

Assembly Bill No. 371–Assemblymen
Stewart; Hickey and Woodbury

CHAPTER.....

AN ACT relating to evidence; authorizing a law enforcement agency to destroy certain physical evidence under certain conditions; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing law, a law enforcement agency that has seized a substance that is alleged to be a controlled substance, dangerous drug or immediate precursor may destroy a part of the substance if the agency obtains the prior approval of the district court in the county in which a defendant is charged in connection with the substance. (NRS 52.395) **Section 1.5** of this bill exempts from the applicability of those provisions any substance that is alleged to be marijuana.

Section 1 of this bill establishes new procedures for the retention and destruction of certain quantities of any substance that is alleged to be marijuana which has been seized as evidence by a law enforcement agency. **Section 1** authorizes a law enforcement agency that has seized such a substance to destroy any amount of the substance that exceeds 10 pounds without court approval if the law enforcement agency: (1) weighs the substance; (2) takes and retains certain samples of the substance for evidentiary purposes; and (3) takes photographs that reasonably demonstrate the total amount of the substance.

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:

Section 1. Chapter 52 of NRS is hereby amended by adding thereto a new section to read as follows:

Except as otherwise provided in NRS 453A.400:

1. At any time after a substance which is alleged to be marijuana is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, without the prior approval of the district court in the county in which the defendant is charged, destroy any amount of the substance that exceeds 10 pounds.

2. The law enforcement agency must, before destroying the substance pursuant to this section:

(a) Accurately weigh and record the weight of the substance.

(b) Take and retain, for evidentiary purposes, at least five random and representative samples of the substance in addition to the amount which is not authorized to be destroyed pursuant to subsection 1. If the substance is alleged to consist of growing or harvested marijuana plants, the 10 pounds retained pursuant to



subsection 1 may include stalks, branches, leaves and buds, but the five representative samples must consist of only leaves or buds.

(c) Take photographs that reasonably demonstrate the total amount of the substance. A sign which clearly and conspicuously shows the title or the case number of the matter, proceeding or action to which the substance relates must appear next to the substance in any photograph taken.

3. A law enforcement agency that destroys a substance pursuant to this section shall, not later than 30 days after the destruction of the substance, file an affidavit in the court which has jurisdiction over the pending criminal proceedings, if any, pertaining to that substance. The affidavit must establish that the law enforcement agency has complied with the requirements of subsection 2, specify the date and time of the destruction of the substance and provide the publicly known address of the agency. If there are no criminal proceedings pending which pertain to the substance, the affidavit may be filed in any court within the county which would have jurisdiction over a person against whom such criminal charged might be filed.

4. If the substance is finally determined not to be marijuana, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

5. The law enforcement agency's finding as to the weight of any substance alleged to be marijuana and destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

Sec. 1.5. NRS 52.395 is hereby amended to read as follows:

52.395 ~~Except as otherwise provided in NRS 453A.400-;~~

1. When any substance alleged to be a controlled substance, dangerous drug or immediate precursor is seized from a defendant by a peace officer, the law enforcement agency of which the officer is a member may, with the prior approval of the prosecuting attorney, petition the district court in the county in which the defendant is charged to secure permission to destroy a part of the substance.

2. Upon receipt of a petition filed pursuant to subsection 1, the district court shall order the substance to be accurately weighed and the weight thereof accurately recorded. The prosecuting attorney or the prosecuting attorney's representative and the defendant or the defendant's representative must be allowed to inspect and weigh the substance.



3. If after completion of the weighing process the defendant does not knowingly and voluntarily stipulate to the weight of the substance, the district court shall hold a hearing to make a judicial determination of the weight of the substance. The defendant, the defendant's attorney and any other witness the defendant may designate may be present and testify at the hearing.

4. After a determination has been made as to the weight of the substance, the district court may order all of the substance destroyed except that amount which is reasonably necessary to enable each interested party to analyze the substance to determine the composition of the substance. The district court shall order the remaining sample to be sealed and maintained for analysis before trial.

5. If the substance is finally determined not to be a controlled substance, dangerous drug or immediate precursor, unless the substance was destroyed pursuant to subsection 7, the owner may file a claim against the county to recover the reasonable value of the property destroyed pursuant to this section.

6. The district court's finding as to the weight of a substance destroyed pursuant to this section is admissible in any subsequent proceeding arising out of the same transaction.

7. If at the time that a peace officer seizes from a defendant a substance believed to be a controlled substance, dangerous drug or immediate precursor, the peace officer discovers any material or substance that he or she reasonably believes is hazardous waste, the peace officer may appropriately dispose of the material or substance without securing the permission of a court.

8. *This section does not apply to any substance that is alleged to be marijuana which is seized from a defendant by a peace officer.*

9. As used in this section:

(a) "Dangerous drug" has the meaning ascribed to it in NRS 454.201.

(b) "Hazardous waste" has the meaning ascribed to it in NRS 459.430.

(c) "Immediate precursor" has the meaning ascribed to it in NRS 453.086.

Sec. 2. (Deleted by amendment.)



