

Amendment No. 202

Assembly Amendment to Assembly Bill No. 423	(BDR 15-1117)
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.

BAW/BJE



Date: 4/16/2019

A.B. No. 423—Revises provisions relating to certain attempt crimes.
(BDR 15-1117)



ASSEMBLY BILL NO. 423—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain attempt crimes.
(BDR 15-1117)

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 crimes; authorizing a ***court to reduce the sentence of a*** person convicted of certain attempt crimes ~~{to petition the court for modification of his or her sentence}~~ under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an act done with the intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. The punishment for attempt crimes varies based upon the category of crime the defendant was attempting to commit. An attempt to commit a category C felony is punishable as a category D felony or gross misdemeanor, an attempt to commit a category D felony is punishable as a category E felony or gross misdemeanor, and an attempt to commit a category E felony is punishable as a category E felony or gross misdemeanor. (NRS 193.330) The crimes of attempting to commit a category C, D or E felony are commonly referred to as "wobblers" because such crimes are punishable as either felonies or gross misdemeanors, in the discretion of the judge.

This bill provides that if a person is convicted of the crime of attempting to commit a category C, D or E felony and the court imposes a felony sentence ~~{, upon completion of his or her sentence, the person may petition}~~ ***and places the person on probation,*** the court ~~{to have}~~ ***may, under certain circumstances, retain jurisdiction of the case for the purpose of reducing*** the original sentence ~~{modified}~~ from a felony to a gross misdemeanor ~~{, upon successful completion of probation and compliance with the terms and conditions established for the sentence to be reduced.}~~

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

Section 1. NRS 193.330 is hereby amended to read as follows:

193.330 1. An act done with the intent to commit a crime, and tending but failing to accomplish it, is an attempt to commit that crime. A person who attempts to commit a crime, unless a different penalty is prescribed by statute, shall be punished as follows:

(a) If the person is convicted of:

(1) Attempt to commit a category A felony, 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.

(2) Attempt to commit a category B felony for which the maximum term of imprisonment authorized by statute is greater than 10 years, 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 10 years.

(3) Attempt to commit a category B felony for which the maximum term of imprisonment authorized by statute is 10 years or less, for a category C felony as provided in NRS 193.130.

(4) Attempt to commit a category C felony, for a category D felony as provided in NRS 193.130, or for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment.

(5) Attempt to commit a category D felony, for a category E felony as provided in NRS 193.130, or for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment.

(6) Attempt to commit a category E felony, for a category E felony as provided in NRS 193.130, or for a gross misdemeanor by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment.

(b) If the person is convicted of attempt to commit a misdemeanor, a gross misdemeanor or a felony for which a category is not designated by statute, by imprisonment for not more than one-half the longest term authorized by statute, or by a fine of not more than one-half the largest sum, prescribed upon conviction for the commission of the offense attempted, or by both fine and imprisonment.

2. Nothing in this section protects a person who, in an unsuccessful attempt to commit one crime, does commit another and different one, from the punishment prescribed for the crime actually committed. A person may be convicted of an attempt to commit a crime, although it appears on the trial that the crime was consummated, unless the court in its discretion discharges the jury and directs the defendant to be tried for the crime itself.

~~3. *Except as otherwise provided in subsection 4, if a person who attempts to commit a category C, D or E felony is punished for a category D or E felony, and placed on probation, the person may, upon completion of his or her sentence, petition the court of original jurisdiction to request to have the original sentence modified from a felony to a gross misdemeanor. At the time of filing such a petition, the person shall give notice of the petition to the prosecuting attorney who had jurisdiction in the original proceedings. Within 30 days after receiving notice of the filing of the petition, the prosecuting attorney shall file a response to the petition. In the response to the petition, the prosecuting attorney may recommend that the petition be granted or denied or may decline to offer a recommendation. If the prosecuting attorney recommends that the petition be granted or declines to offer a recommendation, the court may decide the petition without a hearing. If the prosecuting attorney recommends that the petition be denied, then the court shall schedule a hearing on the petition. At the hearing, the court may consider any evidence deemed appropriate by the court. After considering the petition, any recommendation from the prosecuting attorney and, if a hearing is held, the evidence presented at the hearing, the court may:*~~

~~(a) Grant the petition and modify the original sentence from a felony to a gross misdemeanor; or~~

~~(b) Deny the petition. An order denying a petition is not subject to appeal. If the court may retain jurisdiction of the case for the purpose of reducing the sentence of the person from a felony to a gross misdemeanor. If the court retains jurisdiction for the purpose of reducing the sentence of a person pursuant to this subsection, the court must:~~

~~(a) At the time of sentencing the person, specifically state, on the record:~~

~~(1) The intention to retain jurisdiction for the purpose of reducing the sentence of the person pursuant to this subsection;~~

~~(2) The terms and conditions the person must comply with for the sentence to be reduced; and~~

~~(3) That it is the responsibility of the person to ensure that the case is calendared by the court for a reduction of sentence pursuant to this subsection upon successful completion of probation and compliance with the terms and conditions established for the sentence to be reduced; and~~

~~(b) Ensure that the judgment of conviction contains:~~

~~(1) A statement that the court is retaining jurisdiction for the purpose of reducing the sentence of the person pursuant to this subsection; and~~

~~(2) The terms and conditions the person must comply with for the sentence to be reduced.~~

~~4. The court may not retain jurisdiction of a case for the purpose of reducing the sentence of a person pursuant to subsection 3 if:~~

~~(a) The person has entered a plea of guilty pursuant to a plea agreement, and the plea agreement specifically states that the offense is to be treated as a felony; or~~

~~(b) The person has previously had a sentence reduced pursuant to subsection 3.~~

Sec. 2. The amendatory provisions of this act apply to offenses committed on or after October 1, 2019.