

Amendment No. 419

Assembly Amendment to Assembly Bill No. 438	(BDR 40-1071)
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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

MNM/BAW



Date: 4/22/2017

A.B. No. 438—Revises provisions relating to offenses involving controlled substances. (BDR 40-1071)



ASSEMBLY BILL NO. 438—ASSEMBLYMAN FLORES

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to offenses involving controlled substances. (BDR 40-1071)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 controlled substances; establishing the crimes of ~~low level drug possession, mid level drug possession and high level~~ **level 1 and level 2** drug possession; revising ~~the penalties imposed for the possession of and trafficking in certain controlled substances; establishing additional circumstances in which a court is authorized to reduce or suspend~~ **provisions relating to the reduction or suspension of** the sentence of a person convicted of ~~trafficking in~~ **certain offenses involving** a controlled substance; ~~repealing provisions relating to~~ **reducing the penalty for a violation of** the prohibition against **using or** being under the influence of a controlled substance; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

~~Existing law generally prohibits a person from knowingly or intentionally possessing a controlled substance and provides certain limited exceptions to such a prohibition. Existing law establishes the penalties for such an offense, which vary depending on the type of controlled substance possessed and the frequency of the occurrence of the offense. (NRS 453.226) Section 5 of this bill revises such penalties and provides that the severity of the penalty depends on the quantity of the controlled substance possessed. Section 5 also establishes the crimes of low level drug possession, mid level drug possession and high level drug possession.~~

Existing law prohibits a person from knowingly or intentionally selling, manufacturing, delivering, bringing into this State or being in actual or constructive possession of certain controlled substances other than marijuana and sets forth the penalties for the commission of any such act. (NRS 453.3385, 453.3395) ~~Section 1~~ **Sections 9 and 9.5** of this bill ~~revises and consolidates such penalties and provides~~ **provide that if a person who violates any such provision is guilty of level 1 drug possession, level 2 drug possession or trafficking in a controlled substance, depending on the type and quantity of the controlled substance involved, if 500 grams or more, a person who commits any such act is punished for a category A felony by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.**

Existing law provides that if a person is found guilty of trafficking in a controlled substance, the court is authorized to reduce or suspend the sentence of the person if the court finds that he or she rendered substantial assistance in the investigation or prosecution of any offense. (NRS 453.3405) **Section 10** of this bill ~~additionally~~ authorizes the court to reduce or suspend the sentence of ~~such~~ a person ~~if the person proves by clear and convincing evidence that his or her only participation in the offense consisted of the transportation of a controlled substance and such participation was the result of duress because of a threat made against the person or a member of his or her family.~~ **who is convicted of level 1 drug possession involving certain controlled substances without requiring the person to render such assistance.**

Existing law also provides that it is unlawful for a person knowingly to use or be under the influence of a controlled substance except: (1) in accordance with a lawfully issued prescription; or (2) when administered to the person at certain rehabilitation clinics or hospitals. A person who violates either such provision is generally guilty of a category E felony unless the controlled substance is listed in schedule V, in which case the person is guilty of a gross misdemeanor. (NRS 453.411) **Section 10.5** of this bill ~~repeals such provisions.~~

~~Sections 1, 4, 6, 8 and 11 of this bill make conforming changes.~~ **reduces the penalty for a violation of either such provision to a misdemeanor.**

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

Section 1. ~~NRS 453.222 is hereby amended to read as follows:~~
~~453.222 1. Except as authorized by the provisions of NRS 453.011 to 453.552, inclusive, it is unlawful for a person to knowingly or intentionally:~~
~~(a) Manufacture or compound a controlled substance other than marijuana.~~
~~(b) Possess, with the intent to manufacture or compound a controlled substance other than marijuana, or sell, exchange, barter, supply, prescribe, dispense or give away, with the intent that the chemical be used to manufacture or compound a controlled substance other than marijuana:~~
~~(1) Any chemical identified in subsection 4; or~~
~~(2) Any other chemical which is proven by expert testimony to be commonly used in manufacturing or compounding a controlled substance other than marijuana. The district attorney may present expert testimony to provide a prima facie case that any chemical, whether or not it is a chemical identified in subsection 4, is commonly used in manufacturing or compounding such a controlled substance.~~
~~The provisions of this paragraph do not apply to a person who, without the intent to commit an unlawful act, possesses any chemical at a laboratory that is licensed to store the chemical.~~
~~(c) Offer or attempt to do any act set forth in paragraph (a) or (b).~~
~~2. Unless a greater penalty is provided in NRS 453.3385, for 453.3395, a person who violates any provision of subsection 1 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 3 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$100,000.~~
~~3. The court shall not grant probation to a person convicted pursuant to this section.~~
~~4. The following chemicals are identified for the purposes of subsection 1:~~
~~(a) Acetic anhydride.~~
~~(b) Acetone.~~
~~(c) N-Acetylglutamic acid, its esters and its salts.~~

- ~~(d) Anthranilic acid, its esters and its salts.~~
- ~~(e) Benzaldehyde, its salts, isomers and salts of isomers.~~
- ~~(f) Benzyl chloride.~~
- ~~(g) Benzyl cyanide.~~
- ~~(h) 1,4-Butanediol.~~
- ~~(i) 2-Butanone (or methyl ethyl ketone or MEK).~~
- ~~(j) Ephedrine, its salts, isomers and salts of isomers.~~
- ~~(k) Ergonovine and its salts.~~
- ~~(l) Ergotamine and its salts.~~
- ~~(m) Ethylamine, its salts, isomers and salts of isomers.~~
- ~~(n) Ethyl ether.~~
- ~~(o) Gamma-butyrolactone.~~
- ~~(p) Hydriodic acid, its salts, isomers and salts of isomers.~~
- ~~(q) Hydrochloric gas.~~
- ~~(r) Iodine.~~
- ~~(s) Isosafrole, its salts, isomers and salts of isomers.~~
- ~~(t) Lithium metal.~~
- ~~(u) Methylamine, its salts, isomers and salts of isomers.~~
- ~~(v) 2,4-Methylenedioxy-phenyl-2-propanone.~~
- ~~(w) N-Methylephedrine, its salts, isomers and salts of isomers.~~
- ~~(x) Methyl isobutyl ketone (MIBK).~~
- ~~(y) N-Methylpseudoephedrine, its salts, isomers and salts of isomers.~~
- ~~(z) Nitroethane, its salts, isomers and salts of isomers.~~
- ~~(aa) Norpseudoephedrine, its salts, isomers and salts of isomers.~~
- ~~(bb) Phenylacetic acid, its esters and its salts.~~
- ~~(cc) Phenylpropanolamine, its salts, isomers and salts of isomers.~~
- ~~(dd) Piperidine and its salts.~~
- ~~(ee) Piperonal, its salts, isomers and salts of isomers.~~
- ~~(ff) Potassium permanganate.~~
- ~~(gg) Propionic anhydride, its salts, isomers and salts of isomers.~~
- ~~(hh) Pseudoephedrine, its salts, isomers and salts of isomers.~~
- ~~(ii) Red phosphorus.~~
- ~~(jj) Safrole, its salts, isomers and salts of isomers.~~
- ~~(kk) Sodium metal.~~
- ~~(ll) Sulfuric acid.~~
- ~~(mm) Toluene.] (Deleted by amendment.)~~

Sec. 2. ~~[NRS 453.323 is hereby amended to read as follows:~~

~~453.323 If the death of a person is proximately caused by a controlled substance which was sold, given, traded or otherwise made available to him or her by another person in violation of this chapter, the person who sold, gave or traded or otherwise made the substance available to him or her is guilty of murder. If convicted of murder in the second degree, the person is guilty of a category A felony and shall be punished as provided in subsection 5 of NRS 200.030. If convicted of murder in the first degree, the person is guilty of a category A felony and shall be punished as provided in subsection 4 of NRS 200.030, except that the punishment of death may be imposed only if the requirements of paragraph (a) of subsection 4 of that section have been met and if the defendant is or has previously been convicted of violating NRS 453.3285 [.] or 453.329 [or 453.3295] or a law of any other jurisdiction which prohibits the same conduct.] (Deleted by amendment.)~~

Sec. 3. ~~[NRS 453.3251 is hereby amended to read as follows:~~

~~453.3251 1. Unless a greater penalty is provided by law, and except as otherwise provided in NRS 193.169, any person who violates NRS 453.322 [.] or~~

~~453.3285 [or 453.3295] where the violation included the manufacture of any material, compound, mixture or preparation which contains any quantity of methamphetamine;~~

~~(a) Within 500 feet of a residence, business, church, synagogue or other place of religious worship, public or private school, campus of the Nevada System of Higher Education, playground, public park, public swimming pool or recreational center for youths; or~~

~~(b) In a manner which creates a great risk of death or substantial bodily harm to another person;~~

~~→ shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the crime. The sentence prescribed by this section runs consecutively with the sentence prescribed by statute for the crime.~~

~~2. This section does not create a separate offense but provides an additional penalty for the primary offense, whose imposition is contingent upon the finding of the prescribed fact.~~

~~3. For the purposes of this section:~~

~~(a) "Playground" has the meaning ascribed to it in NRS 453.3345.~~

~~(b) "Recreational center for youths" has the meaning ascribed to it in NRS 453.3345.~~

~~(c) "Residence" means any house, room, apartment, tenement, manufactured home as defined in NRS 489.113, or mobile home as defined in NRS 489.120, that is designed or intended for occupancy.] (Deleted by amendment.)~~

Sec. 4. [NRS 453.3253 is hereby amended to read as follows:

~~453.3253 1. Unless a greater penalty is provided by law, and except as otherwise provided in this section and NRS 193.169, if:~~

~~(a) A person violates NRS 453.322 [.] or 453.3385 , [or 453.3395,] and the violation involves the manufacturing or compounding of any controlled substance other than marijuana; and~~

~~(b) During the discovery or cleanup of the premises at, on or in which the controlled substance was manufactured or compounded, another person suffers substantial bodily harm other than death as the proximate result of the manufacturing or compounding of the controlled substance;~~

~~→ the person who committed the offense shall be punished by imprisonment in the state prison for a term equal to and in addition to the term of imprisonment prescribed by statute for the offense. The sentence prescribed by this subsection runs consecutively with the sentence prescribed by statute for the offense.~~

~~2. Unless a greater penalty is provided by law, and except as otherwise provided in NRS 193.169, if:~~

~~(a) A person violates NRS 453.322 [.] or 453.3385 , [or 453.3395,] and the violation involves the manufacturing or compounding of any controlled substance other than marijuana; and~~

~~(b) During the discovery or cleanup of the premises at, on or in which the controlled substance was manufactured or compounded, another person suffers death as the proximate result of the manufacturing or compounding of the controlled substance;~~

~~→ the offense shall be deemed a category A felony and the person who committed the offense shall be punished 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 20 years has been served; or~~

~~(3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.~~

~~2. Subsection 1 does not create a separate offense but provides an additional penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed fact. Subsection 2 does not create a separate offense but provides an alternative penalty for the primary offense, the imposition of which is contingent upon the finding of the prescribed fact.~~

~~4. As used in this section:~~

~~(a) "Marijuana" does not include concentrated cannabis.~~

~~(b) "Premises" means:~~

~~(1) Any temporary or permanent structure, including, without limitation, any building, house, room, apartment, tenement, shed, earport, garage, shop, warehouse, store, mill, barn, stable, outhouse or tent; or~~

~~(2) Any conveyance, including, without limitation, any vessel, boat, vehicle, airplane, glider, house trailer, travel trailer, motor home or railroad car, whether located aboveground or underground and whether inhabited or not.~~

~~(Deleted by amendment.)~~

Sec. 5. [NRS 453.236 is hereby amended to read as follows:

~~453.236 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, pediatric 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,] or 453.339 or [453.3395,] a person is otherwise subject to the penalty set forth in NRS 453.3385, a person who violates this section:~~

~~(a) By possessing less than 1 gram of a controlled substance shall be punished:~~

~~(a) For the first or second offense, if the] for a misdemeanor.~~

~~(b) By possessing 1 gram or more but less than 14 grams of a controlled substance [is listed in schedule I, II, III or IV,] shall be punished for a category E felony as provided in NRS 193.130.~~

~~[(b) 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 provided in NRS 193.130, and may be further punished by a fine of not more than \$20,000.]~~

~~(c) [For the first offense, if the] By possessing 14 grams or more but less than 42 grams of a controlled substance is [listed in schedule V,] guilty of low-level drug possession and shall be punished for a category [E] C felony as provided in NRS 193.130.~~

~~(d) [For a second or subsequent offense, if the] By possessing 42 grams or more but less than 112 grams of a controlled substance is [listed in schedule V,] guilty of mid-level drug possession and shall be punished for a category [D] B felony [as provided in NRS 193.130.] by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years.~~

~~(e) By possessing 112 grams or more but less than 500 grams of a controlled substance is guilty of high-level drug possession and shall be punished 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 20 years.~~

~~3. Unless a greater penalty is provided in subsection 2 or NRS 212.160, 453.337 or 453.3385, a person who is convicted of the possession of flunitrazepam or gamma hydroxybutyrate, or any substance for which flunitrazepam or gamma hydroxybutyrate is an immediate precursor, 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 6 years.~~

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

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

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

~~(2) Examined by a treatment provider approved by the court to determine whether the person is a drug addict and is likely to be rehabilitated through treatment and, if the examination reveals that the person is a drug addict and is likely to be rehabilitated through treatment, assigned to a program of treatment and rehabilitation pursuant to NRS 453.580. As used in this subparagraph, "treatment provider" has the meaning ascribed to it in NRS 458.010.~~

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

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

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

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

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

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

~~6. As used in this section:~~

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

~~(b) "Marijuana" does not include concentrated cannabis.~~

~~(c) "Sterile hypodermic device program" has the meaning ascribed to it in NRS 439.986.] (Deleted by amendment.)~~

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

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

~~2. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as provided in the section pursuant to which the accused was charged. Notwithstanding the provisions of paragraph (c) of subsection 2 of~~

~~NRS 193.130, upon violation of a term or condition, the court may order the person to the custody of the Department of Corrections.~~

~~2. Upon fulfillment of the terms and conditions, the court shall discharge the accused and dismiss the proceedings against him or her. A nonpublic record of the dismissal must be transmitted to and retained by the Division of Parole and Probation of the Department of Public Safety solely for the use of the courts in determining whether, in later proceedings, the person qualifies under this section.~~

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

~~5. A professional licensing board may consider a proceeding under this section in determining suitability for a license or liability to discipline for misconduct. Such a board is entitled for those purposes to a truthful answer from the applicant or licensee concerning any such proceeding with respect to the applicant or licensee.] (Deleted by amendment.)~~

Sec. 7. [NRS 453.327 is hereby amended to read as follows:

~~453.327 1. Except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive, it is unlawful for a person to possess for the purpose of sale flunitrazepam, gamma hydroxybutyrate, any substance for which flunitrazepam or gamma hydroxybutyrate is an immediate precursor or any controlled substance classified in schedule I or II.~~

~~2. Unless a greater penalty is provided in NRS 453.3385 [,] or 453.339 , [or 453.3395,] a person who violates this section shall be punished:~~

~~(a) For the first offense, for a category D felony as provided in NRS 193.130.~~

~~(b) For a second offense, or if, in the case of a first conviction of violating this section, the offender has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this State, would amount to a felony under the Uniform Controlled Substances Act, for a category C felony as provided in NRS 193.130.~~

~~(c) For a third or subsequent offense, or if the offender has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of any offense under the laws of the United States or any state, territory or district which, if committed in this State, would amount to a felony under the Uniform Controlled Substances Act, for a category D felony by imprisonment in the state prison for a minimum term of not less than 3 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than \$20,000 for each offense.~~

~~3. The court shall not grant probation to or suspend the sentence of a person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 2.] (Deleted by amendment.)~~

Sec. 8. [NRS 453.3383 is hereby amended to read as follows:

~~453.3383 For the purposes of NRS 453.3385 [,] and 453.339 , [and 453.3395,] the weight of the controlled substance as represented by the person~~

selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance. ~~(Deleted by amendment.)~~

Sec. 9. NRS 453.3385 is hereby amended to read as follows:

453.3385 1. Except as otherwise authorized by the provisions of NRS 453.011 to 453.552, inclusive, and unless a greater penalty is provided in NRS 453.322, a person who knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual or constructive possession of flunitrazepam, gamma-hydroxybutyrate, any substance for which flunitrazepam or gamma-hydroxybutyrate is an immediate precursor or 500 grams or more off any controlled substance which is listed in schedule I, except marijuana, or any mixture which contains any such controlled substance, ~~shall be punished, unless a greater penalty is provided pursuant to NRS 453.322,~~ if the quantity involved:

(a) Is 4 grams or more, but less than 14 grams, is guilty of level 1 drug possession and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and by a fine of not more than \$50,000.

(b) Is 14 grams or more, but less than 28 grams, is guilty of level 2 drug possession and shall be punished 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.

(c) Is 28 grams or more, is guilty of trafficking in a controlled substance and shall be punished for a category A felony by imprisonment in the state prison :

(1) For ~~four~~ life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 ~~15~~ years has been served ~~+~~ or

(2) 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.

2. As used in this section, "marijuana" does not include concentrated cannabis.

Sec. 9.5. NRS 453.3395 is hereby amended to read as follows:

453.3395 Except as otherwise provided in NRS 453.011 to 453.552, inclusive, and unless a greater penalty is provided pursuant to NRS 453.322, a person who knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual or constructive possession of any controlled substance which is listed in schedule II or any mixture which contains any such controlled substance, ~~shall be punished, unless a greater penalty is provided pursuant to NRS 453.322,~~

1. Is 28 grams or more, but less than 200 grams, is guilty of level 1 drug possession and shall be punished for a category C felony as provided in NRS 193.130 and by a fine of not more than \$50,000.

2. Is 200 grams or more, but less than 400 grams, is guilty of level 2 drug possession and shall be punished 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 10 years and by a fine of not more than \$100,000.

3. Is 400 grams or more, is guilty of trafficking in a controlled substance and shall be punished 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 5 years has been served; or

(b) For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served,

and by a fine of not more than \$250,000.

Sec. 10. NRS 453.3405 is hereby amended to read as follows:

453.3405 1. Except as otherwise provided in subsection 2, the adjudication of guilt and imposition of sentence of a person found guilty of level 1 drug possession, level 2 drug possession or trafficking in a controlled substance in violation of NRS 453.3385 ~~, for~~ 453.339 or 453.3395, as applicable, must not be suspended and the person is not eligible for parole until the person has actually served the mandatory minimum term of imprisonment prescribed by the section under which the person was convicted.

2. The court, upon an appropriate motion, may reduce or suspend the sentence of any person convicted of violating ~~any of~~ the provisions of:

(a) Paragraph (a) of subsection 1 of NRS 453.3385; or

(b) Paragraph (b) or (c) of subsection 1 of NRS 453.3385, for 453.339 or 453.3395 if the court finds that the convicted person rendered substantial assistance in the investigation or prosecution of any offense ~~, for if the person proves by clear and convincing evidence that his or her only participation in the offense consisted of the transportation of a controlled substance and such participation was the result of duress because of a threat made against the person or a member of his or her family.~~

The arresting agency must be given an opportunity to be heard before the motion is granted. Upon good cause shown, the motion may be heard in camera.

3. Any appropriate reduction or suspension of a sentence ~~for rendering substantial assistance in the investigation or prosecution of any offense~~ pursuant to subsection 2 must be determined by the court, for reasons stated by the court that may include, without limitation, consideration of the following ~~if applicable:~~

(a) The court's evaluation of the significance and usefulness of the convicted person's assistance, taking into consideration the prosecuting attorney's evaluation of the assistance rendered;

(b) The truthfulness, completeness and reliability of any information or testimony provided by the convicted person;

(c) The nature and extent of the convicted person's assistance;

(d) Any injury suffered or any danger or risk of injury to the convicted person or his or her family resulting from his or her assistance; and

(e) The timeliness of the convicted person's assistance.

Sec. 10.5. NRS 453.411 is hereby amended to read as follows:

453.411 1. It is unlawful for a person knowingly to use or be under the influence of a controlled substance except in accordance with a lawfully issued prescription.

2. It is unlawful for a person knowingly to use or be under the influence of a controlled substance except when administered to the person at a rehabilitation clinic established or licensed by the Division of Public and Behavioral Health of the Department, or a hospital certified by the Department.

3. Unless a greater penalty is provided in NRS 212.160, a person who violates this section shall be punished ~~as follows:~~

~~(a) 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) If the controlled substance is listed in schedule V, for a gross misdemeanor, by imprisonment in the county jail for not more than 364 days, and may be further punished by a fine of not more than \$1,000.~~

Sec. 11. NRS 453C.150 is hereby amended to read as follows:

~~453C.150 1. Notwithstanding any other provision of law, a person who, in good faith, seeks medical assistance for a person who is experiencing a drug or alcohol overdose or other medical emergency or who seeks such assistance for himself or herself, or who is the subject of a good faith request for such assistance~~

1 may not be arrested, charged, prosecuted or convicted, or have his or her property
2 subjected to forfeiture, or be otherwise penalized for violating;

3 (a) Except as otherwise provided in subsection 4, a provision of chapter 453 of
4 NRS relating to:

5 (1) Drug paraphernalia, including, without limitation, NRS 453.554 to
6 453.566, inclusive;

7 (2) Possession, unless it is for the purpose of sale or violates the provisions
8 of NRS 453.3385, subsection 2 of NRS 453.3393 [, 453.3395] or NRS 453.3405; or

9 (3) Use of a controlled substance, including, without limitation, NRS
10 453.336;

11 (b) A local ordinance as described in NRS 453.3361 that establishes an offense
12 that is similar to an offense set forth in NRS 453.336;

13 (c) A restraining order; or

14 (d) A condition of the person's parole or probation;

15 if the evidence to support the arrest, charge, prosecution, conviction, seizure or
16 penalty was obtained as a result of the person seeking medical assistance.

17 2. A court, before sentencing a person who has been convicted of a violation
18 of chapter 453 of NRS for which immunity is not provided by this section, shall
19 consider in mitigation any evidence or information that the defendant, in good faith,
20 sought medical assistance for a person who was experiencing a drug or alcohol
21 overdose or other life threatening emergency in connection with the events that
22 constituted the violation.

23 3. For the purposes of this section, a person seeks medical assistance if the
24 person:

25 (a) Reports a drug or alcohol overdose or other medical emergency to a
26 member of a law enforcement agency, a 911 emergency service, a poison control
27 center, a medical facility or a provider of emergency medical services;

28 (b) Assists another person making such a report;

29 (c) Provides care to a person who is experiencing a drug or alcohol overdose or
30 other medical emergency while awaiting the arrival of medical assistance; or

31 (d) Delivers a person who is experiencing a drug or alcohol overdose or other
32 medical emergency to a medical facility and notifies the appropriate authorities.

33 4. The provisions of this section do not prohibit any governmental entity from
34 taking any actions required or authorized by chapter 432B of NRS relating to the
35 abuse or neglect of a child.

36 5. As used in this section, "drug or alcohol overdose" means a condition,
37 including, without limitation, extreme physical illness, a decreased level of
38 consciousness, respiratory depression, coma, mania or death which is caused by the
39 consumption or use of a controlled substance or alcohol, or another substance with
40 which a controlled substance or alcohol was combined, or that an ordinary
41 layperson would reasonably believe to be a drug or alcohol overdose that requires
42 medical assistance. **(Deleted by amendment.)**

43 **Sec. 12. [NRS 179A.075 is hereby amended to read as follows:]**

44 **179A.075 1. The Central Repository for Nevada Records of Criminal**
45 **History is hereby created within the General Services Division of the Department.**

46 **2. Each agency of criminal justice and any other agency dealing with crime or**
47 **delinquency of children shall:**

48 **(a) Collect and maintain records, reports and compilations of statistical data**
49 **required by the Department; and**

50 **(b) Submit the information collected to the Central Repository in the manner**
51 **approved by the Director of the Department.**

52 **3. Each agency of criminal justice shall submit the information relating to**
53 **records of criminal history that it creates, issues or collects, and any information in**

1 its possession relating to the DNA profile of a person from whom a biological
2 specimen is obtained pursuant to NRS 176.09123 or 176.0913, to the Division. The
3 information must be submitted to the Division:

- 4 ~~— (a) Through an electronic network;~~
5 ~~— (b) On a medium of magnetic storage; or~~
6 ~~— (c) In the manner prescribed by the Director of the Department;~~

7 ~~→ within 60 days after the date of the disposition of the case. If an agency has~~
8 ~~submitted a record regarding the arrest of a person who is later determined by the~~
9 ~~agency not to be the person who committed the particular crime, the agency shall~~
10 ~~immediately upon making that determination, so notify the Division. The Division~~
11 ~~shall delete all references in the Central Repository relating to that particular arrest.~~

12 ~~4. The Division shall, in the manner prescribed by the Director of the~~
13 ~~Department:~~

14 ~~— (a) Collect, maintain and arrange all information submitted to it relating to:~~

15 ~~— (1) Records of criminal history; and~~

16 ~~— (2) The DNA profile of a person from whom a biological specimen is~~
17 ~~obtained pursuant to NRS 176.09123 or 176.0913.~~

18 ~~— (b) When practicable, use a record of the personal identifying information of a~~
19 ~~subject as the basis for any records maintained regarding him or her.~~

20 ~~— (c) Upon request, provide the information that is contained in the Central~~
21 ~~Repository to the State Disaster Identification Team of the Division of Emergency~~
22 ~~Management of the Department.~~

23 ~~— (d) Upon request, provide, in paper or electronic form, the information that is~~
24 ~~contained in the Central Repository to a multidisciplinary team to review the death~~
25 ~~of the victim of a crime that constitutes domestic violence organized or sponsored~~
26 ~~by the Attorney General pursuant to NRS 228.495.~~

27 ~~5. The Division may:~~

28 ~~— (a) Disseminate any information which is contained in the Central Repository~~
29 ~~to any other agency of criminal justice;~~

30 ~~— (b) Enter into cooperative agreements with repositories of the United States~~
31 ~~and other states to facilitate exchanges of information that may be disseminated~~
32 ~~pursuant to paragraph (a); and~~

33 ~~— (c) Request of and receive from the Federal Bureau of Investigation~~
34 ~~information on the background and personal history of any person whose record of~~
35 ~~fingerprints or other biometric identifier the Central Repository submits to the~~
36 ~~Federal Bureau of Investigation and:~~

37 ~~— (1) Who has applied to any agency of the State of Nevada or any political~~
38 ~~subdivision thereof for a license which it has the power to grant or deny;~~

39 ~~— (2) With whom any agency of the State of Nevada or any political~~
40 ~~subdivision thereof intends to enter into a relationship of employment or a contract~~
41 ~~for personal services;~~

42 ~~— (3) Who has applied to any agency of the State of Nevada or any political~~
43 ~~subdivision thereof to attend an academy for training peace officers approved by~~
44 ~~the Peace Officers' Standards and Training Commission;~~

45 ~~— (4) For whom such information is required or authorized to be obtained~~
46 ~~pursuant to NRS 62B.270, 62G.223, 62G.353, 424.031, 432A.170, 432B.198,~~
47 ~~433B.183, 449.123 and 449.4329; or~~

48 ~~— (5) About whom any agency of the State of Nevada or any political~~
49 ~~subdivision thereof is authorized by law to have accurate personal information for~~
50 ~~the protection of the agency or the persons within its jurisdiction.~~

51 ~~6. To request and receive information from the Federal Bureau of~~
52 ~~Investigation concerning a person pursuant to subsection 5, the Central Repository~~
53 ~~must receive:~~

~~(a) The person's complete set of fingerprints for the purposes of:~~
~~(1) Booking the person into a city or county jail or detention facility;~~
~~(2) Employment;~~
~~(3) Contractual services; or~~
~~(4) Services related to occupational licensing;~~
~~(b) One or more of the person's fingerprints for the purposes of mobile identification by an agency of criminal justice; or~~
~~(c) Any other biometric identifier of the person as it may require for the purposes of:~~
~~(1) Arrest; or~~
~~(2) Criminal investigation;~~
~~from the agency of criminal justice or agency of the State of Nevada or any political subdivision thereof and submit the received data to the Federal Bureau of Investigation for its report.~~
~~7. The Central Repository shall:~~
~~(a) Collect and maintain records, reports and compilations of statistical data submitted by any agency pursuant to subsection 2.~~
~~(b) Tabulate and analyze all records, reports and compilations of statistical data received pursuant to this section.~~
~~(c) Disseminate to federal agencies engaged in the collection of statistical data relating to crime information which is contained in the Central Repository.~~
~~(d) Investigate the criminal history of any person who:~~
~~(1) Has applied to the Superintendent of Public Instruction for the issuance or renewal of a license;~~
~~(2) Has applied to a county school district, charter school or private school for employment; or~~
~~(3) Is employed by a county school district, charter school or private school;~~
~~and notify the superintendent of each county school district, the governing body of each charter school and the Superintendent of Public Instruction, or the administrator of each private school, as appropriate, if the investigation of the Central Repository indicates that the person has been convicted of a violation of NRS 200.508, 201.230, 453.3385 [,] or 453.339 , [or 453.3395,] or convicted of a felony or any offense involving moral turpitude.~~
~~(e) Upon discovery, notify the superintendent of each county school district, the governing body of each charter school or the administrator of each private school, as appropriate, by providing the superintendent, governing body or administrator with a list of all persons:~~
~~(1) Investigated pursuant to paragraph (d); or~~
~~(2) Employed by a county school district, charter school or private school whose fingerprints were sent previously to the Central Repository for investigation;~~
~~who the Central Repository's records indicate have been convicted of a violation of NRS 200.508, 201.230, 453.3385 [,] or 453.339 , [or 453.3395,] or convicted of a felony or any offense involving moral turpitude since the Central Repository's initial investigation. The superintendent of each county school district, the governing body of a charter school or the administrator of each private school, as applicable, shall determine whether further investigation or action by the district, charter school or private school, as applicable, is appropriate.~~
~~(f) Investigate the criminal history of each person who submits one or more fingerprints or other biometric identifier or has such data submitted pursuant to NRS 62B.270, 62G.223, 62G.353, 424.031, 432A.170, 432B.198, 433B.183, 449.122, 449.123 or 449.4329.~~

~~(g) On or before July 1 of each year, prepare and post on the Central Repository's Internet website an annual report containing the statistical data relating to crime received during the preceding calendar year. Additional reports may be posted to the Central Repository's Internet website throughout the year regarding specific areas of crime if they are approved by the Director of the Department.~~

~~(h) On or before July 1 of each year, prepare and post on the Central Repository's Internet website a report containing statistical data about domestic violence in this State.~~

~~(i) Identify and review the collection and processing of statistical data relating to criminal justice and the delinquency of children by any agency identified in subsection 2 and make recommendations for any necessary changes in the manner of collecting and processing statistical data by any such agency.~~

~~(j) Adopt regulations governing biometric identifiers and the information and data derived from biometric identifiers, including, without limitation:~~

~~(1) Their collection, use, safeguarding, handling, retention, storage, dissemination and destruction; and~~

~~(2) The methods by which a person may request the removal of his or her biometric identifiers from the Central Repository and any other agency where his or her biometric identifiers have been stored.~~

~~8. The Central Repository may:~~

~~(a) In the manner prescribed by the Director of the Department, disseminate compilations of statistical data and publish statistical reports relating to crime or the delinquency of children.~~

~~(b) Charge a reasonable fee for any publication or special report it distributes relating to data collected pursuant to this section. The Central Repository may not collect such a fee from an agency of criminal justice, any other agency dealing with crime or the delinquency of children which is required to submit information pursuant to subsection 2 or the State Disaster Identification Team of the Division of Emergency Management of the Department. All money collected pursuant to this paragraph must be used to pay for the cost of operating the Central Repository.~~

~~(c) In the manner prescribed by the Director of the Department, use electronic means to receive and disseminate information contained in the Central Repository that it is authorized to disseminate pursuant to the provisions of this chapter.~~

~~9. As used in this section:~~

~~(a) "Biometric identifier" means a fingerprint, palm print, scar, bodily mark, tattoo, voiceprint, facial image, retina image or iris image of a person.~~

~~(b) "Mobile identification" means the collection, storage, transmission, reception, search, access or processing of a biometric identifier using a handheld device.~~

~~(c) "Personal identifying information" means any information designed, commonly used or capable of being used, alone or in conjunction with any other information, to identify a person, including, without limitation:~~

~~(1) The name, driver's license number, social security number, date of birth and photograph or computer generated image of a person; and~~

~~(2) A biometric identifier of a person.~~

~~(d) "Private school" has the meaning ascribed to it in NRS 394.103.] (Deleted by amendment.)~~

Sec. 13. [NRS 207.360 is hereby amended to read as follows:

~~207.360 "Crime related to racketeering" means the commission of, attempt to commit or conspiracy to commit any of the following crimes:~~

~~1. Murder;~~

~~2. Manslaughter, except vehicular manslaughter as described in NRS 484B.657;~~
~~3. Mayhem;~~
~~4. Battery which is punished as a felony;~~
~~5. Kidnapping;~~
~~6. Sexual assault;~~
~~7. Arson;~~
~~8. Robbery;~~
~~9. Taking property from another under circumstances not amounting to robbery;~~
~~10. Extortion;~~
~~11. Statutory sexual seduction;~~
~~12. Extortionate collection of debt in violation of NRS 205.322;~~
~~13. Forgery;~~
~~14. Any violation of NRS 199.280 which is punished as a felony;~~
~~15. Burglary;~~
~~16. Grand larceny;~~
~~17. Bribery or asking for or receiving a bribe in violation of chapter 197 or 199 of NRS which is punished as a felony;~~
~~18. Battery with intent to commit a crime in violation of NRS 200.400;~~
~~19. Assault with a deadly weapon;~~
~~20. Any violation of NRS 453.232, 453.316 to [453.3395,] 453.339, inclusive, [except a violation of NRS 453.3393,] or NRS 453.375 to 453.401, inclusive;~~
~~21. Receiving or transferring a stolen vehicle;~~
~~22. Any violation of NRS 202.260, 202.275 or 202.350 which is punished as a felony;~~
~~23. Any violation of subsection 2 or 3 of NRS 463.360 or chapter 465 of NRS;~~
~~24. Receiving, possessing or withholding stolen goods valued at \$650 or more;~~
~~25. Embezzlement of money or property valued at \$650 or more;~~
~~26. Obtaining possession of money or property valued at \$650 or more, or obtaining a signature by means of false pretenses;~~
~~27. Perjury or subornation of perjury;~~
~~28. Offering false evidence;~~
~~29. Any violation of NRS 201.300, 201.320 or 201.360;~~
~~30. Any violation of NRS 90.570, 91.230 or 686A.200, or insurance fraud pursuant to NRS 686A.291;~~
~~31. Any violation of NRS 205.506, 205.920 or 205.930;~~
~~32. Any violation of NRS 202.445 or 202.446;~~
~~33. Any violation of NRS 205.377;~~
~~34. Involuntary servitude in violation of any provision of NRS 200.463 or 200.464 or a violation of any provision of NRS 200.465; or~~
~~35. Trafficking in persons in violation of any provision of NRS 200.467 or 200.468.] (Deleted by amendment.)~~

Sec. 14. ~~[NRS 453.3395 and 453.411 are hereby repealed.] (Deleted by amendment.)~~

†

~~TEXT OF REPEALED SECTIONS~~

~~453.3395 Trafficking in controlled substances: Schedule II substances. Except as otherwise provided in NRS 453.011 to 453.552, inclusive, a person who knowingly or intentionally sells, manufactures, delivers or brings into this State or who is knowingly or intentionally in actual or constructive possession of any controlled substance which is listed in schedule II or any mixture which contains any such controlled substance shall be punished, unless a greater penalty is provided pursuant to NRS 453.322, if the quantity involved:~~

~~1. Is 28 grams or more, but less than 200 grams, for a category C felony as provided in NRS 193.130 and by a fine of not more than \$50,000.~~

~~2. Is 200 grams or more, but less than 400 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 10 years and by a fine of not more than \$100,000.~~

~~3. Is 400 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 5 years has been served; or~~

~~(b) For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served.~~

~~and by a fine of not more than \$250,000.~~

~~[453.411 Unlawful use of controlled substance; penalties.~~

~~1. It is unlawful for a person knowingly to use or be under the influence of a controlled substance except in accordance with a lawfully issued prescription.~~

~~2. It is unlawful for a person knowingly to use or be under the influence of a controlled substance except when administered to the person at a rehabilitation clinic established or licensed by the Division of Public and Behavioral Health of the Department, or a hospital certified by the Department.~~

~~3. Unless a greater penalty is provided in NRS 212.160, a person who violates this section shall be punished:~~

~~(a) 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) If the controlled substance is listed in schedule V, for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, and may be further punished by a fine of not more than \$1,000.}}~~