

ASSEMBLY BILL NO. 239—ASSEMBLYMEN OHRENSCHALL;
HORNE, MUNFORD AND SEGERBLOM

MARCH 4, 2009

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to habitual criminals, habitual felons and habitually fraudulent felons. (BDR 15-9)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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

AN ACT relating to crimes; revising provisions relating to habitual criminals, habitual felons and habitually fraudulent felons; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally authorizes a prosecuting attorney to prosecute a person as a habitual criminal, punishable as a category B felony, if the person: (1) is convicted of petit larceny, a crime which involves fraud or the intent to defraud, or any felony; and (2) has previously been convicted two times of a felony or three times of petit larceny or certain other crimes involving fraud or the intent to defraud. **Section 1** of this bill provides that a person may be prosecuted as a habitual criminal, punishable as a category B felony, if he is convicted of a felony and has previously been convicted three times, rather than two times, of a felony. **Section 1** also removes the provisions concerning convictions and prior convictions for petit larceny or certain crimes involving fraud or the intent to defraud. (NRS 207.010)

Existing law provides that a person may be prosecuted as a habitual criminal, punishable as a category A felony, if the person: (1) is convicted of a felony; and (2) has previously been convicted three times of a felony or five times of petit larceny or certain other crimes which involve fraud or the intent to defraud. (NRS 207.010) **Section 1** of this bill provides that such a person may be prosecuted as a habitual criminal, punishable as a category A felony, if he has previously been convicted five times, rather than three times, of a felony. **Section 1** also removes the provisions concerning prior convictions for petit larceny or certain crimes involving fraud or the intent to defraud. (NRS 207.010) Further, **section 1** eliminates life without the possibility of parole as an option for sentencing for a conviction as a habitual criminal punishable as a category A felony. Finally, **section 1** prohibits a trial judge from adjudicating a person as a habitual criminal,



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whether punishable as a category A or B felony, unless the person has served at least one prison term in a state or federal penal institution. (NRS 207.010)

Existing law provides that a person is a habitual felon if the person: (1) has been convicted of one of certain enumerated felonies; and (2) before the commission of that felony, the person was convicted two times of a felony included in those enumerated felonies. (NRS 207.012) **Section 2** of this bill makes it discretionary rather than mandatory for a prosecuting attorney to prosecute a person as a habitual felon. **Section 2** also makes it discretionary rather than prohibited for a trial judge to dismiss a habitual felon count in an indictment or information. (NRS 207.012)

Existing law provides that a person is a habitually fraudulent felon if: (1) the person has been convicted of a felony which involves fraud or the intent to defraud an older person, a person with a mental disability or a vulnerable person; and (2) before the commission of that felony, the person was convicted two times of a felony which involves fraud or the intent to defraud an older person, a person with a mental disability or a vulnerable person. (NRS 207.014) **Section 3** of this bill amends the law in a manner similar to **section 2** of this bill with regard to habitually fraudulent felons, making it discretionary rather than mandatory for a prosecuting attorney to prosecute a person as such a felon and making it discretionary rather than prohibited for a trial judge to dismiss a habitually fraudulent felon count in an indictment or information. (NRS 207.014)

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

Section 1. NRS 207.010 is hereby amended to read as follows:
207.010 1. Unless the person is prosecuted pursuant to NRS 207.012 or 207.014, a person convicted in this State of:

(a) Any ~~[crime of which fraud or intent to defraud is an element, or of petit larceny, or of any]~~ felony, who has previously been ~~[two]~~ **three** times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony ~~[-, or who has previously been three times convicted, whether in this State or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or intent to defraud is an element,]~~ is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.

(b) Any felony, who has previously been ~~[three]~~ **five** times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony ~~[-, or who has previously been five times convicted, whether in this State or elsewhere, of petit larceny, or of any misdemeanor or gross misdemeanor of which fraud or the intent to defraud is an element,]~~ is a habitual criminal and shall be punished for a category A felony by imprisonment in the state prison:



(1) ~~For life without the possibility of parole;~~
~~(2)~~ For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or
~~(3)~~ (2) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. It is within the discretion of the prosecuting attorney whether to include a count under this section in any information or file a notice of habitual criminality if an indictment is found. The trial judge may, at his discretion, dismiss a count under this section which is included in any indictment or information.

3. A trial judge shall not adjudicate a person as a habitual criminal unless the person has served a prior prison term in any state or federal penal institution.

Sec. 2. NRS 207.012 is hereby amended to read as follows:

207.012 1. A person who:

(a) Has been convicted in this State of a felony listed in subsection 2; and

(b) Before the commission of that felony, was twice convicted of any crime which under the laws of the situs of the crime or of this State would be a felony listed in subsection 2, whether the prior convictions occurred in this State or elsewhere,

➤ is a habitual felon and shall be punished for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(3) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

2. ~~It is within the discretion of the prosecuting attorney whether to~~ ~~include a count under this section in any information or~~ ~~shall~~ ***It is within the discretion of the prosecuting attorney whether to*** include a count under this section in any information or ~~shall~~ file a notice of habitual felon if an indictment is found, if each prior conviction and the alleged offense committed by the accused constitutes a violation of subparagraph (1) of paragraph (a) of subsection 1 of NRS 193.330, NRS 199.160, 199.500, 200.030, 200.310, 200.340, 200.366, 200.380, 200.390, subsection 3 or 4 of NRS 200.400, NRS 200.410, subsection 3 of NRS 200.450, subsection 5 of NRS 200.460, NRS 200.463, 200.464, 200.465, 200.467, 200.468, subsection 1, paragraph (a) of subsection 2 or subparagraph (2) of paragraph (b) of subsection 2 of NRS 200.508, NRS 200.710, 200.720, 201.230, 201.450, 202.170, 202.270, subsection 2 of NRS 202.780, paragraph (b) of subsection 2 of NRS 202.820, subsection 2 of NRS 202.830, NRS 205.010, subsection 4 of NRS 205.060, subsection 4 of NRS 205.067, NRS 205.075, 207.400, paragraph (a) of subsection 1 of NRS 212.090, NRS 453.3325, 453.333, 484.219, 484.3795 or 484.37955.



3. The trial judge may ~~not~~, *at his discretion*, dismiss a count under this section that is included in an indictment or information.

Sec. 3. NRS 207.014 is hereby amended to read as follows:

207.014 1. A person who:

(a) Has been convicted in this State of any felony committed on or after July 1, 1995, of which fraud or intent to defraud is an element; and

(b) Has previously been two times convicted, whether in this State or elsewhere, of any felony of which fraud or intent to defraud is an element before the commission of the felony under paragraph (a),

is a habitually fraudulent felon and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years, if the victim of each offense was an older person, a person with a mental disability or a vulnerable person.

2. ~~The~~ *It is within the discretion of the* prosecuting attorney ~~shall~~ *whether to* include a count under this section in any information or ~~shall~~ file a notice of habitually fraudulent felon if an indictment is found, if the prior convictions and the alleged offense committed by the accused are felonies of which fraud or intent to defraud is an element and the victim of each offense was:

(a) An older person;

(b) A person with a mental disability; or

(c) A vulnerable person.

3. The trial judge may ~~not~~, *at his discretion*, dismiss a count under this section that is included in an indictment or information.

4. As used in this section:

(a) "Older person" means a person who is:

(1) Sixty-five years of age or older if the crime was committed before October 1, 2003.

(2) Sixty years of age or older if the crime was committed on or after October 1, 2003.

(b) "Person with a mental disability" means a person who has a mental impairment which is medically documented and substantially limits one or more of the person's major life activities. The term includes, but is not limited to, a person who:

(1) Suffers from mental retardation;

(2) Suffers from a severe mental or emotional illness;

(3) Has a severe learning disability; or

(4) Is experiencing a serious emotional crisis in his life as a result of the fact that he or a member of his immediate family has a catastrophic illness.



1 (c) “Vulnerable person” has the meaning ascribed to it in
2 subsection 7 of NRS 200.5092.

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