

SENATE BILL NO. 439—COMMITTEE ON JUDICIARY

MARCH 25, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to firearms.
(BDR 15-926)

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

~

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

AN ACT relating to firearms; providing for conditional dismissal of a charge of unlawfully carrying a concealed firearm under certain circumstances; increasing the maximum penalty for unlawfully possessing a firearm under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally prohibits a person from carrying a firearm concealed on his or her person unless the person possesses a permit to carry a concealed firearm. (NRS 202.350) **Section 1** of this bill provides that if a person is charged with unlawfully carrying a concealed firearm, the prosecutor may dismiss the charge on the condition that the person obtains a permit to carry a concealed firearm.

Existing law prohibits a person from owning or possessing a firearm if the person: (1) has been convicted of a misdemeanor crime of domestic violence; (2) has been convicted of a felony, unless the person has received a pardon and the pardon does not restrict his or her right to bear arms; (3) has been convicted of stalking; (4) is currently subject to an extended order for protection against domestic violence which prohibits the person from possessing a firearm while the order is in effect; (5) is a fugitive from justice; (6) is an unlawful user of, or addicted to, any controlled substance; or (7) is otherwise prohibited by federal law from possessing a firearm. A person who possesses a firearm in violation of any of these provisions is guilty of a category B felony, punishable 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 a fine of not more than \$5,000. (NRS 202.360) **Section 2** of this bill increases the maximum term of imprisonment from 6 years to 10 years if: (1) the person is convicted for unlawfully possessing a firearm after having been convicted of a felony; (2) it is a second or subsequent violation by the person; or (3) the person is convicted of a crime of violence arising out of the same facts as the violation for unlawfully possessing a firearm.



* S B 4 3 9 *

23 **Section 3** of this bill makes a conforming change.

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

1 **Section 1.** NRS 202.350 is hereby amended to read as follows:

2 202.350 1. Except as otherwise provided in this section and
3 NRS 202.3653 to 202.369, inclusive, a person within this State shall
4 not:

5 (a) Manufacture or cause to be manufactured, or import into the
6 State, or keep, offer or expose for sale, or give, lend or possess any
7 instrument or weapon of the kind commonly known as a blackjack,
8 slungshot, billy, sand-club, sandbag or metal knuckles;

9 (b) Manufacture or cause to be manufactured, or import into the
10 State, or keep, offer or expose for sale, or give, lend, possess or use
11 a machine gun or a silencer, unless authorized by federal law;

12 (c) With the intent to inflict harm upon the person of another,
13 possess or use a nunchaku or trefoil; or

14 (d) Carry concealed upon his or her person any:

15 (1) Explosive substance, other than ammunition or any
16 components thereof;

17 (2) Machete; or

18 (3) Pistol, revolver or other firearm, other dangerous or
19 deadly weapon or pneumatic gun.

20 2. Except as otherwise provided in NRS 202.275 and 212.185,
21 a person who violates any of the provisions of:

22 (a) Paragraph (a) or (c) of subsection 1 or subparagraph (2) of
23 paragraph (d) of subsection 1 is guilty:

24 (1) For the first offense, of a gross misdemeanor.

25 (2) For any subsequent offense, of a category D felony and
26 shall be punished as provided in NRS 193.130.

27 (b) Paragraph (b) of subsection 1 or subparagraph (1) or (3) of
28 paragraph (d) of subsection 1 is guilty of a category C felony and
29 shall be punished as provided in NRS 193.130.

30 3. *If a person is charged with a violation of subparagraph (3)*
31 *of paragraph (d) of subsection 1, the prosecuting attorney may*
32 *dismiss the charge on the condition that the person must, before*
33 *dismissal of the charge, obtain a permit to carry a concealed*
34 *firearm pursuant to the provisions of NRS 202.3653 to 202.369,*
35 *inclusive. To be eligible for dismissal of a charge pursuant to this*
36 *subsection, the person must be eligible to obtain a permit to carry*
37 *a concealed firearm pursuant to the provisions of NRS 202.3653*
38 *to 202.369, inclusive.*



* S B 4 3 9 *

4. Except as otherwise provided in this subsection, the sheriff of any county may, upon written application by a resident of that county showing the reason or the purpose for which a concealed weapon is to be carried, issue a permit authorizing the applicant to carry in this State the concealed weapon described in the permit. This subsection does not authorize the sheriff to issue a permit to a person to carry a pistol, revolver or other firearm.

~~14.1~~ 5. Except as otherwise provided in subsection ~~15.1~~ 6, this section does not apply to:

(a) Sheriffs, constables, marshals, peace officers, correctional officers employed by the Department of Corrections, special police officers, police officers of this State, whether active or honorably retired, or other appointed officers.

(b) Any person summoned by any peace officer to assist in making arrests or preserving the peace while the person so summoned is actually engaged in assisting such an officer.

(c) Any full-time paid peace officer of an agency of the United States or another state or political subdivision thereof when carrying out official duties in the State of Nevada.

(d) Members of the Armed Forces of the United States when on duty.

~~15.1~~ 6. The exemptions provided in subsection ~~14.1~~ 5 do not include a former peace officer who is retired for disability unless his or her former employer has approved his or her fitness to carry a concealed weapon.

~~16.1~~ 7. The provisions of paragraph (b) of subsection 1 do not apply to any person who is licensed, authorized or permitted to possess or use a machine gun or silencer pursuant to federal law. The burden of establishing federal licensure, authorization or permission is upon the person possessing the license, authorization or permission.

~~17.1~~ 8. This section shall not be construed to prohibit a qualified law enforcement officer or a qualified retired law enforcement officer from carrying a concealed weapon in this State if he or she is authorized to do so pursuant to 18 U.S.C. § 926B or 926C.

~~18.1~~ 9. As used in this section:

(a) "Concealed weapon" means a weapon described in this section that is carried upon a person in such a manner as not to be discernible by ordinary observation.

(b) "Honorably retired" means retired in Nevada after completion of 10 years of creditable service as a member of the Public Employees' Retirement System. A former peace officer is not "honorably retired" if he or she was discharged for cause or



1 resigned before the final disposition of allegations of serious
2 misconduct.

3 (c) "Machine gun" means any weapon which shoots, is designed
4 to shoot or can be readily restored to shoot more than one shot,
5 without manual reloading, by a single function of the trigger.

6 (d) "Nunchaku" means an instrument consisting of two or more
7 sticks, clubs, bars or rods connected by a rope, cord, wire or chain
8 used as a weapon in forms of Oriental combat.

9 (e) "Pneumatic gun" has the meaning ascribed to it in
10 NRS 202.265.

11 (f) "Qualified law enforcement officer" has the meaning
12 ascribed to it in 18 U.S.C. § 926B(c).

13 (g) "Qualified retired law enforcement officer" has the meaning
14 ascribed to it in 18 U.S.C. § 926C(c).

15 (h) "Silencer" means any device for silencing, muffling or
16 diminishing the report of a firearm, including any combination of
17 parts, designed or redesigned, and intended for use in assembling or
18 fabricating a silencer or muffler, and any part intended only for use
19 in such assembly or fabrication.

20 (i) "Trefoil" means an instrument consisting of a metal plate
21 having three or more radiating points with sharp edges, designed in
22 the shape of a star, cross or other geometric figure and used as a
23 weapon for throwing.

24 **Sec. 2.** NRS 202.360 is hereby amended to read as follows:

25 202.360 1. A person shall not own or have in his or her
26 possession or under his or her custody or control any firearm if the
27 person:

28 (a) Has been convicted in this State or any other state of a
29 misdemeanor crime of domestic violence as defined in 18 U.S.C. §
30 921(a)(33);

31 (b) Has been convicted of a felony in this State or any other
32 state, or in any political subdivision thereof, or of a felony in
33 violation of the laws of the United States of America, unless the
34 person has received a pardon and the pardon does not restrict his or
35 her right to bear arms;

36 (c) Has been convicted of a violation of NRS 200.575 or a law
37 of any other state that prohibits the same or substantially similar
38 conduct and the court entered a finding in the judgment of
39 conviction or admonishment of rights pursuant to subsection 5 of
40 NRS 200.575;

41 (d) Except as otherwise provided in NRS 33.031, is currently
42 subject to:

43 (1) An extended order for protection against domestic
44 violence pursuant to NRS 33.017 to 33.100, inclusive, which
45 includes a statement that the adverse party is prohibited from



possessing or having under his or her custody or control any firearm while the order is in effect; or

(2) An equivalent order in any other state;

(e) Is a fugitive from justice;

(f) Is an unlawful user of, or addicted to, any controlled substance; or

(g) Is otherwise prohibited by federal law from having a firearm in his or her possession or under his or her custody or control.

~~1-2~~ 2. A person who violates the provisions of ~~this~~:

(a) Paragraph (b) 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 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$5,000.

(b) Except as otherwise provided in subsection 3, paragraph (a), (c), (d), (e), (f) or (g) 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 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

~~1-2~~ 3. A person who violates the provisions of paragraph (a), (c), (d), (e), (f) or (g) 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 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$5,000, if the person:

(a) Has previously been convicted of a violation of this section; or

(b) Is convicted of a crime of violence arising out of the same facts as the violation of this section.

4. A person shall not own or have in his or her possession or under his or her custody or control any firearm if the person:

(a) Has been adjudicated as mentally ill or has been committed to any mental health facility by a court of this State, any other state or the United States;

(b) Has entered a plea of guilty but mentally ill in a court of this State, any other state or the United States;

(c) Has been found guilty but mentally ill in a court of this State, any other state or the United States;

(d) Has been acquitted by reason of insanity in a court of this State, any other state or the United States; or

(e) Is illegally or unlawfully in the United States.

➤ A person who violates the provisions of this subsection is guilty of a category D felony and shall be punished as provided in NRS 193.130.



~~13-1~~ 5. As used in this section:

(a) "Controlled substance" has the meaning ascribed to it in 21 U.S.C. § 802(6).

(b) *"Crime of violence" means:*

(1) Any offense involving the use or threatened use of force or violence against the person or property of another; or

(2) Any felony for which there is a substantial risk that force or violence may be used against the person or property of another in the commission of the felony.

(c) "Firearm" includes any firearm that is loaded or unloaded and operable or inoperable.

Sec. 3. NRS 424.044 is hereby amended to read as follows:

424.044 1. A person who is listed in paragraph (a) of subsection ~~44~~ 5 of NRS 202.350 or holds a permit to carry a concealed firearm pursuant to NRS 202.3653 to 202.369, inclusive, may possess the firearm, whether loaded or unloaded, or ammunition while on the premises of a family foster home in accordance with the provisions of this section.

2. Except as otherwise provided in subsection 4, a person described in subsection 1 who possesses a firearm or ammunition while on the premises of a family foster home must store the firearm or ammunition in a locked secure storage container except:

(a) When used for a lawful purpose, which may include, without limitation, for an educational or recreational purpose, for hunting, for the defense of a person or property, or to clean or service the firearm; or

(b) If the firearm or ammunition is inoperable and solely ornamental.

3. A person who stores a firearm or ammunition on the premises of a family foster home in a locked secure storage container as required pursuant to subsection 2 shall ensure that any key, combination or access code to the locked secure storage container is kept in the reasonably secure possession of an adult or a locked combination or biometric safe.

4. A person who is authorized to possess a firearm on the premises of a family foster home pursuant to subsection 1 may carry a firearm on his or her person while in the presence of a foster child, including, without limitation, while operating or riding in a motor vehicle, if the person:

(a) Keeps the firearm in a holster or similarly secure case;

(b) Carries the firearm in a manner which ensures that the firearm is inaccessible to any foster child and is in the possession and control of the provider or other person; and

(c) Returns the firearm to a locked storage container when the firearm is on the premises of a foster home or in the presence of a



1 foster child and is not being carried on his or her person in
2 accordance with this subsection or used for a lawful purpose.

3 5. An agency which provides child welfare services is immune
4 from civil and criminal liability for any injury resulting from the use
5 of a firearm or ammunition that is stored on the premises of a family
6 foster home or is carried by a provider of family foster care or any
7 other person who resides in a family foster home.

8 6. As used in this section:

9 (a) "Firearm" has the meaning ascribed to it in NRS 202.253.

10 (b) "Secure storage container" means any device, including,
11 without limitation, a safe, gun safe, secure gun case or lock box, that
12 is marketed commercially for storing a firearm or ammunition and is
13 designed to be unlocked only by means of a key, a combination, a
14 biometric lock or other similar means.

