

Amendment No. 209

Assembly Amendment to Assembly Bill No. 353

(BDR 15-514)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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

NMB/RRY



Date: 4/6/2009

A.B. No. 353—Makes various changes concerning certain crimes related to property. (BDR 15-514)



ASSEMBLY BILL NO. 353—ASSEMBLYMEN BOBZIEN, SMITH, LESLIE, PARNELL,
ANDERSON; GOICOECHEA, KIRKPATRICK AND SETTELMAYER

MARCH 16, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning certain crimes related to property. (BDR 15-514)

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 property; revising the abatement procedures and penalties for a violation of certain state laws that prohibit public nuisances; ~~providing that those same procedures and penalties apply to a violation of a city or county ordinance that prohibits public nuisances;~~ expanding the applicability of certain abatement procedures available to a board of county commissioners; ~~to include specifically the abatement of a public nuisance;~~ authorizing the solid waste management authority in ~~certain~~ all counties to establish a program for the control of unlawful dumping; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a court or magistrate to order an abatement of a public nuisance. **Section 1** of this bill additionally requires the court or magistrate to impose a civil penalty on a person convicted of a public nuisance and provides additional procedures for the abatement of the nuisance, including, without limitation: (1) time limitations on the period during which the person must complete the abatement; and (2) procedures for an agency to abate the nuisance at the discretion of the agency, if the person does not abate the nuisance. **Section 1** also requires that civil penalties collected under this section be deposited in an account used only for abatement. ~~and requires the court to prioritize proceedings brought under this section on the court's calendar.~~ (NRS 202.480)

~~Section 2 of this bill: (1) specifically authorizes a board of county commissioners to adopt an ordinance prohibiting a public nuisance as defined in NRS 202.450; (2) provides that a person who violates the ordinance is guilty of a misdemeanor; and (3) requires a court or magistrate to impose the same civil penalties and follow the same procedures for abatement set forth in NRS 202.480, as amended by section 1 of this bill. Section 4 of this bill makes the same changes with respect to city ordinances that prohibit a public nuisance.~~

Existing law authorizes a board of county commissioners to adopt an ordinance to secure a dangerous structure or condition. Section 2.5 of this bill amends existing law to authorize a board of county commissioners to adopt an ordinance to summarily abate certain dangerous structures or conditions and provides a process for providing the owner with notice of the summary abatement and for judicial review of the summary abatement. (NRS 244.3601)

Existing law authorizes a board of county commissioners to adopt an ordinance to administratively and on its own accord require an owner of a property to abate a dangerous structure, rubbish or noxious weeds. **Section 3** of this bill expands those provisions to apply to the abatement of ~~the public~~ **any other public** nuisance as defined in ~~(NRS 202.450 or any)~~ **the** ordinance **adopted by the board** which prohibits a ~~public~~ nuisance. (NRS 244.3605)

Existing law authorizes the solid waste management authority in each county with a population of 400,000 (currently Clark County) to establish a program for the control of unlawful dumping. **Section 5** of this bill ~~lowers~~ **removes** the population threshold to authorize the solid waste management authority in each county ~~(with a population of 100,000 or more (currently Clark and Washoe Counties))~~ to establish such a program. (NRS 444.629)

Existing law provides that if a person is convicted of unlawfully disposing certain waste or sewage, a court clerk who receives any civil penalties from the person for the violation must remit the money to the district health department if the health authority initiated the action. **Section 6** of this bill requires the court clerk to remit the money to the district health department also if a person, other than the health authority, who is authorized to enforce the provisions of NRS 444.630 initiated the action for a violation of NRS 444.630. (NRS 444.635)

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

Section 1. NRS 202.480 is hereby amended to read as follows:

202.480 **1.** Any court or magistrate before whom there may be pending any proceeding for a violation of NRS 202.470 shall, in addition to any fine or other punishment which it may impose for such **a** violation, order ~~{such nuisance abated, and all property unlawfully used in the maintenance thereof destroyed by the sheriff at the cost of the defendant.}~~

(a) The defendant to abate the nuisance. The abatement must begin within 3 days after the court or magistrate enters the order to abate and must be completed within the time period specified by the court or magistrate. The responsible agency shall supervise the abatement and report to the court or magistrate regarding whether the abatement was successfully completed within the time period specified by the court or magistrate.

(b) The defendant to pay a civil penalty of not less than \$500 but not more than \$5,000. If ordered by the court or magistrate, the penalty may be paid in installments. The responsible agency may attempt to collect a civil penalty or installment that is in default in any manner provided by law for the enforcement of a judgment.

~~{(c) The}~~

2. *If a defendant is ordered to abate a nuisance pursuant to subsection 1 and fails to abate the nuisance within the time period specified by the court or magistrate, the responsible agency ~~to~~ may assume responsibility and abate the nuisance, at the expense of the defendant. ~~If the defendant does not abate the nuisance within the time period specified by the court or magistrate. The~~ If the responsible agency ~~which~~ abates the nuisance, the responsible party shall report to the court or magistrate upon the successful completion of the abatement.*

~~{2.}~~ **3.** Any civil penalty collected pursuant to subsection 1 must be deposited with the treasurer of the responsible agency in an account used solely to pay costs associated with **any** abatement ordered by a court or magistrate.

~~{3. A court shall give priority to proceedings brought under NRS 202.470 on the court's calendar.}~~

4. As used in this section, "responsible agency" means an agency, officer, bureau, board, commission, department, division or any other unit of government of the State or a local government that is designated by a court or magistrate as the party responsible for carrying out ~~the actions ordered by the court or magistrate~~ any action pursuant to this section.

Sec. 2. ~~[Chapter 244 of NRS is hereby amended by adding thereto a new section to read as follows:~~

~~1. The board of county commissioners of a county may adopt an ordinance prohibiting a public nuisance within the county.~~

~~2. If a defendant pleads or is found guilty or guilty but mentally ill of violating a county ordinance that prohibits a public nuisance:~~

~~(a) The defendant is guilty of a misdemeanor; and~~

~~(b) The court or magistrate shall, in addition to any other fine or punishment it may impose for the violation, order:~~

~~(1) The abatement of the nuisance following the procedures set forth in NRS 202.480; and~~

~~(2) The defendant to pay a civil penalty as provided in NRS 202.480.~~

~~3. As used in this section, the term "public nuisance" means a public nuisance as defined in NRS 202.450.] (Deleted by amendment.)~~

Sec. 2.5. NRS 244.3601 is hereby amended to read as follows:

244.3601 1. Notwithstanding the abatement procedures set forth in NRS 244.360 ~~or~~ 244.3605, a board of county commissioners may, by ordinance, provide for a reasonable means to secure or summarily abate a dangerous structure or condition that at least three persons who enforce building codes, housing codes, zoning ordinances or local health regulations, or who are members of a local law enforcement agency or fire department, determine in a signed, written statement to be an imminent danger ~~[to the surrounding neighborhood. The]~~

2. Except as otherwise provided in subsection 3, the owner of the property on which the structure or condition is located must be given reasonable written notice that is:

(a) If practicable, hand-delivered or sent prepaid by United States mail to the owner of the property; or

(b) Posted on the property,

↪ before the structure or condition is so secured. The notice must state clearly that the owner of the property may challenge the action to secure or summarily abate the structure or condition and must provide a telephone number and address at which the owner may obtain additional information.

3. If it is determined in the signed, written statement provided pursuant to subsection 1 that the structure or condition is an imminent danger and the result of the imminent danger is likely to occur before the notice and an opportunity to challenge the action can be provided pursuant to subsection 2, then the structure or condition which poses such an imminent danger that presents an immediate hazard may be summarily abated. A structure or condition summarily abated pursuant to this section may only be abated to the extent necessary to remove the imminent danger that presents an immediate hazard. The owner of the structure or condition which is summarily abated must be given written notice of the abatement after its completion. The notice must state clearly that the owner of the property may seek judicial review of the summary abatement and must provide an address and telephone number at which the owner may obtain additional information concerning the summary abatement.

4. The costs of securing or summarily abating the structure or condition may be made a special assessment against the real property on which the structure or

condition is located and may be collected pursuant to the provisions set forth in subsection 4 of NRS 244.360.

~~(2)~~ 5. As used in this section ~~“imminent”~~:

(a) “Dangerous structure or condition” has the meaning ascribed to it in subsection 5 of NRS 244.3605.

(b) “Imminent danger” means the existence of any structure or condition that could reasonably be expected to cause injury or endanger the life, safety, health or property of:

~~(1)~~ (1) The occupants, if any, of the real property on which the structure or condition is located; or

~~(2)~~ (2) The general public.

Sec. 3. NRS 244.3605 is hereby amended to read as follows:

244.3605 1. Notwithstanding the provisions of NRS 244.360 and 244.3601, the board of county commissioners of a county may to abate public nuisances, adopt by ordinance procedures pursuant to which the board or its designee may order an owner of property within the county to:

(a) Repair, safeguard or eliminate a dangerous structure or condition;

(b) Clear debris, rubbish and refuse which is not subject to the provisions of chapter 459 of NRS; ~~for~~

(c) Clear weeds and noxious plant growth ~~for~~; or

(d) Repair, clear, correct, rectify, safeguard or eliminate ~~a public~~ any other public nuisance ~~as defined in the ordinance adopted pursuant to this section,~~

to protect the public health, safety and welfare of the residents of the county.

2. An ordinance adopted pursuant to subsection 1 must:

(a) Contain procedures pursuant to which the owner of the property is:

(1) Sent notice, by certified mail, return receipt requested, of the existence on his property of a ~~condition~~ public nuisance set forth in subsection 1 and the date by which he must abate the ~~condition~~ public nuisance; and

(2) Afforded an opportunity for a hearing before the designee of the board and an appeal of that decision either to the board. ~~The ordinance must specify whether all such appeals which involve a public nuisance are to be made to the board of county commissioners or to a court of competent jurisdiction ~~for~~, as determined by the ordinance adopted pursuant to subsection 1.~~

(b) Provide that the date specified in the notice by which the owner must abate the ~~condition~~ public nuisance is tolled for the period during which the owner requests a hearing and receives a decision.

(c) Provide the manner in which the county will recover money expended to abate the ~~condition~~ public nuisance on the property if the owner fails to abate the ~~condition~~ public nuisance.

(d) Provide for civil penalties for each day that the owner did not abate the ~~condition~~ public nuisance after the date specified in the notice by which the owner was required to abate the ~~condition~~.

~~(e) If the condition constitutes a public nuisance, provide for an expedited process, to include summary abatement, in those situations where the public nuisance involves a serious risk of immediate harm to public health, safety or welfare, public nuisance.~~

3. The ~~board or its designee may direct the~~ county ~~to~~ may abate the ~~condition~~ public nuisance on the property and may recover the amount expended by the county for labor and materials used to abate the ~~condition~~ public nuisance if:

(a) The owner has not requested a hearing within the time prescribed in the ordinance adopted pursuant to subsection 1 and has failed to abate the ~~condition~~ public nuisance on his property within the period specified in the notice;

(b) After a hearing in which the owner did not prevail, the owner has not filed an appeal within the time prescribed in the ordinance adopted pursuant to subsection 1 and has failed to abate the ~~condition~~ public nuisance within the period specified in the order; or

(c) The board ~~or, if the appeal involves a public nuisance, a court of competent jurisdiction~~ has denied the appeal of the owner and the owner has failed to abate the ~~condition~~ public nuisance within the period specified in the order.

4. In addition to any other reasonable means of recovering money expended by the county to abate the ~~condition, the board may make~~ public nuisance, the expense is a special assessment against the property upon which the ~~condition~~ public nuisance is located ~~[-The]~~ , and this special assessment may be collected pursuant to the provisions set forth in subsection 4 of NRS 244.360.

5. As used in this section, ~~"dangerous"~~ (a) "Dangerous" structure or condition" means a structure or condition that is a public nuisance which may cause injury to or endanger the health, life, property or safety of the general public or the occupants, if any, of the real property on which the structure or condition is located. The term includes, without limitation, a structure or condition that:

(a) ~~[(1)]~~ Does not meet the requirements of a code or regulation adopted pursuant to NRS 244.3675 with respect to minimum levels of health or safety; or

(b) ~~[(2)]~~ Violates an ordinance, rule or regulation regulating health and safety enacted, adopted or passed by the board of county commissioners of a county, the violation of which is designated by the board as a public nuisance in the ordinance, rule or regulation.

~~[- (b) "Public nuisance" means a public nuisance as defined in NRS 202.450 or an ordinance adopted pursuant to section 2 of this act.]~~

Sec. 4. ~~[Chapter 268 of NRS is hereby amended by adding thereto a new section to read as follows:]~~

~~1. The city council of a city may adopt an ordinance prohibiting a public nuisance within the city.~~

~~2. If a defendant pleads or is found guilty or guilty but mentally ill for violating a city ordinance that prohibits a public nuisance:~~

~~(a) The defendant is guilty of a misdemeanor; and~~

~~(b) The court or magistrate shall, in addition to any other fine or punishment it may impose for the violation, order:~~

~~(1) The abatement of the nuisance following the procedures set forth in NRS 202.480; and~~

~~(2) The defendant to pay a civil penalty as provided in NRS 202.480.~~

~~3. As used in this section, the term "public nuisance" means a public nuisance as defined in NRS 202.450.] (Deleted by amendment.)~~

Sec. 5. NRS 444.629 is hereby amended to read as follows:

444.629 1. The solid waste management authority in each county ~~[whose population is] [400,000] [100,000 or more]~~ may establish a program for the control of unlawful dumping and administer the program within its jurisdiction unless superseded.

2. The program established pursuant to subsection 1 must:

(a) Include standards and procedures for the control of unlawful dumping which are equivalent to or stricter than those established by statute or state regulation; and

(b) Provide for adequate administration and enforcement.

3. ~~[In a county whose population is] [400,000] [100,000 or more], the~~ The solid waste management authority may delegate to an independent hearing officer or hearing board the authority to determine violations and levy administrative

penalties for violations of the provisions of NRS 444.440 to 444.645, inclusive, or any regulation adopted pursuant to those sections.

Sec. 6. NRS 444.635 is hereby amended to read as follows:

444.635 1. Except as otherwise provided in NRS 445C.010 to 445C.120, inclusive, a person convicted of violating NRS 444.555 and, in addition to the penalty imposed pursuant to NRS 444.583 or 444.630, any person convicted of violating NRS 444.583 or 444.630 is liable for a civil penalty upon each such conviction.

2. Except as otherwise provided in NRS 445C.010 to 445C.120, inclusive, a court before whom a defendant is convicted of a violation of the provisions of NRS 444.555, 444.583 or 444.630, shall order the defendant:

(a) For a first offense, to pay a civil penalty which is at least \$500 but not more than \$5,000.

(b) For a second offense, to pay a civil penalty which is at least \$1,000 but not more than \$5,500.

(c) For a third offense, to pay a civil penalty which is at least \$1,500 but not more than \$6,000.

(d) For any subsequent offense, to pay a civil penalty which is at least \$500 more than the most recent previous civil penalty that the defendant was ordered to pay pursuant to this subsection.

3. If so provided by the court, a penalty imposed pursuant to this section may be paid in installments.

4. The solid waste management authority may attempt to collect all such penalties and installments which are in default in any manner provided by law for the enforcement of a judgment.

5. ~~Each~~ *Except as otherwise provided in this subsection, each* court which receives money pursuant to the provisions of this section shall forthwith remit the money to the Division of Environmental Protection of the State Department of Conservation and Natural Resources ~~for, if~~ *, which shall deposit the money with the State Treasurer for credit in a separate account in the State General Fund. If* the health authority initiated the action ~~it~~ *or, if any other person authorized to enforce NRS 444.630 initiated the action and the money collected was for a violation of NRS 444.630, the court shall remit the money to* the district health department which shall deposit the money ~~[with the State Treasurer for credit in a separate account in the State General Fund or]~~ with the county treasurer for deposit in an account for the district health department. ~~[as the case may be.]~~ Money ~~so~~ deposited *pursuant to this subsection* must be:

(a) Used only to pay:

(1) Rewards pursuant to NRS 444.640;

(2) For education regarding the unlawful disposal of solid waste;

(3) For the cleaning up of dump sites; and

(4) For the management of solid waste; and

(b) Paid as other claims against the state or local governments are paid.