

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 court to reduce the sentence of a person convicted of certain attempt crimes 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 and
13 places the person on probation, the court may, under certain circumstances, retain
14 jurisdiction of the case for the purpose of reducing the original sentence from a
15 felony to a gross misdemeanor upon successful completion of probation and
16 compliance with the terms and conditions established for the sentence to be
17 reduced.



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

6 (a) If the person is convicted of:

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

11 (2) Attempt to commit a category B felony for which the
12 maximum term of imprisonment authorized by statute is greater than
13 10 years, for a category B felony by imprisonment in the state prison
14 for a minimum term of not less than 1 year and a maximum term of
15 not more than 10 years.

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

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

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

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

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

38 2. Nothing in this section protects a person who, in an
39 unsuccessful attempt to commit one crime, does commit another and
40 different one, from the punishment prescribed for the crime actually
41 committed. A person may be convicted of an attempt to commit a
42 crime, although it appears on the trial that the crime was



1 consummated, unless the court in its discretion discharges the jury
2 and directs the defendant to be tried for the crime itself.

3 **3. Except as otherwise provided in subsection 4, if a person**
4 **who attempts to commit a category C, D or E felony is punished**
5 **for a category D or E felony and placed on probation, the court**
6 **may retain jurisdiction of the case for the purpose of reducing the**
7 **sentence of the person from a felony to a gross misdemeanor. If**
8 **the court retains jurisdiction for the purpose of reducing the**
9 **sentence of a person pursuant to this subsection, the court must:**

10 (a) **At the time of sentencing the person, specifically state, on**
11 **the record:**

12 (1) **The intention to retain jurisdiction for the purpose of**
13 **reducing the sentence of the person pursuant to this subsection;**

14 (2) **The terms and conditions the person must comply with**
15 **for the sentence to be reduced; and**

16 (3) **That it is the responsibility of the person to ensure that**
17 **the case is calendared by the court for a reduction of sentence**
18 **pursuant to this subsection upon successful completion of**
19 **probation and compliance with the terms and conditions**
20 **established for the sentence to be reduced; and**

21 (b) **Ensure that the judgment of conviction contains:**

22 (1) **A statement that the court is retaining jurisdiction for**
23 **the purpose of reducing the sentence of the person pursuant to**
24 **this subsection; and**

25 (2) **The terms and conditions the person must comply with**
26 **for the sentence to be reduced.**

27 **4. The court may not retain jurisdiction of a case for the**
28 **purpose of reducing the sentence of a person pursuant to**
29 **subsection 3 if:**

30 (a) **The person has entered a plea of guilty pursuant to a plea**
31 **agreement, and the plea agreement specifically states that the**
32 **offense is to be treated as a felony; or**

33 (b) **The person has previously had a sentence reduced**
34 **pursuant to subsection 3.**

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



