

CHAPTER.....

AN ACT relating to controlled substances; establishing the crimes of level 1 and level 2 drug possession; revising provisions relating to the reduction or suspension of the sentence of a person convicted of certain offenses involving a controlled substance; 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 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) **Sections 9 and 9.5** of this bill provide that 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.

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 authorizes the court to reduce or suspend the sentence of a person 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 reduces the penalty for a violation of either such provision to a misdemeanor.

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

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

Sections 1-8. (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 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 life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 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,}~~ if the quantity involved:

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, 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, 453.339 or 453.3395 if the court finds that the convicted person rendered substantial assistance in the investigation or prosecution of any offense.

↳ 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 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 ~~+~~

~~—(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.}~~

Secs. 11-14. (Deleted by amendment.)

