

ASSEMBLY BILL NO. 371—ASSEMBLYMEN  
STEWART; HICKEY AND WOODBURY

MARCH 17, 2015

---

Referred to Committee on Judiciary

SUMMARY—Establishes provisions governing the destruction of certain physical evidence. (BDR 4-734)

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

~

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

---

AN ACT relating to evidence; authorizing a law enforcement agency to destroy certain physical evidence under certain conditions; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Under existing law, a law enforcement agency that has seized a substance that is alleged to be a controlled substance, dangerous drug or immediate precursor may destroy a part of the substance if the agency obtains the prior approval of the district court in the county in which a defendant is charged in connection with the substance. (NRS 52.395) **Section 1.5** of this bill exempts from the applicability of those provisions any substance that is alleged to be marijuana.

**Section 1** of this bill establishes new procedures for the retention and destruction of certain quantities of any substance that is alleged to be marijuana which has been seized as evidence by a law enforcement agency. **Section 1** authorizes a law enforcement agency that has seized such a substance to destroy any amount of the substance that exceeds 10 pounds without court approval if the law enforcement agency: (1) weighs the substance; (2) takes and retains certain samples of the substance for evidentiary purposes; and (3) takes photographs that reasonably demonstrate the total amount of the substance.

---

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

**Section 1.** Chapter 52 of NRS is hereby amended by adding thereto a new section to read as follows:

***Except as otherwise provided in NRS 453A.400:***



1       1. *At any time after a substance which is alleged to be*  
2 *marijuana is seized from a defendant by a peace officer, the law*  
3 *enforcement agency of which the officer is a member may, without*  
4 *the prior approval of the district court in the county in which the*  
5 *defendant is charged, destroy any amount of the substance that*  
6 *exceeds 10 pounds.*

7       2. *The law enforcement agency must, before destroying the*  
8 *substance pursuant to this section:*

9       (a) *Accurately weigh and record the weight of the substance.*

10       (b) *Take and retain, for evidentiary purposes, at least five*  
11 *random and representative samples of the substance in addition to*  
12 *the amount which is not authorized to be destroyed pursuant to*  
13 *subsection 1. If the substance is alleged to consist of growing or*  
14 *harvested marijuana plants, the 10 pounds retained pursuant to*  
15 *subsection 1 may include stalks, branches, leaves and buds, but*  
16 *the five representative samples must consist of only leaves or buds.*

17       (c) *Take photographs that reasonably demonstrate the total*  
18 *amount of the substance. A sign which clearly and conspicuously*  
19 *shows the title or the case number of the matter, proceeding or*  
20 *action to which the substance relates must appear next to the*  
21 *substance in any photograph taken.*

22       3. *A law enforcement agency that destroys a substance*  
23 *pursuant to this section shall, not later than 30 days after the*  
24 *destruction of the substance, file an affidavit in the court which*  
25 *has jurisdiction over the pending criminal proceedings, if any,*  
26 *pertaining to that substance. The affidavit must establish that the*  
27 *law enforcement agency has complied with the requirements of*  
28 *subsection 2, specify the date and time of the destruction of the*  
29 *substance and provide the publicly known address of the agency.*  
30 *If there are no criminal proceedings pending which pertain to the*  
31 *substance, the affidavit may be filed in any court within the county*  
32 *which would have jurisdiction over a person against whom such*  
33 *criminal charged might be filed.*

34       4. *If the substance is finally determined not to be marijuana,*  
35 *the owner may file a claim against the county to recover the*  
36 *reasonable value of the property destroyed pursuant to this*  
37 *section.*

38       5. *The law enforcement agency's finding as to the weight of*  
39 *any substance alleged to be marijuana and destroyed pursuant to*  
40 *this section is admissible in any subsequent proceeding arising out*  
41 *of the same transaction.*

42       **Sec. 1.5.** NRS 52.395 is hereby amended to read as follows:

43       52.395 ~~[Except as otherwise provided in NRS 453A.400:]~~

44       1. When any substance alleged to be a controlled substance,  
45 dangerous drug or immediate precursor is seized from a defendant



\* A B 3 7 1 R 1 \*

1 by a peace officer, the law enforcement agency of which the officer  
2 is a member may, with the prior approval of the prosecuting  
3 attorney, petition the district court in the county in which the  
4 defendant is charged to secure permission to destroy a part of the  
5 substance.

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

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

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

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

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

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

39 8. *This section does not apply to any substance that is alleged*  
40 *to be marijuana which is seized from a defendant by a peace*  
41 *officer.*

42 9. As used in this section:

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



- 1 (b) “Hazardous waste” has the meaning ascribed to it in  
2 NRS 459.430.  
3 (c) “Immediate precursor” has the meaning ascribed to it in  
4 NRS 453.086.  
5 **Sec. 2.** (Deleted by amendment.)

