



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1981 | Issue 1

Article 23

1-1-1981

Crimes; Drug Paraphernalia Prohibition

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Recommended Citation

Univeristy of the Pacific, McGeorge School of Law, *Crimes; Drug Paraphernalia Prohibition*, 1981 U. PAC. L. REV. (2019).

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Crimes

Crimes; drug paraphernalia prohibition

N.R.S. §453.— (new); 453.301 (amended).

AB 148 (Stewart); STATS 1981, Ch 216 (*Effective May 13, 1981*)

Chapter 216 defines drug paraphernalia¹ and prohibits the use, advertisement, sale, delivery, or manufacture of any item determined to be drug paraphernalia.² Chapter 216 also establishes specific penalties for each of these offenses³ and provides that any item used unlawfully will be subject to forfeiture.⁴

Under Chapter 216, the definition of drug paraphernalia includes all equipment and material used to grow, convert, manufacture, test, package, conceal, or introduce into the human body any controlled substance.⁵ Chapter 216 enumerates certain items that fall under the definition of drug paraphernalia including, but not limited to, kits for preparing or increasing the potency of controlled substances;⁶ items for testing, weighing, or diluting controlled substances;⁷ items for holding, concealing, or storing controlled substances;⁸ or items for ingesting, inhaling, or inducing controlled substances into the human body.⁹ In determining whether an item is drug paraphernalia, Chapter 216 allows a court to consider all the circumstances surrounding the object¹⁰ including, but not limited to, (1) any statements or prior drug related convictions of the owner or person in control of the object,¹¹ (2) the existence of any controlled substance or residue on or in the proximity of the object,¹² (3) direct or circumstantial evidence of the intent of the owner or person in control of the object to deliver the object knowing that it will be used with a controlled substance,¹³ (4) national and local adver-

1. N.R.S. §453.— (definition of drug paraphernalia).

2. *See generally id.* §453.—.

3. *See id.* §§453.—, 453.—, 453.—, 453.—.

4. *Id.* §453.301 6.

5. *See id.* §§453.—, 453.041 (definition of controlled substance).

6. *Id.* §453.— 1, 2, 3.

7. *Id.* §453.— 4, 5, 6.

8. *Id.* §453.— 7, 8, 9, 10.

9. *Id.* §453.— 11 (bongs, roach clips, pipes, cocaine spoons and chillums).

10. *See id.* §453.—.

11. *Id.* §453.— 1, 2.

12. *Id.* §453.— 4.

13. *Id.* §453.— 6.

tising and display modes of the object,¹⁴ (5) the instruction or descriptive material accompanying the object,¹⁵ and (6) the testimony of experts on the normal use of the object.¹⁶ Chapter 216 *does not* require that an owner intend to use the item in an illegal manner in determining whether the item is drug paraphernalia.¹⁷

Chapter 216 also imposes certain penalties for the use, possession, manufacture, sale, delivery, or advertisement of drug paraphernalia.¹⁸ Under Chapter 216, it is a misdemeanor to use or possess with intent to use any item for growing, manufacturing, or introducing into the human body any controlled substance.¹⁹ In addition, Chapter 216 subjects any person who sells, delivers, or manufactures any drug paraphernalia and knows or should know that it will be used for drug related²⁰ purposes to a prison term of one to six years, or a fine of up to \$5,000, or both.²¹ A stricter penalty is imposed when an adult eighteen years of age or older sells an implement to a person under eighteen years of age who is at least three years younger than the adult.²² This offense carries a mandatory prison term of one to ten years and a possible fine of up to \$10,000.²³ Finally, it is a misdemeanor to print an advertisement of any object for the purpose of promoting the sale of items intended for use as drug paraphernalia.²⁴ Chapter 216 authorizes a city or district attorney to seek to enjoin the sale or manufacture of drug articles²⁵ and provides that all items used in violation of any stated provision will be subject to forfeiture.²⁶

Traditionally, statutes prohibiting drug paraphernalia materials have been challenged on grounds of vagueness under the due process clauses of the fifth and fourteenth amendments of the United States Constitution.²⁷ The challenges have been based on failure to provide a person with fair notice or warning of the prohibited use of the paraphernalia²⁸

14. *Id.* §453.— 9, 10,

15. *Id.* §453.— 7, 8.

16. *Id.* §453.— 12.

17. *Id.* §453.—

18. *See id.* §§453.—, 453.—, 453.—, 453.—.

19. *See id.* §453.— *Accord*, *Johnson v. United States*, 255 A.2d 494, 496 (D.C. 1969) (illegal intent inferred from mere possession).

20. *See generally* N.R.S. §453.— (includes planting, cultivating, harvesting, manufacturing testing, packing, storing, and ingesting).

21. *Id.*

22. *Id.* §453.—.

23. *Id.*

24. *Id.* §453.—.

25. *Id.* §453.—.

26. *Id.* §453.301 6.

27. *See Geiger v. Evans*, 618 F.2d 26, 28 (8th Cir. 1980); 12 PAC. L.J., REVIEW OF SELECTED 1980 CALIFORNIA LEGISLATION 322, 324 (1981).

28. *See* 12 PAC. L.J., REVIEW OF SELECTED 1980 CALIFORNIA LEGISLATION 322, 324 (1981).

and of the penalty to be imposed.²⁹ The establishment of enumerated offenses and penalties under Chapter 216, however, may be sufficient to protect it from similar attack.³⁰

29. See *State v. Harper*, 510 S.W.2d 749, 750 (Mo. Ct. App. 1974).

30. Compare N.R.S. §§453.—, 453.— with *Cole v. State*, 511 P.2d 593, 594 (Okla. Crim. App. 1973) (1971 Okla. Sess. Laws, c. 119, §2-405(B), at 365 held unconstitutional).

Crimes; obscene materials—injunctions, sale to minors

N.R.S. §201.258 (repealed);
 §§200.5011, 201.241, 201.257, 201.262, 201.265 (amended).
 AB 534 (Committee on Judiciary);
 STATS 1981, Ch 694

The Nevada Revised Statutes provisions dealing with obscenity¹ allow a district or city attorney to seek an injunction to prohibit an owner from selling, renting, exhibiting, reproducing, manufacturing, or distributing material² that the attorney believes is obscene.³ The court is not allowed to issue a temporary restraining order,⁴ but prior to the enactment of Chapter 694 the court could issue a preliminary injunction without a showing of irreparable injury or threat of irreparable injury.⁵ Chapter 694 apparently precludes the issuance of a preliminary injunction without a showing of irreparable injury or threat of irreparable injury.⁶ Thus, the court cannot issue a preliminary injunction unless there is grave doubt concerning the law or the facts or it is necessary to prevent hardship or irreparable damage until there is a hearing and determination.⁷ Chapter 694 also imposes time restrictions for the trial on the merits.⁸ The trial must be commenced no later than thirty-five days after the complaint is filed but no earlier than five days after the answer is filed.⁹ Moreover, the court must render a decision

1. See N.R.S. §§201.235-201.254.

2. See *id.* §201.235 3 (definition of material).

3. See *id.* §§201.241 1, 201.235 4 (definition of obscene).

4. See *id.* §201.241 2.

5. See STATUTES OF NEVADA 1981, c. 694, §2, at — (amending N.R.S. §201.241). See generally *Glass v. Eighth Judicial District Court*, 87 Nev. 321, 323, 486 P.2d 1180, 1181 (1971) (a preliminary injunction may not be issued without "a hearing designed to focus searchingly on the issue of obscenity"); *A Quantity of Books v. Kansas*, 378 U.S. 205 (1964) (first and fourteenth amendments require a prior adversary judicial hearing), *Julian v. Las Vegas*, 88 Nev. 68, 493 P.2d 1037 (1972) (hearing required in both civil and criminal action).

6. N.R.S. §201.241 2.

7. *Marino v. Williams*, 30 Nev. 360, 372, 96 P. 1073, 1075 (1908). See generally NEV. R. CIV. P. 65(a).

8. See N.R.S. §201.241 3.

9. See *id.*