

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 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:

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

11 This bill provides that if a person is convicted of the crime of attempting to
12 commit a category C, D or E felony and the court imposes a felony sentence, upon
13 completion of his or her sentence, the person may petition the court to have the
14 original sentence modified from a felony to a gross misdemeanor.

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

1 Section 1. NRS 193.330 is hereby amended to read as follows:
2 193.330 1. An act done with the intent to commit a crime,
3 and tending but failing to accomplish it, is an attempt to commit that



1 crime. A person who attempts to commit a crime, unless a different
2 penalty is prescribed by statute, shall be punished as follows:

3 (a) If the person is convicted of:

4 (1) Attempt to commit a category A felony, for a category B
5 felony by imprisonment in the state prison for a minimum term of
6 not less than 2 years and a maximum term of not more than 20
7 years.

8 (2) Attempt to commit a category B felony for which the
9 maximum term of imprisonment authorized by statute is greater than
10 10 years, for a category B felony by imprisonment in the state prison
11 for a minimum term of not less than 1 year and a maximum term of
12 not more than 10 years.

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

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

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

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

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

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

42 ***3. If a person who attempts to commit a category C, D or E***
43 ***felony is punished for a category D or E felony, the person may,***
44 ***upon completion of his or her sentence, petition the court of***
45 ***original jurisdiction to request to have the original sentence***



1 *modified from a felony to a gross misdemeanor. At the time of*
2 *filing such a petition, the person shall give notice of the petition to*
3 *the prosecuting attorney who had jurisdiction in the original*
4 *proceedings. Within 30 days after receiving notice of the filing of*
5 *the petition, the prosecuting attorney shall file a response to the*
6 *petition. In the response to the petition, the prosecuting attorney*
7 *may recommend that the petition be granted or denied or may*
8 *decline to offer a recommendation. If the prosecuting attorney*
9 *recommends that the petition be granted or declines to offer a*
10 *recommendation, the court may decide the petition without a*
11 *hearing. If the prosecuting attorney recommends that the petition*
12 *be denied, then the court shall schedule a hearing on the petition.*
13 *At the hearing, the court may consider any evidence deemed*
14 *appropriate by the court. After considering the petition, any*
15 *recommendation from the prosecuting attorney and, if a hearing is*
16 *held, the evidence presented at the hearing, the court may:*

- 17 (a) *Grant the petition and modify the original sentence from a*
18 *felony to a gross misdemeanor; or*
19 (b) *Deny the petition. An order denying a petition is not subject*
20 *to appeal.*

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



