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ASSEMBLY BILL NO. 259—ASSEMBLYMEN MCCURDY II, MONROE-MORENO, THOMPSON, OHRENSCHALL; BILBRAY-AXELROD, BROOKS, FUMO AND MILLER

MARCH 7, 2017

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JOINT SPONSORS: SENATORS PARKS, CANCELA,  
SEGERBLOM AND RATTI

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Referred to Committee on Corrections,  
Parole, and Probation

SUMMARY—Revises provisions relating to certain criminal convictions and sentences. (BDR 14-657)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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

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AN ACT relating to criminal procedure; providing for the vacating of certain judgments of conviction relating to marijuana; authorizing a court to depart from prescribed minimum terms of imprisonment for the possession of controlled substances in certain circumstances; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes a court to grant a motion to vacate a judgment of  
2 conviction in certain circumstances. (NRS 176.515) **Section 1** of this bill  
3 additionally authorizes a court to grant a motion to vacate a judgment of conviction  
4 if: (1) the judgment is a conviction for a violation of any provision of law  
5 concerning certain offenses involving marijuana and the act constituting the offense  
6 is a lawful act in this State on or after January 1, 2017; and (2) the court notifies the  
7 prosecuting attorney who prosecuted the defendant for the crime and allows the  
8 prosecuting attorney to testify and present evidence before the court decides  
9 whether to grant the motion. **Section 1** also requires a court to grant a motion to  
10 vacate a judgment of conviction if the judgment is a conviction for the possession  
11 of 1 ounce or less of marijuana.

12 Existing law generally prohibits a person from knowingly or intentionally  
13 possessing a controlled substance and sets forth the penalties for violating such a  
14 provision. The severity of the penalty generally depends on the type of controlled



\* A B 2 5 9 \*

15 substance the person possessed and the number of times the person has committed  
16 the offense. (NRS 453.336) **Section 2** of this bill provides that if a person is  
17 convicted of knowingly or intentionally possessing a controlled substance and the  
18 penalty for such possession requires that the person serve a minimum term of  
19 imprisonment, the court is authorized to depart from the prescribed minimum term  
20 of imprisonment in certain specified circumstances.

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

1       **Section 1.** NRS 176.515 is hereby amended to read as follows:  
2       176.515 1. The court may grant a new trial to a defendant if  
3 required as a matter of law or on the ground of newly discovered  
4 evidence.

5       2. If trial was by the court without a jury, the court may vacate  
6 the judgment if entered, take additional testimony and direct the  
7 entry of a new judgment.

8       3. Except as otherwise provided in NRS 176.09187, a motion  
9 for a new trial based on the ground of newly discovered evidence  
10 may be made only within 2 years after the verdict or finding of guilt.

11       4. A motion for a new trial based on any other grounds must be  
12 made within 7 days after the verdict or finding of guilt or within  
13 such further time as the court may fix during the 7-day period.

14       5. *The court:*

15       (a) *Shall grant a motion to vacate a judgment if the judgment*  
16 *is a conviction for the possession of 1 ounce or less of marijuana*  
17 *in violation of subsection 4 of NRS 453.336.*

18       (b) *Except as otherwise provided in paragraph (a), may grant a*  
19 *motion to vacate a judgment if the judgment is a conviction for a*  
20 *violation of any provision of law concerning an offense involving*  
21 *marijuana, if the act constituting the offense is a lawful act in this*  
22 *State on or after January 1, 2017.*

23       6. The court may grant a motion to vacate a judgment if:

24       (a) The judgment is a conviction for a violation of:

25           (1) NRS 201.354, for engaging in prostitution or solicitation  
26 for prostitution, provided that the defendant was not alleged to be a  
27 customer of a prostitute;

28           (2) NRS 207.200, for unlawful trespass;

29           (3) Paragraph (b) of subsection 1 of NRS 463.350, for  
30 loitering; or

31           (4) A county, city or town ordinance, for loitering for the  
32 purpose of solicitation or prostitution;

33       (b) The participation of the defendant in the offense was the  
34 result of the defendant having been a victim of:



1 (1) Trafficking in persons as described in the Trafficking  
2 Victims Protection Act of 2000, 22 U.S.C. §§ 7101 et seq.; or

3 (2) Involuntary servitude as described in NRS 200.463 or  
4 200.4631; and

5 (c) The defendant makes a motion under this subsection with  
6 due diligence after the defendant has ceased being a victim of  
7 trafficking or involuntary servitude or has sought services for  
8 victims of such trafficking or involuntary servitude.

9 ~~16~~ 7. In deciding whether to grant a motion made pursuant  
10 to :

11 *(a) Paragraph (b) of subsection 5, the court must notify the*  
12 *prosecuting attorney who prosecuted the defendant for the crime*  
13 *and allow the prosecuting attorney to testify and present evidence*  
14 *before the court decides whether to grant the motion.*

15 *(b) Subsection 6, the court shall take into consideration any*  
16 *reasonable concerns for the safety of the defendant, family members*  
17 *of the defendant or other victims that may be jeopardized by the*  
18 *bringing of such a motion.*

19 ~~17~~ 8. If the court grants a motion made pursuant to subsection  
20 5 ~~17~~ or 6, the court:

21 (a) Shall vacate the judgment and dismiss the accusatory  
22 pleading; and

23 (b) May take any additional action that the court deems  
24 appropriate under the circumstances.

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

26 453.336 1. Except as otherwise provided in subsection ~~15~~ 6,  
27 a person shall not knowingly or intentionally possess a controlled  
28 substance, unless the substance was obtained directly from, or  
29 pursuant to, a prescription or order of a physician, physician  
30 assistant licensed pursuant to chapter 630 or 633 of NRS, dentist,  
31 podiatric physician, optometrist, advanced practice registered nurse  
32 or veterinarian while acting in the course of his or her professional  
33 practice, or except as otherwise authorized by the provisions of NRS  
34 453.005 to 453.552, inclusive.

35 2. Except as otherwise provided in subsections 3 , ~~1and~~ 4 and  
36 5 and in NRS 453.3363, and unless a greater penalty is provided in  
37 NRS 212.160, 453.3385, 453.339 or 453.3395, a person who  
38 violates this section shall be punished:

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

42 (b) For a third or subsequent offense, if the controlled substance  
43 is listed in schedule I, II, III or IV, or if the offender has previously  
44 been convicted two or more times in the aggregate of any violation  
45 of the law of the United States or of any state, territory or district



1 relating to a controlled substance, for a category D felony as  
2 provided in NRS 193.130, and may be further punished by a fine of  
3 not more than \$20,000.

4 (c) For the first offense, if the controlled substance is listed in  
5 schedule V, for a category E felony as provided in NRS 193.130.

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

9 3. ~~Unless~~ *Except as otherwise provided in subsection 5 and*  
10 *unless* a greater penalty is provided in NRS 212.160, 453.337 or  
11 453.3385, 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 of a category B felony and shall be punished by  
15 imprisonment in the state prison for a minimum term of not less  
16 than 1 year and a maximum term of not more than 6 years.

17 4. ~~Unless~~ *Except as otherwise provided in subsection 5 and*  
18 *unless* a greater penalty is provided pursuant to NRS 212.160, a  
19 person who is convicted of the possession of 1 ounce or less of  
20 marijuana:

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

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

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

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

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

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

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

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

39 5. *Notwithstanding any other provision of law, if a person is*  
40 *convicted of a violation of any provision of this section which is*  
41 *punishable by the imposition of a minimum term of imprisonment,*  
42 *the court may, upon a showing of good cause by the person, depart*  
43 *from the prescribed minimum term of imprisonment if:*

44 (a) *The offense for which the person was convicted did not*  
45 *involve the use, attempted use or threatened use of physical force*



1 *against another person or result in any physical injury to another*  
2 *person;*

3 *(b) During the commission of the offense for which the person*  
4 *was convicted, the person was not in possession of, and did not*  
5 *threaten the use of, display or represent by words or conduct that*  
6 *he or she was in possession of, any weapon listed in subsection 1*  
7 *of NRS 202.265;*

8 *(c) The provisions of this subsection have not previously been*  
9 *applied to the person; and*

10 *(d) At the time of sentencing, the court states the reasons for*  
11 *imposing a particular sentence upon the person and the specific*  
12 *reason for imposing a sentence that departs from the prescribed*  
13 *minimum term of imprisonment.*

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

18 ~~6.~~ **7.** As used in this section:

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

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

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

25 **Sec. 3.** The amendatory provisions of section 2 of this act  
26 apply to an offense committed:

27 1. On or after July 1, 2017; and

28 2. Before July 1, 2017, if the person is convicted on or after  
29 July 1, 2017.

30 **Sec. 4.** This act becomes effective on July 1, 2017.







