

ASSEMBLY BILL NO. 407—ASSEMBLYWOMAN SHELTON

MARCH 17, 2015

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing crimes and punishments. (BDR 14-814)

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 crimes; requiring a peace officer to issue a citation to a person for a violation of certain ordinances or provisions of state law if the person is not required to be taken before a magistrate; providing in skeleton form for the reduction of a penalty from a felony or gross misdemeanor to a misdemeanor for any crime which is a first offense and which does not result in physical, psychological or financial harm to a person other than the perpetrator; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Under existing law, whenever a person is detained by a peace officer for a
2 violation of a county, city or town ordinance or a state law which is punishable as a
3 misdemeanor and the person is not required to be taken before a magistrate, the
4 person must, in the discretion of the peace officer: (1) be given a misdemeanor
5 citation; or (2) be taken before the proper magistrate. Similarly, whenever a person
6 is halted by a peace officer for a violation of certain traffic laws and is not required
7 to be taken before a magistrate, the person may, in the discretion of the peace
8 officer: (1) be given a traffic citation; or (2) be taken before the proper magistrate.
9 (NRS 171.1771, 484A.730) **Sections 1 and 3** of this bill provide that in such
10 situations when a person is detained or halted by a peace officer and is not required
11 to be taken before a magistrate, the person must be given a misdemeanor or traffic
12 citation, as applicable.

13 This bill also provides in skeleton form for the reduction of a penalty from a
14 felony or gross misdemeanor to a misdemeanor for any crime which is a first
15 offense and which does not result in physical, psychological or financial harm to a
16 person other than the perpetrator. For example, existing law generally prohibits a
17 person from knowingly or intentionally possessing a controlled substance. The
18 penalty for a person who violates such a provision varies depending on the type of



controlled substance the person possesses. (NRS 453.336) **Section 2** of this bill provides that for a violation which is punishable as a felony for the first offense, the penalty is reduced to a misdemeanor.

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

Section 1. NRS 171.1771 is hereby amended to read as follows:

171.1771 Whenever any person is detained by a peace officer for any violation of a county, city or town ordinance or a state law which is punishable as a misdemeanor and the person is not required to be taken before a magistrate, the person ~~shall, in the discretion of the peace officer, either~~ **must** be given a misdemeanor citation. ~~or be taken without unnecessary delay before the proper magistrate.~~ Any such person ~~shall~~ **must** be taken before the **proper** magistrate when the person does not furnish satisfactory evidence of identity or when the peace officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court.

Sec. 2. NRS 453.336 is hereby amended to read as follows:

453.336 1. Except as otherwise provided in subsection 5, a person shall not knowingly or intentionally possess a controlled substance, unless the substance was obtained directly from, or pursuant to, a prescription or order of a physician, physician assistant licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric physician, optometrist, advanced practice registered nurse or veterinarian while acting in the course of his or her professional practice, or except as otherwise authorized by the provisions of NRS 453.005 to 453.552, inclusive.

2. Except as otherwise provided in subsections 3 and 4 and in NRS 453.3363, and unless a greater penalty is provided in NRS 212.160, 453.3385, 453.339 or 453.3395, a person who violates this section shall be punished:

(a) For the first ~~offense~~ **offense, if the controlled substance is listed in schedule I, II, III or IV, for a misdemeanor.**

(b) **For the** second offense, if the controlled substance is listed in schedule I, II, III or IV, for a category E felony as provided in NRS 193.130.

~~(b)~~ (c) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, for a category D felony as



1 provided in NRS 193.130, and may be further punished by a fine of
2 not more than \$20,000.

3 ~~[(e)] (d)~~ For the first offense, if the controlled substance is
4 listed in schedule V, for a ~~category E felony as provided in~~
5 ~~NRS 193.130.~~

6 ~~—(d)] misdemeanor.~~

7 (e) For a second or subsequent offense, if the controlled
8 substance is listed in schedule V, for a category D felony as
9 provided in NRS 193.130.

10 3. Unless a greater penalty is provided in NRS 212.160,
11 453.337 or 453.3385, a person who is convicted of the possession of
12 flunitrazepam or gamma-hydroxybutyrate, or any substance for
13 which flunitrazepam or gamma-hydroxybutyrate is an immediate
14 precursor, is guilty :

15 (a) *For the first offense, of a misdemeanor.*

16 (b) *For the second or subsequent offense,* of a category B
17 felony and shall be punished by imprisonment in the state prison for
18 a minimum term of not less than 1 year and a maximum term of not
19 more than 6 years.

20 4. Unless a greater penalty is provided pursuant to NRS
21 212.160, a person who is convicted of the possession of 1 ounce or
22 less of marijuana:

23 (a) For the first offense, is guilty of a misdemeanor and shall be:

24 (1) Punished by a fine of not more than \$600; or

25 (2) Examined by an approved facility for the treatment of
26 abuse of drugs to determine whether the person is a drug addict and
27 is likely to be rehabilitated through treatment and, if the examination
28 reveals that the person is a drug addict and is likely to be
29 rehabilitated through treatment, assigned to a program of treatment
30 and rehabilitation pursuant to NRS 453.580.

31 (b) For the second offense, is guilty of a misdemeanor and shall
32 be:

33 (1) Punished by a fine of not more than \$1,000; or

34 (2) Assigned to a program of treatment and rehabilitation
35 pursuant to NRS 453.580.

36 (c) For the third offense, is guilty of a gross misdemeanor and
37 shall be punished as provided in NRS 193.140.

38 (d) For a fourth or subsequent offense, is guilty of a category E
39 felony and shall be punished as provided in NRS 193.130.

40 5. It is not a violation of this section if a person possesses a
41 trace amount of a controlled substance and that trace amount is in or
42 on a hypodermic device obtained from a sterile hypodermic device
43 program pursuant to NRS 439.985 to 439.994, inclusive.

44 6. As used in this section:



* A B 4 0 7 *

(a) "Controlled substance" includes flunitrazepam, gamma-hydroxybutyrate and each substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor.

(b) "Sterile hypodermic device program" has the meaning ascribed to it in NRS 439.986.

Sec. 3. NRS 484A.730 is hereby amended to read as follows:

484A.730 Whenever any person is halted by a peace officer for any violation of chapters 484A to 484E, inclusive, of NRS and is not required to be taken before a magistrate, the person ~~may, in the discretion of the peace officer, either~~ **must** be given a traffic citation. ~~It or be taken without unnecessary delay before the proper magistrate.~~ The person must be taken before the **proper** magistrate in any of the following cases:

1. When the person does not furnish satisfactory evidence of identity or when the peace officer has reasonable and probable grounds to believe the person will disregard a written promise to appear in court;

2. When the person is charged with a violation of NRS 484D.580 relating to the refusal of a driver of a vehicle to submit the vehicle to an inspection and test;

3. When the person is charged with a violation of NRS 484D.675 relating to the failure or refusal of a driver of a vehicle to submit the vehicle and load to a weighing or to remove excess weight therefrom; or

4. When the person is charged with a violation of NRS 484C.110 or 484C.120, unless the person is incapacitated and is being treated for injuries at the time the peace officer would otherwise be taking the person before the magistrate.

