to 33, inclusive, of this act.

2. An authorized agent or employee of an operator may prohibit a passenger from boarding an amusement ride if he reasonably believes that the passenger is under the influence of alcohol, prescription drugs or a controlled substance. An agent or employee of an operator is not civilly or criminally liable for prohibiting a passenger from boarding an amusement ride pursuant to this subsection.

Sec. 42. NRS 52.395 is hereby amended to read as follows:

52.395 ***Except as otherwise provided in section 26 of this act:***

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 43. (Deleted by amendment.)

Sec. 44. NRS 159.061 is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months ~~[.]~~ *, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act;* and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood or marriage of the proposed guardian to the proposed ward.

(e) Any recommendation made by a special master pursuant to NRS 159.0615.

* A B 4 5 3 R 2 *

Sec. 45. NRS 213.123 is hereby amended to read as follows:

213.123 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use ***, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** or any failure or refusal to submit to a test is a ground for revocation of parole.

2. Any expense incurred as a result of any test is a charge against the division.

Sec. 46. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name ~~[,]~~ ***or that he was not using in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 47. NRS 630.3066 is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for ~~[prescribing]~~ ***:***

1. Prescribing or administering to a patient under his care a controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with regulations adopted by the board.

2. Engaging in any activity in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 48. (Deleted by amendment.)

Sec. 49. The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.

Sec. 50. 1. This section becomes effective upon passage and approval.

2. Sections 6, 20, 21, 30 and 32 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2001, for all other purposes.

3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, and 49 of this act become effective on October 1, 2001.

4. Section 37 of this act becomes effective at 12:01 a.m. on October 1, 2001.

Remarks by Assemblymen Giunchigliani and Price.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 453.

Bill read third time.

Remarks by Assemblymen Giunchigliani, Freeman, Brower, Carpenter, Beers and Anderson.

Assemblywoman Angle requested that the following remarks be entered in the Journal.

ASSEMBLYWOMAN GIUNCHIGLIANI:

I would just remind everyone that AB 453 simply implements the will of the people. They spoke, not once but twice, in this State, with more than 65.2 percent of the public supporting it the second time around. In fact, out of the 42 Assembly seats in this body, in at least 34 of the seats, Question 9 received more votes than all of us sitting here. Governor Guinn also received 223,892 votes and Question 9 received 380,926 votes. I think the public knew very well what they were voting on and recognized that under extreme medical conditions they supported the issue of a registry card and allowing an individual to have access to this. This is a states rights issue, which I think Nevadans have long held dear. In the second component of the bill, the de-felonization issue is simply codifying what is current practice, but also offers different protections that are there. By supporting this legislation you are not only instituting the will of the people, you are also stating that you do not believe that drug use is correct; you do believe that prevention and treatment are. That is the focus of this legislation. Thank you.

ASSEMBLYWOMAN FREEMAN:

Thank you, Mr. Speaker. I rise in support of AB 453. It has long been a puzzle to me that people are forced to jump through such hoops to have access to something that is potentially very helpful to those who need it. The medical community and health care facilities have for many years regulated and dispensed controlled substances. There is no reason in the world that we shouldn't have done this a long time ago except for the fear in the law enforcement community that it was an entry level drug. Over the years it probably has been and that is probably all of our faults. I compliment my colleague from Las Vegas in bringing this to us and I think that we need to take the courageous step and support this piece of legislation.

ASSEMBLYMAN BROWER:

Thank you, Mr. Speaker. I rise in opposition, very reluctantly, to AB 453. Let me first echo some of the comments made by my colleague from Reno. I think I said a lot of the same things during the Judiciary Committee's hearing on this bill. As I read the bill, and if you look at it, it is a very long complicated bill. It creates too many hoops to jump through, for those who feel they might benefit from medical marijuana. I support the concept, but I think that this complicated bill creates more problems than it solves. Last week the United States Supreme Court reaffirmed that it is a federal crime to possess or use marijuana. I know that many in this body are thinking as I speak—so what. So what about the Fed's—we don't care what the Fed's do. I have been known to say that from time to time myself. I believe very strongly in state's rights and the principles of federalism, but the fact is that I think this bill puts Nevadans in the position of a Catch 22. We are saying to them—we are not going to prosecute you, go ahead and buy, grow, possess and use. It is a federal crime but don't worry about that. I think it is unfair to put our citizens in that position, despite the fact that many feel the need to use marijuana to solve or relieve their medical problems. I think that those people will continue to do so. We all know that they will, as they have been.

The de-felonization issue is also a concern. The drug court judges I have talked to don't like this bill. They like the current system. They don't charge defendants with felonies for small first-time possession. Our prison system is not full of small-time marijuana possessors. That is not the way it works. I don't see this bill as the answer. I was hopeful that this session we could pass a bill that did not run afoul of Federal Law. Unfortunately, with

the United States Supreme Court's decision of last week we can't do that with this bill. I commend my colleague for trying to tackle this problem that has the attention of so many Nevadans. I don't think this is the answer. If this bill does not make it through I would hope that she and others would continue to attempt to solve this problem. In my opinion it will take Congress changing the Federal Law before we can safely and effectively change the way the system works in Nevada. For those reasons I reluctantly oppose AB 453. Thank you, Mr. Speaker.

ASSEMBLYMAN CARPENTER:

Thank you, Mr. Speaker. I rise in support of AB 453. I think the most important part of this bill is the treatment part. On the first offense you have to find out if you are addicted. On the second time you must go to treatment. If we are ever going to make any headway on the drug problem in this nation it will be through treatment. That is the only thing that works. There were a lot of judges that came to Judiciary in support of allowing people to use marijuana for medicinal purposes. I think the people have spoken. As far as going against Federal Law—that is right down my alley. Thank you, Mr. Speaker. I do support AB 453.

ASSEMBLYMAN BEERS:

Thank you, Mr. Speaker. I rise in support of AB 453 with two points that I don't believe have been made yet. One is that we tell our youth that possession of marijuana is a felony, but it is okay to drink beer till you can't move. I think that undermines the credibility of all the rest of our collective substance abuse control efforts. The other point is that we are one of the last states, if not the last, that has a felony law for possession.

ASSEMBLYMAN ANDERSON:

Thank you, Mr. Speaker. I rise in support of the legislation. The former Chief Justice of the State Supreme Court held a study of judges several years ago from which we are still trying to implement the various recommendations. One of them is this very piece of legislation. The need for this in terms of the hypocrisy that exists in a system that has legislation that mandates one thing, only to see it ignored by the district attorneys. It causes a high level of frustration in the law enforcement agencies that feel they do the right thing by the letter of the law and offenders are not prosecuted. It seems to me we should ask law enforcement personnel to do what we are asking them to do, not any less. If we are not going to enforce the law, we should not have it on the books. That is exactly what this is doing, forcing law enforcement into a difficult position. This legislation will clarify the situation.

Roll call on Assembly Bill No. 453:

YEAS—30.

NAYS—Angle, Brower, Brown, Cegavske, Gibbons, Gustavson, Humke, Lee, Oceguera, Smith, Tiffany, Von Tobel—12.

Assembly Bill No. 453 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 630.

Bill read third time.

Roll call on Assembly Bill No. 630:

YEAS—42.

NAYS—None.

Assembly Bill No. 630 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

Seventy-First Session
May 30, 2001

The Senate Committee on Human Resources and Facilities was called to order by Chairman Raymond D. Rawson, at 2:59 p.m., on Wednesday, May 30, 2001, in Room 2135 of the Legislative Building, Carson City, Nevada. The meeting was video conferenced to the Grant Sawyer Office Building, Room 4401, Las Vegas Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Raymond D. Rawson, Chairman
Senator Maurice Washington, Vice Chairman
Senator Randolph J. Townsend
Senator Mark Amodei
Senator Bernice Mathews
Senator Michael Schneider
Senator Valerie Wiener

GUEST LEGISLATORS PRESENT:

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27
Senator Terry John Care, Clark County Senatorial District No. 7
Assemblywoman Christina R. Giunchigliani, Clark County Assembly District No. 9
Assemblywoman Marcia de Braga, Churchill, White Pine, Eureka (part), and Lander (part) Counties, Assembly District No. 35

STAFF MEMBERS PRESENT:

H. Pepper Sturm, Committee Policy Analyst
Patricia Vardakis, Committee Secretary

OTHERS PRESENT:

Nelza Meligan, Concerned Citizen
Jana Vickers, Concerned Citizen

Gary Yup, M.D., Medical Director, Intensive Care Nursery, Washoe Medical Center
Susan Lund, Concerned Citizen
Lindsey Nunn, Concerned Citizen
Sean G. Gamble, Lobbyist, PacifiCare/Secure Horizons
Bill M. Welch, Lobbyist, Nevada Hospital Association
Kathy Naumann, Lobbyist, Teamsters Local 14
Jean Irwin, Concerned Citizen
Yvonne Sylva, M.P.A., Administrator, Health Division, Department of Human Resources
Charles Duarte, Medicaid Administrator, Division of Health Care Financing and Policy, Department of Human Resources
James J. Jackson, Lobbyist, Nevada Attorneys for Criminal Justice
Daniel M. Hart, Lobbyist, Nevadans for Medical Rights
Rose, Concerned Citizen
Earlene Forsythe, Lobbyist, Cancer Screening and Treatment Center of Nevada
Andy (Eldon) Anderson, Lobbyist, Nevada Conference of Police and Sheriffs
Danny L. Thompson, Lobbyist, Nevada State American Federation of Labor-Congress of Industrial Organizations
John C. Morrow, Lobbyist, Washoe County Public Defender
Phillip Weyrick, Administrative Services Officer I, Fiscal, Services and Personnel, Health Division, Department of Human Resources
Brian K. Krolicki, State Treasurer

Senator Amodei opened the hearing on Assembly Bill (A.B.) 250.

ASSEMBLY BILL 250: Requires screening of certain newborn children for hearing impairments. (BDR 40-155)

Assemblywoman Sheila Leslie, Washoe County Assembly District No. 27, explained a similar bill was proposed by Senator Terry John Care, Clark County Senatorial District No. 7, but he has joined in sponsorship of A.B. 250. She told the committee 34 states have adopted policies or mandates concerning the issue of universal newborn hearing screening. Assemblywoman Leslie stated 12,000, or 1 in 300, infants are born each year with a hearing impairment, and 4000 infants are born profoundly deaf. She said 46 percent of babies in the United States are currently screened for hearing impairment at birth, and in Nevada the total is only 16 percent. Assemblywoman Leslie emphasized Nevada has been rated as unsatisfactory by the National Campaign for Hearing

THE MOTION CARRIED UNANIMOUSLY.

*****

Chairman Rawson opened the hearing, and invited testimony on Assembly Bill (A.B.) 453.

ASSEMBLY BILL 453: Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

Assemblywoman Christina R. Giunchigliani, Clark County Assembly District No. 9, testified A.B. 453 authorizes the use of medical marijuana for treatment of certain medical conditions including AIDS (acquired immunodeficiency syndrome), cancer, glaucoma, ataxia and others. She said A.B. 453 also establishes a registry identification card system for the medical distribution of marijuana. Assemblywoman Giunchigliani stated a person holding a registry identification card is exempt from state prosecution for being in the presence of marijuana. She said a person holding a card could possess, deliver, and produce not more than 1 ounce of usable marijuana, 3 mature plants, and 4 immature plants. Assemblywoman Giunchigliani stated A.B. 453 reduces the penalties for the possession of 1 ounce or less of marijuana for a first offense to a misdemeanor, with a fine of not more than $600, and a mandatory examination for drug treatment. Continuing, she said, for a second offense, the penalty is a misdemeanor with a fine of not more than $1000, and an assignment to a program of treatment and rehabilitation; and for a third offense it is a gross misdemeanor, and a fine not to exceed $2000.

Assemblywoman Giunchigliani emphasized the voters of Nevada have passed this concept on two occasions with 65.4 percent of the vote. She urged the committee not to undermine the "will of the people."

Assemblywoman Giunchigliani stressed the second issue concerning A. B. 453 is the defelonization. Referring to a packet of letters and other information supporting A.B. 453 (Exhibit I), Assemblywoman Giunchigliani called attention to the first letter, written by Nevada Supreme Court Justice, Robert E. Rose, recommending Nevada bring in-line the penalty for possession of small amounts of marijuana with the rest of the nation, and by doing so, would "benefit the

whole judicial system by reducing its workload." She stated A.B. 453 does not permit "trafficking" of marijuana.

Assemblywoman Giunchigliani pointed out items contained within the packet (Exhibit I) were: newspaper articles supporting the defelonization and the medical marijuana issues; an Americans for Medical Rights press release; a legal opinion A.B. 453 would not be impacted by the federal court ruling; a vote tabulation of the Assembly; and a sampling of articles, letters, and e-mails from individuals supporting A.B. 453.

Assemblywoman Giunchigliani acknowledged the key piece to A.B. 453 is assisting people who are severely ill. She emphasized medical doctors would use every treatment available before prescribing medical marijuana.

Senator Wiener questioned how the amounts were determined on page 3, line 41 through 43. Assemblywoman Giunchigliani responded the amounts are an exact model of the Oregon statute. She elaborated on a plan the State Department of Agriculture devised, but was cautioned by the district attorney's office that a state-run plan would "invite the federal government in"; therefore, A.B. 453 addresses the "grow-your-own-method."

Senator Wiener referred to lines 5 through 9, on page 9 of A.B. 453 and asked whether other places had been considered. Assemblywoman Giunchigliani responded even though an individual possesses an identification card that does not exempt them from prosecution, if they are driving, operating, or in control of a vehicle or vessel, they cannot engage in conduct prohibited by law, and cannot possess a firearm. Continuing, she clarified for Senator Wiener no other public place, other than what is included in A.B. 453, was discussed.

Senator Wiener queried why there was no treatment recommended at the third offense, and what the legal effect would be of not completing treatment at the other offense levels. Assemblywoman Giunchigliani responded defelonization in A.B. 453 was crafted to focus on a prevention and treatment program, but at the third-level offense it was left to the judgment of the courts. She explained the fines collected would be used for drug treatment and prevention. Senator Wiener questioned what the consequence would be of a person not completing a drug program ordered by the courts. Assemblywoman Giunchigliani replied it would come under the jurisdiction of the judge.

Senator Wiener opined A.B. 453 could be interpreted to mean the judge does not have the option to send an offender, at the third level, to participate in drug treatment. Assemblywoman Giunchigliani stated an amendment to clarify that issue would be acceptable.

Senator Amodei voiced agreement with Senator Wiener explaining the progression of treatment and help appears to stop before the third level of offense. He questioned whether the consequences for this type of drug offense are consistent with those for alcohol abuse. Assemblywoman Giunchigliani suggested, by including lines 23 and 24 in lines 25 through 27, on page 15 of A.B. 453, the judge would not be prohibited from ordering a drug treatment program. Another proposal made by Assemblywoman Giunchigliani was to include, "and/or" in all three offenses.

Senator Amodei questioned why a jail term was excluded at the "chronic" level. Assemblywoman Giunchigliani opined a judge would have that discretion.

James J. Jackson, Lobbyist, Nevada Attorneys for Criminal Justice, said the word "shall" would restrict the discretion of the court. Senator Amodei commented it would be responsible of the legislature to allow the judicial officer full discretion over the penalty for a gross misdemeanor. Mr. Jackson addressed Chairman Rawson and offered to assist in drafting language to overcome that concern. Assemblywoman Giunchigliani concurred with the suggestion.

Chairman Rawson questioned whether there were federal laws addressing the growing of marijuana. Assemblywoman Giunchigliani replied it would be a schedule 1 offense for marijuana. Chairman Rawson queried where a "home grower" would obtain seeds without getting involved in "trafficking." Assemblywoman Giunchigliani responded the Internet would provide access. Continuing the discussion, Chairman Rawson commented on federal programs for raising research marijuana.

Daniel M. Hart, Lobbyist, Nevadans for Medical Rights, stated the federal programs are very limited with approximately a dozen patients nationally. He stated the Nevadans for Medical Rights support A.B. 453. Mr. Hart voiced concern about requiring a terminally ill person to grow marijuana. He suggested using police-confiscated marijuana for terminally ill patients. Chairman Rawson questioned whether the police would be considered distributing an illegal

substance. Mr. Hart replied the federal policy and law are inconsistent concerning this issue.

Chairman Rawson asked for an estimated number of patients A.B. 453 would affect. Assemblywoman Giunchigliani responded there would be approximately 200 patients over a 12- to 18-month period. She noted the Oregon model, over a 5-year period, has had 1900 patients, and only 2 instances of any type of legal violation. Chairman Rawson asked whether the patients were critically ill. Assemblywoman Giunchigliani answered the patients were both chronically and critically ill.

Chairman Rawson questioned whether a caregiver under state law could grow marijuana for a patient who is chronically or critically ill. Assemblywoman Giunchigliani and Mr. Hart answered in the affirmative. Chairman Rawson questioned whether there was a mechanism which would allow patients to grow or obtain marijuana without being in violation of federal law, such as a properly-sponsored research program. Mr. Hart objected to the concept proposed by Chairman Rawson because he emphasized the referendum voted on by the people of Nevada was specific in terms of this issue. Chairman Rawson acknowledged his understanding of the intent of the language, but commented on the legal obligation of the legislature.

Mr. Jackson opined a research program would complement the initiative and the referendum passed by the voters. Chairman Rawson asked whether the federal government determines the proper execution of a study, or could a medical school conduct appropriate studies. Assemblywoman Giunchigliani stated research shows a parallel program is best, but the state would need to apply to the federal government for permission.

Chairman Rawson commented there were two pieces to consider: one, would be the supplying of the substance; and the other would be to determine whether people fit a certain model and place them in a program that is considered by the state an appropriate research methodology. Assemblywoman Giunchigliani asked whether that would be in addition to what is currently proposed in A.B. 453. Chairman Rawson remarked he was exploring alternative approaches. Assemblywoman Giunchigliani declared if this suggestion was in addition to, and paralleled A.B. 453, then she said the alternative could be considered, but, not in lieu of A.B. 453.

Chairman Rawson explored the possibilities of a statewide research program. Mr. Hart commented federal approval for such a program would have a long wait. Mr. Jackson said, in the Oakland Cannabis case, the U.S. Supreme Court put "extra language" in the opinion because the justices were struggling for a way a medical necessity would not run "afoul" of the controlled substances act. He stated the U.S. Supreme Court decided a medical necessity would need to be part of a medical study. Mr. Jackson said a medical study would satisfy the Oakland Cannabis case, but, he opined, it would not restrict the state's ability to produce a plan which would allow for the possession of marijuana under certain circumstances.

Chairman Rawson mentioned Nevada is renowned for "going beyond convention." Assemblywoman Giunchigliani commented the Nevada State Department of Agriculture has a "seed lab" for marijuana, and the department formulated a plan which was broached to the U.S. Drug Enforcement Administration (DEA) in Las Vegas, but the DEA did not have the authority. She said consequently the federal government warned the DEA, if such a project were undertaken, they would disband such an operation.

Senator Washington questioned the use of marijuana over the use of Marinol, a pill with the marijuana derivative. Assemblywoman Giunchigliani explained Marinol may work for some patients but not all, and Marinol does not contain all the ingredients of marijuana. She reiterated a physician would use medical marijuana as a last measure after all other medical intervention had been tried. Senator Washington claimed reports state Marinol works just as effectively as marijuana. Mr. Hart clarified marijuana is inhaled and helps with the "wasting or nausea" associated with chemotherapy or various medications, whereas, Marinol is a pill patients ingest. He added controlling the dosage of Marinol is another problem.

Chairman Rawson asked whether Marinol is a legal, class 2 drug. Assemblywoman Giunchigliani answered in the affirmative, and said it could be prescribed by a physician.

Rose, Concerned Citizen, told the committee her husband is a paraplegic, and smoking marijuana assists him with the painful spasms he suffers due to his condition. She urged the committee to vote in favor of A.B. 453.

Senator Mathews questioned whether there was a continuous source and supply of medical marijuana for her husband. Rose declined to answer the question, but said when A. B. 453 is put into effect she and her husband would follow the new process. Chairman Rawson asked whether secondhand smoke was an issue in her home. Rose responded her husband smokes in another part of the house, and she personally does not indulge in this practice.

Chairman Rawson stated a subcommittee would be formed to discuss and conclude any outstanding issues concerning A.B. 453.

Senator Washington asked for a clarification of the effects of Marinol.

Earlene Forsythe, Lobbyist, Cancer Screening and Treatment Center of Nevada, told the committee she was a nurse practitioner and works with her husband, treating approximately 600 cancer patients a month. She said 10 to 15 percent of the patients do not experience relief from pain medications; therefore, the patients provide their own source of marijuana. Mrs. Forsythe explained Marinol does not give the same effect as smoking marijuana.

Andy (Eldon) Anderson, Lobbyist, Nevada Conference of Police and Sheriffs, stated he was representing the "street officers," and the defelonization proposed in A.B. 453 is appropriate. He said A.B. 453 would assure patients were getting the proper medical marijuana, not "street marijuana" which could be laced with other substances. Mr. Anderson stressed control over the program would be important.

Danny L. Thompson, Lobbyist, Nevada State American Federation of Labor-Congress of Industrial Organizations, testified in support of A.B. 453, and stressed the people have voiced their consent on this issue. He stated it is incumbent upon the legislature not only to satisfy the "will of the people," but to keep our laws intact.

Ms. Naumann spoke on behalf of Gary H. Wolff, Lobbyist, Nevada Highway Patrol Association, and Teamsters Local 14, in support of A.B. 453.

John C. Morrow, Lobbyist, Washoe County Public Defender, stated the medical benefits of A.B. 453 were important, and the defelonization would be an appropriate step. Mr. Morrow addressed a concern previously expressed about the graduated punishment level, and stated a third offense for possession being

considered a gross misdemeanor, escalates the offense to be under the supervision of the Division of Parole and Probation.

Senator Amodei asked whether placing a period at the conclusion of the language ". . . is guilty of a gross misdemeanor. . ." on line 25, page 15 of A.B. 453, would leave all the sentencing options under the gross misdemeanor statute open to a judge. Mr. Morrow opined a person could not be sent to jail with A.B. 453 in the present form. He said Senator Amodei's suggestion would remove all ambiguity and make the third offense a true gross misdemeanor, and allow the judge every latitude. Senator Amodei commented the judge could then sentence the offender accordingly.

Senator Wiener echoed the same concern, and asked for affirmation of the escalation process in A.B. 453. Mr. Morrow responded positively. Senator Wiener questioned the penalty of an offender violating a proposed treatment program. Mr. Morrow replied the sanction would be a contempt of court, or civil contempt.

Chairman Rawson closed the hearing on A.B. 453, and assigned Senator Amodei and Senator Wiener to work on the subcommittee concerning A.B. 453.

Chairman Rawson opened the hearing A.B. 630.

ASSEMBLY BILL 630: Revises provisions regarding system for reporting of information on cancer that is maintained by state health officer. (BDR 40-1456)

Assemblywoman Marcia de Braga, Churchill, White Pine, Eureka (part) and Lander (part) Counties, Assembly District No. 35, testified A.B. 630 would expedite the process of reporting cases of cancer to the State Board of Health, to be compiled in the cancer registry. She explained, during the investigation of leukemia cases in Fallon, it was discovered the cancer registry was behind in data by 2 years. Assemblywoman de Braga noted A.B. 630 requires a fine of up to $1000 for not reporting in a timely manner. She mentioned A.B. 630 has a provision the Health Division would compile the data not later than 6 months after the information has been received. Chairman Rawson commented on the importance of reporting to the cancer registry in a timely manner.

SUPREME COURT OF NEVADA
ROBERT E. ROSE, JUSTICE
201 SOUTH CARSON STREET
CARSON CITY, NEVADA 89701-4702

Statement of Robert E. Rose
Justice, Nevada Supreme Court
Remarks before the Judiciary Committee of the Nevada State Assembly
April 10, 2001

Dear Chairman and Committee Members:

In 1993, the Nevada Supreme Court created the Nevada Urban Court Workload Assessment Commission which consisted of 50 members representing all walks of life. About half of the members were non-lawyers, and they were charged with studying the Nevada judiciary without fear of political or special interest pressure. The Commission studied the operation of Nevada's urban courts for over a year and made many recommendations that it believed would improve the operation and efficiency of our urban courts. Since I asked for the creation of the Commission and chaired it, it became known as the Rose Commission.

One of the recommendations the Commission made in 1994 was to reduce the penalties for the possession of small amounts of marijuana. It recommended that an ounce or less of marijuana be a simple misdemeanor, that possession of more than one ounce but less than 4 ounces be a gross misdemeanor, and that possession of 4 ounces or more of marijuana remain a felony. In effect, the Commission recommended that the possession of small amounts of marijuana be a misdemeanor or gross misdemeanor.

The rationale for this recommendation were several. First, the Commission found that Nevada was "isolate" in its treatment of possession of small amounts of marijuana as a felony. It felt that defelonizing the possession of small amounts of marijuana would bring the penalty in line with almost every other state, in line with the criminal justice practice in most areas of Nevada, and that the punishment would better fit the crime.

Second, this penalty reduction would "benefit the whole judicial system by reducing its workload." At present, an arrest for the possession of any amount of marijuana is a felony and requires booking, detention at a jail facility, appointment of counsel, a preliminary hearing, trial and possible prison incarceration. Reducing the penalty would reduce the procedures and costs considerably. In this way, valuable resources could be devoted to handling more serious charges and jail or prison space would be left for those who commit more serious crimes.

I might add that the penalties for marijuana in the state result in disparate treatment throughout the state. In the urban areas of Nevada, simple possession of a small amount of marijuana is usually reduced to a gross misdemeanor or misdemeanor or resolved in Drug Court. It seldom results in a felony charge, let alone a conviction. In the rural counties, any possession of marijuana is usually charged as a felony and may or may not be dealt down to a gross misdemeanor, depending on the attitude of the prosecutor and law enforcement in the county. In the urban counties, possession will almost always be processed as a misdemeanor or a Drug Court case, while in the rural counties you probably will face felony charges.

I know some people say that while reducing the penalties for a small amount of marijuana may be appropriate, it will send the wrong message to our young people. My answer is that our young people are bright and quite informed nowadays. If we are worried about sending signals or signs to the public, I think we should be most concerned about sending realistic messages and that in our legislation the punishment should fit the crime.

The Rose Commission was reconvened when I became Chief Justice again in 1999. It reviewed its old recommendations and a few new areas of court operation. In 2000, it renewed its recommendation for the reduction of the penalties for a small amount of marijuana to a misdemeanor and cited the same reasons for the recommendation.

I want to make it clear that this recommendation is not that of the Nevada Supreme Court or any of its justices. It is the recommendation of 50 citizens of Nevada who believe that each recommendation will improve the justice system in our state.

Simplifying the Maze

A Fresh Look at Nevada's Court System

The Nevada Supreme Court
Judicial Assessment Commission

1999-2000

Preface

In 1993, the Nevada Supreme Court initiated the **Judicial Assessment Commission** – dubbed ***The Rose Commission*** for its sponsor, then-Chief Justice Bob Rose – and gave it authority to take a broad look at Nevada's justice system and laws. The assignment was simple: make recommendations for innovative and needed changes to ''simplify the maze'' of our urban courts without regard for politics or other special interests.

Four task forces were established by the Commission: ***Access to and Quality of Justice, Court Administration, Special Court Structures and Criminal Justice.***

Resulting recommendations led to the passage of new laws by the Legislature and new rules by the Nevada Supreme Court, enabling the court system at every level to work better for the people. The recommendations enacted included:

- Truth in sentencing legislation
- Establishment by Supreme Court Rule of Strong Chief Judge systems in Clark and Washoe Counties
- Funding for construction of an expanded Clark County jail
- Authorization and funding of new Family Court judges in Clark County
- Expansion of Drug Court programs
- Co-location of the Las Vegas Municipal Courts and Justice Courts in the Justice Center currently under construction
- Making the Municipal Court in Las Vegas a "court of record"
- Statewide collection of judicial workload statistics
- Creating a Division of Planning and Analysis at the Administrative Office of the Courts, Supreme Court of Nevada

Bolstered by that success, Justice Rose – when he again became Chief Justice in 1999 – reconvened the **Judicial Assessment Commission** and asked its members to take another look at a justice system that had gone through a series of changes in operating procedures and personalities during the previous five years.

This report describes the recommendations resulting from the 1999-2000 *Rose Commission's* fresh look at our justice system.

Introduction

The 1999-2000 **Judicial Assessment Commission** reviewed and fine-tuned many of its prior recommendations, reaffirming its position on sometimes politically sensitive issues:

- The appointment rather than election of new judges
- Consolidation of Municipal and Justice Courts
- Re-categorizing minor traffic offenses and ``neighborhood dispute'' misdemeanors from crimes to civil infractions.

The *Rose Commission* also renewed its 1994 call to **reduce penalties for possession and use of small quantities of marijuana.** Such crimes are now felonies and the recommendation is they be reduced to misdemeanors or gross misdemeanors. This would reduce jail populations because violators would receive citations rather than being arrested. Although a controversial concept, the passage of such a law already has received support in newspaper editorials.

Perhaps the two Commission recommendations that will have the greatest impact on the future of the judicial system already have been implemented in response to the 1994 Commission report. They involve simple accountability through the **collection of uniform statistics** and the **establishment of a Division of Planning and Analysis at the Administrative Office of the Courts** to collect and analyze the data.

Commission members had noted in 1994 that the National Center for State Courts publishes periodic reports comparing judicial caseload statistics of the states and Nevada traditionally had the least comprehensive data. That was due in part to the lack of a standardized statistical model, resource problems at some courts in Nevada that hampered the gathering of the information and limited staffing at the Administrative Office of the Courts to process the statistics.

The Legislature, in response to a proposal from the Nevada Supreme Court, expanded the Administrative Office of the Courts and created a Division of Planning and Analysis, which set the statistical standards. In 1999, the Supreme Court issued an order establishing the **Uniform System for Judicial Records**, requiring every court in the state to collect caseload statistics and provide them to the Administrative Office of the Courts.

The courts must report statistics about the number of cases filed, number and type of dispositions, events occurring in each case and the status of pending cases.

Full implementation, however, will be on a staggered schedule because not all courts are immediately able to produce all statistics. Yet enough caseload statistics have been compiled for the publication of the Nevada judicial system's first Annual Report in December 2000.

Additional statistics will be added in future years, finally bringing Nevada in line with other states.

CHAPTER 2:

Commission Members

Membership of the **Judicial Assessment Commission** in 1999-2000, with few exceptions, was the same as in 1994.

Most members have connections to or experience in the legal community and, as such, are familiar with current laws and processes. Other members, however, were chosen from outside the justice system for their skills, business knowledge or community involvement. They brought a fresh perspective to a judicial structure steeped in formality and traditionally slow to change.

As in 1994, the Commission in 2000 was divided into four task forces – ***Access to and Quality of Justice, Court Administration, Special Court Structures and Criminal Justice***

Supreme Court of Nevada

1999-2000

JUDICIAL ASSESSMENT COMMISSION

CHIEF JUSTICE ROBERT E. ROSE
Commission Chair

TASK FORCE CHAIRS

Dr. Bill Berliner
Medical Director, Health Insight
Las Vegas
Access to and Quality of Justice

Anna Peterson
District Court Administrator (retired)
Las Vegas
Court Administration

Judge Nancy Oesterle
Las Vegas Township
Justice Court
Criminal Justice

Larry Hyde
Judicial College Dean (retired)
Reno
Special Court Structures

MEMBERS

Judge Brent Adams
Second Judicial District, Reno

Assemblyman Morse Arberry (inactive)
Las Vegas

Sandra Lee Avants
Commissioner
Department of Business & Industry
Transportation Services Authority

Justice Nancy Becker
Nevada Supreme Court

District Judge Janet Berry
Second Judicial District, Reno

Sue Berfield
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Las Vegas

Linda Bonicci
KLAS-TV marketing director
Las Vegas

Torris Brand, Esq.
Las Vegas

Judge Rodney Burr
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Roxanne Clark-Murphy, PhD
Las Vegas Municipal Court
Evaluation Center

Carol Cohen
Nevada Parole and Probation
Las Vegas

Brian Doran
Deputy State Court Administrator
Nevada Supreme Court

Russ Eaton (inactive)
Court Administrator (Retired)
Las Vegas Justice Court

Walt Elliot
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Nevada AFL-CIO

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Debra Gauthier
Metropolitan Police Department
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Michael Havemann
Court Administrator
Las Vegas Municipal Court

Dorothy Nash Holmes
Deputy Attorney General
Carson City

Joni Kaiser
Executive Director
Committee to Aid Abused Women

Karen Kavanau
State Court Administrator
Nevada Supreme Court

Cathy Krolak
Court Administrator
Sparks Municipal Court

Dr. Paul Martin
Director, Clark County
Detention Center

Michael L. Miller
Chief Deputy Public Defender
Las Vegas

Terry Miethe
Chair, Department
Of Criminal Justice
University of Nevada,
Las Vegas

Steve Morris
Court Administrator
Las Vegas Justice Court

Steve Morris, Esq.
Schreck & Morris
Las Vegas

Julie Neil
Outback Media
Las Vegas

Kathy Ong
Financial Consultant
Hobbs, Ong & Associates

Susan Pacult
Program Administrator
Clark County Social Services

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John Sherman
Finance Director
Washoe County

Charles Short
Court Administrator
Eighth Judicial District Court
Las Vegas

Ulrich Smith, Esq.
Las Vegas

William Snyder
Tate & Snyder Architects
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Bob Teuton
Chief Deputy District Attorney
Las Vegas

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Las Vegas Justice Court

Senator Dina Titus
Las Vegas

Judge James Van Winkle
Reno Municipal Court

David Wall
Chief Deputy District Attorney
Las Vegas

Alfred Wiggs
Justice Court Bailiff
Las Vegas

Judge Robey Willis
Carson City Justice Court

STAFF

Bill Gang
Statewide Court Program Coordinator
Administrative Office of the Courts

Lynda Dill
Management Analyst
Administrative Office of the Courts

Beth Mammen
Management Analyst
Administrative Office of the Courts

RJ 12/17/00

Common sense on drugs

Nevada lawmakers have traditionally lacked the guts to implement more rational approaches to minor drug crimes — witness how Assemblywoman Chris Giunchigliani's biennial effort to soften the state's toughest-in-the-nation marijuana law ends up in the circular file each session.

Privately, many legislators agree that Ms. Giunchigliani's effort is a worthy one. But publicly they tremble at the notion of seeing an opponent's campaign flier paint them as soft on crime or drug use.

On Monday, though, a panel of the state Supreme Court offered the Legislature a bit of cover. The court's Judicial Assessment Commission recommended that possessing a small amount of marijuana be treated as a misdemeanor rather than a felony and that certain minor drug users be diverted to treatment programs instead of sent to prison.

These reforms make eminent sense. And if lawmakers still erroneously believe the public won't tolerate such change, how do they account for the fact that Nevada voters have twice overwhelmingly approved a ballot question supporting the medicinal use of marijuana? And why, despite vociferous opposition from law enforcement groups, did California voters just last month give the go-ahead to an initiative that sends minor drug users to treatment rather than jail?

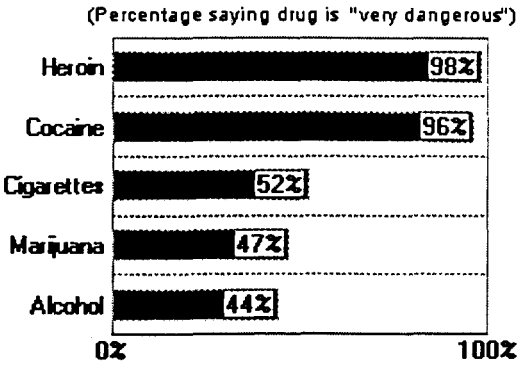
Lawmakers should do the right thing and heed the state Supreme Court panel's suggestions. They'll be surprised at the reaction.

LAS VEGAS
REVIEW-JOURNAL
a member of the Donrey Media Group

Drugs: Red Flags

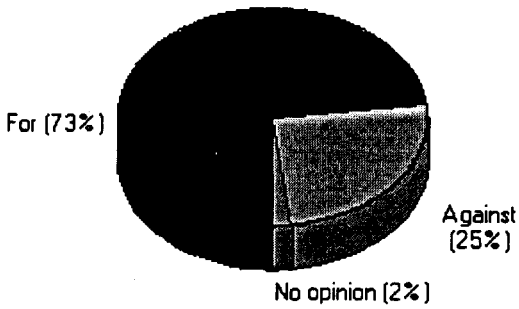
The public does not consider marijuana as dangerous as cocaine or heroin and support its use for medical reasons

For each of the following drugs, please tell me if you believe use of the drug is very dangerous...



Source: Gallup Organization/ CNN/ USA Today 8/95

Suppose on Election Day this year, you could vote on key issues as well as candidates. Please tell me whether you would vote for or against each one of the following proposals: making marijuana legally available for doctors to prescribe in order to reduce pain and suffering?



Source: Gallup Organization 3/99

For more details

Understanding the Issue:
Overview | Notable & Newsworthy | Fact File | Framing the Debate | Quick Takes | Sources & Resources

Public Opinion:
People's Chief Concerns | Major Proposals | A Nation Divided? | Red Flags | Selection Criteria

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Las Vegas SUN

March 29, 2001

Nevada measures tougher on DUIs, easier on pot possession

By Siobhan McDonough
ASSOCIATED PRESS

CARSON CITY, Nev. (AP) - If Nevada is a seeming paradox, with its round-the-clock gambling and drinking but harsh criminal laws, its lawmakers are no different - proposing tougher drunken driving laws but softer marijuana statutes.

"It reflects the uniqueness of Nevada. It almost seems like a contradiction," said Assemblywoman Sheila Leslie, D-Reno. "It shows our Libertarian bent - a 'you do your thing as long as you aren't hurting me' attitude."

This session, Assemblywoman Chris Giunchigliani's AB453 would authorize medical use of marijuana and decriminalize possession of small amounts of pot - while Assemblyman Mark Manendo's AB166 would lower the permitted blood-alcohol limit for drivers from 0.10 to 0.08.

"It's unusual we'd have the harshest law on marijuana possession on the books - it conflicts with our Libertarian way. But it doesn't conflict with our tradition of being conservative and strict on crime," Leslie said. "Alcohol kills far more than marijuana."

Manendo wants to reduce the deaths caused by drunken driving. He says if the blood-alcohol limit in drivers is lowered to 0.08 nationally, each year up to 600 DUI-related fatalities would be prevented around the country.

"This is a lifesaving measure," Manendo said, adding that the bill faced strong casino industry opposition in the past but has a good chance this year because Congress mandated the lower blood-alcohol level.

Nineteen states already have imposed the 0.08 level, and if Nevada doesn't do the same by 2003 it will lose millions of dollars in federal highway funds.

In 2000, there were 255 fatal crashes resulting in 309 deaths reported across the state, according to the state Office of Traffic Safety. About a third of the deaths were alcohol-related.

Assemblyman John Carpenter, R-Elko, said he resents the federal government's intrusive manner, adding, "We need to be passing laws on the basis of whether the law is good."

But Assembly Judiciary Chairman Bernie Anderson, D-Sparks, hopes the Legislature acts on the lower DUI standard now "before it's pushed in our face. We have an opportunity to be more thoughtful."

Harvey Whittemore, representing the Nevada Beer Wholesalers' Association, said that states with lower DUI levels don't necessarily have fewer fatal drunken-driving accidents, and that other factors such as educating people about drunken driving and building safe roads also reduce the number of fatalities.

"We're concerned about the continued attempt by many to turn this into a Prohibition," he adds.

But others, including Assemblywoman Barbara Cegavske, R-Las Vegas, don't think the bill is tough enough.

"If we want to tell people not to drink and drive, we need to have a limit of 0.0," she said. "We're sending the wrong message - that a little bit of alcohol is OK to have and drive. The message really is: don't drink and drive."

While the penalties for drunken driving might get stricter, getting caught with small amounts of marijuana could result in softer sentences than the current felony penalties that can be imposed.

Giunchigliani, D-Las Vegas, says her strategy to get the possession penalty eased was to link it with the medical marijuana plan mandated by the state's voters.

The ballot plan, approved by nearly two of every three voters, allows use of marijuana by cancer, AIDS, glaucoma victims and others with painful and potentially terminal illnesses.

"We don't want to nail people who are using it for medical purposes," Giunchigliani said.

She adds that while those who don't have a medical excuse for possessing marijuana will have a price to pay, it won't be high.

Giunchigliani wants a misdemeanor fine for people caught with an ounce or less of marijuana. A second offense would result in a higher fine and assignment to a treatment or rehabilitation program. Third-time offenders would be charged with a gross misdemeanor and have to pay an even steeper fine.

As the law stands now, she says, "It ends up being a bunch of paperwork for police. They need to focus their energies on violent criminals, and cocaine and crack addicts."

"Maybe it's a reflection that our drug policy has failed."

Carpenter tends to vote conservatively, but favors decriminalizing possession of small amounts of pot.

"The only way to make inroads on the drug problem is through treatment and to some, that is punishment. They need to have the fear of the devil put into them."

Veteran Assemblyman Joe Dini, D-Yerington, also backs decriminalization, saying he's concerned about the mark a felony leaves on the record of a young person caught with marijuana.

"That's a bad rap. The rest of their life they have that on their record. Maybe the law is too strict, and

we're not winning the war."

Return to the referring page.
Las Vegas SUN main page

Questions or problems? Click here.

AMERICANS FOR
MEDICAL RIGHTS

Making Effective Medical Marijuana Policy

Successful Ballot Initiatives:

Alaska *Question 8*

Arizona *Proposition 200*

California *Proposition 215*

Colorado *Amendment 20*

Maine *Question 2*

Nevada *Question 9*

Oregon *Measure 67*

Washington *Initiative 692*

FOR RELEASE:
March 26, 2001

CONTACT:
Debi Waterstone at (310) 394-2952

On Eve of Supreme Court Medical Marijuana Case, 'Contradiction and Cowardice' Mark Federal Policy

LOS ANGELES, March 26 — President **George W. Bush** opposes legalizing marijuana for medical use, but supports states' rights to decide the issue themselves.

Federal agencies, led by the Drug Enforcement Administration (DEA), have rebuffed efforts to reclassify marijuana as a medically useful drug. Yet seven patients still receive monthly shipments of marijuana at their local pharmacies, under a federal program begun in 1976.

A frequently heard federal agency position is that "science should decide" whether marijuana is made available medically. But the findings and advice in a **landmark 1999 Institute of Medicine (IOM) report** – which found both that marijuana clearly helps patients and should be studied further – have largely been ignored.

Bill Zimmerman, executive director of Americans for Medical Rights, said, "Wherever you look in federal policy on medical marijuana, there is contradiction and cowardice. There are tiny glimmers of compassion amid a long-standing policy of hard-line opposition. It seems no one in Washington, D.C., will actually defend what the government is doing: inhibiting or destroying patients' access to a beneficial medicine."

Despite vehement opposition from former drug czar Barry McCaffrey and other federal officials, efforts to make medical marijuana available have progressed at the state level. Since 1996, nine states have passed laws allowing patients to grow and use marijuana with a doctor's approval – eight by ballot initiative. In two of those states, Maine and Nevada, legislation to authorize state-sponsored methods of distribution of marijuana to patients is under active consideration.

(continued)

1250 Sixth Street #202 • Santa Monica, CA 90401 • (310) 394-2952 • fax (310) 451-7494
www.mednjscience.org • www.drugreform.org

President Bush seemed to recognize the states' progress when, at an October 19, 1999, campaign appearance in Seattle, he answered questions about medical marijuana by saying, **"I believe each state can choose that decision as they so choose."** He later said he personally opposed legalizing medical marijuana, offering the hope that the drug's constituent chemicals could be refined for medical use at some point in the future.

Zimmerman said, "Bush's position on medical marijuana is well-rooted in our tradition of respect for states' rights. On difficult issues, especially, it is best to let the states innovate."

Zimmerman continued, "Nine states are now working out the details of regulating medical marijuana without legalizing it for recreational use."

"It's a series of experiments that will continue," Zimmerman said, "regardless of the outcome of the pending U.S. Supreme Court case. For as long as thousands of patients have no real alternative to marijuana, legalizing it for medical use will remain an urgent issue at both the state and federal levels."

On Wednesday, March 28, the U.S. Supreme Court will hear oral arguments in a case entitled *United States vs. Oakland Cannabis Buyers' Cooperative*. At issue is a Ninth Circuit Court of Appeals decision that permitted a group of patients and caregivers – the Oakland cooperative – to grow and distribute marijuana to patients with a medical need for the drug.

Neither the California state law permitting patients to grow and use marijuana, known as Proposition 215 in 1996, nor any other state law is at issue in the case. None of these state laws expressly provides a method for distribution of marijuana.

"The Supreme Court is taking up this issue at a time when voters have given clear expression to the national will," Zimmerman said. "Voters want patients to have access to marijuana if they need it. We hope to see some respect for that fact when the court decides this issue."

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United States vs. Oakland Cannabis Buyers' Cooperative

CASE SUMMARY

Fourteen months after California voters approved Proposition 215, the Oakland Cannabis Buyers' Cooperative was one of six medical marijuana distribution centers in Northern California named in a federal civil suit brought by the U.S. Justice Dept. in January 1998. The government obtained an injunction in 1999 ordering all the centers to cease distributing marijuana, but the Oakland center appealed, arguing that its members had the right to distribute the drug to patients with a documented "medical necessity."

In separate rulings in 1999 and 2000, the U.S. Court of Appeals for the Ninth Circuit cleared the way for the Oakland center to resume distributing marijuana to a narrowly defined class of patients. Citing both patients' rights to use a medically necessary drug and the public interest, the Ninth Circuit ordered the lower court to modify its injunction to permit the Oakland center to reopen. The lower court was to craft rules for oversight of the center's operations.

Before the Oakland center could take advantage of these rulings and resume operations, the Justice Dept. obtained Supreme Court intervention to stay the Ninth Circuit ruling and review it. Oral arguments take place March 28.

WHAT IS AT ISSUE

- Does the doctrine of "medical necessity" permit seriously ill patients to use marijuana as a medicine? Does "medical necessity" also exempt from federal drug laws those who grow and distribute marijuana to these patients?
- Are medical marijuana cooperatives a legal means of distributing the drug to patients? Might there be other legal means of regulating distribution?
- Do Ninth and Tenth Amendment protections of the rights of the people, and of the states, permit state- or local-level regulation of medical marijuana distribution?

WHAT IS NOT AT ISSUE

- The *Oakland CBC* case is not a constitutional challenge of California's Proposition 215, the medical marijuana initiative that serves as the backdrop to the case; in fact, none of the newly enacted state laws on medical marijuana have been challenged on constitutional or federal "supremacy" grounds.
- The rights of patients to use, cultivate or possess marijuana for medical use under nine state laws (AK, AZ, CA, HI, ME, NV, OR, WA) are not being challenged.
- Medical marijuana distribution bills now being considered by legislators in **Maine** and **Nevada** propose state-sanctioned, rather than "cooperative" distribution; therefore it is uncertain how these legislative efforts might be affected, even by an adverse ruling in the *Oakland CBC* case.

STATE OF NEVADA
LEGISLATIVE COUNSEL BUREAU
LEGISLATIVE BUILDING
401 S. CARSON STREET
CARSON CITY, NEVADA 89701-4747
Fax No.: (775) 684-6600

LORNE J. MALKIEWICH, *Director*
(775) 684-6800

LEGISLATIVE COMMISSION (775) 684-6800
ANN O'CONNELL, Senator, *Chairman*
Lorne J. Malkiewich, *Director, Secretary*

INTERIM FINANCE COMMITTEE (775) 684-6821
WILLIAM J. RAGGIO, *Senator, Chairman*
Gary L. Ghiggeri, *Fiscal Analyst*
Mark W. Stevens, *Fiscal Analyst*

Wm. GARY CREWS, *Legislative Auditor* (775) 684-6815
ROBERT E. ERICKSON, *Research Director* (775) 684-6825
BRENDA J. ERDOES, *Legislative Counsel* (775) 684-6830

May 17, 2001

Assemblywoman Chris Giunchigliani
Assembly Chambers

Dear Assemblywoman Giunchigliani:

You have asked this office to explain the effect of the recent decision of the United States Supreme Court in United States v. Oakland Cannabis Buyers' Coop., No. 00-151, slip op. (May 14, 2001), on Senate Bill No. 545 ("S.B. 545") and Assembly Bill No. 453 ("A.B. 453") of the 2001 Legislative Session. Below, we address this question by reviewing the case and other relevant sources of law.

I. PROCEDURAL HISTORY AND EXPLANATION OF OAKLAND CANNABIS

The issue decided in Oakland Cannabis first arose in the United States District Court for the Northern District of California in United States v. Cannabis Cultivators Club, 5 F. Supp. 2d 1086 (N.D. Cal. 1998), *rev'd* 190 F.3d 1109 (9th Cir. 1999). In Cannabis Cultivators, the United States sought an injunction to prohibit the Cannabis Cultivators Club from manufacturing, distributing and possessing marijuana with the intent to manufacture and distribute in violation of the federal Controlled Substances Act ("CSA"). Id. at 1092-93. In relevant part, the defendant Club argued that "even if the Controlled Substances Act prohibits their conduct, the injunction must nevertheless be denied because they are entitled to the common law defense of necessity."[1] Id. at 1101. In effect, the defendant Club attempted to argue that it had a "blanket" defense of necessity with respect to any ill person to whom the Club might distribute marijuana. In response to this argument, the District Court explained that:

[1] As explained by the United States District Court for the Northern District of California, to be entitled to the common law defense of necessity, a person "must prove (1) that they were faced with a choice of evils and chose the lesser evil; (2) they acted to prevent imminent harm; (3) they reasonably anticipated a direct causal relationship between their conduct and the harm to be averted; and (4) that there were no legal alternatives to violating the law." Cannabis Cultivators, 5 F. Supp. 2d at 1101 (citing United States v. Aguilar, 883 F.2d 662, 693 (9th Cir. 1989)).

> [T]he defense of necessity has never been allowed to exempt a defendant from the criminal laws on a blanket basis. To put it another way, for the defense to be available here, defendants would have to prove that each and every patient to whom it provides cannabis is in danger of imminent harm; that the cannabis will alleviate the harm for that particular patient; and that the patient had no other alternatives, for example, that no other legal drug could have reasonably averted the harm.

Id. at 1102 (emphasis added). Having rejected the applicability of a "blanket" defense of necessity for all patients, the District Court clarified that "the Court is not ruling, however, that the defense of necessity is wholly inapplicable to these lawsuits." Id. Although the District Court concluded that a "blanket" defense of necessity was "not an appropriate defense to the issuance of an injunction," the District Court did not dispute that medical necessity could be an appropriate defense for an individual person charged with a violation of the CSA. Id.

The Oakland Cannabis Buyers' Cooperative[2] ("Cooperative") appealed certain subsequent orders of the District Court to the United States Court of Appeals for the Ninth Circuit in United States v. Oakland Cannabis Buyers' Coop., 190 F.3d 1109 (9th Cir. 1999). In relevant part, the Cooperative argued that "the district court abused its discretion by refusing to modify its injunction to permit cannabis distribution to patients for whom it is a medical necessity." Id. at 1113. In considering the Cooperative's argument, the Court of Appeals explained that it believed the District Court erred in refusing to modify its injunction on the basis that the District Court "believed that it had no discretion to issue an injunction that was more limited in scope than the Controlled Substances Act itself . . . ." Id. at 1114-15. Thus, the Court of Appeals reversed the order of the District Court denying the modification and remanded to the District Court with instructions "to reconsider the appellants' request for a modification that would exempt from the injunction distribution to seriously ill individuals who need cannabis for medical purposes." Id. at 1115.

The case subsequently was appealed to the U.S. Supreme Court, which recently issued its decision in United States v. Oakland Cannabis Buyers' Coop., No. 00-151, slip op. (May 14, 2001). In Oakland Cannabis, the sole issue reviewed by the Supreme Court was the decision of the Court of Appeals "that medical necessity is a legally cognizable defense to violations of the Controlled Substances Act." Id. at 5. Writing for the majority, Justice Thomas explained first that "a medical necessity exception for marijuana is at odds with the terms of the Controlled Substances Act." Id. at 6. As stated by Justice Thomas, the CSA specifically classifies marijuana as a "Schedule I" controlled substance which "has no currently accepted medical use in treatment in the United States." Id. at 7 (citing 21 U.S.C. § 812(b)(1)(A)). Although the Cooperative argued

[2] Apparently, the name of the "Cannabis Cultivators Club" was changed during 1998 or 1999 to the "Oakland Cannabis Buyers' Cooperative."

that: (1) Congress had designated marijuana as a Schedule I controlled substance without making the specific findings that would be required of the Attorney General to designate a Schedule I controlled substance; and (2) that a controlled substance such as marijuana can be medically necessary despite the fact that Congress has classified it as a substance with "no currently accepted medical use," the Supreme Court rejected all of the Cooperative's arguments, concluding that "medical necessity is not a defense to manufacturing and distributing marijuana." Id. at 8-10.

The Court further rejected the assertion of the Cooperative that a court, acting in equity, has the authority to exercise its discretion to recognize a defense that is in apparent contravention to the plain language of a criminal statute:

> In this case, the Court of Appeals erred by considering relevant the evidence that some people have "serious medical conditions for whom the use of cannabis is necessary in order to treat or alleviate those conditions or their symptoms," that these people "will suffer serious harm if they are denied cannabis," and that "there is no legal alternative to cannabis for the effective treatment of their medical conditions." As explained above, in the Controlled Substances Act, the balance already has been struck against a medical necessity exception. Because the statutory prohibitions cover even those who have what could be termed a medical necessity, the Act precludes consideration of this evidence.

Id. at 14-15. Thus, the opinion of the Supreme Court in Oakland Cannabis states that because Congress, as expressed in the provisions of the CSA, has determined that marijuana is a Schedule I controlled substance which has no accepted medical use, the recognition of a defense of medical necessity with respect to marijuana would be contrary to the letter and spirit of the CSA.

II. EFFECT OF OAKLAND CANNABIS

In determining the effect of the decision of the U.S. Supreme Court in Oakland Cannabis on S.B. 545 and A.B. 453, it is important to recognize the limited scope of the opinion. This is particularly true given the fact that many media reports following the decision have tended to describe the opinion in sweeping terms. *See, e.g.*, Mark Curriden, Supreme Court ruling: Marijuana illegal even as medicine, Seattle Times, May 15, 2001.[3]

As the U.S. Supreme Court has explained in previous opinions, the decisions rendered by the Court should not be taken to apply broadly to any remotely analogous

[3] *Available at* <http://archives.seattletimes.nwsource.com/cgi-bin/texis/web/vortex/display?slug=scotus15&date=20010515&query=marijuana>.

situation but must instead be read in the light of the specific facts and issues that are presented in regard to a particular decision:

> It is timely again to remind counsel that words of our opinions are to be read in the light of the facts of the case under discussion. To keep opinions within reasonable bounds precludes writing into them every limitation or variation which might be suggested by the circumstances of cases not before the Court. General expressions transposed to other facts are often misleading.

Armour & Co. v. Wantock, 65 S. Ct. 165, 168 (1944) (emphasis added). *See also* Bakke v. St. Thomas Pub. Sch. Dist. No. 43, 359 N.W.2d 117, 120 (N.D. 1984) (citing Spalding v. Loyland, 132 N.W.2d 914 (N.D. 1964)) ("Any comment in an opinion which is not essential to the determination of the case and which is not necessarily involved in the action is dictum and not controlling in subsequent cases.")

Bearing these principles in mind, we must emphasize that Justice Thomas explained that the sole issue being reviewed in Oakland Cannabis was whether "medical necessity is a legally cognizable defense to violations of the Controlled Substances Act." Oakland Cannabis, No. 00-151, slip op. at 5 (emphasis added). In other words, the only matter decided by the Supreme Court in Oakland Cannabis was whether a person charged with a violation of federal law (specifically, the CSA) may raise as an affirmative defense to such a charge that medical necessity justified the violation in question. Notably, the Supreme Court did not in any way address the propriety or legality of the decision of a state to exempt persons from state prosecution for the medical use of marijuana. Indeed, in the underlying decision of the District Court in Cannabis Cultivators, the District Court made clear that a state law which only exempts certain persons from prosecution under state drug laws cannot be in conflict with federal law because such a state law does not purport to make legal any act prohibited by federal law. *See* 5 F. Supp. 2d at 1100 ("Proposition 215 does not conflict with federal law because on its face it does not purport to make legal any conduct prohibited by federal law; it merely exempts certain conduct by certain persons from the California drug laws.")

In addition, by focusing on the particular facts that gave rise to the Oakland Cannabis case, it may be contended that the scope of the decision applies only in the context in which a "club" or "cooperative" manufactures and distributes marijuana or possesses marijuana with intent to manufacture or distribute, in violation of the CSA. As stated previously, the Supreme Court itself has emphasized that its opinions must be read "in light of the facts of the case under discussion." Wantock, 65 S. Ct. at 168. The facts of the earlier cases that led to the Supreme Court's grant of certiorari in Oakland Cannabis were that the Cannabis Cultivators Club/Cooperative attempted to assert a "blanket" defense of medical necessity with respect to any and all persons to whom the Club/Cooperative might provide marijuana. Cannabis Cultivators, 5 F. Supp. 2d at 1101-02. The Club/Cooperative did not attempt, nor did individual persons attempt, to argue

for the application of the defense of medical necessity in the context in which an individual person raises such a defense to charges of a criminal violation. Because the argument was never raised, the issue of whether an individual person may raise a defense of medical necessity to charges of the violation of the CSA was not before the Supreme Court for consideration.

The conclusion that the decision of the Supreme Court arguably does not apply outside the context of an entity that manufactures and distributes marijuana is supported by the concurring opinion in Oakland Cannabis. As explained by Justice Stevens:

> Lest the Court's narrow holding be lost in its broad dicta, let me restate it here: "[W]e hold that medical necessity is not a defense to *manufacturing* and *distributing* marijuana." . . . [I]n the lower courts as well as here, respondents have raised the medical necessity defense as justification for distributing marijuana to cooperative members, and it was in that context that the Ninth Circuit determined that respondents had "a legally cognizable defense." . . . Apart from its limited holding, the Court takes two unwarranted and unfortunate excursions that prevent me from joining its opinion. First, the Court reaches beyond its holding, and beyond the facts of the case, by suggesting that the defense of necessity is unavailable for anyone under the Controlled Substances Act.

Oakland Cannabis, No. 00-151, slip op., concurring opinion at 1-2 (Stevens, J., concurring) (alteration in original).

Because of the fact that much of the discussion in the majority opinion of Oakland Cannabis goes beyond the facts of the lower court cases pursuant to which the issues in question were raised, it is the opinion of this office that the scope of the decision in Oakland Cannabis is not entirely clear. Although the Supreme Court held that a cooperative or club may not use medical necessity as an affirmative defense to charges of manufacturing or distributing marijuana in violation of the federal CSA, Oakland Cannabis does not completely resolve the issues of whether: (1) an individual person who is charged with a violation of the CSA is precluded from raising a defense of medical necessity; or (2) the denial of the defense of medical necessity applies outside the context of manufacturing and distributing marijuana. In addition, it must be emphasized again that Oakland Cannabis does not address or rule upon the propriety or legality of the decision of a state to exempt certain persons from state drug laws for the use of medical marijuana. We now proceed to examine S.B. 545 and A.B. 453.

III. SENATE BILL NO. 545

The provisions of S.B. 545 propose to create a "state commission for the approval of research programs for the medical use of marijuana." Section 10 of S.B. 545. If created, the commission would meet twice each year to receive applications from persons

interested in starting a research program for the medical use of marijuana. Sections 11 and 12 of S.B. 545. If the commission approves a research program, the commission is required to prepare a written statement that the applicant may submit to the Federal Government in connection with registering the program with the Federal Government pursuant to 21 U.S.C. § 823. Subsection 4 of section 12 of S.B. 545. However, regardless of whether the commission approves the research program, S.B. 545 states clearly that any research program must be approved by the "Federal Government pursuant to 21 U.S.C. § 823." Id. If an applicant receives approval from the commission for a research program and registers the research program with the Federal Government pursuant to 21 U.S.C. § 823, section 14 of the bill provides that the person who conducts or operates the program, certain medical personnel assisting with the program and the participants in the program "are exempt from criminal prosecution in this state and are immune from civil and criminal liability in this state for the possession or delivery of marijuana or drug paraphernalia."

As explained by Justice Thomas in Oakland Cannabis:

> The Controlled Substances Act provides that, "[e]xcept as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally . . . to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance." 21 U.S.C. § 841(a)(1). The subchapter, in turn, establishes exceptions. For marijuana (and other drugs that have been classified as "schedule I" controlled substances), there is but one express exception, and it is available only for Government-approved research projects, § 823(f).

Because research programs that are registered with the Federal Government pursuant to 21 U.S.C. § 823 provide an exception to the prohibitions set forth in the CSA, and because any research program authorized pursuant to S.B. 545 must be registered with the Federal Government pursuant to 21 U.S.C. § 823, it is the opinion of this office that the decision of the Supreme Court in Oakland Cannabis does not affect the validity of the provisions of S.B. 545. Oakland Cannabis addresses only the availability of a defense of medical necessity with respect to violations of the CSA and the provisions of S.B. 545 are written in such a manner that the possession and delivery of marijuana as authorized pursuant to S.B. 545 would be in accordance with the CSA.

IV. ASSEMBLY BILL NO. 453

The provisions of A.B. 453, as amended by Amendment No. 799, propose to exempt certain persons from state prosecution for acts involving the possession, delivery or production of marijuana. Section 17 of A.B. 453. To be entitled to such an exemption, a person must be either: (1) a person with a chronic or debilitating medical condition who has been issued a registry identification card by the State Department of Agriculture; or (2) the designated primary caregiver of such a person. Id. The exemption

provided pursuant to section 17 of A.B. 453 is limited to certain small amounts of marijuana and extends only to "the medical use of marijuana as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition." In addition, the exemption does not apply to prosecution for certain enumerated acts such as operating a vehicle or possessing a firearm while under the influence of a controlled substance. Sections 17 and 24 of A.B. 453. Significantly, A.B. 453 does not provide for the centralized manufacture or distribution of marijuana by a "club" or "cooperative" such as was at issue in Oakland Cannabis. Instead, A.B. 453 exempts the holder of a registry identification card from state prosecution for possession, delivery and production of certain small amounts of marijuana. Section 17 of A.B. 453.

In determining the effect of the decision of the Supreme Court in Oakland Cannabis on A.B. 453, as noted previously, the Supreme Court did not consider, nor did it render an opinion concerning, the propriety of the decision of a state to exempt certain persons from state drug laws for the medical use of marijuana. Oakland Cannabis pertains only to the issue of whether a defense of medical necessity may be raised in regard to a charge of violating the federal CSA. As a result, Oakland Cannabis does not call into question the validity or legality of A.B. 453, the substance of which provides only that the State of Nevada will exempt certain persons from state laws that would otherwise prohibit the possession, delivery or production of marijuana and the possession or delivery of drug paraphernalia. As stated previously, the United States District Court for the Northern District of California has set forth clearly that a state statute which "merely exempts certain conduct by certain persons from the [state's] drug laws" does not conflict with federal law, because "it does not purport to make legal any conduct prohibited by federal law." Cannabis Cultivators, 5 F. Supp. 2d at 1100.

It must be emphasized, however, that the fact that a state exempts certain acts related to the medical use of marijuana from prosecution under the state's drug laws does not mean that the conduct so exempted is not prohibited by federal law. The possession, manufacture and distribution of marijuana is prohibited by federal law regardless of any statute that may be enacted by a state legislature. *See* 21 U.S.C. §§ 841 and 844a.[4] Thus, when a state exempts certain persons from prosecution under the state's drug laws for the use of medical marijuana, those persons are still susceptible to federal prosecution. This situation exists in every state that has chosen to decriminalize the medical use of marijuana and reflects a judgment on the part of the various legislatures that persons who use marijuana for medical purposes are at far greater risk of being prosecuted by the state than by the Federal Government. *See* Americans for Medical Rights, High Court's Narrow Ruling Has No Effect on State Medical Marijuana Laws, May 14, 2001 ("[V]irtually all low-level marijuana cases are prosecuted under state laws.")

[4] 21 U.S.C. § 844a does not impose a "criminal" penalty for simple possession of certain small amounts of controlled substances but instead authorizes the Federal Government to impose a civil penalty of up to $10,000 per violation.

Based upon the preceding discussion, it is the opinion of this office that Oakland Cannabis does not call into question the validity or legality of A.B. 453 because Oakland Cannabis did not address the issue of the authority of a state to exempt certain persons from prosecution under state drug laws for the medical use of marijuana. Oakland Cannabis did not address any issues other than the availability of the defense of medical necessity in regard to a charge of the violation of the federal CSA. As a result, the only effect that Oakland Cannabis has with respect to A.B. 453 is that in the unlikely event a person who is exempt from state prosecution for the medical use of marijuana pursuant to A.B. 453 is prosecuted for such use by the Federal Government under the CSA, such a person may not be able to assert a defense of medical necessity to such federal prosecution. However, as explained previously, the Oakland Cannabis decision is unclear on the issues of whether: (1) an individual person who is charged with a violation of the CSA is precluded from raising a defense of medical necessity; and (2) the denial of the defense of medical necessity applies outside the context of manufacturing and distributing marijuana.

V. CONCLUSION

In summary, it is the opinion of this office that the decision of the Supreme Court in Oakland Cannabis is a decision of limited scope that addresses only one issue: whether the defense of medical necessity may be raised in opposition to charges of the violation of the federal Controlled Substances Act. In that decision, the Supreme Court did not consider, nor did it decide, the propriety or legality of the decision of a state to exempt certain persons from prosecution under the state's drug laws for the medical use of marijuana. It is the further opinion of this office that Oakland Cannabis has no effect on S.B. 545, because S.B. 545 proposes only to authorize certain research programs that are authorized in accordance with an exception to the Controlled Substances Act. Finally, it is the opinion of this office that the effect of Oakland Cannabis on A.B. 453 is only that persons who would be exempt from state prosecution pursuant to the provisions of that bill may not, if prosecuted by the Federal Government pursuant to the Controlled Substances Act, be able to assert a defense of medical necessity. The decision does not otherwise call into question the validity or legality of A.B. 453.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

Brenda J. Erdoes
Legislative Counsel

By Scott Mck
Scott McKenna
Senior Deputy Legislative Counsel

By Eileen O'Grady
Eileen G. O'Grady
Principal Deputy Legislative Counsel

MSM:dtm
Ref No. Giunchigli01051785429

Assembly

Vote Tabulation

Constitutional Majority | May 23, 2001 | 71st Session

AB453

Final Passage

Authorizes medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

YEAS -	30	NOT VOTING -	0	EXCUSED -	0
NAYS -	12	ABSENT -	0		

Anderson	Y	Gibbons	N	Parks	Y
Angle	N	Giunchigliani	Y	Parnell	Y
Arberry Jr.	Y	Goldwater	Y	Perkins	Y
Bache	Y	Gustavson	N	Price	Y
Beers	Y	Hettrick	Y	Smith	N
Berman	Y	Humke	N	Tiffany	N
Brower	N	Koivisto	Y	Von Tobel	N
Brown	N	Lee	N	Williams	Y
Buckley	Y	Leslie	Y		
Carpenter	Y	Manendo	Y		
Cegavske	N	Marvel	Y		
Chowning	Y	McClain	Y		
Claborn	Y	Mortenson	Y		
Collins	Y	Neighbors	Y		
de Braga	Y	Nolan	Y		
Dini, Jr.	Y	Oceguera	N		
Freeman	Y	Ohrenschall	Y		

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LAS VEGAS REVIEW-JOURNAL

Tuesday, May 15, 2001

EDITORIAL: A setback for medical marijuana

Legislature should not use court ruling as excuse for inaction

On Monday, the U.S. Supreme Court dealt a blow to advocates of medical marijuana -- a movement which has changed the law in Nevada and eight other states to allow seriously ill patients to use marijuana as treatment for glaucoma, wasting syndrome from chemotherapy, and other illnesses. By a vote of 8-0, the court ruled that "medical necessity is not a defense to manufacturing and distributing marijuana." As a result, the medical marijuana movement faces an uncertain future.

The case was brought against a marijuana buyers group in Oakland that formed after California voters approved a medical marijuana initiative in 1996. To become a member -- and receive marijuana from the cooperative -- a patient had to present a written statement from his physician stating that marijuana was a "medically necessary" form of treatment and then submit to a screening interview. In 1998, the federal government sued the cooperative, claiming that its actions violated the federal Controlled Substances Act, which prohibits the manufacture and distribution of certain illegal drugs.

At trial, U.S. District Judge Charles Breyer ruled for the government, noting that Congress classified marijuana as a "schedule I" drug -- the most restrictive designation listed by the act, set aside for drugs which have "no currently accepted medical use." The 9th U.S. Circuit Court of Appeals reversed that ruling, claiming that "medical necessity" was a legitimate defense for seriously ill patients.

Writing for the Supreme Court, Justice Clarence Thomas said the language of the Controlled Substances Act is clear: "Medical necessity" cannot be used by persons wishing to avoid federal prosecution for the manufacture or distribution of schedule I drugs. Only if Congress reclassified marijuana under a less-restrictive designation could medical necessity be a legitimate defense.

While the ruling is clearly a setback for the medical marijuana movement, it did not explicitly invalidate the California measure or any other state laws, including Nevada's. Dan Hart, executive director of Nevadans for Medical Rights, says the "decision affects a flawed distribution system set up in

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California" and should have no impact on the Nevada constitutional amendment enacted by voters last November authorizing medical marijuana.

Mr. Hart cited a concurring opinion to Monday's decision penned by Justice John Paul Stevens, which pointed out that the court's ruling prohibited only "manufacturing and distributing marijuana." It did not prohibit states from allowing the cultivation and possession of small amounts of marijuana for medicinal purposes.

And that's the direction medical marijuana groups should take. The American Medical Marijuana Association claims that "the medical marijuana clubs will be largely unaffected" by the decision, "because they will simply switch from distributing medical pot to helping patients grow their own."

Voters in states who are represented by 16 senators and 79 House members have passed medical marijuana measures, suggesting there should be a groundswell of support in Congress for reclassifying marijuana under a less-restrictive standard that would allow its use for medical purposes. The more immediate concern lies in Carson City, however, where legislators have refused to allocate any money to pay for the establishment of a registry of marijuana patients.

Nevada's constitutional amendment says the Legislature "shall provide by law" measures that, among other things, allow patients to use marijuana for medicinal purposes, set up a patient registry, and authorize appropriate methods to supply the plant for patients on the registry.

An overwhelming majority of Nevada voters believe that seriously ill patients should have the option of using marijuana medicinally. Monday's Supreme Court decision notwithstanding, it remains the duty of the Legislature to allow those patients to legally obtain that treatment.

This story is located at:
http://www.lvrj.com/lvrj_home/2001/May-15-Tue-2001/opinion/16095716.html

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LAS VEGAS REVIEW-JOURNAL

Wednesday, May 09, 2001

EDITORIAL: Common sense on pot

On two separate occasions, Nevada voters have overwhelmingly approved a change to the state constitution that would provide for the medical use of marijuana. But now state lawmakers are pleading poverty as an excuse for refusing to enact a program designed to carry out the will of the electorate.

It's a crock.

Yes, tax collections are falling below initial projections, requiring reductions in the growth rates of many state programs. But the startup cost for the medical marijuana initiative runs a paltry $30,000 -- and, given the preference of voters, that's a far more legitimate expenditure than, for instance, the money needed to run the worthless Dairy Commission.

A spokesman for Gov. Kenny Guinn said the governor didn't include money in his budget for the medical marijuana program because of concerns over how the federal government would react. But the issue of the legality of state efforts to allow the medical use of pot remains unsettled -- and until it is, the state should side with the outlook of its own residents, not the federal drug warriors.

Another reason that Assembly Bill 453 has lawmakers turning tail is that it includes a provision to reduce to a misdemeanor the penalty for possessing an ounce or less of pot -- now a felony in Nevada. In fact, however, that aspect of the bill does nothing more than codify the common-sense recommendations made months ago by a commission headed by Nevada Supreme Court Justice Bob Rose.

Lawmakers should cease the lame excuses and pass and fully fund AB453.

This story is located at:
http://www.lvrj.com/lvrj_home/2001/May-09-Wed-2001/opinion/16052486.html

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LAS VEGAS REVIEW-JOURNAL

Friday, April 13, 2001

MEDICAL MARIJUANA: Bill would let patients grow pot

Measure advances on 11-2 vote

By ED VOGEL
DONREY CAPITAL BUREAU

CARSON CITY -- Nevada patients who need marijuana for medical reasons could grow up to seven pot plants at their homes under a bill approved 11-2 Thursday by the Assembly Judiciary Committee.

Members decided to implement the marijuana constitutional amendment approved by 65 percent of the voters in November by adopting the Oregon medical marijuana model and letting patients grow their own.

Nevada would join Oregon and seven other states that have laws to allow people with AIDS, cancer and other illnesses to use marijuana for medical reasons.

Oregon allows patients with a doctor's permission to grow no more than three mature and four immature marijuana plants. They also can have no more than 1 ounce marijuana for use on hand to meet their current needs.

Assemblywoman Chris Giunchigliani, D-Las Vegas, proposed the grow-your-own plan because state Agriculture Department officials said Wednesday they needed $750,000 to build an indoor state pot farm that would have used grow lights.

The state planned to charge $250 per ounce to patients who needed marijuana.

But the cost of the farm and the price patients would pay were considered prohibitive by some legislators.

Giunchigliani estimated that only a couple of hundred Nevadans will receive medical permission to use marijuana.

"I am pleased they listened to the will of the voters," she said after the vote. "It is a controversial issue. But it is a recognition that people will benefit from medical marijuana."

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She acknowledged her bill does not give patients a legal way to acquire marijuana seeds.

"They will get it as they get it now," she said. "There will be sharing of information."

Assemblyman John Carpenter, R-Elko, joked that he was disappointed Nevada would not operate a marijuana farm. He said the Agriculture Department could run the farm in conjunction with its wild horse adoption program.

"Then we'd have the fertilizer to grow the plants," he quipped.

"I knew they had local weed out in Elko," replied Judiciary Chairman Bernie Anderson, D-Sparks.

The only votes against the medical marijuana plan were cast by Assembly members Sharron Angle and Greg Brower, both Reno Republicans.

Brower pointed out the bill was not just a plan to implement voters' medical marijuana wishes, but that it also carries clauses to get rid of Nevada's felony marijuana possession law.

Under the bill, first-time possession of an ounce or less of marijuana would become a misdemeanor, punishable by a $600 fine. Second-time offenders would be charged $1,000 and forced to enter a drug treatment program.

Brower said people busted for small amounts of marijuana are not being charged with felonies now, and judges have told him they do not want a change in the felony offense.

But after the meeting, Giunchigliani said Brower was wrong. A committee of citizens, including Supreme Court Justice Bob Rose, had proposed the eradication of Nevada's felony marijuana law.

"I take issue with Mr. Brower," she said. "The judges I have spoken with absolutely and completely agree (with doing away with felonies for possession of small amounts of marijuana)."

Though the bill carried the committee, it now must be referred to the Assembly Ways and Means Committee, which handles bills that appropriate state money.

Legislative analysts estimated the state needs to spend $50,000 to start up a program within the Department of Motor Vehicles to register people who have permission to use marijuana.

Giunchigliani predicted the actual costs will be much less, but approval may

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not come from Ways and Means until late May.

The Senate also must agree to a medical marijuana plan before it can go into effect.

Senate Judiciary Chairman Mark James, R-Las Vegas, said Thursday he opposes a grow-your-own plan because participants must secure seeds illegally.

Instead he said the state should license private individuals to grow marijuana for qualified patients.

"I don't want to put one penny into the hands of organized crime," he said.

His committee today is expected to act on another marijuana measure, Senate Bill 242.

Two years ago, the Legislature mistakenly changed a state marijuana law. Now people technically can grow up to 100 pounds of marijuana and not be charged with a crime.

The bill would reinsert the old marijuana law, but James wants it amended so it does not interfere with the medical marijuana program.

This story is located at:
http://www.lvrj.com/lvrj_home/2001/Apr-13-Fri-2001/news/15863476.html

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LAS VEGAS REVIEW-JOURNAL

Tuesday, May 15, 2001

Backer of Nevada program to keep working

By ED VOGEL
DONREY CAPITAL BUREAU

CARSON CITY -- Assemblywoman Chris Giunchigliani said Monday that she will continue with legislation to set up a medical marijuana program in Nevada, despite an 8-0 U.S. Supreme Court decision that outlawed a similar program in California.

Giunchigliani, D-Las Vegas, maintained the Supreme Court decision only outlawed the medical marijuana program operated by the Oakland Cannabis Buyers Cooperative and will not affect the program in Nevada.

"They aren't going to send in 800 federal agents to find grandpa and grandma with medical marijuana," she said. "States still have rights to pass medical marijuana laws."

Giunchigliani is author of Assembly Bill 453, which would implement the wishes of 65 percent of Nevada voters who approved a constitutional amendment last November to allow marijuana for people with AIDS, cancer and other illnesses. The bill proposes to allow patients -- with authorization from a doctor -- to grow up to seven marijuana plants in their homes. In Oakland, a cooperative acquired marijuana and sold it to patients in a storefront setting.

Senate Judiciary Chairman Mark James, R-Las Vegas, and Assembly Ways and Means Chairman Morse Arberry, D-North Las Vegas, said they were not sure whether the Legislature can still go forward with Giunchigliani's bill.

"I suspect there is nothing we can do without a change in federal law, but I will confirm that with legislative lawyers," James said. "If they give me that advice I won't do anything."

"I would be crazy to pass a bill and then the Supreme Court says you can't do it," added Arberry, in whose committee the bill sits.

Giunchigliani estimated it would cost the state $30,000 to start the medical marijuana program, but Arberry will not process the bill until he is sure the Legislature has the revenue.

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Proponents of the bill, as well as some Las Vegas physicians, say the Supreme Court ruling won't affect Nevada much because marijuana use has long been illegal at the federal level, regardless of state laws.

"If people are smoking it or prescribing it now, it isn't going to change anything," said Dr. John Ellerton, a Las Vegas oncologist. "It's illegal now and they're doing it." Ellerton said he does not support Nevada legislation to legalize medical marijuana and said he does not prescribe it to his cancer patients.

Dan Hart, coordinator of Nevadans for Medical Rights and a staunch supporter of medical marijuana legislation, said it's too early to tell what impact the federal ruling will have on Nevada.

"We don't think it will affect Nevada," Hart said. "People could still be federally prosecuted even before the ruling."

But Attorney General Frankie Sue Del Papa said it is clear from her reading of the Supreme Court decision that it prohibits medical marijuana programs like the one Giunchigliani advocates.

"I am not going to stand here as attorney general and say, `Go out and violate federal law,' " she said. "What the Supreme Court said was pretty clear."

Del Papa said the federal Controlled Substances Act allows the use of marijuana only in federally approved research programs. Instead of passing Giunchigliani's bill, she recommended the Legislature approve Senate Bill 545 that would allow medical marijuana for a select group of patients after the state receives federal permission for a research project.

The attorney general agreed that if the Legislature passes a grow-your-own plan for distributing marijuana, then Nevada police could not arrest people who have permission to use the drug for medical reasons. But they still would be subject to federal arrest, she said.

Dr. Trudy Larson, a Reno physician, said the Supreme Court ruling is a blow to many patients hoping to use the drug for medical purposes. Larson , an infectious disease physician who cares for AIDS patients, said she prescribes a legalized form of marijuana for her patients called Marinol.

"The problem with Marinol, though, is there is no way to get the dose just right, which is what patients tell me they can do with marijuana," Larson said. "My patients do use marijuana and they tell me it's beneficial. I believe it because I see the benefits by their increased weight and lack of nausea."

The Supreme Court ruled that Congress has not found a medical purpose for marijuana, which is listed as a dangerous drug in the Controlled Substances Act.

"The statue expressly contemplates that many drugs have a useful medical purpose, but it includes no exception at all for any medical use of marijuana," wrote Justice Clarence Thomas. "This court is unwilling to view that omission as an accident and is unable, in any event, to override a legislative determination manifest in the statue."

While agreeing with the majority opinion, Justice John Paul Stevens said he was concerned the opinion invaded states' rights.

"The overbroad language of the court's opinion is especially unfortunate, given the importance of showing respect for sovereign states that comprise our federal union," he wrote.

Leaders of Nevada for Medical Rights and its parent organization, Americans for Medical Rights, were adamant the decision only closes down the Oakland cooperative. The groups were responsible for putting the medical marijuana question before voters in Nevada and other states.

"The issue is political will," said Dan Geary, a leader of Nevadans for Medical Rights. "If the DEA (Drug Enforcement Administration) wants to come in here and bust AIDS and cancer patients under federal law, I guess it can. But state law will allow medical marijuana."

Dan Hart, state head of the group, added legislators should remember that nearly two-thirds of the voters wanted medical marijuana.

"I don't know how you can turn your back against voters' wishes," Hart said.

Review-Journal staff writer Joelle Babula contributed to this report.

This story is located at:
http://www.lvrj.com/lvrj_home/2001/May-15-Tue-2001/news/16097079.html

LAW OFFICES
MUSHKIN & HAFER
A PROFESSIONAL CORPORATION
930 SO. THIRD STREET, SUITE 300
LAS VEGAS, NEVADA 89101

Telephone (702) 386-3999
Facsimile (702) 388-0617

MICHAEL R. MUSHKIN
MARK C. HAFER*
SANDRA L. POMRENZE**
DALE E. HALEY
(Of Counsel)
*Also Admitted in Arizona
**Also Admitted in Arizona & Illinois

April 5, 2001

Chris Giunchigliani
Nevada State Legislature
Carson City, Nevada 89701

Re: Marijuana Reform

Dear Ms. Giunchigliani:

This letter is to advise you that I support your efforts to reform the marijuana laws of the State of Nevada. The voters have clearly expressed their intent that marijuana should be provided to chronically ill persons to help relieve pain and increase their appetites. In Clark County, Nevada it is the practice of the District Attorney to plea bargain possession of marijuana charges from felonies to misdemeanors. Unfortunately, in the rural counties of Nevada, the District Attorneys are not so enlightened. In spite of the express intent of the electorate, felony prosecutions are still being pursued for simple possession of marijuana. Your bill would bring common sense into the court system. Thank you for your continued efforts.

Very truly yours,

MARK C. HAFER, ESQ.

MCH/jal

MEMORANDUM

OFFICE OF THE DISTRICT ATTORNEY

STEWART BELL
DISTRICT ATTORNEY

JUVENILE DIVISION
601 North Pecos Road
Las Vegas, Nevada 89101-2417

ROBERT W. TEUTON
Chief Deputy
455-5320
455-5878 (Fax)

TO: **Members of the Assembly Judiciary Committee**

THRU: Assemblywoman Chris Giunchigliana and
Ben Graham, Chief Deputy District Attorney

FROM: Robert W. Teuton

RE: AB 453 - Revising Penalties for Possession of Marijuana

DATE: April 6, 2001

My name is Bob Teuton, Chief Deputy District Attorney in Clark County, Nevada. I have been in charge of our Juvenile Division since 1995 and, by background, served as the Assistant Director or Acting Director of the Clark County Department of Family and Youth Services from December of 1988 through February of 1995. I was a Deputy District Attorney in our Criminal Division from 1978 through 1988, becoming a Chief Deputy in 1984. I would like to confine my remarks to those sections of this bill which address the penalties for possession of marijuana.

I had the distinct pleasure of serving on the Judicial Assessment Commission of the Nevada Supreme Court, more commonly known as the Rose Commission, in both 1994 and 2000. Both Commissions were comprised of members of the judiciary, prosecutors, defense attorneys, educators, business persons and professionals from throughout our state. In September of 1994 and again in October of 2000 the Criminal/Juvenile Section of the Rose Commission(s) recommended, and the full Commission endorsed, the proposition that penalties for simple possession of one ounce of less of marijuana be reduced to a misdemeanor. This bill mirrors the

recommendation of the Rose Commission. In many respects, however, this bill is more stringent than the Rose Commission recommendations. For example:

AB 453	Rose Commission: 1994 & 2000
Authorizes either citation or arrest for possession of 1 ounce or less of marijuana	Would only allow citation to be issued
Provides enhanced penalty for second offense	Repeat offenders subject to same penalty
Provides enhanced penalty for third offense	Repeat offenders subject to same penalty
Mandates treatment and rehabilitation program for second offenders	No mandated program
Current penalties for possession of more than 1 ounce remain the same	Would create gross misdemeanor offense for possession of more than 1 but less than 4 ounces of marijuana

There are at least three reasons, from a law enforcement perspective, why the penalty provisions of this bill should be passed. First, police officers have discretion on whether or not to arrest, cite, or lecture and release most of these offenders (in reality if not in law). That discretion is currently exercised taking into account not only the fact of the offense, but also the amount of time it would take to effectuate a felony arrest (arrest, transport, booking, securing evidence, completing declaration of arrest) and the nature and number of pending calls for service. A police officer with calls pending for assaults, battery, burglary, etc., is more likely to seize and destroy (or book for safekeeping) a joint or marijuana, lecture the offender and **not** make an arrest than make an arrest. Second, in those cases where an arrest is made, similar discretion causes these cases to be screened out of the justice system with the police designation of "no charges filed." That is, a screening detective, when prioritizing his or her time, as well as lab time and costs to do a chemical analysis, with the nature of the offense, is more likely to expend resources on cocaine, heroin, and other controlled substances than on possession of 1 ounce or less or marijuana. Third, it is common practice, at least in Clark County, for law enforcement personnel to avoid the first two issues by simply citing the offender into a municipal court for the offense of Possession of a Dangerous Drug Not to be Introduced into Interstate Commerce. In fairness to police officers, this practice is the result of years of plea bargaining first offense Possession of Marijuana (violations of NRS Chapter 453) into Dangerous Drug violations (NRS Chapter 454) and is tacit recognition that subjecting an offender to misdemeanor sanctions for possession of small amounts of marijuana is more appropriate than ignoring the offense entirely. These are the primary reasons that the Rose Commission recommended de-felonizing the simple possession of one ounce or less of marijuana and the reasons why we support passage of AB 453.

via fax 3 pages

3965 Belhaven St.
Las Vegas, NV 89103
702-876-3839

May 24, 2001

Dear Chris Giunchigliani:

RE: Medical Marijuana Bill 453

Thank you for your tireless pursuit of what we the voters said yes to twice. For the die-hards that you must defeat, here is the FDA stand on the importation of "illegal" drugs for medicinal purposes. (Breaking the federal laws on the importation of illegal substances)

This excerpt is taken from Options, the Alternative Cancer Therapy book by Richard Walters. ISBN 0-89529-510-5

The FDA, a federal agency, allows all forms of drugs to be imported for medicinal purposes, so since the FDA overlooks the federal drug laws, this should help those who need more information to listen to what the voters asked for and vote yes.

It may also assist those who need other drugs and are not aware of this information. It follows on the next two pages.

Thank **YOU** for listening to the voters!

Best regards,

Barbara Dennis
Registered Voter

cc: Barbara Cegavske, my district....I voted yes for this...are you voting for what we, the voters, told you to do or for your own stand? Remember, you merely represent the voters in your district; therefore, please recheck the voting in your district on this issue and see if the majority voted YES... I believe we did with overwhelming numbers. Please represent us the way you are supposed to do with a **YES Vote on 453.**

Appendix D

IMPORTATION OF UNAPPROVED DRUGS FOR PERSONAL USE

For many years, the FDA has had guidelines that allow district offices to exercise discretion when determining whether or not to allow entry, for personal use only, of drugs sold abroad but not approved in the United States. When permission is granted, the petitioner may import just enough of the drug for up to three months' personal use. Several unapproved drugs that some consider of therapeutic benefit for AIDS and AIDS-related conditions have thus been allowed entry into the country.

People usually bring such products into the country in their baggage when they return from abroad. These drugs may also be imported by mail. The FDA's policy on mail importation as of December 11, 1989, is that if there is no evidence of unreasonable risk, fraud, or promotion, permissive discretion may be applied and the product mailed providing:

- The product was purchased for personal use.
- The product is not for commercial distribution, and the amount of the product is not excessive (that is, there is just enough for up to three months' use).
- The intended use of the product is appropriately identified.
- The patient seeking to import the product affirms in writing that it is for his or her own use and provides the name and address of the licensed physician in the United States who is responsible for directing the treatment with the product.

If the imported product is considered fraudulent or dangerous, or if it is promoted for use in the United States despite a lack of approval, the FDA issues "import alerts." Up to July 27, 1988, there were forty import alerts restricting entry of medical products considered fraudulent or unsafe. These restricted products included laetrile, Immuno-Augmentative Therapy agents, and products promoted by Dr. Hans Nieper of West Germany. On January 27, 1992, the FDA issued Import Alert Number 66-57: "Automatic Detention of Foreign Manufactured Unapproved Prescription Drugs Promoted to Individuals in the U.S." This alert lists some firms that have products on automatic detention because of promotional activities.

The latest information on the FDA's policy on importing drugs can be obtained from local FDA offices or by writing to:

United States Department of Health and Human Services
Public Health Service
Food and Drug Administration (HFI-35)
5600 Fishers Lane
Rockville, MD 20857

Assembly Bill 453

Assembly Woman: Chris Glunchigliani

Dear Assembly Woman:

I have survived a double Bylateral Mastectomy, Subcutaneous meaning everything in front is carved down to the ribs! I have had numberous surgery's since then. the Year was 1971, Had i been an addictive person, I would have been a morphine Junkie.

I chose instead to be a herb smoker, as My Fathers People had. Canibus Sativa, ie Marijuana has been my pain medication for over 30 years! You being a woman can imagine going from a 38-B to an invented double A. overnight. only I experienced it. the pain was Agony, the drug morphine, Made me unable to even write My name or Checks for Monthly bills. When asked by my doctor Dr Garth Strand

what I wanted for pain upon release from my last Major surgery: where both sides of my back carry the foot long scars. I said "Nothing thank You, Sir. I have a 1/4 pound of my Medicine in my freezer"

I would like the pleasure of meeting with you. and maybe addressing the other people of the legislature. this bill must be passed, ~~also~~ the word drug, must forever be taken away from a herb that God created. and mother earth nurished. ~~and~~ addicting only water. the life's blood from the sky.

Thank You for taking time to read this. Best regards, and Good Luck on your bill #453

Sincerely
Veronica "Ronnie" Wright
1014 East Fifth Street #1
Carson City, Nevada 89701

Home & Work #
884-4516

;iunchigliani, Chris Assemblywoman

rom: James C Medici, III [icodeyou@juno.com]
ent: Sunday, May 20, 2001 10:52 AM
o: cgiunchigliani@asm.state.nv.us
ubject: Medical Marijuana Bill

would like to commend you on a job well done. You have brought to the ttention of our community and to our State that Medical Marijuana is an ssue that needs to be discussed and properly given a chance. Please ontinue the fight for the justice of the sick. Thank you.

iana L. Medici

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Giunchigliani, Chris Assemblywoman

From: fdm@lvcm.com
Sent: Saturday, May 19, 2001 2:07 PM
To: cgiunchigliani@asm.state.nv.us
Subject: MEDICAL MARIJUANA

Chris,

Good luck in getting the bill passed. My mother died a few years ago after a long fight with breast cancer, my father died one year ago yesterday of pancreatic cancer, my grandmother died last June 25th of lung and breast cancer, my father-in-law has inoperable prostate cancer, and my wife's grandfather was just diagnosed with lung cancer. Grandpa will be staying at our house when he starts chemotherapy next week. When the cancer my family members have that are still alive progresses to a point where marijuana may help them, it would certainly be wonderful if it was available.

The drug war is totally out of control. Shortly before my mother died, my dad called me to pick up a prescription from her doctor here in Las Vegas and bring it to their pharmacy in Bullhead City to be filled. My mom was in great pain. When I arrived at the pharmacy her doctor had not written the prescription correctly. The pharmacist had to put her butt on the line (only because she knew the nurse helping us), and fill the prescription for what my mother needed instead of what it was written for. The difference in the prescription was not significant, she needed a suppository instead of an oral narcotic medication. Watching my mother suffer because of the stupid drug war is unconscionable.

I sent a check for $20 to the Medical Marijuana Fund at the state treasurers office. I hope it helps.

I also support your efforts to reduce the penalty for possession. It is insane to convict someone of a felony for this.

Hope to see you soon.

Floyd Mundt
1707 Del Sueno Dr.
Las Vegas
456-7182

262 4

age-ID: <a9.1o6ce333.2832d1b3@aol.com>
Hdmlv2@aol.com
giunchigliana@asm.state.nv.us
ct: bill 453
Tue, 15 May 2001 11:38:43 -0700
:-Version: 1.0
ler: Internet Mail Service (5.5.2650.21)
Embedded Report
ent-Type: text/plain

e keep up the good work you are doing regarding very ill people who can

ome relief from this product. I am not a user but I believe in it's
cal importance to the very ill. My first wife who has died was very ill
ars and on a dialisis machine. She was introduced to marijuana in the
tal 20 years ago. She got some relief. She was in great pain. Thanks
for work on this subject. I am with you 100%. Harold Manheim
4836 Storm Mountain St.
Las Vegas NV 89130-1851
702 6588866 E hdmlv2@aol.com

——— Headers

MINUTES OF THE
SENATE COMMITTEE ON HUMAN RESOURCES AND FACILITIES

Seventy-First Session
June 3, 2001

The Senate Committee on Human Resources and Facilities was called to order by Chairman Raymond D. Rawson, at 7:40 a.m., on Sunday, June 3, 2001, in Room 2135 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Raymond D. Rawson, Chairman
Senator Maurice Washington, Vice Chairman
Senator Mark Amodei
Senator Bernice Mathews
Senator Michael Schneider
Senator Valerie Wiener

COMMITTEE MEMBERS ABSENT:

Senator Randolph J. Townsend (Excused)

GUEST LEGISLATORS PRESENT:

Assemblywoman Christina R. Giunchigliani, Clark County Assembly District No. 9
Assemblyman Dennis Nolan, Clark County Assembly District No. 13

STAFF MEMBERS PRESENT:

H. Pepper Sturm, Committee Policy Analyst
Cynthia Cook, Committee Secretary

OTHERS PRESENT:

Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau
James J. Jackson, Lobbyist, Nevada Attorneys for Criminal Justice

Chairman Rawson opened the hearing on Assembly Bill (A.B.) 453.

ASSEMBLY BILL 453: Exempts medical use of marijuana in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

Chairman Rawson read from the Constitution of The State of Nevada which provides for the use by a patient, upon the advice of his physician, of a plant of the genus Cannabis for the treatment or alleviation of cancer, glaucoma, acquired immunodeficiency syndrome; severe, persistent nausea of cachexia resulting from these or other chronic or debilitating medical conditions; epilepsy and other disorders characterized by seizure; multiple sclerosis and other disorders characterized by muscular spasticity; or other conditions approved pursuant to law for such treatment.

Chairman Rawson emphasized the importance of a preamble in certain legislation, in order to define legislative intent. He read from the preamble in the proposed amendment to A.B. 453 (Exhibit C), which states there are reliable reports speaking to the therapeutic use of marijuana, and in the general elections held in 1998 and 2000, the people of the State of Nevada voiced their overwhelming support for a constitutional amendment to allow for the medical use of marijuana in this state. He said one could argue back and forth as to whether the people knew the implications of their vote on the initiative petition.

Chairman Rawson summarized the remainder of the preamble (Exhibit C), and Brenda J. Erdoes, Legislative Counsel, Legislative Counsel Bureau, explained the preamble is not binding law, but in cases of ambiguity the court will review the preamble to discern legislative intent.

Senator Wiener emphasized the section of the amendment which stresses the commitment of the legislature to review the program for the distribution and medical use of marijuana, determine the effectiveness of the study, and decide if the program is addressing the best interests of the people of the State of Nevada.

Chairman Rawson requested the committee review the amendment from the beginning. Ms. Erdoes explained the first entry is a technical correction. She said the following two changes were important to protect the confidentiality of those in the study, since the State Department of Agriculture and the

Department of Motor Vehicles and Public Safety will be involved in the process. Ms. Erdoes continued, line 15 on page one of Exhibit C amends the bill as a whole by establishing the program under the auspices of the University of Nevada School of Medicine, explaining the application process, the reporting process, and the accounting of funds.

Ms. Erdoes, in answer to a question by Chairman Rawson, explained the criminal provision for a first offense of the possession of one ounce or less of marijuana is either a fine of not more than $600 or an examination by an approved facility for the treatment of drug abuse. She said the court has the flexibility to determine which provision is best for the offender.

Senator Mathews asked Ms. Erdoes if the drug courts are not currently doing the same thing. Ms. Erdoes replied in the affirmative, and added the courts have a great deal of flexibility in these situations.

Assemblywoman Christina R. Giunchigliani, Clark County Assembly District No. 9, said the key here is intervention with the emphasis on treatment rather than the payment of a fine.

Chairman Rawson asked what would be the next step if a first time offender were examined, and tested positive for drug abuse. Assemblywoman Giunchigliani answered treatment could be ordered at that time, and Ms. Erdoes said unless the defendant is indigent, he or she must pay for the evaluation and treatment, so although it is not a fine, there would be some payment required. Chairman Rawson commented this would have the same effect as a fine.

Ms. Erdoes explained the amendment changes the punishment for a second offense to be a fine of not more than $1000 or assignment to a program of treatment and rehabilitation. She said a third offense, a gross misdemeanor, is punishable as provided in *Nevada Revised Statutes* (NRS) 193.140, and a fourth or subsequent offense, a Category E felony, is punishable as provided in NRS 193.130.

James L. Jackson, Lobbyist, Nevada Attorneys for Criminal Justice, testified the revision for a third offense opens up the possibility for up to two years of probation, supervised by the Division of Probation and Parole, and any other conditions including treatment a judge would find appropriate at sentencing.

In answer to questions by Senator Wiener Mr. Jackson said: the gross misdemeanor statute allows for the prescription of a penalty of up to a year in jail and or a $2000 fine; treatment could also be a part of both a third and a fourth offense; and the decisions are put in the hands of the judges to decide after considering a pre-sentencing investigation. He continued, if rehabilitation is violated, the person would be held in contempt and, at the discretion of the court, be sentenced to 25 days or more in jail.

Ms. Erdoes told the committee the next session of the legislature would review statistics provided by the staff of the Legislative Counsel Bureau.

Ms. Erdoes told Senator Washington the University of Nevada School of Medicine would establish and monitor the program and the participants. She said the amendment does not change registration requirements and does allow participants to grow up to four marijuana plants, and seed distribution would be by the university or the State Department of Agriculture.

In answer to an inquiry by Senator Mathews, Chairman Rawson said if a person has more than the allowable plants or traffics in marijuana, he or she is in big trouble.

Assemblywoman Giunchigliani said only those who are registered are eligible for the program, and if they go beyond the regulations, current law prevails. Mr. Jackson added the participant would also lose their eligibility in the program.

Chairman Rawson called for a motion on A.B. 453.

SENATOR SCHNEIDER MOVED TO AMEND AND DO PASS A.B. 453.

SENATOR AMODEI SECONDED THE MOTION.

Senator Washington said, for the record, he was pleased with the work done by the subcommittee on the bill, and for the safeguards in the bill. He said his own convictions would not allow him to vote for the bill in committee or on the floor.

THE MOTION CARRIED. (SENATOR WASHINGTON VOTED NO.)

*****

A.B. 453_R2
PROPOSED AMENDMENT
JUNE 3, 2001

Prepared by
LCB Legal Division

Amend sec. 25, page 9, line 27, after "that" by inserting: "***the person charged with the offense:***".

Amend sec. 29, page 11, line 46, after "***department***" by inserting: "***and any designee of the department***".

Amend sec. 29, page 12, line 2, after "***department***" by inserting: "***or its designee***".

Amend sec. 29, page 12, by deleting line 8 and inserting: "***The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.***

2. Notwithstanding the provisions of subsection 1, the department or its designee may release the name and other identifying".

Amend sec. 29, page 12, line 11, after "***department***" by inserting: "***or its designee***".

Amend the bill as a whole by adding new sections designated sections 30.1 through 30.5, following sec. 30, to read as follows:

"**Sec. 30.1.** ***1. The University of Nevada School of Medicine shall establish a program for the evaluation and research of the medical use of marijuana in the care and treatment of persons who have been diagnosed with a chronic or debilitating medical condition.***

2. Before the School of Medicine establishes a program pursuant to subsection 1, the School of Medicine shall aggressively seek and must receive approval of the program by the Federal Government pursuant to 21 U.S.C. § 823 or other applicable provisions of federal law, to allow the creation of a federally approved research program for the use and distribution of marijuana for medical purposes.

3. A research program established pursuant to this section must include residents of this state who volunteer to act as participants and subjects, as determined by the School of Medicine.

4. A resident of this state who wishes to serve as a participant and subject in a research program established pursuant to this section may notify the School of Medicine and may apply to participate by submitting an application on a form prescribed by the department of administration of the School of Medicine.

5. The School of Medicine shall, on a quarterly basis, report to the interim finance committee with respect to:

(a) The progress made by the School of Medicine in obtaining federal approval for the research program; and

(b) If the research program receives federal approval, the status of, activities of and information received from the research program.

Sec. 30.2. *1. Except as otherwise provided in this section, the University of Nevada School of Medicine shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written materials that the School of Medicine creates or receives pursuant to the research program described in section 30.1 of this act; or

(b) The name or any other identifying information of a person who has applied to or who participates in the research program described in section 30.1 of this act.

The items of information described in this subsection are confidential, not subject to subpoena and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the School of Medicine may release the name and other identifying information of a person who has applied to or who participates in the research program described in section 30.1 to:

(a) Authorized employees of the State of Nevada as necessary to perform official duties related to the research program; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is a lawful participant in the research program.

Sec. 30.3. *1. The department of administration of the University of Nevada School of Medicine may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of section 30.1 of this act.*

2. Any money the department of administration receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 30.4 of this act.

Sec. 30.4. *1. Any money the department of administration of the University of Nevada School of Medicine receives pursuant to section 30.3 of this act or that is appropriated to carry out the provisions of section 30.1 of this act:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of section 30.1 of this act, including the dissemination of information concerning the provisions of that section and such other information as is determined appropriate by the department of administration; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The department of administration of the School of Medicine shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 30.5. *The department shall vigorously pursue the approval of the Federal Government to establish:*

1. A bank or repository of seeds that may be used to grow marijuana by persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

2. A program pursuant to which the department may produce and deliver marijuana to persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.".

Amend sec. 37, page 14, line 20, by deleting "3, 4 and 5" and inserting "3 ~~[, 4 and 5]~~ ***and 4***"

Amend sec. 37, page 15, line 17, by deleting "***and***" and inserting "***or***".

Amend sec. 37, page 15, line 20, by deleting "***treatment.***" and inserting:

"***treatment and, if the examination reveals that he is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.***".

Amend sec. 37, page 15, line 22, by deleting "***and***" and inserting "***or***".

Amend sec. 37, page 15, by deleting lines 25 through 27 and inserting:

"*(c) For the third offense, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140.*

(d) For a fourth or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.".

Amend sec. 38, page 15, line 33, after "inclusive," by inserting:

"and sections 2 to 12, inclusive, of *Senate Bill No. 397 of* this ~~[act]~~ *session*".

Amend the bill as a whole by adding a new section designated sec. 48.5, following sec. 48, to read as follows:

"**Sec. 48.5.** 1. The 72nd session of the Nevada legislature shall review statistics provided by the legislative counsel bureau with respect to:

(a) Whether persons exempt from state prosecution pursuant to section 17 of this act have been subject to federal prosecution for carrying out the activities concerning which they are exempt from state prosecution pursuant to that section;

(b) The number of persons who participate in the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act; and

(c) The number of persons who are arrested and convicted for drug related offenses within the State of Nevada, to enable appropriations for budgets to be established at levels to provide adequate drug treatment within this state.

2. If, after conducting the review described in subsection 1, the 72nd session of the Nevada legislature determines that the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act is not in the best interests of the residents of this state, the legislature shall revise those provisions as it deems appropriate.".

Amend sec. 50, page 21, by deleting lines 25 and 26 and inserting:

"3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 30.1 to 30.5, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, 48.5 and 49 of this act".

Amend the bill as a whole by adding a preamble, immediately preceding the enacting clause, to read as follows:

"WHEREAS, Modern medical research, including the report *Marijuana and Medicine: Assessing the Science Base* that was released by the Institute of Medicine in 1999, indicates that there is a potential therapeutic value of using marijuana for alleviating pain and other symptoms associated with certain chronic or debilitating medical conditions, including, without limitation, cancer, glaucoma, acquired immunodeficiency syndrome, epilepsy and multiple sclerosis; and

WHEREAS, The State of Nevada has a high incidence of such medical conditions and also has a large and increasing population of senior citizens who may suffer from medical conditions for which the use of marijuana may be useful in managing the pain that results from those conditions; and

WHEREAS, The people of the State of Nevada recognized the importance of this research and the need to provide the option for those suffering from certain medical conditions to alleviate their pain with the medical use of marijuana, and in the general elections held in 1998 and 2000, voiced their overwhelming support for a constitutional amendment to allow for the medical use of marijuana in this state under certain circumstances; and

WHEREAS, While the legislature respects the important and difficult decisions the Federal Government faces in exercising the powers delegated to it by the United States Constitution to establish policies and rules that are in the best interest of this nation, the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to regulate the

health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana; and

WHEREAS, This state should continue to study the benefits of the medical use of marijuana to develop new ways in which the medical use of marijuana may improve the lives of residents of this state who are suffering from chronic or debilitating conditions, and to include in such a study an examination of all established and approved federal protocols; and

WHEREAS, Many residents of this state have suffered the negative consequences of abuse of and addiction to marijuana and it is important for the legislature to ensure that the program established for the distribution and medical use of marijuana is designed in such a manner as not to harm the residents of this state by contributing to the general abuse of and addiction to marijuana; and

WHEREAS, A majority of the men and women in our penal institutions have been convicted of offenses that involve the unlawful use of drugs, many involving marijuana, and there is a need for revising our statutes concerning persons who unlawfully possess smaller quantities of marijuana based on the premise that the rehabilitation of such users is a more appropriate and economical way to prevent recidivism and to address the problems that result from the abuse of marijuana; and

WHEREAS, The legislature is strongly committed to evaluating the medical use of marijuana and recognizes the importance of its obligation to review the program for the distribution and medical use of marijuana and any related study conducted by the University of Nevada School of Medicine, to determine whether the program and study are effectively addressing the best interests of the people of the State of Nevada; now, therefore,".

No. 577, Amendment No. 1172, and respectfully requests your honorable body to concur in said amendments.

Also, I have the honor to inform your honorable body that the Assembly on this day appointed Assemblymen Bache, Gibbons and Lee as a first Conference Committee concerning Assembly Bill No. 219.

PATRICIA R. WILLIAMS
Assistant Chief Clerk of the Assembly

INTRODUCTION, FIRST READING AND REFERENCE

Assembly Bill No. 340.

Senator Rawson moved that the bill be referred to the Committee on Finance.

Motion carried.

Assembly Bill No. 343.

Senator Rawson moved that the bill be referred to the Committee on Finance.

Motion carried.

SECOND READING AND AMENDMENT

Assembly Bill No. 453.

Bill read second time.

The following amendment was proposed by the Committee on Human Resources and Facilities:

Amendment No. 1197.

Amend sec. 25, page 9, line 27, after "*that*" by inserting: "*the person charged with the offense:*".

Amend sec. 29, page 11, line 46, after "*department*" by inserting: "*and any designee of the department*".

Amend sec. 29, page 12, line 2, after "*department*" by inserting: "*or its designee*".

Amend sec. 29, page 12, by deleting line 8 and inserting: "*The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.*

2. Notwithstanding the provisions of subsection 1, the department or its designee may release the name and other identifying".

Amend sec. 29, page 12, line 11, after "*department*" by inserting: "*or its designee*".

Amend the bill as a whole by adding new sections designated sections 30.1 through 30.5, following sec. 30, to read as follows:

"Sec. 30.1. *1. The University of Nevada School of Medicine shall establish a program for the evaluation and research of the medical use of marijuana in the care and treatment of persons who have been diagnosed with a chronic or debilitating medical condition.*

2. Before the School of Medicine establishes a program pursuant to subsection 1, the School of Medicine shall aggressively seek and must receive approval of the program by the Federal Government pursuant to 21 U.S.C. § 823 or other applicable provisions of federal law, to allow the creation of a federally approved research program for the use and distribution of marijuana for medical purposes.

3. A research program established pursuant to this section must include residents of this state who volunteer to act as participants and subjects, as determined by the School of Medicine.

4. A resident of this state who wishes to serve as a participant and subject in a research program established pursuant to this section may notify the School of Medicine and may apply to participate by submitting an application on a form prescribed by the department of administration of the School of Medicine.

5. The School of Medicine shall, on a quarterly basis, report to the interim finance committee with respect to:

(a) The progress made by the School of Medicine in obtaining federal approval for the research program; and

(b) If the research program receives federal approval, the status of, activities of and information received from the research program.

Sec. 30.2. *1. Except as otherwise provided in this section, the University of Nevada School of Medicine shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written materials that the School of Medicine creates or receives pursuant to the research program described in section 30.1 of this act; or

(b) The name or any other identifying information of a person who has applied to or who participates in the research program described in section 30.1 of this act.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the School of Medicine may release the name and other identifying information of a person who has applied to or who participates in the research program described in section 30.1 to:

(a) Authorized employees of the State of Nevada as necessary to perform official duties related to the research program; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is a lawful participant in the research program.

Sec. 30.3. *1. The department of administration of the University of Nevada School of Medicine may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of section 30.1 of this act.*

2. Any money the department of administration receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 30.4 of this act.

Sec. 30.4. *1. Any money the department of administration of the University of Nevada School of Medicine receives pursuant to section 30.3 of this act or that is appropriated to carry out the provisions of section 30.1 of this act:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of section 30.1 of this act, including the dissemination of information concerning the provisions of that section and such other information as is determined appropriate by the department of administration; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The department of administration of the School of Medicine shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 30.5. *The department shall vigorously pursue the approval of the Federal Government to establish:*

1. A bank or repository of seeds that may be used to grow marijuana by persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

2. A program pursuant to which the department may produce and deliver marijuana to persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.".

Amend sec. 37, page 14, line 20, by deleting: "3, 4 and 5" and inserting: "3 ~~[, 4 and 5]~~ *and 4*".

Amend sec. 37, page 15, line 17, by deleting "*and*" and inserting "*or*".

Amend sec. 37, page 15, line 20, by deleting "*treatment.*" and inserting: "*treatment and, if the examination reveals that he is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.*".

Amend sec. 37, page 15, line 22, by deleting "*and*" and inserting "*or*".

Amend sec. 37, page 15, by deleting lines 25 through 27 and inserting:

"*(c) For the third offense, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140.*

(d) For a fourth or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.".

Amend sec. 38, page 15, line 33, after "inclusive," by inserting: "and sections 2 to 12, inclusive, of *Senate Bill No. 397 of* this ~~[act]~~ *session*".

Amend the bill as a whole by adding a new section designated sec. 48.5, following sec. 48, to read as follows:

"Sec. 48.5. 1. The 72nd session of the Nevada legislature shall review statistics provided by the legislative counsel bureau with respect to:

(a) Whether persons exempt from state prosecution pursuant to section 17 of this act have been subject to federal prosecution for carrying out the activities concerning which they are exempt from state prosecution pursuant to that section;

(b) The number of persons who participate in the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act; and

(c) The number of persons who are arrested and convicted for drug related offenses within the State of Nevada, to enable appropriations for budgets to be established at levels to provide adequate and appropriate drug treatment within this state.

2. If, after conducting the review described in subsection 1, the 72nd

session of the Nevada legislature determines that the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act is not in the best interests of the residents of this state, the legislature shall revise those provisions as it deems appropriate.".

Amend sec. 50, page 21, by deleting lines 25 and 26 and inserting:

"3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 30.1 to 30.5, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, 48.5 and 49 of this act".

Amend the bill as a whole by adding a preamble, immediately preceding the enacting clause, to read as follows:

"WHEREAS, Modern medical research, including the report *Marijuana and Medicine: Assessing the Science Base* that was released by the Institute of Medicine in 1999, indicates that there is a potential therapeutic value of using marijuana for alleviating pain and other symptoms associated with certain chronic or debilitating medical conditions, including, without limitation, cancer, glaucoma, acquired immunodeficiency syndrome, epilepsy and multiple sclerosis; and

WHEREAS, The State of Nevada has a high incidence of such medical conditions and also has a large and increasing population of senior citizens who may suffer from medical conditions for which the use of marijuana may be useful in managing the pain that results from those conditions; and

WHEREAS, The people of the State of Nevada recognized the importance of this research and the need to provide the option for those suffering from certain medical conditions to alleviate their pain with the medical use of marijuana, and in the general elections held in 1998 and 2000, voiced their overwhelming support for a constitutional amendment to allow for the medical use of marijuana in this state under certain circumstances; and

WHEREAS, While the legislature respects the important and difficult decisions the Federal Government faces in exercising the powers delegated to it by the United States Constitution to establish policies and rules that are in the best interest of this nation, the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana; and

WHEREAS, This state should continue to study the benefits of the medical use of marijuana to develop new ways in which the medical use of marijuana may improve the lives of residents of this state who are suffering from chronic or debilitating conditions, and to include in such a study an examination of all established and approved federal protocols; and

WHEREAS, Many residents of this state have suffered the negative consequences of abuse of and addiction to marijuana, and it is important for the legislature to ensure that the program established for the distribution and medical use of marijuana is designed in such a manner as not to harm the residents of this state by contributing to the general abuse of and addiction to marijuana; and

WHEREAS, A majority of the men and women in our penal institutions have

been convicted of offenses that involve the unlawful use of drugs, many involving marijuana, and there is a need for revising our statutes concerning persons who unlawfully possess smaller quantities of marijuana based on the premise that the rehabilitation of such users is a more appropriate and economical way to prevent recidivism and to address the problems that result from the abuse of marijuana; and

WHEREAS, The legislature is strongly committed to evaluating the medical use of marijuana and recognizes the importance of its obligation to review the program for the distribution and medical use of marijuana and any related study conducted by the University of Nevada School of Medicine, to determine whether the program and study are effectively addressing the best interests of the people of the State of Nevada; now, therefore,".

Senator Rawson moved the adoption of the amendment.

Remarks by Senator Rawson.

Senator James requested that Senator Rawson's remarks be entered in the Journal.

SENATOR RAWSON:

Thank you, Madam President; I need to take a few moments on this because this is about medical marijuana. A lot of people have asked questions about it and there needs to be some substantial comments made as we process this extensive an issue.

I have had Article 4, Section 38 of the Constitution of the State of Nevada passed out. I will go through some significant parts of it because this is the result of the ballot question that has been passed twice by the people of the State of Nevada. Essentially the Legislature is instructed through the Constitution to provide a law for the following things:

The use by a patient on the advice of his physician, essentially for treatment or alleviation of cancer, glaucoma or a number of other debilitating diseases, a plant of the genus cannabis, in other words marijuana.

We were instructed in the Constitution to do that. It is to be restricted to minors and only upon the advice of a physician and with the approval of a parent. There is to be a protection of the plant and the property related to its use from any forfeiture because of any arrests, unless it is being used by someone that is not authorized to use it. The Legislature was directed to create a registry of patients and their attendants who are authorized to use the plant for medical purposes. There is an authorization of appropriate methods of supply of the plant to patients who are authorized to use it.

There are two notes that there are two things that the section does not authorize. It does not authorize the use or possession of the plant for a purpose other than medical use. It does not require the reimbursement by an insurer for the medical use of the plant. That is the introduction of what is required.

I would like to say that I am a prescribing practitioner. As a dentist I write prescriptions for controlled substances. I also teach pharmacology. In the history of pharmacology we find that plants were really the beginning of pharmacy, not just in this country, but worldwide. We have examples of some such as foxglove, which was brewed as a tea to strengthen people who were suffering congestive heart failure. It was only after discovering the ingredient digitalis that we found that there was a legitimate purpose for it and it is effective in helping people who have congestive failure. The volumes are filled with medicinal uses of plants and their discovery and elucidation and the prescription laws that developed around it.

Marijuana is one of those plants that has a medicinal purpose. We haven't clearly defined what all of those purposes are. We are hampered in that process because it is a drug that has been involved in illicit use. It has a history of that, and because of that, any serious investigation has been soured. Yet, the public and many people, through whatever means, have come to realize that there are probably legitimate uses for this plant. It is out of that desire for taking care of the people who have intractable illnesses, serious illnesses, that this issue became a ballot question and that we, now, have to face it in our Body.

Basically, the amendment to A.B. 453 does a number of things. First of all it resolves a conflict with S.B. 397, but it provides a statement of legislative intent. We have gone into some serious drafting efforts to try to develop a preamble that indicates why this is being done and what is intended to be accomplished by it. It specifies that the registry and application information for medical marijuana users is confidential. It is not subject to discovery. It should not be used to arrest a list of individuals or to embarrass a group of individuals or for any other purposes other than serious medical research. It requires the Department of Agriculture to aggressively pursue approval by the federal government for a seed bank and a program to produce and deliver marijuana to eligible persons. We cannot predict what the federal government will do with that, but we will direct them to actively pursue that. It requires the University of Nevada School of Medicine to apply to the federal government to establish a research program concerning the medical use of marijuana in the care and treatment of persons with chronic or debilitating medical conditions. The amendment specifies conditions of participation, confidentiality requirements for participants and reporting mechanisms for such a study. Further, the School of Medicine may accept gifts, grants or donations to operate the program.

It revises the penalty section of the bill to provide for fines or treatment for first and second offenses for possession, one ounce or less of marijuana. It specifies that the third offense is a gross misdemeanor. Finally, it adds a fourth a subsequent offense as a category "E" felony. It requires that the 2003 Legislature review a report with regard to the number of persons participating in the medical use of marijuana and whether any federal prosecution has taken place involving these individuals. The Legislature shall also review the number of those arrested and convicted for drug related offenses to be able to evaluate budgetary considerations for any treatment programs that are recommended. The amendments were requested to clarify the confidentiality provisions and to provide alternatives that may be acceptable to the federal government through a structured, scientific evaluation of the therapeutic usefulness of medical marijuana in managing pain and alleviating certain medical conditions.

Realizing that a lot of this is technical and it is not up to me to advocate for people to vote one way or another on this, but simply, we have been charged to set up these programs. Our Human Resources and Facilities Committee has tried as conscientiously as we can to set up what we would consider a bright path to a proper program. Whether or not there will still be any federal prosecutions or whether or not this satisfies everyone's moral concerns about the issue of marijuana is another issue, probably outside the scope of the committee work. I can recommend it to you that we have given it our best effort. It has been conscientious. There are a lot of hours into it. I will leave it to you. I might, just historically, say that this isn't the only occasion that this Legislature has acted on such an issue. In 1979 the medical use of marijuana was passed and specifically that was for Keith Hays, who was suffering from cancer. As I read through the minutes of those events, Senator Neal was very prominent in his questions and his concerns and I expect that he has watched this historically to see both the enactment of that and then the later elimination of that from our statutes. The reason for that given at the time was because there was an extract that marijuana produced called merinol. It was presumed that it would take the place of marijuana and it would no longer be necessary to have marijuana available. Merinol, it turned out, did not produce the pharmacological affect that people were hoping for in the alleviation of both nausea and wasting disease and a number of other things. Those things seem to be taken care of more fully by this agent in the smoked form. That is one of the reasons we think that an adequate study should be done on this.

I will leave this issue to the rest of you to deal with this as you would, but I would recommend the amendment.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 148.

Bill read third time.

EXEMPT

(REPRINTED WITH ADOPTED AMENDMENTS)
THIRD REPRINT **A.B. 453**

ASSEMBLY BILL NO. 453–ASSEMBLYWOMAN GIUNCHIGLIANI

MARCH 19, 2001

Referred to Concurrent Committees on Judiciary and Ways and Means

SUMMARY—Exempts medical use of marijuana from state prosecution in certain circumstances and revises penalties for possessing marijuana. (BDR 40-121)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State: Contains Appropriation not included in Executive Budget.

EXPLANATION Matter in ***bolded italics*** is new; matter between brackets [~~omitted material~~] is material to be omitted.

AN ACT relating to controlled substances; exempting the medical use of marijuana from state prosecution in certain circumstances; revising the penalties for possessing marijuana; and providing other matters properly relating thereto.

WHEREAS, Modern medical research, including the report *Marijuana and Medicine: Assessing the Science Base* that was released by the Institute of Medicine in 1999, indicates that there is a potential therapeutic value of using marijuana for alleviating pain and other symptoms associated with certain chronic or debilitating medical conditions, including, without limitation, cancer, glaucoma, acquired immunodeficiency syndrome, epilepsy and multiple sclerosis; and

WHEREAS, The State of Nevada has a high incidence of such medical conditions and also has a large and increasing population of senior citizens who may suffer from medical conditions for which the use of marijuana may be useful in managing the pain that results from those conditions; and

WHEREAS, The people of the State of Nevada recognized the importance of this research and the need to provide the option for those suffering from certain medical conditions to alleviate their pain with the medical use of marijuana, and in the general elections held in 1998 and 2000, voiced their overwhelming support for a constitutional amendment to allow for the medical use of marijuana in this state under certain circumstances; and

WHEREAS, While the legislature respects the important and difficult decisions the Federal Government faces in exercising the powers delegated to it by the United States Constitution to establish policies and rules that are in the best interest of this nation, the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to

regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana; and

WHEREAS, This state should continue to study the benefits of the medical use of marijuana to develop new ways in which the medical use of marijuana may improve the lives of residents of this state who are suffering from chronic or debilitating conditions, and to include in such a study an examination of all established and approved federal protocols; and

WHEREAS, Many residents of this state have suffered the negative consequences of abuse of and addiction to marijuana, and it is important for the legislature to ensure that the program established for the distribution and medical use of marijuana is designed in such a manner as not to harm the residents of this state by contributing to the general abuse of and addiction to marijuana; and

WHEREAS, A majority of the men and women in our penal institutions have been convicted of offenses that involve the unlawful use of drugs, many involving marijuana, and there is a need for revising our statutes concerning persons who unlawfully possess smaller quantities of marijuana based on the premise that the rehabilitation of such users is a more appropriate and economical way to prevent recidivism and to address the problems that result from the abuse of marijuana; and

WHEREAS, The legislature is strongly committed to evaluating the medical use of marijuana and recognizes the importance of its obligation to review the program for the distribution and medical use of marijuana and any related study conducted by the University of Nevada School of Medicine, to determine whether the program and study are effectively addressing the best interests of the people of the State of Nevada; now, therefore,

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

Section 1. Title 40 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 3. "Administer" has the meaning ascribed to it in NRS 453.021.

Sec. 4. "Attending physician" means a physician who:

1. Is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS; and

2. Has primary responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Sec. 5. "Cachexia" means general physical wasting and malnutrition associated with chronic disease.

Sec. 6. "Chronic or debilitating medical condition" means:

1. Acquired immune deficiency syndrome;

2. Cancer;

3. Glaucoma;

4. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;

(b) Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;

(c) Seizures, including, without limitation, seizures caused by epilepsy;

(d) Severe nausea; or

(e) Severe pain; or

5. Any other medical condition or treatment for a medical condition that is:

(a) Classified as a chronic or debilitating medical condition by regulation of the division; or

(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with section 30 of this act.

Sec. 7. "Deliver" or "delivery" has the meaning ascribed to it in NRS 453.051.

Sec. 8. "Department" means the state department of agriculture.

Sec. 9. 1. "Designated primary caregiver" means a person who:

(a) Is 18 years of age or older;

(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and

(c) Is designated as such in the manner required pursuant to section 23 of this act.

2. The term does not include the attending physician of a person diagnosed with a chronic or debilitating medical condition.

Sec. 10. "Division" means the health division of the department of human resources.

Sec. 11. "Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.

Sec. 12. "Marijuana" has the meaning ascribed to it in NRS 453.096.

Sec. 13. "Medical use of marijuana" means:

1. The possession, delivery, production or use of marijuana;

2. The possession, delivery or use of paraphernalia used to administer marijuana; or

3. Any combination of the acts described in subsections 1 and 2,

as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.

Sec. 13.5. "Production" has the meaning ascribed to it in NRS 453.131.

Sec. 14. "Registry identification card" means a document issued by the department or its designee that identifies:

1. A person who is exempt from state prosecution for engaging in the medical use of marijuana; or

2. The designated primary caregiver, if any, of a person described in subsection 1.

Sec. 14.5. *"State prosecution" means prosecution initiated or maintained by the State of Nevada or an agency or political subdivision of the State of Nevada.*

Sec. 15. *1. "Usable marijuana" means the dried leaves and flowers of a plant of the genus Cannabis, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana.*

2. The term does not include the seeds, stalks and roots of the plant.

Sec. 16. *"Written documentation" means:*

1. A statement signed by the attending physician of a person diagnosed with a chronic or debilitating medical condition; or

2. Copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition.

Sec. 17. *1. Except as otherwise provided in this section and section 24 of this act, a person who holds a valid registry identification card issued to him pursuant to section 20 or 23 of this act is exempt from state prosecution for:*

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of drug paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element.

2. In addition to the provisions of subsection 1, no person may be subject to state prosecution for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the medical use of marijuana in accordance with the provisions of this chapter.

3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act, and the designated primary caregiver, if any, of such a person:

(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and

(b) Do not, at any one time, collectively possess, deliver or produce more than:

(1) One ounce of usable marijuana;

(2) Three mature marijuana plants; and

(3) Four immature marijuana plants.

4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.

Sec. 18. (Deleted by amendment.)

Sec. 19. *1. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.*

2. Except as otherwise provided in subsections 3 and 5, the department or its designee shall issue a registry identification card to a person who submits an application on a form prescribed by the department accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The department or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the department to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the department shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the department; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the central repository for Nevada records of criminal history; and

(4) One copy to the board of medical examiners.

The central repository for Nevada records of criminal history shall report to the department its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The board of medical examiners shall report to the department its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).

5. The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The department may contact an applicant, his attending physician and designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The department may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish his chronic or debilitating medical condition; or

(2) Document his consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the department, including, without limitation, the regulations adopted by the director pursuant to section 32 of this act;

(c) The department determines that the information provided by the applicant was falsified;

(d) The department determines that the attending physician of the applicant is not licensed to practice medicine in this state or is not in good standing, as reported by the board of medical examiners;

(e) The department determines that the applicant, or his designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

(f) The department has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of section 24 of this act; or

(g) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the department to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the department. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the department or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the department has not yet approved or denied the application, the person, and his designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the department received the application.

Sec. 20. *1. If the department approves an application pursuant to subsection 5 of section 19 of this act, the department or its designee shall, as soon as practicable after the department approves the application:*

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the department.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the department.

4. A registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the department.

Sec. 21. *1. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act shall, in accordance with regulations adopted by the department:*

(a) Notify the department of any change in his name, address, telephone number, attending physician or designated primary caregiver, if any; and

(b) Submit annually to the department:

(1) Updated written documentation from his attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) He has explained to the person the possible risks and benefits of the medical use of marijuana; and

(2) If he elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number and social security number of the designated primary caregiver; and

(II) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

2. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department, notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to him shall be deemed expired. If the registry identification card of a person to whom the department or its designee issued the card pursuant to paragraph (a) of subsection 1 of

section 20 of this act is deemed expired pursuant to this subsection, a registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired. Upon the deemed expiration of a registry identification card pursuant to this subsection:

(a) The department shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his registry identification card to the department within 7 days after receiving the notice sent pursuant to paragraph (a).

Sec. 22. *If a person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act is diagnosed by his attending physician as no longer having a chronic or debilitating medical condition, the person and his designated primary caregiver, if any, shall return their registry identification cards to the department within 7 days after notification of the diagnosis.*

Sec. 23. *1. If a person who applies to the department for a registry identification card or to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act desires to designate a primary caregiver, the person must:*

(a) To designate a primary caregiver at the time of application, submit to the department the information required pursuant to paragraph (d) of subsection 2 of section 19 of this act; or

(b) To designate a primary caregiver after the department or its designee has issued a registry identification card to him, submit to the department the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.

2. A person may have only one designated primary caregiver at any one time.

3. If a person designates a primary caregiver after the time that he initially applies for a registry identification card, the department or its designee shall, except as otherwise provided in subsection 5 of section 19 of this act, issue a registry identification card to the designated primary caregiver as soon as practicable after receiving the information submitted pursuant to paragraph (b) of subsection 1.

Sec. 24. *1. A person who holds a registry identification card issued to him pursuant to section 20 or 23 of this act is not exempt from state prosecution for, nor may he establish an affirmative defense to charges arising from, any of the following acts:*

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

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(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he knows does not lawfully hold a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

2. In addition to any other penalty provided by law, if the department determines that a person has willfully violated a provision of this chapter or any regulation adopted by the department or division to carry out the provisions of this chapter, the department may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 25. *1. Except as otherwise provided in this section and section 24 of this act, it is an affirmative defense to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that the person charged with the offense:*

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his arrest and has been advised by his attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.

2. A person need not hold a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act to assert an affirmative defense described in this section.

3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,

if the amount of marijuana at issue is not greater than the amount described in paragraph (b) of subsection 3 of section 17 of this act and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

A defendant who fails to provide notice of his intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.

Sec. 26. *1. The fact that a person possesses a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act does not, alone:*

(a) Constitute probable cause to search the person or his property; or

(b) Subject the person or his property to inspection by any governmental agency.

2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other related property from a person engaged or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, drug paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, drug paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, drug paraphernalia or other related property was seized, or his designee, that the person from whom the marijuana, drug paraphernalia or other related property was seized is engaging in or assisting in the medical use of marijuana in accordance with the

provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, marijuana plants, drug paraphernalia or other related property that was seized.

The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or his designee that a person is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 27. *The board of medical examiners shall not take any disciplinary action against an attending physician on the basis that the attending physician:*

1. Advised a person whom the attending physician has diagnosed as having a chronic or debilitating medical condition, or a person whom the attending physician knows has been so diagnosed by another physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS:

(a) About the possible risks and benefits of the medical use of marijuana; or

(b) That the medical use of marijuana may mitigate the symptoms or effects of the person's chronic or debilitating medical condition,

if the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition.

2. Provided the written documentation required pursuant to paragraph (a) of subsection 2 of section 19 of this act for the issuance of a registry identification card or pursuant to subparagraph (1) of paragraph (b) of subsection 1 of section 21 of this act for the renewal of a registry identification card, if:

(a) Such documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition; and

(b) The physician has advised the person about the possible risks and benefits of the medical use of marijuana.

Sec. 28. *A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that:*

1. The person engages in or has engaged in the medical use of marijuana in accordance with the provisions of this chapter; or

2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act.

Sec. 29. *1. Except as otherwise provided in this section and subsection 4 of section 19 of this act, the department and any designee of the department shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written documentation that the department or its designee creates or receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the department or its designee has issued a registry identification card.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the department or its designee may release the name and other identifying information of a person to whom the department or its designee has issued a registry identification card to:

(a) Authorized employees of the department or its designee as necessary to perform official duties of the department; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him pursuant to section 20 or 23 of this act.

Sec. 30. *1. A person may submit to the division a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions pursuant to section 6 of this act.*

2. The division shall adopt regulations setting forth the manner in which the division will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:

(a) The division will approve or deny a petition within 180 days after the division receives the petition;

(b) If the division approves a petition, the division will, as soon as practicable thereafter, transmit to the department information concerning the disease or condition that the division has approved; and

(c) The decision of the division to deny a petition is a final decision for the purposes of judicial review.

Sec. 30.1. *1. The University of Nevada School of Medicine shall establish a program for the evaluation and research of the medical use of marijuana in the care and treatment of persons who have been diagnosed with a chronic or debilitating medical condition.*

2. Before the School of Medicine establishes a program pursuant to subsection 1, the School of Medicine shall aggressively seek and must receive approval of the program by the Federal Government pursuant to 21 U.S.C. § 823 or other applicable provisions of federal law, to allow the creation of a federally approved research program for the use and distribution of marijuana for medical purposes.

3. A research program established pursuant to this section must include residents of this state who volunteer to act as participants and subjects, as determined by the School of Medicine.

4. A resident of this state who wishes to serve as a participant and subject in a research program established pursuant to this section may notify the School of Medicine and may apply to participate by submitting

an application on a form prescribed by the department of administration of the School of Medicine.

5. The School of Medicine shall, on a quarterly basis, report to the interim finance committee with respect to:

(a) The progress made by the School of Medicine in obtaining federal approval for the research program; and

(b) If the research program receives federal approval, the status of, activities of and information received from the research program.

Sec. 30.2. *1. Except as otherwise provided in this section, the University of Nevada School of Medicine shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written materials that the School of Medicine creates or receives pursuant to the research program described in section 30.1 of this act; or

(b) The name or any other identifying information of a person who has applied to or who participates in the research program described in section 30.1 of this act.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the School of Medicine may release the name and other identifying information of a person who has applied to or who participates in the research program described in section 30.1 to:

(a) Authorized employees of the State of Nevada as necessary to perform official duties related to the research program; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is a lawful participant in the research program.

Sec. 30.3. *1. The department of administration of the University of Nevada School of Medicine may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of section 30.1 of this act.*

2. Any money the department of administration receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 30.4 of this act.

Sec. 30.4. *1. Any money the department of administration of the University of Nevada School of Medicine receives pursuant to section 30.3 of this act or that is appropriated to carry out the provisions of section 30.1 of this act:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of section 30.1 of this act, including the dissemination of information concerning the provisions of that section and such other information as is determined appropriate by the department of administration; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The department of administration of the School of Medicine shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 30.5. *The department shall vigorously pursue the approval of the Federal Government to establish:*

1. A bank or repository of seeds that may be used to grow marijuana by persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

2. A program pursuant to which the department may produce and deliver marijuana to persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 31. *The provisions of this chapter do not:*

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to accommodate the medical use of marijuana in the workplace.

Sec. 31.3. *1. The director of the department may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of this chapter.*

2. Any money the director receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 31.7 of this act.

Sec. 31.7. *1. Any money the director of the department receives pursuant to section 31.3 of this act or that is appropriated to carry out the provisions of this chapter:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of this chapter, including the dissemination of information concerning the provisions of sections 2 to 33, inclusive, of this act and such other information as determined appropriate by the director; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The director of the department shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 32. *The director of the department shall adopt such regulations as the director determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:*

1. Procedures pursuant to which the state department of agriculture will, in cooperation with the department of motor vehicles and public safety, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the state department of agriculture will:

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(a) Issue a registry identification card to a qualified person after the card has been prepared by the department of motor vehicles and public safety; or

(b) Designate the department of motor vehicles and public safety to issue a registry identification card to a person if:

(1) The person presents to the department of motor vehicles and public safety valid documentation issued by the state department of agriculture indicating that the state department of agriculture has approved the issuance of a registry identification card to the person; and

(2) The department of motor vehicles and public safety, before issuing the registry identification card, confirms by telephone or other reliable means that the state department of agriculture has approved the issuance of a registry identification card to the person.

2. Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.

Sec. 33. ***The state must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person.***

Sec. 34. Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 35 and 36 of this act.

Sec. 35. ***The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of sections 2 to 33, inclusive, of this act.***

Sec. 36. ***1. A local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed in accordance with subsection 2.***

2. Money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to subsection 1 must be evenly allocated among:

(a) Nonprofit programs for the treatment of abuse of alcohol or drugs that are certified by the bureau of alcohol and drug abuse in the department;

(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and

(c) Local law enforcement agencies,

in a manner determined by the court.

3. As used in this section, "local authority" means the governing board of a county, city or other political subdivision having authority to enact ordinances.

Sec. 37. NRS 453.336 is hereby amended to read as follows:

453.336 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, osteopathic physician's assistant, physician assistant, dentist, podiatric physician, optometrist, advanced practitioner of nursing or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive ~~[.]~~ ***, and sections 35 and 36 of this act.***

2. Except as otherwise provided in subsections 3 ~~[, 4 and 5]~~ ***and 4*** and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, 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 1 year and a maximum term of not more than 6 years.

4. ~~[Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marijuana:~~

~~(a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~(b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.~~

~~5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:~~

~~(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and~~

~~(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.~~

~~6.]~~ ***Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:***

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; or

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment and, if the examination reveals that he is

a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; or

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For the third offense, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140.

(d) For a fourth or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

5. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

Sec. 38. 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, and sections 2 to 12, inclusive, of ***Senate Bill No. 397 of*** this ~~[act]~~ ***session*** 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, guilty but mentally ill, nolo contendere or similar plea to a charge pursuant to ***subsection 2 or 3 of*** NRS 453.336, ***NRS*** 453.411 or 454.351, 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 prisons.

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 motor vehicles and 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. 39. NRS 453.401 is hereby amended to read as follows:

453.401 1. Except as otherwise provided in subsections 3 and 4, if two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act or conspire to defraud the State of Nevada or an agency of the state in connection with its enforcement of the Uniform Controlled Substances Act, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator:

(a) For a first offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(b) For a second offense, or if, in the case of a first conviction of violating this subsection, the conspirator has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or of any state, territory or district which if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 10 years, and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, or if the conspirator has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 may be further punished by a fine of not more than $20,000 for each offense.

2. Except as otherwise provided in subsection 3, if two or more persons conspire to commit an offense in violation of the Uniform Controlled Substances Act and the offense does not constitute a felony, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator shall be punished by imprisonment, or by imprisonment and fine, for not more than the maximum punishment provided for the offense which they conspired to commit.

3. If two or more persons conspire to possess ***more than 1 ounce of*** marijuana unlawfully, except for the purpose of sale, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator is guilty of a gross misdemeanor.

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4. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, the persons so conspiring shall be punished in the manner provided in NRS 207.400.

5. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 1.

Sec. 40. NRS 453.580 is hereby amended to read as follows:

453.580 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to ***subsection 4 of NRS 453.336,*** NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the health division of the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.

2. A program to which a court assigns a person pursuant to subsection 1 must include:

(a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;

(b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is assigned and the cost of any additional supervision required pursuant to subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 41. NRS 455B.080 is hereby amended to read as follows:

455B.080 1. A passenger shall not embark on an amusement ride while intoxicated or under the influence of a controlled substance, unless in accordance with ~~[a]~~ *:*

(a) A prescription lawfully issued to the person ~~[.]~~ ***; or***

(b) The provisions of sections 2 to 33, inclusive, of this act.

2. An authorized agent or employee of an operator may prohibit a passenger from boarding an amusement ride if he reasonably believes that the passenger is under the influence of alcohol, prescription drugs or a controlled substance. An agent or employee of an operator is not civilly or criminally liable for prohibiting a passenger from boarding an amusement ride pursuant to this subsection.

Sec. 42. NRS 52.395 is hereby amended to read as follows:

52.395 ***Except as otherwise provided in section 26 of this act:***

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 43. (Deleted by amendment.)

Sec. 44. NRS 159.061 is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months ~~;~~ , ***except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act;*** and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood or marriage of the proposed guardian to the proposed ward.

(e) Any recommendation made by a special master pursuant to NRS 159.0615.

Sec. 45. NRS 213.123 is hereby amended to read as follows:

213.123 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use ***, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** or any failure or refusal to submit to a test is a ground for revocation of parole.

2. Any expense incurred as a result of any test is a charge against the division.

Sec. 46. NRS 616C.230 is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name ~~;~~ ***or that he was not using in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 47. NRS 630.3066 is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for ~~[~~prescribing~~]~~ ***:***

1. Prescribing or administering to a patient under his care a controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with regulations adopted by the board.

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2. Engaging in any activity in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 48. (Deleted by amendment.)

Sec. 48.5. 1. The 72nd session of the Nevada legislature shall review statistics provided by the legislative counsel bureau with respect to:

(a) Whether persons exempt from state prosecution pursuant to section 17 of this act have been subject to federal prosecution for carrying out the activities concerning which they are exempt from state prosecution pursuant to that section;

(b) The number of persons who participate in the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act; and

(c) The number of persons who are arrested and convicted for drug related offenses within the State of Nevada, to enable appropriations for budgets to be established at levels to provide adequate and appropriate drug treatment within this state.

2. If, after conducting the review described in subsection 1, the 72nd session of the Nevada legislature determines that the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act is not in the best interests of the residents of this state, the legislature shall revise those provisions as it deems appropriate.

Sec. 49. The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.

Sec. 50. 1. This section becomes effective upon passage and approval.

2. Sections 6, 20, 21, 30 and 32 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2001, for all other purposes.

3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 30.1 to 30.5, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, 48.5 and 49 of this act become effective on October 1, 2001.

4. Section 37 of this act becomes effective at 12:01 a.m. on October 1, 2001.

authorizing short-term lessors of passenger cars to charge a fee as reimbursement for payment of vehicle licensing fees and taxes; and providing other matters properly relating thereto.".

Amend the summary of the bill to read as follows:

"SUMMARY—Creates legislative committee on transportation and revises provisions governing fees collected by short-term lessors of passenger cars. (BDR 17-589)".

Senator O'Donnell moved the adoption of the amendment.

Remarks by Senators O'Donnell and Carlton.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 174.

Bill read third time.

Roll call on Assembly Bill No. 174:

YEAS—21.

NAYS—None.

Assembly Bill No. 174 having received a two-thirds majority, Madam President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 453.

Bill read third time.

Remarks by Senators Care and Rawson.

Senator Care requested that the following remarks be entered in the Journal.

SENATOR CARE:

Thank you, Madam President. This is an interesting dilemma. We have a ballot question, we know the will of the people was expressed twice overwhelmingly, as I recall. We have a bill in the United States Supreme Court decision and I know we have an opinion from the Legislative Counsel Bureau (LCB) discussing, as I understand it, the interplay between the case of the Oakland cannabis buyers and the argument about the medical necessity exception, which does not exist in federal law. I heard the Chairman discussing earlier that there is no guarantee how the feds will react to this and I'm really intrigued by this as an attorney. I do not want to thwart the will of the people; on the other hand, I am in no position to speculate how this read with the Supreme Court decision. I'm just wondering, because LCB did issue an opinion. I have asked for it but there just has not been time to get it to my desk. I am wondering if the Chairman has any additional comments or notes or statements from LCB regarding how this bill plays with the recent Supreme Court decision.

SENATOR RAWSON:

Thank you, Madam President. We discussed this extensively and all the way through any of the work on this I told LCB that I wanted to draft something that not only they would say was legal but would have the best chance to be able to withstand the challenge. They cannot predict everything that will happen down the road, but Brenda indicated to our subcommittee that she thought that this bill, as amended, would meet the challenge of being legal and that it had a reasonable chance to be able to withstand any case. From there it would be a matter of the arguments and the aggressiveness and what the specific situation was as to what any particular court would really find. Brenda is right here, behind you, she may be able to address this and she does have a specific written opinion on it and I think it is well written and well reasoned.

SENATOR CARE:

Thank you, Madam President. I think, for the record, if the Chairman does not mind, I would like to take a moment. I have just jumped to the last paragraph, this is what we do in the practice of law, we look to see what the courts order is in the last paragraph and I am just going to read the conclusion. I would do it without even having read it beforehand. It simply says: "In summary it is the opinion of this office that the decision of the Supreme Court in Oakland cannabis is a decision of limited scope that addresses only one issue whether the defense of medical necessity may be raised in opposition to charges of the violation of federal Controlled Substances Act. In that decision the Supreme Court did not consider nor did it decide the propriety or legality of the decision of a state to exempt certain persons from prosecution under the state's drug laws for the medical use of marijuana. It is the further opinion of this office that Oakland cannabis has no effect on Senate Bill 545 because Senate Bill 545 proposes only to authorize certain research programs that are authorized in accordance with an exception to the Controlled Substance Act. Finally it is the opinion of this office that the effect of Oakland cannabis on Assembly Bill 453 is only the persons who would be exempt from state prosecution pursuant to the provisions of that bill, may not if prosecuted by federal government pursuant to the Controlled Substances Act be able to assert a defense of medical necessity. The decision does not otherwise call in to question the validity of or legality of Assembly Bill 453". That is the conclusion of the opinion. I asked for it and I got it.

Roll call on Assembly Bill No. 453:

YEAS—15.

NAYS—Jacobsen, O'Connell, O'Donnell, Porter, Raggio, Washington—6.

Assembly Bill No. 453 having received a constitutional majority, Madam President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

UNFINISHED BUSINESS

RECEDE FROM SENATE AMENDMENTS

Senator Rawson moved that the Senate do not recede from its action on Assembly Bill No. 271, that a conference be requested, and that Madam President appoint a first Conference Committee consisting of three members to meet with a like committee of the Assembly.

Remarks by Senator Rawson.

Motion carried.

Bill ordered transmitted to the Assembly.

APPOINTMENT OF CONFERENCE COMMITTEES

Madam President appointed Senators Amodei, Townsend and Mathews as a first Conference Committee to meet with a like committee of the Assembly for the further consideration of Assembly Bill No. 271.

REPORTS OF CONFERENCE COMMITTEES

Madam President:

The first Conference Committee concerning Senate Bill No. 49, consisting of the undersigned members, has met and reports that:

It has agreed to recommend that the amendment of the Assembly be concurred in.

TERRY CARE	BARBARA E. BUCKLEY
MIKE MCGINNESS	JOHN C. CARPENTER
JON C. PORTER	ELLEN M. KOIVISTO
Senate Conference Committee	*Assembly Conference Committee*

2. The administrative head of a local government shall make available to each local governmental officer or employee,
a written summary of NRS 281.611 to 281.671, inclusive ~~,~~ ***, and sections 2 and 3 of this act.***

Sec. 10. **NRS 281.671** is hereby amended to read as follows:

281.671 NRS 281.611 to 281.661, inclusive, ***and sections 2 and 3 of this act,*** are intended to be directory and preventive rather than punitive, and do not abrogate or decrease the effect of any of the provisions of NRS which define crimes or prescribe punishments with respect to the conduct of state officers or employees ~~,~~ ***or local governmental officers or employees.***

Sec. 11. **NRS 218.5343** is hereby amended to read as follows:

218.5343 1. An employee of a state agency who testifies before a house or committee of the legislature on his own behalf and not on behalf of his employer shall, before commencing his testimony, state that fact clearly on the record.

2. It is unlawful for a state agency which is the employer of an employee who complies with subsection 1 and testifies or seeks to testify before a house or committee of the legislature on his own behalf to:

(a) Deprive the employee of his employment or to take any reprisal or retaliatory action against the employee as a consequence of his testimony or potential testimony;

(b) Threaten the employee that his testimony or potential testimony will result in the termination of his employment or in any reprisal or retaliatory action against him; or

(c) Directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence the employee in an effort to interfere with or prevent the testimony of the employee.

3. It is unlawful for a state agency to:

(a) Deprive or threaten to deprive an employee of his employment;

(b) Take or threaten to take any reprisal or retaliatory action against the employee; or

(c) Directly or indirectly intimidate, threaten, coerce, command or influence or attempt to intimidate, threaten, coerce, command or influence the employee,

in an attempt to affect the behavior of another employee who is testifying or seeks to testify before a house or committee of the legislature on his own behalf.

4. The provisions of this section do not apply to an employee in the classified service who has not completed his probationary period.

5. For the purposes of this section:

(a) "Reprisal or retaliatory action" has the meaning ascribed to it in ~~[subsection 5 of NRS 281.641.]~~ ***NRS 281.611.***

(b) "State agency" means an agency, bureau, board, commission, department, division, officer, employee or agent or any other unit of the executive department of the state government.

Assembly Bill No. 453–Assemblywoman Giunchigliani

CHAPTER 592

AN ACT relating to controlled substances; exempting the medical use of marijuana from state prosecution in certain circumstances; revising the penalties for possessing marijuana; and providing other matters properly relating thereto.

[Approved: June 14, 2001]

WHEREAS, Modern medical research, including the report *Marijuana and Medicine: Assessing the Science Base* that was released by the Institute of Medicine in 1999, indicates that there is a potential therapeutic value of using marijuana for alleviating pain and other symptoms associated with certain chronic or debilitating medical conditions, including, without limitation, cancer, glaucoma, acquired immunodeficiency syndrome, epilepsy and multiple sclerosis; and

WHEREAS, The State of Nevada has a high incidence of such medical conditions and also has a large and increasing population of senior citizens who may suffer from medical conditions for which the use of marijuana may be useful in managing the pain that results from those conditions; and

WHEREAS, The people of the State of Nevada recognized the importance of this research and the need to provide the option for those suffering from certain medical conditions to alleviate their pain with the medical use of marijuana, and in the general elections held in 1998 and 2000, voiced their overwhelming support for a constitutional amendment to allow for the medical use of marijuana in this state under certain circumstances; and

WHEREAS, While the legislature respects the important and difficult decisions the Federal Government faces in exercising the powers delegated to it by the United States Constitution to establish policies and rules that are in the best interest of this nation, the State of Nevada as a sovereign state has the duty to carry out the will of the people of this state and to regulate the health, medical practices and well-being of those people in a manner that respects their personal decisions concerning the relief of suffering through the medical use of marijuana; and

WHEREAS, This state should continue to study the benefits of the medical use of marijuana to develop new ways in which the medical use of marijuana may improve the lives of residents of this state who are suffering from chronic or debilitating conditions, and to include in such a study an examination of all established and approved federal protocols; and

WHEREAS, Many residents of this state have suffered the negative consequences of abuse of and addiction to marijuana, and it is important for the legislature to ensure that the program established for the distribution and medical use of marijuana is designed in such a manner as not to harm the residents of this state by contributing to the general abuse of and addiction to marijuana; and

WHEREAS, A majority of the men and women in our penal institutions have been convicted of offenses that involve the unlawful use of drugs, many involving marijuana, and there is a need for revising our statutes concerning persons who unlawfully possess smaller quantities of marijuana based on the premise that the rehabilitation of such users is a more appropriate and economical way to prevent recidivism and to address the problems that result from the abuse of marijuana; and

WHEREAS, The legislature is strongly committed to evaluating the medical use of marijuana and recognizes the importance of its obligation to review the program for the distribution and medical use of marijuana and any related study conducted by the University of Nevada School of Medicine, to determine whether the program and study are effectively addressing the best interests of the people of the State of Nevada; now, therefore,

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

Section 1. Title 40 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 33, inclusive, of this act.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 3 to 16, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *"Administer" has the meaning ascribed to it in NRS 453.021.*

Sec. 4. *"Attending physician" means a physician who:*

1. Is licensed to practice medicine pursuant to the provisions of chapter 630 of NRS; and

2. Has primary responsibility for the care and treatment of a person diagnosed with a chronic or debilitating medical condition.

Sec. 5. *"Cachexia" means general physical wasting and malnutrition associated with chronic disease.*

Sec. 6. *"Chronic or debilitating medical condition" means:*

1. Acquired immune deficiency syndrome;

2. Cancer;

3. Glaucoma;

4. A medical condition or treatment for a medical condition that produces, for a specific patient, one or more of the following:

(a) Cachexia;

(b) Persistent muscle spasms, including, without limitation, spasms caused by multiple sclerosis;

(c) Seizures, including, without limitation, seizures caused by epilepsy;

(d) Severe nausea; or

(e) Severe pain; or

5. Any other medical condition or treatment for a medical condition that is:

(a) Classified as a chronic or debilitating medical condition by regulation of the division; or

(b) Approved as a chronic or debilitating medical condition pursuant to a petition submitted in accordance with section 30 of this act.

Sec. 7. *"Deliver" or "delivery" has the meaning ascribed to it in NRS 453.051.*

Sec. 8. *"Department" means the state department of agriculture.*

Sec. 9. *1. "Designated primary caregiver" means a person who:*

(a) Is 18 years of age or older;

(b) Has significant responsibility for managing the well-being of a person diagnosed with a chronic or debilitating medical condition; and

(c) Is designated as such in the manner required pursuant to section 23 of this act.

2. The term does not include the attending physician of a person diagnosed with a chronic or debilitating medical condition.

Sec. 10. *"Division" means the health division of the department of human resources.*

Sec. 11. *"Drug paraphernalia" has the meaning ascribed to it in NRS 453.554.*

Sec. 12. *"Marijuana" has the meaning ascribed to it in NRS 453.096.*

Sec. 13. *"Medical use of marijuana" means:*

1. The possession, delivery, production or use of marijuana;

2. The possession, delivery or use of paraphernalia used to administer marijuana; or

3. Any combination of the acts described in subsections 1 and 2,

as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of his chronic or debilitating medical condition.

Sec. 13.5. *"Production" has the meaning ascribed to it in NRS 453.131.*

Sec. 14. *"Registry identification card" means a document issued by the department or its designee that identifies:*

1. A person who is exempt from state prosecution for engaging in the medical use of marijuana; or

2. The designated primary caregiver, if any, of a person described in subsection 1.

Sec. 14.5. *"State prosecution" means prosecution initiated or maintained by the State of Nevada or an agency or political subdivision of the State of Nevada.*

Sec. 15. *1. "Usable marijuana" means the dried leaves and flowers of a plant of the genus Cannabis, and any mixture or preparation thereof, that are appropriate for the medical use of marijuana.*

2. The term does not include the seeds, stalks and roots of the plant.

Sec. 16. *"Written documentation" means:*

1. A statement signed by the attending physician of a person diagnosed with a chronic or debilitating medical condition; or

2. Copies of the relevant medical records of a person diagnosed with a chronic or debilitating medical condition.

Sec. 17. *1. Except as otherwise provided in this section and section 24 of this act, a person who holds a valid registry identification card issued to him pursuant to section 20 or 23 of this act is exempt from state prosecution for:*

(a) Possession, delivery or production of marijuana;

(b) Possession or delivery of drug paraphernalia;

(c) Aiding and abetting another in the possession, delivery or production of marijuana;

(d) Aiding and abetting another in the possession or delivery of drug paraphernalia;

(e) Any combination of the acts described in paragraphs (a) to (d), inclusive; and

(f) Any other criminal offense in which the possession, delivery or production of marijuana or the possession or delivery of drug paraphernalia is an element.

2. In addition to the provisions of subsection 1, no person may be subject to state prosecution for constructive possession, conspiracy or any other criminal offense solely for being in the presence or vicinity of the

medical use of marijuana in accordance with the provisions of this chapter.

3. The exemption from state prosecution set forth in subsection 1 applies only to the extent that a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act, and the designated primary caregiver, if any, of such a person:

(a) Engage in or assist in, as applicable, the medical use of marijuana in accordance with the provisions of this chapter as justified to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; and

(b) Do not, at any one time, collectively possess, deliver or produce more than:

(1) One ounce of usable marijuana;

(2) Three mature marijuana plants; and

(3) Four immature marijuana plants.

4. If the persons described in subsection 3 possess, deliver or produce marijuana in an amount which exceeds the amount described in paragraph (b) of that subsection, those persons:

(a) Are not exempt from state prosecution for possession, delivery or production of marijuana.

(b) May establish an affirmative defense to charges of possession, delivery or production of marijuana, or any combination of those acts, in the manner set forth in section 25 of this act.

Sec. 18. (Deleted by amendment.)

Sec. 19. *1. The department shall establish and maintain a program for the issuance of registry identification cards to persons who meet the requirements of this section.*

2. Except as otherwise provided in subsections 3 and 5, the department or its designee shall issue a registry identification card to a person who submits an application on a form prescribed by the department accompanied by the following:

(a) Valid, written documentation from the person's attending physician stating that:

(1) The person has been diagnosed with a chronic or debilitating medical condition;

(2) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(3) The attending physician has explained the possible risks and benefits of the medical use of marijuana;

(b) The name, address, telephone number, social security number and date of birth of the person;

(c) The name, address and telephone number of the person's attending physician; and

(d) If the person elects to designate a primary caregiver at the time of application:

(1) The name, address, telephone number and social security number of the designated primary caregiver; and

(2) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

3. The department or its designee shall issue a registry identification card to a person who is under 18 years of age if:

(a) The person submits the materials required pursuant to subsection 2; and

(b) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age signs a written statement setting forth that:

(1) The attending physician of the person under 18 years of age has explained to that person and to the custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age the possible risks and benefits of the medical use of marijuana;

(2) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age consents to the use of marijuana by the person under 18 years of age for medical purposes;

(3) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to serve as the designated primary caregiver for the person under 18 years of age; and

(4) The custodial parent or legal guardian with responsibility for health care decisions for the person under 18 years of age agrees to control the acquisition of marijuana and the dosage and frequency of use by the person under 18 years of age.

4. The form prescribed by the department to be used by a person applying for a registry identification card pursuant to this section must be a form that is in quintuplicate. Upon receipt of an application that is completed and submitted pursuant to this section, the department shall:

(a) Record on the application the date on which it was received;

(b) Retain one copy of the application for the records of the department; and

(c) Distribute the other four copies of the application in the following manner:

(1) One copy to the person who submitted the application;

(2) One copy to the applicant's designated primary caregiver, if any;

(3) One copy to the central repository for Nevada records of criminal history; and

(4) One copy to the board of medical examiners.

The central repository for Nevada records of criminal history shall report to the department its findings as to the criminal history, if any, of an applicant within 15 days after receiving a copy of an application pursuant to subparagraph (3) of paragraph (c). The board of medical examiners shall report to the department its findings as to the licensure and standing of the applicant's attending physician within 15 days after receiving a copy of an application pursuant to subparagraph (4) of paragraph (c).

5. The department shall verify the information contained in an application submitted pursuant to this section and shall approve or deny an application within 30 days after receiving the application. The department may contact an applicant, his attending physician and designated primary caregiver, if any, by telephone to determine that the information provided on or accompanying the application is accurate. The department may deny an application only on the following grounds:

(a) The applicant failed to provide the information required pursuant to subsections 2 and 3 to:

(1) Establish his chronic or debilitating medical condition; or

(2) Document his consultation with an attending physician regarding the medical use of marijuana in connection with that condition;

(b) The applicant failed to comply with regulations adopted by the department, including, without limitation, the regulations adopted by the director pursuant to section 32 of this act;

(c) The department determines that the information provided by the applicant was falsified;

(d) The department determines that the attending physician of the applicant is not licensed to practice medicine in this state or is not in good standing, as reported by the board of medical examiners;

(e) The department determines that the applicant, or his designated primary caregiver, if applicable, has been convicted of knowingly or intentionally selling a controlled substance;

(f) The department has prohibited the applicant from obtaining or using a registry identification card pursuant to subsection 2 of section 24 of this act; or

(g) In the case of a person under 18 years of age, the custodial parent or legal guardian with responsibility for health care decisions for the person has not signed the written statement required pursuant to paragraph (b) of subsection 3.

6. The decision of the department to deny an application for a registry identification card is a final decision for the purposes of judicial review. Only the person whose application has been denied or, in the case of a person under 18 years of age whose application has been denied, the person's parent or legal guardian, has standing to contest the determination of the department. A judicial review authorized pursuant to this subsection must be limited to a determination of whether the denial was arbitrary, capricious or otherwise characterized by an abuse of discretion and must be conducted in accordance with the procedures set forth in chapter 233B of NRS for reviewing a final decision of an agency.

7. A person whose application has been denied may not reapply for 6 months after the date of the denial, unless the department or a court of competent jurisdiction authorizes reapplication in a shorter time.

8. Except as otherwise provided in this subsection, if a person has applied for a registry identification card pursuant to this section and the department has not yet approved or denied the application, the person, and his designated primary caregiver, if any, shall be deemed to hold a registry identification card upon the presentation to a law enforcement officer of the copy of the application provided to him pursuant to subsection 4. A person may not be deemed to hold a registry identification card for a period of more than 30 days after the date on which the department received the application.

Sec. 20. *1. If the department approves an application pursuant to subsection 5 of section 19 of this act, the department or its designee shall, as soon as practicable after the department approves the application:*

(a) Issue a serially numbered registry identification card to the applicant; and

(b) If the applicant has designated a primary caregiver, issue a serially numbered registry identification card to the designated primary caregiver.

2. A registry identification card issued pursuant to paragraph (a) of subsection 1 must set forth:

(a) The name, address, photograph and date of birth of the applicant;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant's designated primary caregiver, if any; and

(d) Any other information prescribed by regulation of the department.

3. A registry identification card issued pursuant to paragraph (b) of subsection 1 must set forth:

(a) The name, address and photograph of the designated primary caregiver;

(b) The date of issuance and date of expiration of the registry identification card;

(c) The name and address of the applicant for whom the person is the designated primary caregiver; and

(d) Any other information prescribed by regulation of the department.

4. A registry identification card issued pursuant to this section is valid for a period of 1 year and may be renewed in accordance with regulations adopted by the department.

Sec. 21. *1. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act shall, in accordance with regulations adopted by the department:*

(a) Notify the department of any change in his name, address, telephone number, attending physician or designated primary caregiver, if any; and

(b) Submit annually to the department:

(1) Updated written documentation from his attending physician in which the attending physician sets forth that:

(I) The person continues to suffer from a chronic or debilitating medical condition;

(II) The medical use of marijuana may mitigate the symptoms or effects of that condition; and

(III) He has explained to the person the possible risks and benefits of the medical use of marijuana; and

(2) If he elects to designate a primary caregiver for the subsequent year and the primary caregiver so designated was not the person's designated primary caregiver during the previous year:

(I) The name, address, telephone number and social security number of the designated primary caregiver; and

(II) A written, signed statement from his attending physician in which the attending physician approves of the designation of the primary caregiver.

2. A person to whom the department or its designee has issued a registry identification card pursuant to paragraph (b) of subsection 1 of section 20 of this act or pursuant to section 23 of this act shall, in accordance with regulations adopted by the department, notify the department of any change in his name, address, telephone number or the identity of the person for whom he acts as designated primary caregiver.

3. If a person fails to comply with the provisions of subsection 1 or 2, the registry identification card issued to him shall be deemed expired. If the registry identification card of a person to whom the department or its designee issued the card pursuant to paragraph (a) of subsection 1 of section 20 of this act is deemed expired pursuant to this subsection, a

registry identification card issued to the person's designated primary caregiver, if any, shall also be deemed expired. Upon the deemed expiration of a registry identification card pursuant to this subsection:

(a) The department shall send, by certified mail, return receipt requested, notice to the person whose registry identification card has been deemed expired, advising the person of the requirements of paragraph (b); and

(b) The person shall return his registry identification card to the department within 7 days after receiving the notice sent pursuant to paragraph (a).

Sec. 22. *If a person to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act is diagnosed by his attending physician as no longer having a chronic or debilitating medical condition, the person and his designated primary caregiver, if any, shall return their registry identification cards to the department within 7 days after notification of the diagnosis.*

Sec. 23. *1. If a person who applies to the department for a registry identification card or to whom the department or its designee has issued a registry identification card pursuant to paragraph (a) of subsection 1 of section 20 of this act desires to designate a primary caregiver, the person must:*

(a) To designate a primary caregiver at the time of application, submit to the department the information required pursuant to paragraph (d) of subsection 2 of section 19 of this act; or

(b) To designate a primary caregiver after the department or its designee has issued a registry identification card to him, submit to the department the information required pursuant to subparagraph (2) of paragraph (b) of subsection 1 of section 21 of this act.

2. A person may have only one designated primary caregiver at any one time.

3. If a person designates a primary caregiver after the time that he initially applies for a registry identification card, the department or its designee shall, except as otherwise provided in subsection 5 of section 19 of this act, issue a registry identification card to the designated primary caregiver as soon as practicable after receiving the information submitted pursuant to paragraph (b) of subsection 1.

Sec. 24. *1. A person who holds a registry identification card issued to him pursuant to section 20 or 23 of this act is not exempt from state prosecution for, nor may he establish an affirmative defense to charges arising from, any of the following acts:*

(a) Driving, operating or being in actual physical control of a vehicle or a vessel under power or sail while under the influence of marijuana.

(b) Engaging in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410, 488.420 or 493.130.

(c) Possessing a firearm in violation of paragraph (b) of subsection 1 of NRS 202.257.

(d) Possessing marijuana in violation of NRS 453.336 or possessing drug paraphernalia in violation of NRS 453.560 or 453.566, if the possession of the marijuana or drug paraphernalia is discovered because the person engaged or assisted in the medical use of marijuana in:

(1) Any public place or in any place open to the public or exposed to public view; or

(2) Any local detention facility, county jail, state prison, reformatory or other correctional facility, including, without limitation, any facility for the detention of juvenile offenders.

(e) Delivering marijuana to another person who he knows does not lawfully hold a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

(f) Delivering marijuana for consideration to any person, regardless of whether the recipient lawfully holds a registry identification card issued by the department or its designee pursuant to section 20 or 23 of this act.

2. In addition to any other penalty provided by law, if the department determines that a person has willfully violated a provision of this chapter or any regulation adopted by the department or division to carry out the provisions of this chapter, the department may, at its own discretion, prohibit the person from obtaining or using a registry identification card for a period of up to 6 months.

Sec. 25. *1. Except as otherwise provided in this section and section 24 of this act, it is an affirmative defense to a criminal charge of possession, delivery or production of marijuana, or any other criminal offense in which possession, delivery or production of marijuana is an element, that the person charged with the offense:*

(a) Is a person who:

(1) Has been diagnosed with a chronic or debilitating medical condition within the 12-month period preceding his arrest and has been advised by his attending physician that the medical use of marijuana may mitigate the symptoms or effects of that chronic or debilitating medical condition;

(2) Is engaged in the medical use of marijuana; and

(3) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the person's attending physician to mitigate the symptoms or effects of the person's chronic or debilitating medical condition; or

(b) Is a person who:

(1) Is assisting a person described in paragraph (a) in the medical use of marijuana; and

(2) Possesses, delivers or produces marijuana only in the amount described in paragraph (b) of subsection 3 of section 17 of this act or in excess of that amount if the person proves by a preponderance of the evidence that the greater amount is medically necessary as determined by the assisted person's attending physician to mitigate the symptoms or effects of the assisted person's chronic or debilitating medical condition.

2. A person need not hold a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act to assert an affirmative defense described in this section.

3. Except as otherwise provided in this section and in addition to the affirmative defense described in subsection 1, a person engaged or assisting in the medical use of marijuana who is charged with a crime pertaining to the medical use of marijuana is not precluded from:

(a) Asserting a defense of medical necessity; or

(b) Presenting evidence supporting the necessity of marijuana for treatment of a specific disease or medical condition,
if the amount of marijuana at issue is not greater than the amount described in paragraph (b) of subsection 3 of section 17 of this act and the person has taken steps to comply substantially with the provisions of this chapter.

4. A defendant who intends to offer an affirmative defense described in this section shall, not less than 5 days before trial or at such other time as the court directs, file and serve upon the prosecuting attorney a written notice of his intent to claim the affirmative defense. The written notice must:

(a) State specifically why the defendant believes he is entitled to assert the affirmative defense; and

(b) Set forth the factual basis for the affirmative defense.

A defendant who fails to provide notice of his intent to claim an affirmative defense as required pursuant to this subsection may not assert the affirmative defense at trial unless the court, for good cause shown, orders otherwise.

Sec. 26. *1. The fact that a person possesses a registry identification card issued to him by the department or its designee pursuant to section 20 or 23 of this act does not, alone:*

(a) Constitute probable cause to search the person or his property; or

(b) Subject the person or his property to inspection by any governmental agency.

2. Except as otherwise provided in this subsection, if officers of a state or local law enforcement agency seize marijuana, drug paraphernalia or other related property from a person engaged or assisting in the medical use of marijuana:

(a) The law enforcement agency shall ensure that the marijuana, drug paraphernalia or other related property is not destroyed while in the possession of the law enforcement agency.

(b) Any property interest of the person from whom the marijuana, drug paraphernalia or other related property was seized must not be forfeited pursuant to any provision of law providing for the forfeiture of property, except as part of a sentence imposed after conviction of a criminal offense.

(c) Upon a determination by the district attorney of the county in which the marijuana, drug paraphernalia or other related property was seized, or his designee, that the person from whom the marijuana, drug paraphernalia or other related property was seized is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter, the law enforcement agency shall immediately return to that person any usable marijuana, marijuana plants, drug paraphernalia or other related property that was seized.

The provisions of this subsection do not require a law enforcement agency to care for live marijuana plants.

3. For the purposes of paragraph (c) of subsection 2, the determination of a district attorney or his designee that a person is engaging in or assisting in the medical use of marijuana in accordance with the provisions of this chapter shall be deemed to be evidenced by:

(a) A decision not to prosecute;

(b) The dismissal of charges; or

(c) Acquittal.

Sec. 27. *The board of medical examiners shall not take any disciplinary action against an attending physician on the basis that the attending physician:*

1. Advised a person whom the attending physician has diagnosed as having a chronic or debilitating medical condition, or a person whom the attending physician knows has been so diagnosed by another physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS:

(a) About the possible risks and benefits of the medical use of marijuana; or

(b) That the medical use of marijuana may mitigate the symptoms or effects of the person's chronic or debilitating medical condition,
if the advice is based on the attending physician's personal assessment of the person's medical history and current medical condition.

2. Provided the written documentation required pursuant to paragraph (a) of subsection 2 of section 19 of this act for the issuance of a registry identification card or pursuant to subparagraph (1) of paragraph (b) of subsection 1 of section 21 of this act for the renewal of a registry identification card, if:

(a) Such documentation is based on the attending physician's personal assessment of the person's medical history and current medical condition; and

(b) The physician has advised the person about the possible risks and benefits of the medical use of marijuana.

Sec. 28. *A professional licensing board shall not take any disciplinary action against a person licensed by the board on the basis that:*

1. The person engages in or has engaged in the medical use of marijuana in accordance with the provisions of this chapter; or

2. The person acts as or has acted as the designated primary caregiver of a person who holds a registry identification card issued to him pursuant to paragraph (a) of subsection 1 of section 20 of this act.

Sec. 29. *1. Except as otherwise provided in this section and subsection 4 of section 19 of this act, the department and any designee of the department shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written documentation that the department or its designee creates or receives pursuant to the provisions of this chapter; or

(b) The name or any other identifying information of:

(1) An attending physician; or

(2) A person who has applied for or to whom the department or its designee has issued a registry identification card.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the department or its designee may release the name and other identifying information of a person to whom the department or its designee has issued a registry identification card to:

(a) Authorized employees of the department or its designee as necessary to perform official duties of the department; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is the lawful holder of a registry identification card issued to him pursuant to section 20 or 23 of this act.

Sec. 30. *1. A person may submit to the division a petition requesting that a particular disease or condition be included among the diseases and conditions that qualify as chronic or debilitating medical conditions pursuant to section 6 of this act.*

2. The division shall adopt regulations setting forth the manner in which the division will accept and evaluate petitions submitted pursuant to this section. The regulations must provide, without limitation, that:

(a) The division will approve or deny a petition within 180 days after the division receives the petition;

(b) If the division approves a petition, the division will, as soon as practicable thereafter, transmit to the department information concerning the disease or condition that the division has approved; and

(c) The decision of the division to deny a petition is a final decision for the purposes of judicial review.

Sec. 30.1. *1. The University of Nevada School of Medicine shall establish a program for the evaluation and research of the medical use of marijuana in the care and treatment of persons who have been diagnosed with a chronic or debilitating medical condition.*

2. Before the School of Medicine establishes a program pursuant to subsection 1, the School of Medicine shall aggressively seek and must receive approval of the program by the Federal Government pursuant to 21 U.S.C. § 823 or other applicable provisions of federal law, to allow the creation of a federally approved research program for the use and distribution of marijuana for medical purposes.

3. A research program established pursuant to this section must include residents of this state who volunteer to act as participants and subjects, as determined by the School of Medicine.

4. A resident of this state who wishes to serve as a participant and subject in a research program established pursuant to this section may notify the School of Medicine and may apply to participate by submitting an application on a form prescribed by the department of administration of the School of Medicine.

5. The School of Medicine shall, on a quarterly basis, report to the interim finance committee with respect to:

(a) The progress made by the School of Medicine in obtaining federal approval for the research program; and

(b) If the research program receives federal approval, the status of, activities of and information received from the research program.

Sec. 30.2. *1. Except as otherwise provided in this section, the University of Nevada School of Medicine shall maintain the confidentiality of and shall not disclose:*

(a) The contents of any applications, records or other written materials that the School of Medicine creates or receives pursuant to the research program described in section 30.1 of this act; or

(b) The name or any other identifying information of a person who has applied to or who participates in the research program described in section 30.1 of this act.

The items of information described in this subsection are confidential, not subject to subpoena or discovery and not subject to inspection by the general public.

2. Notwithstanding the provisions of subsection 1, the School of Medicine may release the name and other identifying information of a person who has applied to or who participates in the research program described in section 30.1 to:

(a) Authorized employees of the State of Nevada as necessary to perform official duties related to the research program; and

(b) Authorized employees of state and local law enforcement agencies, only as necessary to verify that a person is a lawful participant in the research program.

Sec. 30.3. *1. The department of administration of the University of Nevada School of Medicine may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of section 30.1 of this act.*

2. Any money the department of administration receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 30.4 of this act.

Sec. 30.4. *1. Any money the department of administration of the University of Nevada School of Medicine receives pursuant to section 30.3 of this act or that is appropriated to carry out the provisions of section 30.1 of this act:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of section 30.1 of this act, including the dissemination of information concerning the provisions of that section and such other information as is determined appropriate by the department of administration; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The department of administration of the School of Medicine shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 30.5. *The department shall vigorously pursue the approval of the Federal Government to establish:*

1. A bank or repository of seeds that may be used to grow marijuana by persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

2. A program pursuant to which the department may produce and deliver marijuana to persons who use marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 31. *The provisions of this chapter do not:*

1. Require an insurer, organization for managed care or any person or entity who provides coverage for a medical or health care service to pay for or reimburse a person for costs associated with the medical use of marijuana.

2. Require any employer to accommodate the medical use of marijuana in the workplace.

Sec. 31.3. *1. The director of the department may apply for or accept any gifts, grants, donations or contributions from any source to carry out the provisions of this chapter.*

2. Any money the director receives pursuant to subsection 1 must be deposited in the state treasury pursuant to section 31.7 of this act.

Sec. 31.7. *1. Any money the director of the department receives pursuant to section 31.3 of this act or that is appropriated to carry out the provisions of this chapter:*

(a) Must be deposited in the state treasury and accounted for separately in the state general fund;

(b) May only be used to carry out the provisions of this chapter, including the dissemination of information concerning the provisions of sections 2 to 33, inclusive, of this act and such other information as determined appropriate by the director; and

(c) Does not revert to the state general fund at the end of any fiscal year.

2. The director of the department shall administer the account. Any interest or income earned on the money in the account must be credited to the account. Any claims against the account must be paid as other claims against the state are paid.

Sec. 32. *The director of the department shall adopt such regulations as the director determines are necessary to carry out the provisions of this chapter. The regulations must set forth, without limitation:*

1. Procedures pursuant to which the state department of agriculture will, in cooperation with the department of motor vehicles and public safety, cause a registry identification card to be prepared and issued to a qualified person as a type of identification card described in NRS 483.810 to 483.890, inclusive. The procedures described in this subsection must provide that the state department of agriculture will:

(a) Issue a registry identification card to a qualified person after the card has been prepared by the department of motor vehicles and public safety; or

(b) Designate the department of motor vehicles and public safety to issue a registry identification card to a person if:

(1) The person presents to the department of motor vehicles and public safety valid documentation issued by the state department of agriculture indicating that the state department of agriculture has approved the issuance of a registry identification card to the person; and

(2) The department of motor vehicles and public safety, before issuing the registry identification card, confirms by telephone or other reliable means that the state department of agriculture has approved the issuance of a registry identification card to the person.

2. Criteria for determining whether a marijuana plant is a mature marijuana plant or an immature marijuana plant.

Sec. 33. *The state must not be held responsible for any deleterious outcomes from the medical use of marijuana by any person.*

Sec. 34. **Chapter 453 of NRS** is hereby amended by adding thereto the provisions set forth as sections 35 and 36 of this act.

Sec. 35. *The provisions of this chapter do not apply to the extent that they are inconsistent with the provisions of sections 2 to 33, inclusive, of this act.*

Sec. 36. *1. A local authority may enact an ordinance adopting the penalties set forth for misdemeanors in NRS 453.336 for similar offenses under a local ordinance. The ordinance must set forth the manner in which money collected from fines imposed by a court for a violation of the ordinance must be disbursed in accordance with subsection 2.*

2. Money collected from fines imposed by a court for a violation of an ordinance enacted pursuant to subsection 1 must be evenly allocated among:

(a) Nonprofit programs for the treatment of abuse of alcohol or drugs that are certified by the bureau of alcohol and drug abuse in the department;

(b) A program of treatment and rehabilitation established by a court pursuant to NRS 453.580, if any; and

(c) Local law enforcement agencies,

in a manner determined by the court.

3. As used in this section, "local authority" means the governing board of a county, city or other political subdivision having authority to enact ordinances.

Sec. 37. **NRS 453.336** is hereby amended to read as follows:

453.336 1. A person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, osteopathic physician's assistant, physician assistant, dentist, podiatric physician, optometrist, advanced practitioner of nursing or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive ~~,~~ ***, and sections 35 and 36 of this act.***

2. Except as otherwise provided in subsections 3 ~~, 4 and 5~~ ***and 4*** and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first or second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

(b) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.

(c) For the first offense, if the controlled substance is listed in schedule V, for a category E felony as provided in NRS 193.130.

(d) For a second or subsequent offense, if the controlled substance is listed in schedule V, for a category D felony as provided in NRS 193.130.

3. Unless a greater penalty is provided in NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma-hydroxybutyrate, or any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor, 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 1 year and a maximum term of not more than 6 years.

4. ~~Unless a greater penalty is provided in NRS 212.160, a person who is less than 21 years of age and is convicted of the possession of less than 1 ounce of marijuana:~~

~~(a) For the first and second offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.~~

~~(b) For a third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $20,000.~~

~~5. Before sentencing under the provisions of subsection 4 for a first offense, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of NRS 176A.200. After the report is received but before sentence is pronounced the court shall:~~

~~(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and~~

~~(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information.~~

~~6.~~] ***Unless a greater penalty is provided pursuant to NRS 212.160, a person who is convicted of the possession of 1 ounce or less of marijuana:***

(a) For the first offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $600; or

(2) Examined by an approved facility for the treatment of abuse of drugs to determine whether he is a drug addict and is likely to be rehabilitated through treatment and, if the examination reveals that he is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(b) For the second offense, is guilty of a misdemeanor and shall be:

(1) Punished by a fine of not more than $1,000; or

(2) Assigned to a program of treatment and rehabilitation pursuant to NRS 453.580.

(c) For the third offense, is guilty of a gross misdemeanor and shall be punished as provided in NRS 193.140.

(d) For a fourth or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

5. As used in this section, "controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

Sec. 38. **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, and sections 2 to 12, inclusive, of ***Senate Bill No. 397 of*** this ~~[act]~~ ***session*** 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, guilty but mentally ill, nolo contendere or similar plea to a charge pursuant to ***subsection 2 or 3 of*** NRS 453.336, ***NRS*** 453.411 or 454.351, 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 prisons.

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 motor vehicles and 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. 39. **NRS 453.401** is hereby amended to read as follows:

453.401 1. Except as otherwise provided in subsections 3 and 4, if two or more persons conspire to commit an offense which is a felony under the Uniform Controlled Substances Act or conspire to defraud the State of Nevada or an agency of the state in connection with its enforcement of the Uniform Controlled Substances Act, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator:

(a) For a first offense, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(b) For a second offense, or if, in the case of a first conviction of violating this subsection, the conspirator has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or of any state, territory or district which if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 10 years, and may be further punished by a fine of not more than $10,000.

(c) For a third or subsequent offense, or if the conspirator has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, 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 may be further punished by a fine of not more than $20,000 for each offense.

2. Except as otherwise provided in subsection 3, if two or more persons conspire to commit an offense in violation of the Uniform Controlled Substances Act and the offense does not constitute a felony, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator shall be punished by imprisonment, or by imprisonment and fine, for not

more than the maximum punishment provided for the offense which they conspired to commit.

3. If two or more persons conspire to possess ***more than 1 ounce of*** marijuana unlawfully, except for the purpose of sale, and one of the conspirators does an act in furtherance of the conspiracy, each conspirator is guilty of a gross misdemeanor.

4. If the conspiracy subjects the conspirators to criminal liability under NRS 207.400, the persons so conspiring shall be punished in the manner provided in NRS 207.400.

5. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 1.

Sec. 40. **NRS 453.580** is hereby amended to read as follows:

453.580 1. A court may establish an appropriate treatment program to which it may assign a person pursuant to ***subsection 4 of NRS 453.336,*** NRS 453.3363 or 458.300 or it may assign such a person to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the health division of the department of human resources. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress towards completion of the program.

2. A program to which a court assigns a person pursuant to subsection 1 must include:

(a) Information and encouragement for the participant to cease abusing alcohol or using controlled substances through educational, counseling and support sessions developed with the cooperation of various community, health, substance abuse, religious, social service and youth organizations;

(b) The opportunity for the participant to understand the medical, psychological and social implications of substance abuse; and

(c) Alternate courses within the program based on the different substances abused and the addictions of participants.

3. If the offense with which the person was charged involved the use or possession of a controlled substance, in addition to the program or as a part of the program the court must also require frequent urinalysis to determine that the person is not using a controlled substance. The court shall specify how frequent such examinations must be and how many must be successfully completed, independently of other requisites for successful completion of the program.

4. Before the court assigns a person to a program pursuant to this section, the person must agree to pay the cost of the program to which he is assigned and the cost of any additional supervision required pursuant to subsection 3, to the extent of his financial resources. If the person does not have the financial resources to pay all of the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program at a facility that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 41. **NRS 455B.080** is hereby amended to read as follows:

455B.080 1. A passenger shall not embark on an amusement ride while intoxicated or under the influence of a controlled substance, unless in accordance with ~~[a]~~ *:*

(a) A prescription lawfully issued to the person ~~[.]~~ ***; or***

(b) The provisions of sections 2 to 33, inclusive, of this act.

2. An authorized agent or employee of an operator may prohibit a passenger from boarding an amusement ride if he reasonably believes that the passenger is under the influence of alcohol, prescription drugs or a controlled substance. An agent or employee of an operator is not civilly or criminally liable for prohibiting a passenger from boarding an amusement ride pursuant to this subsection.

Sec. 42. **NRS 52.395** is hereby amended to read as follows:

52.395 ***Except as otherwise provided in section 26 of this act:***

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or his representative and the defendant or his representative must be allowed to inspect and weigh the substance.

3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, his attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 43. **(Deleted by amendment.)**

Sec. 44. **NRS 159.061** is hereby amended to read as follows:

159.061 1. The parents of a minor, or either parent, if qualified and suitable, are preferred over all others for appointment as guardian for the minor. In determining whether the parents of a minor, or either parent, is qualified and suitable, the court shall consider, without limitation:

(a) Which parent has physical custody of the minor;

(b) The ability of the parents or parent to provide for the basic needs of the child, including, without limitation, food, shelter, clothing and medical care;

(c) Whether the parents or parent has engaged in the habitual use of alcohol or any controlled substance during the previous 6 months ~~[.]~~ ***, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act;*** and

(d) Whether the parents or parent has been convicted of a crime of moral turpitude, a crime involving domestic violence or a crime involving the exploitation of a child.

2. Subject to the preference set forth in subsection 1, the court shall appoint as guardian for an incompetent, a person of limited capacity or minor the qualified person who is most suitable and is willing to serve.

3. In determining who is most suitable, the court shall give consideration, among other factors, to:

(a) Any request for the appointment as guardian for an incompetent contained in a written instrument executed by the incompetent while competent.

(b) Any nomination of a guardian for an incompetent, minor or person of limited capacity contained in a will or other written instrument executed by a parent or spouse of the proposed ward.

(c) Any request for the appointment as guardian for a minor 14 years of age or older made by the minor.

(d) The relationship by blood or marriage of the proposed guardian to the proposed ward.

(e) Any recommendation made by a special master pursuant to NRS 159.0615.

Sec. 45. **NRS 213.123** is hereby amended to read as follows:

213.123 1. Upon the granting of parole to a prisoner, the board may, when the circumstances warrant, require as a condition of parole that the parolee submit to periodic tests to determine whether the parolee is using any controlled substance. Any such use ***, except the use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** or any failure or refusal to submit to a test is a ground for revocation of parole.

2. Any expense incurred as a result of any test is a charge against the division.

Sec. 46. **NRS 616C.230** is hereby amended to read as follows:

616C.230 1. Compensation is not payable pursuant to the provisions of chapters 616A to 616D, inclusive, or chapter 617 of NRS for an injury:

(a) Caused by the employee's willful intention to injure himself.

(b) Caused by the employee's willful intention to injure another.

(c) Proximately caused by the employee's intoxication. If the employee was intoxicated at the time of his injury, intoxication must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

(d) Proximately caused by the employee's use of a controlled substance. If the employee had any amount of a controlled substance in his system at the time of his injury for which the employee did not have a current and lawful prescription issued in his name ~~[.]~~ ***or that he was not using in accordance with the provisions of sections 2 to 33, inclusive, of this act,*** the controlled substance must be presumed to be a proximate cause unless rebutted by evidence to the contrary.

2. For the purposes of paragraphs (c) and (d) of subsection 1:

(a) The affidavit or declaration of an expert or other person described in NRS 50.315 is admissible to prove the existence of any alcohol or the existence, quantity or identity of a controlled substance in an employee's system. If the affidavit or declaration is to be so used, it must be submitted in the manner prescribed in NRS 616C.355.

(b) When an examination requested or ordered includes testing for the use of alcohol or a controlled substance, the laboratory that conducts the testing must be licensed pursuant to the provisions of chapter 652 of NRS.

3. No compensation is payable for the death, disability or treatment of an employee if his death is caused by, or insofar as his disability is aggravated, caused or continued by, an unreasonable refusal or neglect to submit to or to follow any competent and reasonable surgical treatment or medical aid.

4. If any employee persists in an unsanitary or injurious practice that imperils or retards his recovery, or refuses to submit to such medical or surgical treatment as is necessary to promote his recovery, his compensation may be reduced or suspended.

5. An injured employee's compensation, other than accident benefits, must be suspended if:

(a) A physician or chiropractor determines that the employee is unable to undergo treatment, testing or examination for the industrial injury solely because of a condition or injury that did not arise out of and in the course of his employment; and

(b) It is within the ability of the employee to correct the nonindustrial condition or injury.

The compensation must be suspended until the injured employee is able to resume treatment, testing or examination for the industrial injury. The insurer may elect to pay for the treatment of the nonindustrial condition or injury.

Sec. 47. **NRS 630.3066** is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for ~~[prescribing]~~ ***:***

1. Prescribing or administering to a patient under his care a controlled substance which is listed in schedule II, III, IV or V by the state board of pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with regulations adopted by the board.

2. Engaging in any activity in accordance with the provisions of sections 2 to 33, inclusive, of this act.

Sec. 48. **(Deleted by amendment.)**

Sec. 48.5. 1. The 72nd session of the Nevada legislature shall review statistics provided by the legislative counsel bureau with respect to:

(a) Whether persons exempt from state prosecution pursuant to section 17 of this act have been subject to federal prosecution for carrying out the activities concerning which they are exempt from state prosecution pursuant to that section;

(b) The number of persons who participate in the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act; and

(c) The number of persons who are arrested and convicted for drug related offenses within the State of Nevada, to enable appropriations for budgets to be established at levels to provide adequate and appropriate drug treatment within this state.

2. If, after conducting the review described in subsection 1, the 72nd session of the Nevada legislature determines that the medical use of marijuana in accordance with the provisions of sections 2 to 33, inclusive, of this act is not in the best interests of the residents of this state, the legislature shall revise those provisions as it deems appropriate.

Sec. 49. The amendatory provisions of this act do not apply to offenses committed before October 1, 2001.

Sec. 50. 1. This section becomes effective upon passage and approval.

2. Sections 6, 20, 21, 30 and 32 of this act become effective upon passage and approval for the purpose of adopting regulations and on October 1, 2001, for all other purposes.

3. Sections 1 to 5, inclusive, 7 to 19, inclusive, 22 to 29, inclusive, 30.1 to 30.5, inclusive, 31, 31.3, 31.7, 33 to 36, inclusive, 38 to 47, inclusive, 48.5 and 49 of this act become effective on October 1, 2001.

4. Section 37 of this act becomes effective at 12:01 a.m. on October 1, 2001.

Assembly Bill No. 466–Assemblymen Leslie, Parks, Parnell, Gibbons, Anderson, Brower, Chowning, Freeman, Giunchigliani, Humke, Smith and Tiffany

Joint Sponsor: Senator Mathews

CHAPTER 593

AN ACT relating to gaming; authorizing the Nevada gaming commission to adopt regulations governing the licensing and operation of interactive gaming if the commission first makes certain determinations; providing that a license to operate interactive gaming may be issued only to resort hotels or certain other establishments holding nonrestricted licenses; providing for certain license fees relating to interactive gaming; providing that gross revenue received from interactive gaming is subject to taxation in the same manner as gross revenue received from other games; exempting the operation of interactive gaming from certain other fees and taxes; revising the computation of interest payable by the commission on the overpayment of certain fees and taxes; prohibiting a person from operating interactive gaming until the commission adopts regulations and unless the person procures and maintains all licenses required pursuant to the regulations; providing for the enforceability of gaming debts incurred pursuant to an interactive gaming system; providing for the licensure and regulation of manufacturers of interactive gaming systems and manufacturers of equipment associated with interactive gaming; revising provisions relating to persons who acquire a certain beneficial ownership in a publicly traded corporation registered with the commission; revising the definitions of "gaming employee" and "manufacturer" for the purposes of the Nevada Gaming Control Act; revising provisions governing applications for restricted licenses; providing for the issuance of statewide work permits for gaming employees; establishing a maximum fee for the issuance of such work permits; revising various provisions governing the listing, investigation and disqualification of personnel of a labor organization for gaming employees; prohibiting certain fraudulent acts concerning gaming; providing penalties; and providing other matters properly relating thereto.

[Approved: June 14, 2001]

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

Section 1. Chapter 463 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. ***1. "Interactive gaming" means the conduct of gambling games through the use of communications technology that allows a person, utilizing money, checks, electronic checks, electronic transfers of money, credit cards, debit cards or any other instrumentality, to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes or other similar information. The term does not include the operation of a race book or sports pool that uses communications technology approved by the board pursuant to regulations adopted by the commission to accept wagers originating within this state for races or sporting events.***

2. As used in this section, "communications technology" means any method used and the components employed by an establishment to facilitate the transmission of information, including, without limitation, transmission and reception by systems based on wire, cable, radio,