

ASSEMBLY BILL NO. 415—COMMITTEE ON JUDICIARY

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Revises various provisions relating to criminal justice. (BDR 15-804)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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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 criminal justice; revising provisions governing the crime of burglary; authorizing the Advisory Commission on the Administration of Justice to apply for and accept certain money; revising provisions governing credits for offenders sentenced for certain crimes; requiring the suspension of proceedings for certain violations relating to controlled substances; revising provisions governing the crime of trafficking in certain controlled substances; requiring the Commission to study and report on certain issues; authorizing Clark County to establish a community court pilot project to provide an alternative to sentencing a person who is charged with a misdemeanor; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person who enters certain structures with the intent to commit grand or petit larceny, assault or battery, any felony or to obtain money by false pretenses is guilty of the crime of burglary. (NRS 205.060) Existing law also provides that a person commits the crime of petit larceny if the person intentionally steals, takes and carries, leads or drives away certain goods or property. (NRS 205.240) **Sections 1 and 2** of this bill remove the crime of petit larceny from the underlying offenses which constitute burglary.

Existing law establishes the Advisory Commission on the Administration of Justice and directs the Commission, among other duties, to identify and study the elements of this State's system of criminal justice. (NRS 176.0123, 176.0125) **Section 3** of this bill authorizes the Chair of the Commission to apply for grants and accept grants, bequests, devises, donations and gifts. **Section 8** of this bill



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requires the Commission to include certain items relating to criminal justice on an agenda for discussion and to issue a report.

Existing law provides that certain credits to the sentence of an offender convicted of certain category C, D or E felonies must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances. (NRS 209.4465) **Section 5** of this bill provides that an offender convicted of a category B felony also qualifies to have certain credits deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances.

Existing law authorizes, but does not require, a court to suspend the proceedings and place on probation certain first-time offenders who violate certain provisions relating to controlled substances. (NRS 453.3363) **Section 6** of this bill requires a court to suspend the proceedings and place such offenders on probation.

Existing law provides that a person is guilty of trafficking in a controlled substance if the person sells, manufactures, delivers or brings into this State or knowingly or intentionally possesses certain amounts of certain controlled substances which are listed in schedule I. (NRS 453.3385) **Section 7** of this bill increases the threshold amounts by which a person may be found guilty of trafficking in those controlled substances.

Existing law provides that a misdemeanor is punishable by a fine of not more than \$1,000 or imprisonment in the county jail for not more than 6 months, or by both a fine and imprisonment. (NRS 193.150) **Section 10** of this bill authorizes Clark County to establish a community court pilot project within one of its justice courts located in the County to provide an alternative to sentencing a person who is charged with a misdemeanor. **Section 11** of this bill requires the community court to evaluate each defendant to determine whether services or treatment is likely to assist the defendant to modify behavior or obtain skills that may prevent the defendant from engaging in further criminal activity. The services or treatment that the community court may order the defendant to receive may include, without limitation, treatment for alcohol or substance abuse, health education, treatment for mental health, family counseling, literacy assistance, job training, housing assistance or any other services or treatment that the community court deems appropriate. **Section 11** provides that if the defendant successfully completes all conditions imposed by the community court, the sentence to which the defendant agreed upon with the justice court must not be executed or recorded. If the defendant does not successfully complete the conditions imposed, the case will be transferred back to the justice court, and the sentence must be carried out.

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

Section 1. NRS 205.060 is hereby amended to read as follows:

205.060 1. A person who, by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand ~~for petit~~ larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of burglary.



2. Except as otherwise provided in this section, a person convicted of burglary 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 10 years, and may be further punished by a fine of not more than \$10,000. A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of sentence.

3. Whenever a burglary is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car traveled during the time the burglary was committed.

4. A person convicted of burglary who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, 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 15 years, and may be further punished by a fine of not more than \$10,000.

Sec. 2. NRS 205.065 is hereby amended to read as follows:

205.065 Every person who unlawfully breaks and enters or unlawfully enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car may reasonably be inferred to have broken and entered or entered it with intent to commit grand ~~for~~ ~~petit~~ larceny, assault or battery on any person or a felony therein, unless the unlawful breaking and entering or unlawful entry is explained by evidence satisfactory to the jury to have been made without criminal intent.

Sec. 3. Chapter 176 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The Chair of the Commission may apply for and accept any available grants and may accept any bequests, devises, donations or gifts from any public or private source to carry out the provisions of this section and NRS 176.0121 to 176.0129, inclusive.

2. Any money received pursuant to this section must be deposited in the Special Account for the Support of the Advisory



Commission on the Administration of Justice, which is hereby created in the State General Fund. Interest and income earned on money in the Account must be credited to the Account. Money in the Account may only be used for the support of the Commission and its activities pursuant to this section and NRS 176.0121 to 176.0129, inclusive.

Sec. 4. NRS 176.0121 is hereby amended to read as follows:
176.0121 As used in NRS 176.0121 to 176.0129, inclusive, *and section 3 of this act*, "Commission" means the Advisory Commission on the Administration of Justice.

Sec. 5. NRS 209.4465 is hereby amended to read as follows:
209.4465 1. An offender who is sentenced to prison for a crime committed on or after July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement or the laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated pursuant to his or her sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

➔ a deduction of 20 days from his or her sentence for each month the offender serves.

2. In addition to the credits allowed pursuant to subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 60 days.

(b) For earning a high school diploma, 90 days.

(c) For earning his or her first associate degree, 120 days.

3. The Director may, in his or her discretion, authorize an offender to receive a maximum of 90 days of credit for each additional degree of higher education earned by the offender.

4. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit



1 pursuant to this subsection is eligible to earn the entire 30 days of
2 credit each month that is allowed pursuant to subsections 1 and 2.

3 5. The Director may allow not more than 90 days of credit each
4 year for an offender who engages in exceptional meritorious service.

5 6. The Board shall adopt regulations governing the award,
6 forfeiture and restoration of credits pursuant to this section.

7 7. Except as otherwise provided in subsection 8, credits earned
8 pursuant to this section:

9 (a) Must be deducted from the maximum term imposed by the
10 sentence; and

11 (b) Apply to eligibility for parole unless the offender was
12 sentenced pursuant to a statute which specifies a minimum sentence
13 that must be served before a person becomes eligible for parole.

14 8. Credits earned pursuant to this section by an offender who
15 has not been convicted of:

16 (a) Any crime that is punishable as a felony involving the use or
17 threatened use of force or violence against the victim;

18 (b) A sexual offense that is punishable as a felony;

19 (c) A violation of NRS 484C.110, 484C.120, 484C.130 or
20 484C.430 that is punishable as a felony; or

21 (d) A category A ~~for-B1~~ felony,

22 ➔ apply to eligibility for parole and must be deducted from the
23 minimum term imposed by the sentence until the offender becomes
24 eligible for parole and must be deducted from the maximum term
25 imposed by the sentence.

26 **Sec. 6.** NRS 453.3363 is hereby amended to read as follows:

27 453.3363 1. If a person who has not previously been
28 convicted of any offense pursuant to NRS 453.011 to 453.552,
29 inclusive, or pursuant to any statute of the United States or of any
30 state relating to narcotic drugs, marijuana, or stimulant, depressant
31 or hallucinogenic substances tenders a plea of guilty, guilty but
32 mentally ill, nolo contendere or similar plea to a charge pursuant to
33 subparagraph (1) of paragraph (a) of subsection 2 of NRS 453.3325,
34 subsection 2 or 3 of NRS 453.336, NRS 453.411 or 454.351, or is
35 found guilty or guilty but mentally ill of one of those charges, the
36 court, without entering a judgment of conviction and with the
37 consent of the accused, ~~may~~ **shall** suspend further proceedings and
38 place the person on probation upon terms and conditions that must
39 include attendance and successful completion of an educational
40 program or, in the case of a person dependent upon drugs, of a
41 program of treatment and rehabilitation pursuant to NRS 453.580.

42 2. Upon violation of a term or condition, the court may enter a
43 judgment of conviction and proceed as provided in the section
44 pursuant to which the accused was charged. Notwithstanding the
45 provisions of paragraph (e) of subsection 2 of NRS 193.130, upon



1 violation of a term or condition, the court may order the person to
2 the custody of the Department of Corrections.

3 3. Upon fulfillment of the terms and conditions, the court shall
4 discharge the accused and dismiss the proceedings against him or
5 her. A nonpublic record of the dismissal must be transmitted to and
6 retained by the Division of Parole and Probation of the Department
7 of Public Safety solely for the use of the courts in determining
8 whether, in later proceedings, the person qualifies under this section.

9 4. Except as otherwise provided in subsection 5, discharge and
10 dismissal under this section is without adjudication of guilt and is
11 not a conviction for purposes of this section or for purposes of
12 employment, civil rights or any statute or regulation or license or
13 questionnaire or for any other public or private purpose, but is a
14 conviction for the purpose of additional penalties imposed for
15 second or subsequent convictions or the setting of bail. Discharge
16 and dismissal restores the person discharged, in the contemplation
17 of the law, to the status occupied before the arrest, indictment or
18 information. The person may not be held thereafter under any law to
19 be guilty of perjury or otherwise giving a false statement by reason
20 of failure to recite or acknowledge that arrest, indictment,
21 information or trial in response to an inquiry made of the person for
22 any purpose. Discharge and dismissal under this section may occur
23 only once with respect to any person.

24 5. A professional licensing board may consider a proceeding
25 under this section in determining suitability for a license or liability
26 to discipline for misconduct. Such a board is entitled for those
27 purposes to a truthful answer from the applicant or licensee
28 concerning any such proceeding with respect to the applicant or
29 licensee.

30 **Sec. 7.** NRS 453.3385 is hereby amended to read as follows:

31 453.3385 Except as otherwise authorized by the provisions of
32 NRS 453.011 to 453.552, inclusive, a person who knowingly or
33 intentionally sells, manufactures, delivers or brings into this State or
34 who is knowingly or intentionally in actual or constructive
35 possession of flunitrazepam, gamma-hydroxybutyrate, any
36 substance for which flunitrazepam or gamma-hydroxybutyrate is an
37 immediate precursor or any controlled substance which is listed in
38 schedule I, except marijuana, or any mixture which contains any
39 such controlled substance, shall be punished, unless a greater
40 penalty is provided pursuant to NRS 453.322, if the quantity
41 involved:

42 1. Is ~~144~~ 10 grams or more, but less than ~~144~~ 20 grams, for a
43 category B felony by imprisonment in the state prison for a
44 minimum term of not less than 1 year and a maximum term of not
45 more than 6 years and by a fine of not more than \$50,000.



2. Is ~~144~~ 20 grams or more, but less than ~~128~~ 40 grams, for a category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and by a fine of not more than \$100,000.

3. Is ~~128~~ 40 grams or more, for a category A felony by imprisonment in the state prison:

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

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

and by a fine of not more than \$500,000.

Sec. 8. 1. The Advisory Commission on the Administration of Justice created pursuant to NRS 176.0123, shall, at a meeting held by the Commission, include as an item on the agenda a discussion of the following issues:

(a) A review of sentencing for all criminal offenses for which a term of imprisonment of more than 1 year may be imposed.

(b) An evaluation of the current system of parole, including a review of whether the current system should be maintained, amended or abolished.

(c) An evaluation of potential legislation relating to offenders for whom traditional imprisonment is not considered appropriate. In evaluating such potential legislation, the Commission shall consider current practices governing sentencing and release from imprisonment and correctional resources, including, without limitation, the capacities of local and state correctional facilities and institutions.

2. Upon review of the issues pursuant to subsection 1, the Commission shall prepare a comprehensive report including the Commission's recommended changes, the Commission's findings and any recommendations for proposed legislation. The report must be submitted to the Chair of the Senate Standing Committee on Judiciary and the Chair of the Assembly Standing Committee on Judiciary no later than June 1, 2014.

Sec. 9. As used in sections 10 and 11 of this act, "community court" means the community court that is established as part of a pilot project pursuant to section 10 of this act.

Sec. 10. 1. Clark County may establish a community court pilot project within one of the justice courts located in the County to provide an alternative to sentencing a person who is charged with a misdemeanor.

2. Notwithstanding any other provision of law, a defendant charged with a misdemeanor may be transferred to the community court by the justice court if the defendant:

(a) Pleads guilty to the offense;



1 (b) Has not previously been referred to the community court;
2 (c) Agrees to comply with the conditions imposed by the
3 community court; and

4 (d) Agrees to a sentence, including, without limitation, a period
5 of imprisonment in the county jail, which must be carried out if the
6 defendant does not successfully complete the conditions imposed by
7 the community court.

8 3. When a defendant is transferred to the community court,
9 sentencing must be postponed and, if the defendant successfully
10 completes all conditions imposed by the community court, the
11 sentence of the defendant must not be executed or appear on the
12 record of the defendant. If the defendant does not successfully
13 complete all conditions imposed by the community court, the
14 sentence must be carried out.

15 4. A defendant who is transferred to the community court
16 remains under the supervision of the community court and must
17 comply with the conditions established by the community court.

18 5. Clark County may collaborate with state and local
19 governmental entities as well as private persons and entities to
20 coordinate and determine the services and treatment that may be
21 offered to defendants who are transferred to the community court.

22 6. A defendant does not have a right to be referred to the
23 community court pursuant to this section. It is not intended that the
24 establishment or operation of the community court creates any right
25 or interest in liberty or property or establishes a basis for any cause
26 of action against the State of Nevada, its political subdivisions,
27 agencies, boards, commissions, departments, officers or employees.
28 The decision by the justice court of whether to refer a defendant to
29 the community court is not subject to appeal.

30 **Sec. 11.** 1. The community court shall provide for the
31 evaluation of each defendant transferred to the community court to
32 determine whether services or treatment is likely to assist the
33 defendant to modify his or her behavior or obtain skills which may
34 prevent the defendant from engaging in further criminal activity.
35 Such services or treatment may include, without limitation,
36 treatment for alcohol or substance abuse, health education, treatment
37 for mental health, family counseling, literacy assistance, job
38 training, housing assistance or such other services or treatment as
39 the community court deems appropriate.

40 2. The community court shall provide or refer a defendant to a
41 provider of such services or treatment. The community court may
42 enter into contracts with persons or private entities that are qualified
43 to evaluate defendants and provide services or treatment to
44 defendants.



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1 3. A defendant who is ordered by the community court to
2 receive services or treatment shall pay for the services or treatment
3 to the extent of his or her financial resources.

4 4. The justice court shall not refuse to refer a defendant to the
5 community court based on the inability of the defendant to pay any
6 or all of the related costs.

7 5. The community court shall order a defendant to perform a
8 specified amount of community service in addition to any services
9 or treatment to which the defendant is ordered to receive. Such
10 community service must be performed for and under the supervising
11 authority of a county, city, town or other political subdivision or
12 agency of the State of Nevada or a charitable organization that
13 renders service to the community or its residents.

14 6. Notwithstanding any other provision of law, if a defendant
15 successfully completes the conditions imposed by the community
16 court, the community court shall so certify to the justice court, and
17 the sentence imposed pursuant to section 10 of this act must not be
18 executed or recorded. If the defendant does not successfully
19 complete the conditions imposed by the community court, the case
20 must be transferred back to the justice court, and the sentence must
21 be carried out.

