

1983

**S. B. 7—Raggio, Jan. 18.**

Summary—Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of others. (BDR 40-37) Fiscal Note: Effect on Local Government: No. Effect on the State or on Industrial Insurance: No.

Jan. 18—Read first time. Referred to Committee on Human Resources and Facilities. To printer.

Jan. 19—From printer. To committee.

Feb. 15—From committee: Amend, and do pass as amended.

✓Feb. 16—Read second time. Amended. To printer.

Feb. 17—From printer. To engrossment. Engrossed. First reprint.✓

Feb. 18—Taken from General File. Placed on Secretary's desk.

✓Feb. 21—Taken from Secretary's desk. Placed on General File. Read third time. Passed, as amended. Title approved, as amended. To Assembly.

Feb. 22—In Assembly.✓ Read first time. Referred to Committee on Judiciary. To committee.

Mar. 22—From committee: Amend, and do pass as amended.

✓Mar. 23—Read second time. Amended. To printer.

Mar. 24—From printer. To re-engrossment. Re-engrossed. Second reprint.✓

✓Mar. 25—Read third time. Passed, as amended. Title approved. To Senate.

Mar. 28—In Senate. Assembly amendment concurred in. To enrollment.

Mar. 29—Enrolled and delivered to Governor.

Apr. 2—Approved by the Governor. Chapter 111.

Effective July 1, 1983.

# NEVADA LEGISLATURE

SIXTY-SECOND SESSION

1983

## SUMMARY OF LEGISLATION



PREPARED BY

RESEARCH DIVISION

LEGISLATIVE COUNSEL BUREAU

A.B. 423 (chapter 327)

Requires that any person who uses a handgun containing a metal-penetrating bullet in the commission of a crime be punished by imprisonment in the state prison for a term equal to, and in addition to, the term of imprisonment prescribed by statute for the crime. The bill provides that the additional term run consecutively with the sentence for the crime. The measure makes it a gross misdemeanor to manufacture the bullets unless it is done pursuant to an agreement with a law enforcement agency.

A.B. 429 (chapter 246)

Provides that a person who uses a card or other device for automatically withdrawing or transferring money in a financial institution to obtain money to which he knows he is not entitled is guilty of grand larceny. The measure specifies that the penalty for this offense is a 10-year prison sentence and a fine of up to \$10,000.

S.B. 7 (chapter 111)

Provides penalties for trafficking controlled substances. The bill also restricts the suspension of sentences for these offenses to persons who render substantial assistance in the conviction of others. The list of property subject to forfeiture is also expanded to include money exchanged for controlled substances and the proceeds of an exchange.

S.B. 42 (chapter 54)

Requires the department of parole and probation to charge each parolee or probationer a fee of not less than \$12 a month to defray the cost of his or her supervision. The fee does not apply to parolees or probationers who have been transferred to Nevada under the terms of the interstate compact. The fee may be waived if the executive director of the department determines that the fee would create an economic hardship on the offender. The measure makes it a violation of a condition of parole or probation if the required fee is not paid.

S.B. 113 (chapter 55)

Permits the director of the department of prisons to designate a substitute to represent himself on panels formed to determine if sexual offenders may be granted parole. Under previous law, only the administrator of the mental hygiene and mental retardation division of the state department of human resources could designate a substitute on such panels.

S.B. 114 (chapter 117)

Provides for a deduction from an offender's personal money to pay for the cost of:

1. State property willfully damaged or destroyed by the offender during his incarceration;

## SENATE BILL NO. 7—SENATOR RAGGIO

JANUARY 18, 1983

Referred to Committee on Human Resources and Facilities

SUMMARY—Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of other. (BDR 40-37)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted

AN ACT relating to controlled substances; providing penalties for trafficking; restricting the suspension of sentences for these offenses to persons who render substantial assistance in the conviction of others; and providing other matters properly relating thereto.

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

- 1    Section 1. Chapter 453 of NRS is hereby amended by adding  
2    thereto the provisions set forth as sections 2 to 5, inclusive, of this act.  
3    Sec. 2. *Except as authorized by the provisions of NRS 453.011 to*  
4    *453.551, inclusive, and sections 2 to 5, inclusive, of this act, any per-*  
5    *son who knowingly or intentionally sells, manufactures, delivers or*  
6    *brings into this state or who is knowingly or intentionally in actual or*  
7    *constructive possession of any controlled substance which is listed in*  
8    *schedule I, except marihuana, or any mixture which contains any such*  
9    *controlled substance shall be punished, if the quantity involved:*  
10    1. *Is 4 grams or more, but less than 14 grams, by imprisonment in*  
11    *the state prison for not less than 3 years nor more than 20 years and*  
12    *by a fine of \$50,000.*  
13    2. *Is 14 grams or more, but less than 28 grams, by imprisonment*  
14    *in the state prison for life or for a definite term of not less than 10*  
15    *years and by a fine of \$100,000.*  
16    3. *Is 28 grams or more, by imprisonment in the state prison for life*  
17    *or for a definite term of not less than 25 years and by a fine of*  
18    *\$500,000.*

1     Sec. 3. Except as authorized by the provisions of NRS 453.011 to  
2     453.551, inclusive, any person who knowingly or intentionally sells,  
3     manufactures, delivers or brings into this state or who is knowingly or  
4     intentionally in actual or constructive possession of marihuana shall be  
5     punished, if the quantity involved:

6         1. Is 100 pounds or more, but less than 2,000 pounds, by impris-  
7         onment in the state prison for not less than 3 years nor more than 20  
8         years and by a fine of \$25,000.

9         2. Is 2,000 pounds or more, but less than 10,000 pounds, by  
10         imprisonment in the state prison for not less than 5 years nor more  
11         than 20 years and by a fine of \$50,000.

12         3. Is 10,000 pounds or more, by imprisonment in the state prison  
13         for life or for a definite term of not less than 15 years and by a fine  
14         of \$200,000.

15     Sec. 4. Except as authorized by the provisions of NRS 453.011 to  
16     453.551, inclusive, any person who knowingly or intentionally sells,  
17     manufactures, delivers or brings into this state or who is knowingly or  
18     intentionally in actual or constructive possession of any controlled sub-  
19     stance which is listed in schedule II or any mixture which contains any  
20     such controlled substance shall be punished, if the quantity involved:

21         1. Is 28 grams or more, but less than 200 grams, by imprisonment  
22         in the state prison for not less than 3 years nor more than 20 years and  
23         by a fine of \$50,000.

24         2. Is 200 grams or more, but less than 400 grams, by imprisonment  
25         in the state prison for not less than 5 years nor more than 20 years and  
26         by a fine of \$100,000.

27         3. Is 400 grams or more, by imprisonment in the state prison for  
28         life or for a definite term of not less than 15 years and by a fine of  
29         \$250,000.

30     Sec. 5. 1. Except as provided in subsection 2, the adjudication of  
31     guilt and imposition of sentence of a person found guilty of trafficking  
32     in a controlled substance in violation of section 2, 3 or 4 of this act  
33     must not be suspended, deferred or withheld and the person is not eli-  
34     gible for parole until he has actually served the mandatory minimum  
35     term of imprisonment prescribed by the section under which he was  
36     convicted.

37         2. The judge, upon an appropriate motion by the prosecutor, may  
38         reduce or suspend the sentence of any person convicted of violating  
39         any of the provisions of sections 2 to 4, inclusive, of this act if he finds  
40         that the convicted person rendered substantial assistance in the identifi-  
41         cation, arrest or conviction of any of his accomplices, accessories,  
42         coconspirators or principals. The arresting agency must be given an  
43         opportunity to be heard before the motion is granted. Upon good  
44         cause shown, the motion may be heard in camera.

1     Sec. 6. NRS 453.336 is hereby amended to read as follows:

2     453.336   1. It is unlawful for any person knowingly or intention-  
3 ally to possess a controlled substance unless the substance was obtained  
4 directly from, or pursuant to, a valid prescription or order of a physi-  
5 cian, dentist, podiatrist or veterinarian while acting in the course of his  
6 professional practice, or except as otherwise authorized by the provi-  
7 sions of NRS 453.011 to 453.551, inclusive.

8     2. Except as provided in subsections 3 and [4,] 4 and unless a  
9 greater penalty is provided in section 2, 3 or 4 of this act, any person  
10 who violates this section shall be punished:

11     (a) For the first offense, if the controlled substance is listed in sched-  
12 ule I, II, III or IV, by imprisonment in the state prison for not less  
13 than 1 year nor more than 6 years, and may be further punished by a  
14 fine of not more than \$5,000.

15     (b) For a second offense, if the controlled substance is listed in  
16 schedule I, II, III or IV, or if, in case of a first conviction of violation  
17 of this section, the offender has previously been convicted of any vio-  
18 lation of the laws of the United States or of any state, territory or dis-  
19 trict relating to a controlled substance, the offender shall be punished  
20 by imprisonment in the state prison for not less than 1 year nor more  
21 than 10 years and may be further punished by a fine of not more than  
22 \$10,000.

23     (c) For a third or subsequent offense, if the controlled substance is  
24 listed in schedule I, II, III or IV, or if the offender has previously been  
25 convicted two or more times in the aggregate of any violation of the  
26 law of the United States or of any state, territory or district relating to  
27 a controlled substance, the offender shall be punished by imprisonment  
28 in the state prison for not less than 1 year nor more than 20 years and  
29 may be further punished by a fine of not more than \$20,000.

30     (d) For the first offense, if the controlled substance is listed in  
31 schedule V, by imprisonment in the county jail for not more than 1  
32 year, and may be further punished by a fine of not more than \$1,000.

33     (e) For a second or subsequent offense, if the controlled substance is  
34 listed in schedule V, by imprisonment in the state prison for not less  
35 than 1 year nor more than 6 years, and may be further punished by a  
36 fine of not more than \$5,000.

37     3. Any person who is under 21 years of age and is convicted of the  
38 possession of less than 1 ounce of marihuana:

39     (a) For the first offense:

40         (1) Shall be punished by imprisonment in the state prison for not  
41 less than 1 year nor more than 6 years, and may be further punished  
42 by a fine of not more than \$2,000; or

43         (2) Shall be punished by imprisonment in the county jail for not  
44 more than 1 year, and may be further punished by a fine of not more

1 than \$1,000, and may have his driver's license suspended for not more  
2 than 6 months.

3 (b) For the second offense shall be punished in the manner pre-  
4 scribed by subsection 2 for a first offense.

5 (c) For a third or subsequent offense, shall be punished in the man-  
6 ner prescribed by subsection 2 for a second offense.

7 4. Before sentencing under the provisions of subsection 3, the court  
8 shall require the parole and probation officer to submit a presentencing  
9 report on the person convicted in accordance with the provisions of  
10 NRS 176.195. After the report is received but before sentence is pro-  
11 nounced the court shall:

12 (a) Interview the person convicted and make a determination as to  
13 the possibility of his rehabilitation; and

14 (b) Conduct a hearing at which evidence may be presented as to the  
15 possibility of rehabilitation and any other relevant information received  
16 as to whether the person convicted of the offense shall be adjudged to  
17 have committed a felony or to have committed a gross misdemeanor.

18 5. Three years after the person has been convicted and sentenced  
19 under the provisions of subsection 3, the court may order sealed all  
20 records, papers and exhibits in such person's record, minute book  
21 entries and entries on dockets, and other records relating to the case in  
22 the custody of such other agencies and officials as are named in the  
23 court's order, if:

24 (a) The person fulfilled all the terms and conditions imposed by the  
25 court and by the parole and probation officer; and

26 (b) The court, after hearing, is satisfied that the rehabilitation has  
27 been attained.

28 6. Whenever any person who has not previously been convicted of  
29 any offense under the provisions of NRS 453.011 to 453.551, inclusive,  
30 or under any statute of the United States or of any state relating to  
31 narcotic drugs, marihuana or stimulant, depressant or hallucinogenic  
32 drugs pleads guilty to or is found guilty under this section of posses-  
33 sion of a controlled substance not for the purpose of sale, the court,  
34 with the consent of the accused, may impose sentence, including a fine,  
35 suspend imprisonment, seal the record and place him on probation  
36 upon terms and conditions.

37 7. The record of a person sentenced under subsection 6 which has  
38 been sealed by the court may remain sealed until:

39 (a) The defendant fulfills all of the terms and conditions imposed by  
40 the court and by his probation officer, when the record may be  
41 expunged; or

42 (b) His probation is revoked and the sentence is executed.

43 8. There may be only one suspension of sentence under subsection  
44 6 with respect to any person.

6

1     **Sec. 7.** NRS 453.337 is hereby amended to read as follows:

2     453.337 1. Except as authorized by the provisions of NRS  
3     453.011 to 453.551, inclusive, it is unlawful for any person to possess  
4     for the purpose of sale any controlled substance classified in schedule  
5     I or II.

6     2. **[Any]** *Unless a greater penalty is provided in section 2, 3 or*  
7     *4 of this act, any person who violates this section shall be punished:*

8     (a) For the first offense, by imprisonment in the state prison for not  
9     less than 1 year nor more than 15 years and may be further punished  
10    by a fine of not more than \$5,000.

11   (b) For a second offense, or if, in the case of a first conviction of  
12   violating this section, the offender has previously been convicted of a  
13   felony under the Uniform Controlled Substances Act or of an offense  
14   under the laws of the United States or any state, territory or district  
15   which, if committed in this state, would amount to a felony under the  
16   Uniform Controlled Substances Act, by imprisonment in the state  
17   prison for not less than 5 years nor more than 15 years and may be  
18   further punished by a fine of not more than \$10,000.

19   (c) For a third or subsequent offense, or if the offender has previ-  
20   ously been convicted two or more times of a felony under the Uniform  
21   Controlled Substances Act or of any offense under the laws of the  
22   United States or any state, territory or district which, if committed in  
23   this state, would amount to a felony under the Uniform Controlled  
24   Substances Act, by imprisonment in the state prison for not less than  
25   15 years and may be further punished by a fine of not more than  
26   \$20,000 for each offense.

27   3. The court shall not grant probation to or suspend the sentence  
28   of any person convicted of violating this section and punishable pursu-  
29   ant to paragraph (b) or (c) of subsection 2.



Following Mr. Kightlinger's reading of Exhibit L, the Chairman asked for any further questions or testimony.

At this point, Exhibits M, N and O were presented in opposition to Senate Bill Number 45. (see Exhibit D)

There being no further discussion, the Chairman closed the hearing on Senate Bill Number 45, (see Exhibit D).

The Chairman then opened the hearing on the reading of Senate Bill Number 7. (Exhibit P.)

SENATE BILL NO. 7 - EXHIBIT P

The Chairman stated this was the bill which "provides for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of others."

Senator William J. Raggio, Washoe District I, introducer of this bill, gave testimony. He felt this bill was needed, as it specifically deals with a problem that is occurring more frequently in the State of Nevada, where there is a great deal of open space and close proximity to Mexico and other ports of entry. Senator Raggio cited what some other states had done in this regard. Senator Raggio referred to Senate Bill Number 7, as it was, for the Committee's reference, and discussion continued between Committee members and Senator Raggio.

The Chairman noted the exemption in this bill to Marijuana, which Senator Raggio said was covered in Section III of Senate Bill Number 7, further stating this bill only deals with the heavy trafficking of these drugs.

Discussion followed between the Chairman and Senator Raggio regarding problems with the constitution of this bill, to which Senator Raggio said there were no such problems. Senator Raggio then referred to Mr. Vincent Swinney, Sheriff of Washoe County, who was also in favor of this bill in its present form. Senator Raggio then referred to specific letters from other people involved with this bill, i.e., the District Attorney of Reno, Mr. Mills Lane, Mr. John Moran, Sheriff of Clark County, Mr. Donald K. Wadsworth and Mr. Donald Rhodes. Senator Raggio handed out all letters from these individuals to the Committee members. See Exhibit Q.

Chairman Neal then asked for any further questions.

Mr. Bill McDonald, Nevada District Attorney's Association and Clark County District Attorney's Office, gave testimony in favor

of Senate Bill Number 7, and felt it would certainly be a good tool for law enforcement.

Mr. Joe Midmore, from the State Board of Pharmacy, was the next witness to support this bill. Mr. Midmore further stated the Board of Pharmacy should go on record "In support of anything that this Session of the Legislature sees fit to do that is aimed at curbing drug traffic."

The Chairman asked for any further questions. There being no further discussion, the hearing was closed on Senate Bill Number 7.

SENATE BILL NO. 59 - EXHIBIT R

The Chairman then opened the hearing on Senate Bill Number 59. Chairman Neal announced this was the bill that provides additional penalty for possession of certain controlled substances and expands provision relating to forfeitures.

Senator William H. Hernstadt testified to the purpose of the bill, which was basically twofold. The first part of this bill would substantially increase the maximum fine up to one million dollars for major traffickers in controlled substances, and the second part of the bill would follow the federal statutes and confiscate real and personal property owned by perpetrators of the drug offense. Mr. Hernstadt further commented on how this bill was already being implemented in certain circumstances.

Discussion followed between Senator Hernstadt and Committee members regarding Senate Bill No. 59 -(see Exhibit R.) It was further explained to Committee members what could be expected for the "big dealers in drug trafficking", and that it is the "little people" who really get hurt now. Senator Hernstadt further stated he would like to see Senate Bill Number 7 and Senate Bill Number 59, thus making both these bills more powerful.

Discussion continued between the Chairman and Senator Hernstadt regarding fines, penalties, and the fines imposed on the users of marijuana. The Chairman asked Senator Hernstadt if he would be willing to have Senate Bill Number 59, Section I, amended, and just add "Keep in Section II, subsection VII". Senator Hernstadt felt this section should be applied to Senate Bill Number 7, but to make sure there was a range for the fines. Senator Hernstadt distributed information to Committee members (see Exhibit S), regarding penalties in other states, and what their sentencing situation involved.

Senator Faiss moved that the Committee introduce this Bill Draft Request.

Senator Foley seconded motion.

Senators Blakemore and Horn were opposed.

Motion failed.

The Chairman proceeded to Senate Bill Number 57, which makes various changes in the requirements to admission of children's homes.

Senator Blakemore moved for a DO PASS of Senate Bill Number 57.

Senator Faiss seconded the motion.

The motion carried.

The Chairman called for a motion on Senate Bill Number 53.

Senator Blakemore moved for a DO PASS.

Senator Foley seconded the motion.

The motion carried.

The Chairman then called for a motion on Senate Bill Number 45.

Senator Foley moved for an indefinite postponement.

Senator Blakemore seconded the motion.

The motion carried.

The Chairman asked for any questions. There being no questions, those in favor were Senators Mello, Foley, Blakemore and the Chairman, Senator Neal. Those opposed were Senator Faiss and Senator Horn. Senator Ryan was not present for this vote.

The Chairman then called for a motion on Senate Bill Number 7 and Senate Bill Number 59.

Senator Blakemore voted for an amendment, but until the Committee could see the amendments, he felt the Committee should hold their proposal to the bil, and to possibly merge the amended Senate Bill Number 7 into Senate Bill Number 59, the portion of which pertained.

The Chairman stated the Committee had not yet determined what section of the law they wanted to merge.

Senator Mello wished to take subsection VIII, on page 2 of Senate Bill Number 59, and put it in Senate Bill Number 7.

The Chairman stated the affirmative, this would be the amendment to Senate Bill Number 7, and that there was a motion that the Committee amend Senate Bill Number 7 by incorporating in language on Page 2 of Senate Bill Number 50, Subsection VII, amend to Senate Bill Number 7.

The Chairman then asked for questions. There being no further discussion, the Chairman asked for a vote on the above amendments regarding these two bills.

Senator Blakemore further moved that the Committee amend that Section VII, as it would be merged into Senate Bill Number 7.

The Chairman stated that rather than take action on this particular bill, and not having anything before the Committee, that the Committee work on getting the amendments through Senator Blakemore.

The Chairman made the motion to indefinitely postpone Senate Bill Number 59.

Senator Donald A. Mello so moved to indefinitely postpone Senate Bill Number 59.

Senator Blakemore seconded the motion.

The motion carried.

The Chairman moved to have a Committee introduction to Bill Draft Request 34-134.

This motion was moved by Senator Nicholas J. Horn.

Senator Donald A. Mello seconded the motion.

The motion carried.

Senator Glaser said he would be willing to testify in that committee.

Senator Jacobsen, representing the western counties, testified that in counties where volunteer services are used, such as Douglas County, who transported 93 accident victims, they have no jurisdiction over who is indigent and who is not. To this date they billed \$157,000 and collected only \$46.00. He felt that it is imperative that the state has this responsibility and that they should help in this matter. He felt that Senate Bill Number 120 would address this problem.

Frank Holzhauer, Chief Planning of Human Resources stated that Title 19 is a 50-50 program, under which the state can only put up so much money and that in turn buys a like amount of federal money.

After some discussion by the committee and Mr. Holzhauer, the meeting was closed on Senate Bill Number 120.

Senator Blakemore wanted to hold this bill and see if this concurs with the counties that he represents.

Mr. Chairman held Senate Bill Number 120 on request of Senator Blakemore.

Mr. Chairman held Senate Bill Number 119 to wait for more information from Senator Horn on Toluene.

Senate Bill Number 119 and Senate Bill Number 120 were held until Wednesday, February 23, 1983.

Discussion was then brought up on Senate Bill Number 7. Senator Foley presented the amendments to the committee ~~that makes a~~ minimum fine for those offenses but not a maximum fine. (See Exhibit G & H).

Senator Horn moved that they adopt the amendments.

Senator Blakemore seconded the motion.

All were in favor.

None opposed.

Senator Horn moved that Senate Bill Number 7 be a DO PASS AS AMENDED.

No questions.

All were in favor.

None opposed.

S. B. 7

## SENATE BILL NO. 7—SENATOR RAGGIO

JANUARY 18, 1983

Referred to Committee on Human Resources and Facilities

SUMMARY—Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of other. (BDR 40-37)

FISCAL NOTE: Effect on Local Government: No.  
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EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to controlled substances; providing penalties for trafficking; restricting the suspension of sentences for these offenses to persons who render substantial assistance in the conviction of others; and providing other matters properly relating thereto.

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

- 1 Section 1. Chapter 453 of NRS is hereby amended by adding
- 2 thereto the provisions set forth as sections 2 to 5, inclusive, of this act.
- 3 Sec. 2. *Except as authorized by the provisions of NRS 453.011 to*
- 4 *453.551, inclusive, and sections 2 to 5, inclusive, of this act, any per-*
- 5 *son who knowingly or intentionally sells, manufactures, delivers or*
- 6 *brings into this state or who is knowingly or intentionally in actual or*
- 7 *constructive possession of any controlled substance which is listed in*
- 8 *schedule I, except marihuana, or any mixture which contains any such*
- 9 *controlled substance shall be punished, if the quantity involved:*
- 10 1. *Is 4 grams or more, but less than 14 grams, by imprisonment in*
- 11 *the state prison for not less than 3 years nor more than 20 years and*
- 12 *by a fine of \$50,000.*
- 13 2. *Is 14 grams or more, but less than 28 grams, by imprisonment*
- 14 *in the state prison for life or for a definite term of not less than 10*
- 15 *years and by a fine of \$100,000.*
- 16 3. *Is 28 grams or more, by imprisonment in the state prison for life*
- 17 *or for a definite term of not less than 25 years and by a fine of*
- 18 *\$500,000.*

## ASSEMBLY ACTION

## SENATE ACTION

Adopted ☐  
 Lost ☐  
 Date:  
 Initial:  
 Concurred in ☐  
 Not concurred in ☐  
 Date:  
 Initial:

Adopted ☐  
 Lost ☐  
 Date:  
 Initial:  
 Concurred in ☐  
 Not concurred in ☐  
 Date:  
 Initial:

Senate Amendment to  
 Senate Bill No. 7.  
 EDR 40-37  
 Proposed by Committee on  
 Human Resources and  
 Facilities

Replaces Amendment No. 33.

Amendment

No. 39

Amend sec. 2, page 1, line 12, after "of" by inserting:  
"not less than".

Amend sec. 2, page 1, line 15, after "of" by inserting:  
"not less than".

Amend sec. 2, page 1, line 18, before "\$500,000" by inserting:  
"not less than".

Amend sec. 3, page 2, line 8, after "of" by inserting:  
"not less than".

Amend sec. 3, page 2, line 11, after "of" by inserting:  
"not less than".

Amend sec. 3, page 2, line 14, after "of" by inserting:  
"not less than".

Amend sec. 4, page 2, line 23, after "of" by inserting:  
"not less than".

Amend sec. 4, page 2, line 26, after "of" by inserting:  
"not less than".

Amend sec. 4, page 2, line 29, before "\$250,000" by inserting:  
"not less than".

Amend the bill as a whole by renumbering sections 6 and 7 as  
 sections 7 and 8 and adding a new section designated section 6, fol-  
 lowing section 5, to read as follows:

"Sec. 6. NRS 453.301 is hereby amended to read as follows:  
 453.301 The following are subject to forfeiture:

to: E & E  
 LCB File  
 Journal ✓  
 Engrssment  
 Bill

Drafted by

JKN:lp

2/9/83

Date

209

14

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.551, inclusive.

2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive.

3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2.

4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of the provisions of NRS 453.011 to 453.551, inclusive.

5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, possession for sale or receipt of property described in subsections 1 or 2, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the provisions of NRS 453.011 to 453.551, inclusive;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(c) A conveyance is not subject to forfeiture for a violation of NRS 453.336 unless more than 1 kilogram of marihuana was in the conveyance;

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission. If a conveyance



is forfeited, the appropriate law enforcement agency may pay off the existing balance and retain the conveyance for official use.

*Just* No person, other than the holder of a community property interest, whose name or interest does not appear on the certificate of registration or title for the conveyance is a proper party to any forfeiture proceeding pursuant to this subsection.

6. All drug paraphernalia as defined by NRS 453.554 which are used in violation of NRS 453.560, 453.562 or 453.566 or of an injunction issued pursuant to NRS 453.558.

7. Except as provided in this subsection, everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive, all proceeds traceable to such an exchange, and all money, negotiable instruments and securities used or intended to be used to facilitate a violation of the provisions of NRS 453.011 to 453.551, inclusive. No person's interest in property may be forfeited pursuant to this subsection by reason of any act or omission which he establishes was committed or omitted without his knowledge or consent. There is a rebuttable presumption that all money found in close proximity to forfeitable controlled substances, drug paraphernalia or records is subject to forfeiture pursuant to this subsection.

Amend the title of the bill, third line, after "others;" by inserting:

"expanding the list of property subject to forfeiture to include money exchanged for controlled substances and the proceeds of an exchange;"

## MOTIONS, RESOLUTIONS AND NOTICES

Senator Ashworth moved that Senate Bill No. 18 be taken from the General File and be placed on the Secretary's desk.

Motion carried.

Senator Wilson moved that Senate Bill No. 19 be taken from the General File and be placed on the Secretary's desk.

Motion carried.

## SECOND READING AND AMENDMENT

Senate Bill No. 7.

Bill read second time.

The following amendment was proposed by the Committee on Human Resources and Facilities:

Amendment No. 39.

Amend sec. 2, page 1, line 12, after "of" by inserting: "not less than".

Amend sec. 2, page 1, line 15, after "of" by inserting: "not less than".

Amend sec. 2, page 1, line 18, before "\$500,000" by inserting: "not less than".

Amend sec. 3, page 2, line 8, after "of" by inserting: "not less than".

Amend sec. 3, page 2, line 11, after "of" by inserting: "not less than".

Amend sec. 3, page 2, line 14, after "of" by inserting: "not less than".

Amend sec. 4, page 2, line 23, after "of" by inserting: "not less than".

Amend sec. 4, page 2, line 26, after "of" by inserting: "not less than".

Amend sec. 4, page 2, line 29, before "\$250,000" by inserting: "not less than".

Amend the bill as a whole by renumbering sections 6 and 7 as sections 7 and 8 and adding a new section designated section 6, following section 5, to read as follows:

"Sec. 6. NRS 453.301 is hereby amended to read as follows:

453.301 The following are subject to forfeiture:

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.551, inclusive.

2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive.

3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2.

4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of the provisions of NRS 453.011 to 453.551, inclusive.

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5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, possession for sale or receipt of property described in subsections 1 or 2, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the provisions of NRS 453.011 to 453.551, inclusive;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(c) A conveyance is not subject to forfeiture for a violation of NRS 453.336 unless more than 1 kilogram of marihuana was in the conveyance;

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission. If a conveyance is forfeited, the appropriate law enforcement agency may pay off the existing balance and retain the conveyance for official use.

No person, other than the holder of a community property interest, whose name or interest does not appear on the certificate of registration or title for the conveyance is a proper party to any forfeiture proceeding pursuant to this subsection.

6. All drug paraphernalia as defined by NRS 453.554 which are used in violation of NRS 453.560, 453.562 or 453.566 or of an injunction issued pursuant to NRS 453.558.

7. *Except as provided in this subsection, everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive, all proceeds traceable to such an exchange, and all money, negotiable instruments and securities used or intended to be used to facilitate a violation of the provisions of NRS 453.011 to 453.551, inclusive. No person's interest in property may be forfeited pursuant to this subsection by reason of any act or omission which he establishes was committed or omitted without his knowledge or consent. There is a rebuttable presumption that all money found in close proximity to forfeitable controlled substances, drug paraphernalia or records is subject to forfeiture pursuant to this subsection.*

Amend the title of the bill, third line, after "others;" by inserting: "expanding the list of property subject to forfeiture to include money exchanged for controlled substances and the proceeds of an exchange;"

Senator Neal moved the adoption of the amendment.

Remarks by Senator Neal.

Amendment adopted.

Bill ordered reprinted, engrossed and to third reading.

Senate Bill No. 39.

Bill read second time.

## SENATE BILL NO. 7--SENATOR RAGGIO

JANUARY 18, 1983

Referred to Committee on Human Resources and Facilities

SUMMARY—Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of other. (BDR 40-37)

FISCAL NOTE: Effect on Local Government: No  
Effect on the State or on Industrial Insurance: No.

EXPLANATION: Matter in *italics* is new; matter in brackets [ ] is in need of amendment.

AN ACT relating to controlled substances; providing penalties for trafficking; restricting the suspension of sentences for these offenses to persons who render substantial assistance in the conviction of others; expanding the list of property subject to forfeiture to include money exchanged for controlled substances and the proceeds of an exchange; and providing other matters properly relating thereto

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

1 Section 1. Chapter 453 of NRS is hereby amended by adding  
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

3 Sec. 2. *Except as authorized by the provisions of NRS 453.011 to*  
4 *453.551, inclusive, and sections 2 to 5, inclusive, of this act, any per-*  
5 *son who knowingly or intentionally sells, manufactures, delivers or*  
6 *brings into this state or who is knowingly or intentionally in actual or*  
7 *constructive possession of any controlled substance which is listed in*  
8 *schedule I, except marihuana, or any mixture which contains any such*  
9 *controlled substance shall be punished, if the quantity involved:*

10 1. *Is 4 grams or more, but less than 14 grams, by imprisonment in*  
11 *the state prison for not less than 3 years nor more than 20 years and*  
12 *by a fine of not less than \$50,000.*

13 2. *Is 14 grams or more, but less than 28 grams, by imprisonment*  
14 *in the state prison for life or for a definite term of not less than 10*  
15 *years and by a fine of not less than \$100,000.*

1 3. Is 28 grams or more, by imprisonment in the state prison for life  
2 or for a definite term of not less than 25 years and by a fine of not  
3 less than \$500,000.

4 **Sec. 3.** Except as authorized by the provisions of NRS 453.011 to  
5 453.551, inclusive, any person who knowingly or intentionally sells,  
6 manufactures, delivers or brings into this state or who is knowingly or  
7 intentionally in actual or constructive possession of marihuana shall be  
8 punished, if the quantity involved:

9 1. Is 100 pounds or more, but less than 2,000 pounds, by impris-  
10 onment in the state prison for not less than 3 years nor more than 20  
11 years and by a fine of not less than \$25,000.

12 2. Is 2,000 pounds or more, but less than 10,000 pounds, by  
13 imprisonment in the state prison for not less than 5 years nor more  
14 than 20 years and by a fine of not less than \$50,000.

15 3. Is 10,000 pounds or more, by imprisonment in the state prison  
16 for life or for a definite term of not less than 15 years and by a fine  
17 of not less than \$200,000.

18 **Sec. 4.** Except as authorized by the provisions of NRS 453.011 to  
19 453.551, inclusive, any person who knowingly or intentionally sells,  
20 manufactures, delivers or brings into this state or who is knowingly or  
21 intentionally in actual or constructive possession of any controlled sub-  
22 stance which is listed in schedule II or any mixture which contains any  
23 such controlled substance shall be punished, if the quantity involved:

24 1. Is 28 grams or more, but less than 200 grams, by imprisonment  
25 in the state prison for not less than 3 years nor more than 20 years and  
26 by a fine of not less than \$50,000.

27 2. Is 200 grams or more, but less than 400 grams, by imprisonment  
28 in the state prison for not less than 5 years nor more than 20 years and  
29 by a fine of not less than \$100,000.

30 3. Is 400 grams or more, by imprisonment in the state prison for  
31 life or for a definite term of not less than 15 years and by a fine of no  
32 less than \$250,000.

33 **Sec. 5.** 1. Except as provided in subsection 2, the adjudication of  
34 guilt and imposition of sentence of a person found guilty of traffickin  
35 in a controlled substance in violation of section 2, 3 or 4 of this ac  
36 must not be suspended, deferred or withheld and the person is not el  
37 gible for parole until he has actually served the mandatory minimum  
38 term of imprisonment prescribed by the section under which he wa  
39 convicted.

40 2. The judge, upon an appropriate motion by the prosecutor, ma  
41 reduce or suspend the sentence of any person convicted of violatin  
42 any of the provisions of sections 2 to 4, inclusive, of this act if he fin

1 *that the convicted person rendered substantial assistance in the identifi-*  
2 *cation, arrest or conviction of any of his accomplices, accessories,*  
3 *coconspirators or principals. The arresting agency must be given an*  
4 *opportunity to be heard before the motion is granted. Upon good*  
5 *cause shown, the motion may be heard in camera.*

6 **Sec. 6.** NRS 453.301 is hereby amended to read as follows:

7 453.301 The following are subject to forfeiture:

8 1. All controlled substances which have been manufactured, dis-  
9 tributed, dispensed or acquired in violation of the provisions of NRS  
10 453.011 to 453.551, inclusive.

11 2. All raw materials, products and equipment of any kind which  
12 are used, or intended for use, in manufacturing, compounding, pro-  
13 cessing, delivering, importing or exporting any controlled substance in  
14 violation of the provisions of NRS 453.011 to 453.551, inclusive.

15 3. All property which is used, or intended for use, as a container  
16 for property described in subsections 1 and 2.

17 4. All books, records and research products and materials, includ-  
18 ing formulas, microfilm, tapes and data, which are used, or intended  
19 for use, in violation of the provisions of NRS 453.011 to 453.551,  
20 inclusive.

21 5. All conveyances, including aircraft, vehicles or vessels, which are  
22 used, or intended for use, to transport, or in any manner to facilitate  
23 the transportation, for the purpose of sale, possession for sale or  
24 receipt of property described in subsections 1 or 2, except that:

25 (a) No conveyance used by any person as a common carrier in the  
26 transaction of business as a common carrier is subject to forfeiture  
27 under this section unless it appears that the owner or other person in  
28 charge of the conveyance is a consenting party or privy to a violation  
29 of the provisions of NRS 453.011 to 453.551, inclusive;

30 (b) No conveyance is subject to forfeiture under this section by rea-  
31 son of any act or omission established by the owner thereof to have  
32 been committed or omitted without his knowledge or consent;

33 (c) A conveyance is not subject to forfeiture for a violation of NRS  
34 453.336 unless more than 1 kilogram of marihuana was in the convey-  
35 ance;

36 (d) A forfeiture of a conveyance encumbered by a bona fide security  
37 interest is subject to the interest of the secured party if he neither had  
38 knowledge of nor consented to the act or omission. If a conveyance is  
39 forfeited, the appropriate law enforcement agency may pay off the  
40 existing balance and retain the conveyance for official use.

41 No person, other than the holder of a community property interest,  
42 whose name or interest does not appear on the certificate of registra-  
43 tion or title for the conveyance is a proper party to any forfeiture pro-  
44 ceeding pursuant to this subsection.

1 6. All drug paraphernalia as defined by NRS 453.554 which are  
2 used in violation of NRS 453.560, 453.562 or 453.566 or of an injunc-  
3 tion issued pursuant to NRS 453.558.

4 7. Except as provided in this subsection, everything of value fur-  
5 nished or intended to be furnished in exchange for a controlled sub-  
6 stance in violation of the provisions of NRS 453.011 to 453.551, inclu-  
7 sive, all proceeds traceable to such an exchange, and all money,  
8 negotiable instruments and securities used or intended to be used to  
9 facilitate a violation of the provisions of NRS 453.011 to 453.551,  
10 inclusive. No person's interest in property may be forfeited pursuant to  
11 this subsection by reason of any act or omission which he establishes  
12 was committed or omitted without his knowledge or consent. There is  
13 a rebuttable presumption that all money found in close proximity to  
14 forfeitable controlled substances, drug paraphernalia or records is sub-  
15 ject to forfeiture pursuant to this subsection.

16 Sec. 7. NRS 453.336 is hereby amended to read as follows:

17 453.336 1. It is unlawful for any person knowingly or intention-  
18 ally to possess a controlled substance unless the substance was obtained  
19 directly from, or pursuant to, a valid prescription or order of a physi-  
20 cian, dentist, podiatrist or veterinarian while acting in the course of his  
21 professional practice, or except as otherwise authorized by the provi-  
22 sions of NRS 453.011 to 453.551, inclusive.

23 2. Except as provided in subsections 3 and [4,] 4 and unless a  
24 greater penalty is provided in section 2, 3 or 4 of this act, any person  
25 who violates this section shall be punished:

26 (a) For the first offense, if the controlled substance is listed in sched-  
27 ule I, II, III or IV, by imprisonment in the state prison for not less  
28 than 1 year nor more than 6 years, and may be further punished by a  
29 fine of not more than \$5,000.

30 (b) For a second offense, if the controlled substance is listed in  
31 schedule I, II, III or IV, or if, in case of a first conviction of violation  
32 of this section, the offender has previously been convicted of any vio-  
33 lation of the laws of the United States or of any state, territory or dis-  
34 trict relating to a controlled substance, the offender shall be punished  
35 by imprisonment in the state prison for not less than 1 year nor more  
36 than 10 years and may be further punished by a fine of not more than  
37 \$10,000.

38 (c) For a third or subsequent offense, if the controlled substance is  
39 listed in schedule I, II, III or IV, or if the offender has previously been  
40 convicted two or more times in the aggregate of any violation of the  
41 law of the United States or of any state, territory or district relating to  
42 a controlled substance, the offender shall be punished by imprisonment

1 in the state prison for not less than 1 year nor more than 20 years and  
2 may be further punished by a fine of not more than \$20,000.

3 (d) For the first offense, if the controlled substance is listed in  
4 schedule V, by imprisonment in the county jail for not more than 1  
5 year, and may be further punished by a fine of not more than \$1,000.

6 (e) For a second or subsequent offense, if the controlled substance is  
7 listed in schedule V, by imprisonment in the state prison for not less  
8 than 1 year nor more than 6 years, and may be further punished by a  
9 fine of not more than \$5,000.

10 3. Any person who is under 21 years of age and is convicted of the  
11 possession of less than 1 ounce of marihuana:

12 (a) For the first offense:

13 (1) Shall be punished by imprisonment in the state prison for not  
14 less than 1 year nor more than 6 years, and may be further punished  
15 by a fine of not more than \$2,000; or

16 (2) Shall be punished by imprisonment in the county jail for not  
17 more than 1 year, and may be further punished by a fine of not more  
18 than \$1,000, and may have his driver's license suspended for not more  
19 than 6 months.

20 (b) For the second offense shall be punished in the manner pre-  
21 scribed by subsection 2 for a first offense.

22 (c) For a third or subsequent offense, shall be punished in the man-  
23 ner prescribed by subsection 2 for a second offense.

24 4. Before sentencing under the provisions of subsection 3, the court  
25 shall require the parole and probation officer to submit a presentencing  
26 report on the person convicted in accordance with the provisions of  
27 NRS 176.195. After the report is received but before sentence is pro-  
28 nounced the court shall:

29 (a) Interview the person convicted and make a determination as to  
30 the possibility of his rehabilitation; and

31 (b) Conduct a hearing at which evidence may be presented as to the  
32 possibility of rehabilitation and any other relevant information received  
33 as to whether the person convicted of the offense shall be adjudged to  
34 have committed a felony or to have committed a gross misdemeanor.

35 5. Three years after the person has been convicted and sentenced  
36 under the provisions of subsection 3, the court may order sealed all  
37 records, papers and exhibits in such person's record, minute book  
38 entries and entries on dockets, and other records relating to the case in  
39 the custody of such other agencies and officials as are named in the  
40 court's order, if:

41 (a) The person fulfilled all the terms and conditions imposed by the  
42 court and by the parole and probation officer; and

43 (b) The court, after hearing, is satisfied that the rehabilitation has  
44 been attained.



1 6. Whenever any person who has not previously been convicted of  
2 any offense under the provisions of NRS 453.011 to 453.551, inclusive,  
3 or under any statute of the United States or of any state relating to  
4 narcotic drugs, marihuana or stimulant, depressant or hallucinogenic  
5 drugs pleads guilty to or is found guilty under this section of posses-  
6 sion of a controlled substance not for the purpose of sale, the court,  
7 with the consent of the accused, may impose sentence, including a fine,  
8 suspend imprisonment, seal the record and place him on probation  
9 upon terms and conditions.

10 7. The record of a person sentenced under subsection 6 which has  
11 been sealed by the court may remain sealed until:

12 (a) The defendant fulfills all of the terms and conditions imposed by  
13 the court and by his probation officer, when the record may be  
14 expunged; or

15 (b) His probation is revoked and the sentence is executed.

16 8. There may be only one suspension of sentence under subsection  
17 6 with respect to any person.

18 Sec. 8. NRS 453.337 is hereby amended to read as follows:

19 453.337 1. Except as authorized by the provisions of NRS  
20 453.011 to 453.551, inclusive, it is unlawful for any person to possess  
21 for the purpose of sale any controlled substance classified in schedule  
22 I or II.

23 2. **[Any]** *Unless a greater penalty is provided in section 2, 3 or*  
24 *4 of this act, any person who violates this section shall be punished:*

25 (a) For the first offense, by imprisonment in the state prison for not  
26 less than 1 year nor more than 15 years and may be further punished  
27 by a fine of not more than \$5,000.

28 (b) For a second offense, or if, in the case of a first conviction of  
29 violating this section, the offender has previously been convicted of a  
30 felony under the Uniform Controlled Substances Act or of an offense  
31 under the laws of the United States or any state, territory or district  
32 which, if committed in this state, would amount to a felony under the  
33 Uniform Controlled Substances Act, by imprisonment in the state  
34 prison for not less than 5 years nor more than 15 years and may be  
35 further punished by a fine of not more than \$10,000.

36 (c) For a third or subsequent offense, or if the offender has previ-  
37 ously been convicted two or more times of a felony under the Uniform  
38 Controlled Substances Act or of any offense under the laws of the  
39 United States or any state, territory or district which, if committed in  
40 this state, would amount to a felony under the Uniform Controlled  
41 Substances Act, by imprisonment in the state prison for not less than  
42 15 years and may be further punished by a fine of not more than  
43 \$20,000 for each offense.

1     3. The court shall not grant probation to or suspend the sentence  
2     of any person convicted of violating this section and punishable pursu-  
3     ant to paragraph (b) or (c) of subsection 2.

50

Roll call on Senate Bill No. 125:

YEAS—21.

NAYS—None.

Senate Bill No. 125 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 126.

Bill read third time.

Remarks by Senators Neal and Robinson.

Roll call on Senate Bill No. 126:

YEAS—21.

NAYS—None.

Senate Bill No. 126 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 139.

Bill read third time.

Remarks by Senators Lamb, Neal and Robinson.

Senator Lamb moved that Senate Bill No. 139 be taken from the General File and be placed on the General File for the next legislative day.

Motion carried.

Senate Bill No. 141.

Bill read third time.

Roll call on Senate Bill No. 141:

YEAS—21.

NAYS—None.

Senate Bill No. 141 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Senate Bill No. 159.

Bill read third time.

Roll call on Senate Bill No. 159:

YEAS—21.

NAYS—None.

Senate Bill No. 159 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

\* Senate Bill No. 7.

Bill read third time.

Remarks by Senators Neal and Hernstadt.

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Roll call on Senate Bill No. 7:

YEAS—21.

NAYS—None.

Senate Bill No. 7 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

#### MOTIONS, RESOLUTIONS AND NOTICES

Senator Raggio gave notice that on the next legislative day he would move to reconsider the vote whereby Senate Bill No. 2 was this day refused passage.

#### UNFINISHED BUSINESS

##### SIGNING OF BILLS AND RESOLUTIONS

There being no objections, the President and Secretary signed Senate Concurrent Resolution No. 9; Assembly Concurrent Resolution No. 9.

#### GUESTS EXTENDED PRIVILEGE OF SENATE FLOOR

On request of Senator Glover, the privilege of the floor of the Senate Chamber for this day was extended to Ms. Mary Ellen Hewlett.

On request of Senator Mello, the privilege of the floor of the Senate Chamber for this day was extended to Mr. David W. Mello and Ms. Lisa Braun.

On request of Senator Wagner, the privilege of the floor of the Senate Chamber for this day was extended to Misses Kristi Wagner, Janie Shim and former Senator Jean Ford.

On request of Senator Ashworth, the privilege of the floor of the Senate Chamber for this day was extended to Dr. and Mrs. Marilyn Glaser.

On request of Senator Glaser, the privilege of the floor of the Senate Chamber for this day was extended to Messrs. Brian Glaser, Trent Glaser, Steven Glaser and Miss Caroline Glaser.

On request of Senator Wilson, the privilege of the floor of the Senate Chamber for this day was extended to Messrs. Thomas R. C. Wilson III and John Weston Wilson.

On request of Senator Bilbray, the privilege of the floor of the Senate Chamber for this day was extended to Mesdames Chris Carpenter, Mary Kaye Nikitas, Mikey Bilbray and Miss Shannon Bilbray.

On request of Senator Townsend, the privilege of the floor of the Senate Chamber for this day was extended to Ms. Pat Hendrikon and Natalie Treadway.

On request of Senator Horn, the privilege of the floor of the Senate Chamber for this day was extended to Mrs. Nancy Lynn Horn and Ms. Stacy Lynn Horn.

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MEMBERS PRESENT: Chairman Jan Stewart  
Vice Chairman Shelley Berkley  
Mr. Mike Malone  
Mrs. Jane Ham  
Mr. Byron Bilyeu  
Mr. Gene Collins  
Mr. Robert Fay  
Mr. David Humke  
Mr. Leonard Nevin  
Mr. James Stone  
Mrs. Courtenay Swain

MEMBERS ABSENT : None

GUESTS PRESENT : See guest list attached as EXHIBIT A.

Chairman Stewart called the meeting to order at 8:00 a.m. The first bill considered by the Committee was SB 7.

- \* SB 7: Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of others. (BDR 40-37)

First to testify on this bill was Senator William Raggio, prime sponsor of the bill. He began by explaining the reason for this bill and its apparent effectiveness in the jurisdictions in which it has been adopted.

He commented that he was aware the Committee had also processed Mr. Humke's bill, AB 162 which subjects money exchanged for controlled substances and proceeds of such exchanges to forfeiture. He said there is a similar provision in both these bills. The reason for that is SB 59, which provides additional penalty for possession of certain controlled substances and expands provision relating to forfeitures, when processed by the Senate Judiciary Committee, had its provisions incorporated into SB 7.

SB 7, when originally introduced, dealt only with two issues: a) the great enhancement of existing penalties for heavy trafficking of controlled substances and large amounts of marijuana and b) the addition of a provision which would require, before any form of leniency could be granted in these heavy trafficking cases, that substantial information be provided by the offender for the purpose of apprehension, investigation, etc. of the "higher ups" in this heavy drug trafficking.

He explained that he had come across this bill in his discussions with people in the State of Florida, and his interest was prompted because over the past several years there have been many cases of

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large volumes of controlled substances and marijuana having been imported into the State. Because of Nevada's proximity to Mexico and its border, and to the distribution centers for this type of substance--the Los Angeles urban area and the San Francisco area--and elsewhere, it was common practice, as law enforcement officials will tell you, to import by plane or truck large volumes of these substances into the state, often by small planes landing in the hinterlands of the state.

The State of Florida experienced the same problems, and they enacted this trafficking law, which has been utilized in about 90% of the prosecutions involving drug trafficking in that state.

Senator Raggio noted that he had made available to the Committee Members some letters, which are attached to these minutes as EXHIBIT B. He said one of these is a memorandum from Research Director Don Rhodes, who contacted Florida State Attorney Eugene Whitworth. Mr. Whitworth helped in furnishing information which indicates this law has been highly successful in Florida.

This bill does not change the existing penalties for possession of these substances until you get to the larger volumes. Section 2 of the bill deals with the Schedule I controlled substances, and the enhanced penalties come into play when a person is convicted of possession of 4 grams or more--a substantial amount. As the amount increases, the penalties increase. He then read the penalties from this section of the bill.

The witness said that if these penalties seem high, they do not begin to equal the profits from the amounts of drugs and controlled substances involved.

He then noted that Section 3 of the bill deals with marijuana; in this case 100 pounds or more. Again, this involves increased and enhanced penalties, both in jail or prison time as well as the amount of fine.

Section 4, which deals with Schedule II substances, does the same thing.

The real meat of this bill, said the Senator, is in Section 5 which states that, upon a motion made by the prosecutor, the court may reduce or suspend the sentence of any person convicted of violations of these amounts, only if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, co-conspirators or principals; and the arresting agency must be given an opportunity to be heard also before the motion is granted. The bill further provides for an "in camera" motion, which adds some protection for the offender who is going to provide this information.

Senator Raggio said the bottom line is that this law has worked successfully, apparently, in Florida where it has been utilized.

(Committee Minutes)

He noted that part of EXHIBIT B consists of letters from representatives of law enforcement, who have each endorsed the measure. He proceeded to name some of these individuals, noting that he has also talked to Mr. Bob Miller, the District Attorney, who has authorized him to say that he endorses the measure. He went on to say that he has not heard of any opposition to the bill by representatives of law enforcement.

He reiterated that this bill does not change existing penalties for lesser amounts of these controlled substances and marijuana; it will give an added tool to both the court and to the prosecutor and law enforcement officers to use the "mule". Usually, just the mule is arrested; this bill gives the something additional which will help law enforcement get to the higher ups who shield themselves from the vulnerability, usually, of any arrest or apprehension.

Next the witness noted that SB 7 also incorporates SB 59's provision for seizure. This is in Section 6 of SB 7. It includes all proceeds traceable to the exchange, all money, negotiable instruments, securities used or intended to be used to facilitate a violation of the provisions. He said he had not had a chance to compare this section with the provisions in AB 162, but said that if they are similar he would have no objections to amending any additional provisions into this bill in order to eliminate some duplication of processing, especially since this bill has already cleared the Senate.

Senator Raggio said that while he did not have any statistics as to the number of cases in the past year, he did know that Florida is using it in 90% of them. He added that he had not had time to check the statistics in Nevada either. He felt, however, that even if there were only one case where they were able to utilize this measure to reach the higher ups--the wholesalers, and the wholesale dealers in these types of substances--it would have benefit.

He said we must strike in every way we can to get at this vicious trafficking which is going on in this country. Nevada is only one state, but it is a state where such trafficking is likely and we know that wholesaling and heavy trafficking occur here. We must do everything we can to give the tools to law enforcement and to the courts to try to eliminate this problem.

Regarding page 2, line 40 of this bill which provides for the prosecutor to make a motion to reduce or suspend sentence, Mr. Stone noted that it is the practice in federal law to allow either party to make a motion and the court, if necessary, will hold a hearing and will decide the issue.

Senator Raggio said he prefers this be available only to the prosecutor and that it be with at least some input from the arresting agency.

Mr. Stone said he was concerned about the client who attempts to render assistance--does everything in their power to do that-- but, for whatever reason, comes up short of the mark, either because the person he was purchasing from is gone or something of that nature. The prosecutor may not want to make the motion under those circumstances, but it seems the person who makes a good faith effort to comply and to render assistance may be entitled to some leniency; at least the court should be made aware of it.

Senator Raggio replied he did not have strong feelings about it but he did not think it ought to be the defendant who now faces a heavy sentence who has that choice. He agreed it would not be harmful to the bill to add that it can also be on motion of the defendant.

Mr. Stone then asked if passage of this bill would get the State involved in giving people new identities, etc. Senator Raggio said he hoped not, this was not his intent. He added that these crimes are also violations of federal law, and if a new identity were necessary there could probably be some cooperative effort between the State and federal authorities, if they felt that a case merited that kind of attention.

Mr. Fay asked if removal of Section 5 of the bill would have any major effect. Senator Raggio said that was the whole thrust of this bill: to increase the penalties so that they are so great that there will be an impetus, or incentive, to the convicted individual to furnish information to enable law enforcement to reach the higher ups who are involved in the wholesaling of large amounts-- heavy trafficking--of drugs. That is the thrust of this bill. He also told Mr. Fay that this would not render the Secret Witness program; if anything it might help it.

In reply to Mr. Bilyeu, Senator Raggio explained that the amounts listed, for controlled substances, are large amounts even though they are only grams. It was noted that cocaine is cut down into sixteenths of a gram. The amounts listed have retail value up into the hundreds of thousands and millions of dollars. He added that this bill tracks the same language in the present statutes.

Mr. Nevin pointed out that Nevada is considered the hub of drug control; i.e., for shipping and distributing to different places and states.

Next to testify was Mr. Bill Macdonald, representing the Nevada District Attorneys Association. He said the District Attorneys are very much in support of Senator Raggio's bill and for the primary reason he mentioned: the hopes of getting to those persons who are normally "untouchable"--the ones we just don't see. The mules are arrested and prosecuted, but the higher ups just go and get somebody else. If the incentive is great enough, the prosecutors in Florida say that they are able to start getting some of the big boys, who are the ones we really need to get.



Mrs. Ham asked if anyone would dare to tell on the higher ups, for fear of retaliation. Is the enhanced penalty the thing to do it.

Mr. Macdonald said that if anything is, the enhanced penalty is going to do it. He noted it has been effective in Florida. If there is a real serious case, and the only way to get a witness to cooperate is by offering him a new identity, there is the probability that the federal authorities would help in this matter. The individual could also receive police protection, etc.

Mr. Collins asked what guarantees existed that the individual would not simply skip bail, given the large sums of money involved. Mr. Macdonald said that generally there is an extremely high bail assigned in such cases. He agreed there was really nothing to guarantee he wouldn't jump bail. Mr. Collins also said he did not feel police protection could adequately protect the life of an individual offering state's evidence. He therefore doubted this bill would make these individuals come forth. Mr. Macdonald said the same could be said about any person arrested because he was involved in a crime with other persons; there is a certain--and in many cases a very substantial--amount of danger to that person if he cooperates. The fact remains there are a lot of people who do cooperate, and they cooperate for the reason that it is in their best interest. When a person is looking at 25 years in state prison, that's a real incentive. This bill increases that incentive from a self-preservation standpoint.

Mr. Macdonald wished to make certain it was understood that not everyone could be run through the federal new identity program.

The next witness was Mr. Ed Basl, of the Washoe County District Attorney's Office. He noted that Mr. Mills Lane requested he speak on this bill because they are in full support of it. It is one of the bills that is going to have an effect on local government because it is going to require the criminal to pay some of the bills. Thus, there is a fiscal impact--but it is a positive one.

He pointed out that there is a lot of money in narcotics, and this bill's mandatory fines will help to pay the costs of investigating these types of crimes, etc.

Mr. Basl suggested that Section 5 (page 2, line 36) be amended by deleting the word "deferred". This is because in the last Legislature Subsection 6 was changed--there used to be a deferred provision under Subsection 6 of NRS 453.336, which is on page 6, line 8 of the bill--to provide for suspending the sentence and sealing the records. You now have the conviction before you suspend the sentence; under the old statute you deferred acceptance of the guilty plea or the imposition of sentence itself. You didn't have a conviction, you had the probation first.

In reply to Mr. Stewart, Mr. Basl explained that suspending imprisonment and sealing the record in fact means that you are withholding them having to give the information that they have been convicted at that time, and if they satisfactorily complete the probationary period that they are on, the conviction is still of record but you can seal the record for purposes of employment, etc.

The witness noted that the reason the mandatory fine is necessary is that in most cases, when a judge imposes a sentence it is very seldom that you are able to get a fine imposed, at least in Washoe County. Thus the mandatory fine.

With regards to the provision that is characterized as "ratting on the person next up in the line or chain of command of the drug business", that is especially crucial and it shouldn't cause any different problems than it does right now. Right now it is simply an offer that is made, generally, to the person when they are arrested "Do you want to help. If you do that information will be provided to the judge and he can take that into account on sentencing". This will simply make it mandatory so that you are able to get at the higher ups in the chain of drug trafficking.

The next person to testify was Mr. John Conner, from the Nevada Trial Lawyers. He noted he was speaking personally on this bill because the NTLA had not had a chance to really discuss this issue.

He said he wished to discuss Section 5, subsection 2 of this bill which states that "upon appropriate motion by the prosecutor...". He said the court ought to be able to consider whatever information can be made available to it as regards an individual's cooperation.

He cited the example of the prosecutor deciding that the information furnished by the accused is not enough, and therefore refusing to make the motion. He felt the determination of whether the cooperation was enough or not should rest with the sentencing judge rather than with the State.

Regarding the mandatory fines, Mr. Conner felt expecting to collect fines as large as those cited from these individuals is unrealistic. He said the amount of money that will actually be realized by those mandatory fines is perhaps not as high as has been suggested. He said this is because the amounts of drugs cited are not really that large and expecting to collect \$50,000 from a person who is found to have 4 grams is totally unrealistic. Thus the amount of money collected by these fines is not going to be as high as suggested. This must be considered, because mandatory prison will have a fiscal impact in that more prisons will be required.

Mr. Conner said he is not pleading for leniency on anyone's behalf. He is simply suggesting that we ought to consider the realities of having mandatory prison sentences in all instances where you are

talking about possessing what, in practice in the criminal courts, proves to be comparatively small amounts.

He said a person sentenced under Section 2, Subsection 1 is going to be a mule, and nothing more. A person under Section 4, Subsection 1, is not a "heavy". You are talking about putting all these people in prison, irrespective of the circumstances.

He said there are a lot of people who are not in a position to help the government; not because they are being threatened but because they really don't have substantial information. They are people who are caught with a relatively small amount and they can't turn anybody--there is nobody for them to turn. So what you are doing is penalizing that person for being less involved in the drug world and giving them less of a chance to avoid prison than someone who is much more seriously involved.

He said he is not suggesting that the penalties ought to be lessened, but that the Committee ought to give serious consideration to whether or not they can expect to collect these fines and secondly, whether they do want to have mandatory prison terms.

Mr. Conner said that right now the federal sentencing system is tougher than Nevada's, as far as narcotics goes. Yet, they do not have mandatory prison sentences in federal court. U.S. District Judge Ed Reed has set a sentencing policy that has let a lot of people who may once have considered Nevada to be a hub of activity to take their business elsewhere, however.

He reiterated the mandatory sentence has clear fiscal overtones which must be considered by the Committee.

Mr. Stewart asked Mr. Conner if he was against mandatory sentencing. Mr. Conner said he did not think it to be fiscally feasible because of the size of the problem. He said this is not really a possession for sale statute because of the small amounts involved. Thus, he said this bill involves a lot of people who will be going to prison and costing the taxpayer several thousand dollars a year, when there might be some other way to deal with those individuals.

Mr. Stewart then asked, fiscal impact aside, whether Mr. Conner felt it appropriate to have these types of penalties for this type of crime. Mr. Conner said he felt there is only a very limited class of crimes in which society can legitimately say it will not even consider probation.

He also told Mr. Stewart that this bill addresses not only drug dealing, but also drug possession. He did not feel that 4 grams of a Schedule I substance is enough to make a person a dealer. He agreed with Mr. Stewart that this amount is more than a person would use in one evening, but said that just as people might buy a case of wine rather than a bottle, people who indulge in drugs do the same type of thing.

(Committee Minutes)

Mr. Conner said this bill puts people who use drugs in a category, by statute, that perhaps they don't belong in and perhaps could establish they don't belong in. This bill takes that opportunity away from them.

Mr. Conner went on to say that he feels the mandatory sentencing provision is ill advised. Realistically, if you stand someone up in a courtroom, and have a prosecutor in there who has the ability to show that that person is not a mule, that that person is not some sort of a victim of another person who pushes, they're going to go to prison. But to say that in all cases, regardless of the circumstances, they have to go to prison, will prove to be incredibly expensive to the taxpayers--maybe more so than it needs to be.

Mr. Malone pointed out that the person who is found with 4 or 5 grams of drugs on him obtained these drugs from someone; thus, he does have at least one person he can turn in.

Mr. Conner said that, if the accused has one person to turn in, and the prosecutor says he wants more than that, this bill would permit the prosecutor to not make the motion at his own discretion. If the defense attorney is allowed to make the motion, this area of concern would be alleviated.

Mr. Nevin pointed out that people buying controlled substances usually "shop around" for the best price. Thus, these individuals would have the names of more than just one person to turn in. Mr. Conner said that if you are talking about the person who has been a junkie for 15 years, he agrees. However, if you are talking about one kid, 19 years old, who knows one person that he can get cocaine from, he disagrees. He agreed those kids in the latter case should be punished, but he was not sure mandatory prison was appropriate.

Mr. Conner reiterated that the portion of the bill that says "upon motion by the prosecutor" should be deleted so that whatever cooperation is provided gets to the judge and the judge can give it whatever weight he wants rather than looking down at the State and asking if they were satisfied. If its enough for the judge to be satisfied, it will still have the effectiveness originally intended in the bill, but at the same time it will make the system a little more workable.

In reply to Mr. Nevin the witness said this not only takes a little discretion away from the judge, it takes all of it away.

Mr. Stone noted he agreed that either party should be able to make the motion for reduction or suspension of sentence and let the judge make the decision.

Mr. Conner summarized his testimony by noting he in no way is supporting or condoning use or abuse of anything. He was not speaking on behalf of the trial lawyers. He doesn't like drugs either. What he is expressing is that there are legitimate tools that are being

(Committee Minutes)

examined here for use, but both sides out to have a chance to report cooperation. Also, regarding the mandatory prison terms, the Committee might want to ask the District Attorneys Association to submit figures on how many people might be incarcerated in the next 2 years under this bill and what it will cost.

AB 238: Makes various changes regarding murder of first degree.  
(BDR 14-1249)

Mr. Ed Basl and Mr. Bill Macdonald also testified on this bill. Mr. Basl noted the Washoe County District Attorney's Office is in full support of this measure. He said he had discussed it with Mr. Conner, who had expressed concern over certain portions of the bill. Mr. Basl said he disagreed with some of these areas of concern.

Regarding page 1, line 10 of the bill, Mr. Basl said one thing the Committee should consider is that California passed, a few years ago, what they call the Briggs Amendment or initiative. In that initiative, one of the things was that the jury had to be instructed what the actual penalty of life with or life without meant so that the prosecution was then in a position to explain that life does not mean life, it means a certain number of years and then it can either be commuted by the Pardons Board, or the Governor, etc.; or that life without generally means 12-15 years as opposed to life without; or that life with means 7-10 years as opposed to what it really says in the wording of it.

There is presently a case before the United States Supreme Court to determine whether or not that initiative is constitutional. The California Supreme Court said that it wasn't constitutional. That was appealed by the State to the U.S. Supreme Court. He suggested the Committee might wish to look into this matter further.

Regarding page 1, line 11, Mr. Basl said this should be viewed in light of all other sentencing procedures, which allow the District Attorney to present any and all information to the sentencing body-- that being the judge. In this instance, however, where we have the most terrible crimes committed, the ones in which life imprisonment is the lesser standard, and death is the ultimate punishment, we say that a jury is not allowed to consider 90% of the information about that person with regards to making the final decision. He noted they still have to determine whether or not specific aggravating circumstances are there and that they outweigh the mitigating circumstances, but they are able to do it after having a total base of information about that individual. That is what this bill supports: that all matters that are relevant to the character of the defendant-- prior convictions, involvement with problems, the same things that any trier of fact or judge would want to know before he imposes a sentence, whether it be a 1 year sentence or a 20 year sentence--be known. Mr. Basl did not feel that a jury, who has to consider death, life with, or life without should have any less than that and have to make their decision solely upon isolated factors, which can be taken

(Committee Minutes)

Mr. Bilyeu reiterated that it should be left to the court to define the term should the need arise. Mr. Basl reiterated that the need has arisen in terms of presumptions, and the court has not yet defined it.

In reply to Mr. Stewart, Mr. Basl said it was significant in determining prima facie that the judge have the discretion to reject the explanation, contradiction or rebuttal of it as presented, because under NRS 47.230 you need to leave that discretion in there. Right now in every presumption case that has come up, the reason that it has been reversed is because while you may call it a presumption, you then have to give an additional limiting instruction saying that presumption really means reasonable inference, that it is discretionary and you may accept or reject it. By putting this in the definition itself, then you don't have to hope that you hit every statute, you simply have it within the definition, which should be sufficient to point out that the judge does have that discretion at that time. That is why it is important language which should be left in the definition.

AB 246: Makes various changes regarding preliminary examinations.  
(BDR 14-1246)

Mr. Robert Miller, District Attorney for Clark County, came forward to provide to the Committee information which they had requested at the hearing on AB 246. He said that in 1982 there were 525 bench warrants issued for failure to appear at preliminary hearings in Las Vegas Township.

SB 7: Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of others. (BDR 40-37)

The Committee discussed the suggested amendments to this bill and agreed that on page 2, line 36 the word "deferred" should be deleted, and on page 2, line 40 the defense attorney should also be allowed to make such a motion.

Mr. Nevin moved AMEND AND DO PASS, seconded by Mr. Bilyeu, and carried unanimously. Mr. Nevin will handle the bill on the Floor.

AB 238: Makes various changes regarding murder of first degree.  
(BDR 14-1249)

Mrs. Swain moved INDEFINITELY POSTPONE, seconded by Mr. Bilyeu and carried unanimously.

AB 313: Requires upon request pretrial hearing on alibi claimed by defendant. (BDR 14-805)

Mr. Bilyeu moved INDEFINITELY POSTPONE, seconded by Mrs. Berkley and carried unanimously.

ASSEMBLY JUDICIARY COMMITTEE  
62nd SESSION NEVADA LEGISLATURE  
LEGISLATIVE ACTION

DATE OF ACTION: March 10, 1983

BILL NO: SB 7

SUMMARY : Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of others.

---

MOTION : AMEND AND DO PASS

AMENDMENT : Page 2, line 36 - delete word "deferred"  
Page 2, line 40 - the defense attorney should also be allowed to make such a motion.

MADE BY : Mr. Leonard Nevin  
SECONDED BY : Mr. Byron Bilyeu

	VOTE	
	YES	NO
SHELLEY BERKLEY	<u>X</u>	—
BYRON BILYEU	<u>X</u>	—
GENE COLLINS	<u>X</u>	—
ROBERT FAY	<u>X</u>	—
JANE HAM	<u>X</u>	—
DAVID HUMKE	<u>X</u>	—
MIKE MALONE	<u>X</u>	—
LEONARD NEVIN	<u>X</u>	—
JAMES STONE	<u>X</u>	—
COURTENAY SWAIN	<u>X</u>	—
JAN STEWART	<u>X</u>	—
TALLY:	<u>11</u>	—

---

MOTION :

AMENDMENT :

MADE BY :  
SECONDED BY :

	VOTE	
	YES	NO
SHELLEY BERKLEY	—	—
BYRON BILYEU	—	—
GENE COLLINS	—	—
ROBERT FAY	—	—
JANE HAM	—	—
DAVID HUMKE	—	—
MIKE MALONE	—	—
LEONARD NEVIN	—	—
JAMES STONE	—	—
COURTENAY SWAIN	—	—
JAN STEWART	—	—

TALLY:

—863

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
CAPITOL COMPLEX  
CARSON CITY, NEVADA 89710

ASSEMBLY JUDICIARY COMMITTEE  
EXHIBIT B  
March 10, 1983  
Page 1 of 8

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Judy Matteucci, Fiscal Analyst

ARTHUR J. PALMER, Director  
(702) 885-5627

FRANK W. DAYKIN, Legislative Counsel (702) 885-5627  
JOHN R. CROSSLEY, Legislative Auditor (702) 885-5622  
DONALD A. RHODES, Research Director (702) 885-5637

January 27, 1983

M E M O R A N D U M

TO: Senator William Raggio  
FROM: Donald A. Rhodes, Research Director  
SUBJECT: Florida Drug Trafficking Law

This is in response to your request for information on the effectiveness of Florida's drug trafficking law. You indicated specific interest in the provision which allows a judge, upon appropriate motion by the prosecutor, to reduce or suspend the sentence of any person convicted of violating the drug trafficking act if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, co-conspirators or principals.

According to Eugene T. Whitworth, the Florida state attorney (similar to one of our district attorneys) and president of the state prosecutors' association, the Florida drug trafficking law has been very effective because, in great part, of the so-called whistle blower provision.

Mr. Whitworth estimates that the provision has been used in at least 90 percent of the prosecutions involving drug trafficking cases. The person usually involved in the bargaining process is a lesser offender, such as a drug deliverer or "mule," who is able to provide information leading to the arrest or conviction of one of the principals. Mr. Whitworth mentioned the importance of the "in camera" provision. He also suggested that you may want to ensure that good time credits do not apply to the minimum sentence. He advises that there was a recent trial court decision in Florida which said that such credits must apply to minimum sentences.

Mr. Whitworth says he would be happy to talk to you about this matter or to appear before the Nevada legislature in support of your measure. Mr. Whitworth's trip to Nevada, as you know, would require the passage of a concurrent resolution to reimburse him for his expenses.



Page 2

I called the National Association of Attorneys General who were unaware of any other states with "whistle blowing" provisions in their drug trafficking laws. The person I spoke with, Joel Kanter, noted, however, that several laws contain relief or protection provisions for persons identifying crimes or cooperating with law enforcement officials.

Mr. Kanter suggested communicating with attorneys in several states including Steve Twist in Arizona [phone (602) 255-4266] and Mike Lilly in Hawaii [phone (808) 548-4740]. I have been unable to reach these persons but will try again at your request.

DAR/llp:DT-2



MILLS LANE  
District Attorney

Washoe County District Attorney

Washoe County Courthouse  
South Virginia and Court Streets  
P.O. Box 11130 • Reno, Nevada 89520

January 24, 1983

The Honorable William J. Raggio  
State Senator  
Post Office Box 3137  
Reno, Nevada 89505

Dear Bill:

Thanks for yours of January 20 relative to S.B. 7, the proposed narcotics statute.

It is my opinion that this is the type of legislation which can greatly assist law enforcement. Indeed, in many instances, agreements and bargains are entered into which encompass the intent of this type of legislation, even though nothing is now on the books. It seems to me that actual legislation would be extremely desirable, as that would make clear the intent of the Legislature insofar as defendants can then be given consideration if they assist in additional investigations.

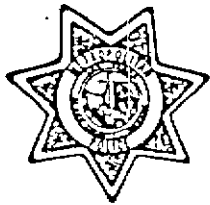
Simply put, I do, indeed, support this type of legislation and would like to be on the notification list.

Best regards,

Sincerely,

  
MILLS LANE  
District Attorney

ML/jz



JOHN MORAN, Sheriff

ERIC S. COOPER, Undersheriff

# Las Vegas Metropolitan Police Department

400 EAST STEWART AVENUE  
LAS VEGAS, NEVADA 89101  
PHONE 702/386-3111

January 25, 1983

ASSEMBLY JUDICIARY COMMITTEE

EXHIBIT B

March 10, 1983

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Assistant Sheriff  
Staff Operations

DAN STOPKA,  
Assistant Sheriff  
Line Operations

LARRY C. BOLDEN,  
Deputy Chief  
Technical Services Div.

AMOS A. ELLIOTT, JR.,  
Deputy Chief  
Administrative Services Div.

JOHN L. SULLIVAN,  
Deputy Chief  
Investigative Services Div.

STEVE WAUGH,  
Deputy Chief  
Uniform Field Services Div.

GORDON F. YACH,  
Director  
Detention Services Div.

RANDALL H. WALKER,  
Business Manager  
Fiscal Affairs Bureau

RE: Letter dated  
1-20-83 SB-7

Mr. William J. Raggio, Senator  
Washoe No. 1  
P.O. Box 3137  
Reno, Nevada 89505

Dear Senator Raggio:

Be assured you have my endorsement and full support concerning  
your Senate Bill No. 7.

SB-7 addresses an important new dimension to the drug enforcement  
picture. The measure when enacted will enhance our law enforcement  
effort in a positive manner.

Thanks to you and the Legislation you are purposing holds the  
promise of dramatically improving drug law enforcement.

Sincerely,

JOHN T. MORAN, SHERIFF

C. E. LANDRETH, COMMANDER  
VICE & NARCOTICS BUREAU

CEL/dr





*Office of the District*

CLARK COUNTY COURTHOUSE  
LAS VEGAS, NEVADA 89101  
(702) 386-4711

ASSEMBLY JUDICIARY COMMITTEE  
EXHIBIT B

March 10, 1983  
Page 5 of 8

DISTRICT ATTORNEY

DONALD K. WADSWORTH  
CHIEF DEPUTY

January 27, 1983

Senator William J. Raggio  
P. O. Box 3137  
Reno, Nevada 89505

Dear Senator Raggio:

This will acknowledge receipt of a copy of Senate Bill No. 7 which deals with trafficking in heavy volumes of narcotics and Marijuana, which Bill was recently introduced into the Nevada Legislature by you.

Subsequent to a review of same by District Attorney Bob Miller, he requested that I review same and obtain further comments thereon from a number of our chief prosecutors. That review is not yet completed but Mr. Miller has requested that I advise you this office would, indeed, be interested in being notified of any hearing date which is scheduled for said Bill and that this office would have a representative available at that time.

Very truly yours,

A handwritten signature in cursive script, reading "Donald K. Wadsworth".  
DONALD K. WADSWORTH

DKW/flh

March 10, 1983

Page 6 of 8

## WASHOE COUNTY SHERIFF

P.O. Box 2915

RENO, NEVADA 89505 — 2915

Phone: (Area 702) 785-6220

VINCENT G. SWINNEY  
SHERIFF

January 27, 1983

Senator Joe Neal, Chairman  
Senate Committee on Human Resources  
and Facilities  
Legislative Building  
State of Nevada  
Capitol Complex  
Carson City, Nevada 89710

Dear Chairman Neal:

On behalf of Sheriff Swinney and the Washoe County Sheriff's Office, I would like to go on record in support of SB 7, sponsored by Senator Bill Raggio.

The Commander of our Consolidated Narcotic Unit examined this Bill and advised me that the provisions contained would certainly enhance their ability to develop confidential informants and also would reduce the time required to infiltrate major drug trafficking networks. Also, we have been in contact with Federal and local officers from the Florida area and each of them have stated that SB 7 is modeled after a Florida law which is extremely helpful in combating drug trafficking in their jurisdictions.

We would strongly urge the passage of this legislation and would appreciate your support.

Very truly yours,

VINCENT G. SWINNEY, Sheriff

By

WM. D. MATHEWS, Chief  
Investigative Service Bureau

WDM:mab

STATE OF NEVADA  
LEGISLATIVE COUNSEL BUREAU

LEGISLATIVE BUILDING  
CAPITOL COMPLEX  
CARSON CITY, NEVADA 89710



ASSEMBLY JUDICIARY COMMITTEE  
EXHIBIT B

March 10, 1983

Page 7 of 8

10

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JOHN R. CROSSLEY, Legislative Auditor (702) 885-5622  
DONALD A. RHODES, Research Director (702) 885-5637

January 27, 1983

M E M O R A N D U M

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FROM: Donald A. Rhodes, Research Director  
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Mr. Whitworth estimates that the provision has been used in at least 90 percent of the prosecutions involving drug trafficking cases. The person usually involved in the bargaining process is a lesser offender, such as a drug deliverer or "mule," who is able to provide information leading to the arrest or conviction of one of the principals. Mr. Whitworth mentioned the importance of the "in camera" provision. He also suggested that you may want to ensure that good time credits do not apply to the minimum sentence. He advises that there was a recent trial court decision in Florida which said that such credits must apply to minimum sentences.

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875  
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Page 2

I called the National Association of Attorneys General who were unaware of any other states with "whistle blowing" provisions in their drug trafficking laws. The person I spoke with, Joel Kanter, noted, however, that several laws contain relief or protection provisions for persons identifying crimes or cooperating with law enforcement officials.

Mr. Kanter suggested communicating with attorneys in several states including Steve Twist in Arizona [phone (602) 255-4266] and Mike Lilly in Hawaii [phone (808) 548-4740]. I have been unable to reach these persons but will try again at your request.

DAR/llp:DT-2

\* Senate Bill No. 7.

Bill read second time.

The following amendment was proposed by the Committee on Judiciary:

Amendment No. 281.

Amend sec. 5, page 2, line 36, by deleting "*, deferred or withheld*".Amend sec. 5, page 2, line 40, by deleting "*by the prosecutor,*" and inserting comma after "*motion*".

Assemblyman Nevin moved the adoption of the amendment.

Remarks by Assemblyman Nevin.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Senate Bill No. 125.

Bill read second time and ordered to third reading.

Senate Bill No. 126.

Bill read second time and ordered to third reading.

## MOTIONS, RESOLUTIONS AND NOTICES

Assemblyman Jeffrey moved that Assembly Bill No. 134 be taken from the Chief Clerk's desk and placed on the General File.

Remarks by Assemblyman Jeffrey.

Motion carried.

## UNFINISHED BUSINESS

## CONSIDERATION OF SENATE AMENDMENTS

Assembly Bill No. 128.

The following Senate amendment was read:

Amendment No. 192.

Amend section 1, page 1, by deleting line 12 and inserting "*day.*".

Assemblyman Banner moved that the Assembly concur in the Senate amendment to Assembly Bill No. 128.

Remarks by Assemblyman Banner.

Motion carried.

Bill ordered enrolled.

## GENERAL FILE AND THIRD READING

Assembly Bill No. 50.

Bill read third time.

Remarks by Assemblyman Nevin.

Roll call on Assembly Bill No. 50:

YEAS—41.

NAYS—None.

Absent—Perry.

Assembly Bill No. 50 having received a constitutional majority, Mr. Speaker pro Tempore declared it passed, as amended.

Bill ordered transmitted to the Senate.

JOURNAL OF THE ASSEMBLY



SENATE BILL NO. 7—SENATOR RAGGIO

JANUARY 18, 1983

Referred to Committee on Human Resources and Facilities

SUMMARY—Provides penalties for trafficking in controlled substances and restricts probation to persons who render substantial assistance in conviction of other. (BDR 40-37)

FISCAL NOTE: Effect on Local Government. No.  
Effect on the State or on Industrial Insurance: No.

EXPLANATION—Matter in *italics* is new; matter in brackets [ ] is material to be omitted

AN ACT relating to controlled substances; providing penalties for trafficking; restricting the suspension of sentences for these offenses to persons who render substantial assistance in the conviction of others; expanding the list of property subject to forfeiture to include money exchanged for controlled substances and the proceeds of an exchange; and providing other matters properly relating thereto.

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

- 1 Section 1. Chapter 453 of NRS is hereby amended by adding
- 2 thereto the provisions set forth as sections 2 to 5, inclusive, of this act.
- 3 Sec. 2. *Except as authorized by the provisions of NRS 453.011 to*
- 4 *453.551, inclusive, and sections 2 to 5, inclusive, of this act, any per-*
- 5 *son who knowingly or intentionally sells, manufactures, delivers or*
- 6 *brings into this state or who is knowingly or intentionally in actual or*
- 7 *constructive possession of any controlled substance which is listed in*
- 8 *schedule I, except marihuana, or any mixture which contains any such*
- 9 *controlled substance shall be punished, if the quantity involved:*
- 10 1. *Is 4 grams or more, but less than 14 grams, by imprisonment in*
- 11 *the state prison for not less than 3 years nor more than 20 years and*
- 12 *by a fine of not less than \$50,000.*
- 13 2. *Is 14 grams or more, but less than 28 grams, by imprisonment*
- 14 *in the state prison for life or for a definite term of not less than 10*
- 15 *years and by a fine of not less than \$100,000.*

1     3. Is 28 grams or more, by imprisonment in the state prison for life  
2 or for a definite term of not less than 25 years and by a fine of not  
3 less than \$500,000.

4     Sec. 3. Except as authorized by the provisions of NRS 453.011 to  
5 453.551, inclusive, any person who knowingly or intentionally sells,  
6 manufactures, delivers or brings into this state or who is knowingly or  
7 intentionally in actual or constructive possession of marihuana shall be  
8 punished, if the quantity involved:

9     1. Is 100 pounds or more, but less than 2,000 pounds, by impris-  
10 onment in the state prison for not less than 3 years nor more than 20  
11 years and by a fine of not less than \$25,000.

12     2. Is 2,000 pounds or more, but less than 10,000 pounds, by  
13 imprisonment in the state prison for not less than 5 years nor more  
14 than 20 years and by a fine of not less than \$50,000.

15     3. Is 10,000 pounds or more, by imprisonment in the state prison  
16 for life or for a definite term of not less than 15 years and by a fine  
17 of not less than \$200,000.

18     Sec. 4. Except as authorized by the provisions of NRS 453.011 to  
19 453.551, inclusive, any person who knowingly or intentionally sells,  
20 manufactures, delivers or brings into this state or who is knowingly or  
21 intentionally in actual or constructive possession of any controlled sub-  
22 stance which is listed in schedule II or any mixture which contains any  
23 such controlled substance shall be punished, if the quantity involved:

24     1. Is 28 grams or more, but less than 200 grams, by imprisonment  
25 in the state prison for not less than 3 years nor more than 20 years and  
26 by a fine of not less than \$50,000.

27     2. Is 200 grams or more, but less than 400 grams, by imprisonment  
28 in the state prison for not less than 5 years nor more than 20 years and  
29 by a fine of not less than \$100,000.

30     3. Is 400 grams or more, by imprisonment in the state prison for  
31 life or for a definite term of not less than 15 years and by a fine of not  
32 less than \$250,000.

33     Sec. 5. 1. Except as provided in subsection 2, the adjudication of  
34 guilt and imposition of sentence of a person found guilty of trafficking  
35 in a controlled substance in violation of section 2, 3 or 4 of this act  
36 must not be suspended and the person is not eligible for parole until he  
37 has actually served the mandatory minimum term of imprisonment  
38 prescribed by the section under which he was convicted.

39     2. The judge, upon an appropriate motion, may reduce or suspend  
40 the sentence of any person convicted of violating any of the provisions  
41 of sections 2 to 4, inclusive, of this act if he finds that the convicted  
42 person rendered substantial assistance in the identification, arrest or  
43 conviction of any of his accomplices, accessories, coconspirators or

1 principals. The arresting agency must be given an opportunity to be  
2 heard before the motion is granted. Upon good cause shown, the  
3 motion may be heard in camera.

4 Sec. 6. NRS 453.301 is hereby amended to read as follows:

5 453.301 The following are subject to forfeiture:

6 1. All controlled substances which have been manufactured, dis-  
7 tributed, dispensed or acquired in violation of the provisions of NRS  
8 453.011 to 453.551, inclusive.

9 2. All raw materials, products and equipment of any kind which  
10 are used, or intended for use, in manufacturing, compounding, pro-  
11 cessing, delivering, importing or exporting any controlled substance in  
12 violation of the provisions of NRS 453.011 to 453.551, inclusive.

13 3. All property which is used, or intended for use, as a container  
14 for property described in subsections 1 and 2.

15 4. All books, records and research products and materials, includ-  
16 ing formulas, microfilm, tapes and data, which are used, or intended  
17 for use, in violation of the provisions of NRS 453.011 to 453.551,  
18 inclusive.

19 5. All conveyances, including aircraft, vehicles or vessels, which are  
20 used, or intended for use, to transport, or in any manner to facilitate  
21 the transportation, for the purpose of sale, possession for sale or  
22 receipt of property described in subsections 1 or 2, except that:

23 (a) No conveyance used by any person as a common carrier in the  
24 transaction of business as a common carrier is subject to forfeiture  
25 under this section unless it appears that the owner or other person in  
26 charge of the conveyance is a consenting party or privy to a violation  
27 of the provisions of NRS 453.011 to 453.551, inclusive;

28 (b) No conveyance is subject to forfeiture under this section by rea-  
29 son of any act or omission established by the owner thereof to have  
30 been committed or omitted without his knowledge or consent;

31 (c) A conveyance is not subject to forfeiture for a violation of NRS  
32 453.336 unless more than 1 kilogram of marihuana was in the convey-  
33 ance;

34 (d) A forfeiture of a conveyance encumbered by a bona fide security  
35 interest is subject to the interest of the secured party if he neither had  
36 knowledge of nor consented to the act or omission. If a conveyance is  
37 forfeited, the appropriate law enforcement agency may pay off the  
38 existing balance and retain the conveyance for official use.

39 No person, other than the holder of a community property interest,  
40 whose name or interest does not appear on the certificate of registra-  
41 tion or title for the conveyance is a proper party to any forfeiture pro-  
42 ceeding pursuant to this subsection.

43 6. All drug paraphernalia as defined by NRS 453.554 which are

1 used in violation of NRS 453.560, 453.562 or 453.566 or of an injunc-  
2 tion issued pursuant to NRS 453.558.

3 7. *Except as provided in this subsection, everything of value fur-*  
4 *nished or intended to be furnished in exchange for a controlled sub-*  
5 *stance in violation of the provisions of NRS 453.011 to 453.551, inclu-*  
6 *sive, all proceeds traceable to such an exchange, and all money,*  
7 *negotiable instruments and securities used or intended to be used to*  
8 *facilitate a violation of the provisions of NRS 453.011 to 453.551,*  
9 *inclusive. No person's interest in property may be forfeited pursuant to*  
10 *this subsection by reason of any act or omission which he establishes*  
11 *was committed or omitted without his knowledge or consent. There is*  
12 *a rebuttable presumption that all money found in close proximity to*  
13 *forfeitable controlled substances, drug paraphernalia or records is sub-*  
14 *ject to forfeiture pursuant to this subsection.*

15 Sec. 7. NRS 453.336 is hereby amended to read as follows:

16 453.336 1. It is unlawful for any person knowingly or intention-  
17 ally to possess a controlled substance unless the substance was obtained  
18 directly from, or pursuant to, a valid prescription or order of a physi-  
19 cian, dentist, podiatrist or veterinarian while acting in the course of his  
20 professional practice, or except as otherwise authorized by the provi-  
21 sions of NRS 453.011 to 453.551, inclusive.

22 2. Except as provided in subsections 3 and [4,] 4 and unless a  
23 greater penalty is provided in section 2, 3 or 4 of this act, any person  
24 who violates this section shall be punished:

25 (a) For the first offense, if the controlled substance is listed in sched-  
26 ule I, II, III or IV, by imprisonment in the state prison for not less  
27 than 1 year nor more than 6 years, and may be further punished by a  
28 fine of not more than \$5,000.

29 (b) For a second offense, if the controlled substance is listed in  
30 schedule I, II, III or IV, or if, in case of a first conviction of violation  
31 of this section, the offender has previously been convicted of any vio-  
32 lation of the laws of the United States or of any state, territory or dis-  
33 trict relating to a controlled substance, the offender shall be punished  
34 by imprisonment in the state prison for not less than 1 year nor more  
35 than 10 years and may be further punished by a fine of not more than  
36 \$10,000.

37 (c) For a third or subsequent offense, if the controlled substance is  
38 listed in schedule I, II, III or IV, or if the offender has previously been  
39 convicted two or more times in the aggregate of any violation of the  
40 law of the United States or of any state, territory or district relating to  
41 a controlled substance, the offender shall be punished by imprisonment  
42 in the state prison for not less than 1 year nor more than 20 years and  
43 may be further punished by a fine of not more than \$20,000.

44 (d) For the first offense, if the controlled substance is listed in

1 schedule V, by imprisonment in the county jail for not more than 1  
2 year, and may be further punished by a fine of not more than \$1,000.

3 (e) For a second or subsequent offense, if the controlled substance is  
4 listed in schedule V, by imprisonment in the state prison for not less  
5 than 1 year nor more than 6 years, and may be further punished by a  
6 fine of not more than \$5,000.

7 3. Any person who is under 21 years of age and is convicted of the  
8 possession of less than 1 ounce of marihuana:

9 (a) For the first offense:

10 (1) Shall be punished by imprisonment in the state prison for not  
11 less than 1 year nor more than 6 years, and may be further punished  
12 by a fine of not more than \$2,000; or

13 (2) Shall be punished by imprisonment in the county jail for not  
14 more than 1 year, and may be further punished by a fine of not more  
15 than \$1,000, and may have his driver's license suspended for not more  
16 than 6 months.

17 (b) For the second offense shall be punished in the manner pre-  
18 scribed by subsection 2 for a first offense.

19 (c) For a third or subsequent offense, shall be punished in the man-  
20 ner prescribed by subsection 2 for a second offense.

21 4. Before sentencing under the provisions of subsection 3, the court  
22 shall require the parole and probation officer to submit a presentencing  
23 report on the person convicted in accordance with the provisions of  
24 NRS 176.195. After the report is received but before sentence is pro-  
25 nounced the court shall:

26 (a) Interview the person convicted and make a determination as to  
27 the possibility of his rehabilitation; and

28 (b) Conduct a hearing at which evidence may be presented as to the  
29 possibility of rehabilitation and any other relevant information received  
30 as to whether the person convicted of the offense shall be adjudged to  
31 have committed a felony or to have committed a gross misdemeanor.

32 5. Three years after the person has been convicted and sentenced  
33 under the provisions of subsection 3, the court may order sealed all  
34 records, papers and exhibits in such person's record, minute book  
35 entries and entries on dockets, and other records relating to the case in  
36 the custody of such other agencies and officials as are named in the  
37 court's order, if:

38 (a) The person fulfilled all the terms and conditions imposed by the  
39 court and by the parole and probation officer; and

40 (b) The court, after hearing, is satisfied that the rehabilitation has  
41 been attained.

42 6. Whenever any person who has not previously been convicted of  
43 any offense under the provisions of NRS 453.011 to 453.551, inclusive,  
44 or under any statute of the United States or of any state relating to

1 narcotic drugs, marihuana or stimulant, depressant or hallucinogenic  
2 drugs pleads guilty to or is found guilty under this section of posses-  
3 sion of a controlled substance not for the purpose of sale, the court,  
4 with the consent of the accused, may impose sentence, including a fine,  
5 suspend imprisonment, seal the record and place him on probation  
6 upon terms and conditions.

7 7. The record of a person sentenced under subsection 6 which has  
8 been sealed by the court may remain sealed until:

9 (a) The defendant fulfills all of the terms and conditions imposed by  
10 the court and by his probation officer, when the record may be  
11 expunged; or

12 (b) His probation is revoked and the sentence is executed.

13 8. There may be only one suspension of sentence under subsection  
14 6 with respect to any person.

15 Sec. 8. NRS 453.337 is hereby amended to read as follows:

16 453.337 1. Except as authorized by the provisions of NRS  
17 453.011 to 453.551, inclusive, it is unlawful for any person to possess  
18 for the purpose of sale any controlled substance classified in schedule  
19 I or II.

20 2. **[Any]** *Unless a greater penalty is provided in section 2, 3 or*  
21 *4 of this act, any person who violates this section shall be punished:*

22 (a) For the first offense, by imprisonment in the state prison for not  
23 less than 1 year nor more than 15 years and may be further punished  
24 by a fine of not more than \$5,000.

25 (b) For a second offense, or if, in the case of a first conviction of  
26 violating this section, the offender has previously been convicted of a  
27 felony under the Uniform Controlled Substances Act or of an offense  
28 under the laws of the United States or any state, territory or district  
29 which, if committed in this state, would amount to a felony under the  
30 Uniform Controlled Substances Act, by imprisonment in the state  
31 prison for not less than 5 years nor more than 15 years and may be  
32 further punished by a fine of not more than \$10,000.

33 (c) For a third or subsequent offense, or if the offender has previ-  
34 ously been convicted two or more times of a felony under the Uniform  
35 Controlled Substances Act or of any offense under the laws of the  
36 United States or any state, territory or district which, if committed in  
37 this state, would amount to a felony under the Uniform Controlled  
38 Substances Act, by imprisonment in the state prison for not less than  
39 15 years and may be further punished by a fine of not more than  
40 \$20,000 for each offense.

41 3. The court shall not grant probation to or suspend the sentence  
42 of any person convicted of violating this section and punishable pursu-  
43 ant to paragraph (b) or (c) of subsection 2.

Assembly Bill No. 255.

Bill read third time.

Remarks by Assemblyman Zimmer.

Roll call on Assembly Bill No. 255:

YEAS—41.

NAYS—None.

Excused—Kovacs.

Assembly Bill No. 255 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Joint Resolution No. 16.

Resolution read third time.

Remarks by Assemblymen Stewart, Dini, Coffin, Beyer, Bourne, Sader and Bilyeu.

Assemblyman Thompson moved that Assembly Joint Resolution No. 16 be taken from the General File and placed on the Chief Clerk's desk.

Remarks by Assemblymen Thompson, Swain and Stone.

Assemblymen Price, Ham and Bergevin requested a roll call on Assemblyman Thompson's motion.

Remarks by Assemblymen Schofield and Craddock.

Roll call on Assemblyman Thompson's motion:

YEAS—23.

NAYS—Banner, Bilyeu, Brady, Collins, DuBois, Fay, Ham, Humke, Joerg, Malone, Nevin, Nicholas, Price, Redelsperger, Stewart, Stone, Swain, Mr. Speaker—18.

Excused—Kovacs.

The motion having received a majority, Mr. Speaker declared it carried.

Senate Bill No. 7.

Bill read third time.

Remarks by Assemblyman Nevin.

Roll call on Senate Bill No. 7:

YEAS—41.

NAYS—None.

Excused—Kovacs.

Senate Bill No. 7 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Senate Bill No. 29.

Bill read third time.

Remarks by Assemblyman Bergevin.

Roll call on Senate Bill No. 29:

YEAS—41.

NAYS—None.

Excused—Kovacs.

Senate Bill No. 29 having received a constitutional majority, Mr. Speaker declared it passed.

Bill ordered transmitted to the Senate.

because of an act performed in his official capacity, and the defendant knew or reasonably should have known that the victim was a peace officer or fireman. For purposes of this subsection "peace officer" means sheriffs of counties and their deputies, marshals and policemen of cities and towns, the chief and agents of the investigation division of the department of motor vehicles, personnel of the Nevada highway patrol, and the director, deputy director, correctional officers and other employees of the department of prisons when carrying out the duties prescribed by the director of the department.

8. The murder involved torture, depravity of mind or the mutilation of the victim.

9. The murder was committed upon one or more persons at random and without apparent motive.

Sec. 2. This act shall become effective upon passage and approval.

Senate Bill No. 7—Senator Raggio

#### CHAPTER 111

AN ACT relating to controlled substances; providing penalties for trafficking; restricting the suspension of sentences for these offenses to persons who render substantial assistance in the conviction of others; expanding the list of property subject to forfeiture to include money exchanged for controlled substances and the proceeds of an exchange; and providing other matters properly relating thereto.

[Approved April 2, 1983]

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

**Section 1.** Chapter 453 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 5, inclusive, of this act.

**Sec. 2.** *Except as authorized by the provisions of NRS 453.011 to 453.551, inclusive, and sections 2 to 5, inclusive, of this act, any 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 I, except marihuana, or any mixture which contains any such controlled substance shall be punished, if the quantity involved:*

1. *Is 4 grams or more, but less than 14 grams, by imprisonment in the state prison for not less than 3 years nor more than 20 years and by a fine of not less than \$50,000.*

2. *Is 14 grams or more, but less than 28 grams, by imprisonment in the state prison for life or for a definite term of not less than 10 years and by a fine of not less than \$100,000.*

3. *Is 28 grams or more, by imprisonment in the state prison for life or for a definite term of not less than 25 years and by a fine of not less than \$500,000.*

**Sec. 3.** *Except as authorized by the provisions of NRS 453.011 to 453.551, inclusive, any 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 marihuana shall be punished, if the quantity involved:*

1. *Is 100 pounds or more, but less than 2,000 pounds, by imprisonment in the state prison for not less than 3 years nor more than 20 years and by a fine of not less than \$25,000.*

2. *Is 2,000 pounds or more, but less than 10,000 pounds, by imprisonment in the state prison for not less than 5 years nor more than 20 years and by a fine of not less than \$50,000.*

3. *Is 10,000 pounds or more, by imprisonment in the state prison for life or for a definite term of not less than 15 years and by a fine of not less than \$200,000.*

**Sec. 4.** *Except as authorized by the provisions of NRS 453.011 to 453.551, inclusive, any 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, if the quantity involved:*

1. *Is 28 grams or more, but less than 200 grams, by imprisonment in the state prison for not less than 3 years nor more than 20 years and by a fine of not less than \$50,000.*

2. *Is 200 grams or more, but less than 400 grams, by imprisonment in the state prison for not less than 5 years nor more than 20 years and by a fine of not less than \$100,000.*

3. *Is 400 grams or more, by imprisonment in the state prison for life or for a definite term of not less than 15 years and by a fine of not less than \$250,000.*

**Sec. 5.** 1. *Except as provided in subsection 2, the adjudication of guilt and imposition of sentence of a person found guilty of trafficking in a controlled substance in violation of section 2, 3 or 4 of this act must not be suspended and the person is not eligible for parole until he has actually served the mandatory minimum term of imprisonment prescribed by the section under which he was convicted.*

2. *The judge, upon an appropriate motion, may reduce or suspend the sentence of any person convicted of violating any of the provisions of sections 2 to 4, inclusive, of this act if he finds that the convicted person rendered substantial assistance in the identification, arrest or conviction of any of his accomplices, accessories, coconspirators or principals. 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.*

**Sec. 6.** NRS 453.301 is hereby amended to read as follows:

453.301 The following are subject to forfeiture:

1. All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of the provisions of NRS 453.011 to 453.551, inclusive.

2. All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting any controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive.

3. All property which is used, or intended for use, as a container for property described in subsections 1 and 2.

4. All books, records and research products and materials, including formulas, microfilm, tapes and data, which are used, or intended for use, in violation of the provisions of NRS 453.011 to 453.551, inclusive.

5. All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale, possession for sale or receipt of property described in subsections 1 or 2, except that:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of the provisions of NRS 453.011 to 453.551, inclusive;

(b) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(c) A conveyance is not subject to forfeiture for a violation of NRS 453.336 unless more than 1 kilogram of marihuana was in the conveyance;

(d) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission. If a conveyance is forfeited, the appropriate law enforcement agency may pay off the existing balance and retain the conveyance for official use.

No person, other than the holder of a community property interest, whose name or interest does not appear on the certificate of registration or title for the conveyance is a proper party to any forfeiture proceeding pursuant to this subsection.

6. All drug paraphernalia as defined by NRS 453.554 which are used in violation of NRS 453.560, 453.562 or 453.566 or of an injunction issued pursuant to NRS 453.558.

7. *Except as provided in this subsection, everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of the provisions of NRS 453.011 to 453.551, inclusive, all proceeds traceable to such an exchange, and all money, negotiable instruments and securities used or intended to be used to facilitate a violation of the provisions of NRS 453.011 to 453.551, inclusive. No person's interest in property may be forfeited pursuant to this subsection by reason of any act or omission which he establishes was committed or omitted without his knowledge or consent. There is a rebuttable presumption that all money found in close proximity to forfeitable controlled substances, drug paraphernalia or records is subject to forfeiture pursuant to this subsection.*

Sec. 7. NRS 453.336 is hereby amended to read as follows:

453.336 1. It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained

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directly from, or pursuant to, a valid prescription or order of a physician, dentist, podiatrist or veterinarian while acting in the course of his professional practice, or except as otherwise authorized by the provisions of NRS 453.011 to 453.551, inclusive.

2. Except as provided in subsections 3 and ~~[4,]~~ 4 and unless a greater penalty is provided in section 2, 3 or 4 of this act, any person who violates this section shall be punished:

(a) For the first offense, if the controlled substance is listed in schedule I, II, III or IV, by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than \$5,000.

(b) For a second offense, if the controlled substance is listed in schedule I, II, III or IV, or if, in case of a first conviction of violation of this section, the offender has previously been convicted of any violation of the laws of the United States or of any state, territory or district relating to a controlled substance, the offender shall be punished by imprisonment in the state prison for not less than 1 year nor more than 10 years and may be further punished by a fine of not more than \$10,000.

(c) For a third or subsequent offense, if the controlled substance is listed in schedule I, II, III or IV, or if the offender has previously been convicted two or more times in the aggregate of any violation of the law of the United States or of any state, territory or district relating to a controlled substance, the offender shall be punished by imprisonment in the state prison for not less than 1 year nor more than 20 years and may be further punished by a fine of not more than \$20,000.

(d) For the first offense, if the controlled substance is listed in schedule V, by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than \$1,000.

(e) For a second or subsequent offense, if the controlled substance is listed in schedule V, by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than \$5,000.

3. Any person who is under 21 years of age and is convicted of the possession of less than 1 ounce of marihuana:

(a) For the first offense:

(1) Shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years, and may be further punished by a fine of not more than \$2,000; or

(2) Shall be punished by imprisonment in the county jail for not more than 1 year, and may be further punished by a fine of not more than \$1,000, and may have his driver's license suspended for not more than 6 months.

(b) For the second offense shall be punished in the manner prescribed by subsection 2 for a first offense.

(c) For a third or subsequent offense, shall be punished in the manner prescribed by subsection 2 for a second offense.

4. Before sentencing under the provisions of subsection 3, the court shall require the parole and probation officer to submit a presentencing report on the person convicted in accordance with the provisions of

NRS 176.195. After the report is received but before sentence is pronounced the court shall:

(a) Interview the person convicted and make a determination as to the possibility of his rehabilitation; and

(b) Conduct a hearing at which evidence may be presented as to the possibility of rehabilitation and any other relevant information received as to whether the person convicted of the offense shall be adjudged to have committed a felony or to have committed a gross misdemeanor.

5. Three years after the person has been convicted and sentenced under the provisions of subsection 3, the court may order sealed all records, papers and exhibits in such person's record, minute book entries and entries on dockets, and other records relating to the case in the custody of such other agencies and officials as are named in the court's order, if:

(a) The person fulfilled all the terms and conditions imposed by the court and by the parole and probation officer; and

(b) The court, after hearing, is satisfied that the rehabilitation has been attained.

6. Whenever any person who has not previously been convicted of any offense under the provisions of NRS 453.011 to 453.551, inclusive, or under any statute of the United States or of any state relating to narcotic drugs, marihuana or stimulant, depressant or hallucinogenic drugs pleads guilty to or is found guilty under this section of possession of a controlled substance not for the purpose of sale, the court, with the consent of the accused, may impose sentence, including a fine, suspend imprisonment, seal the record and place him on probation upon terms and conditions.

7. The record of a person sentenced under subsection 6 which has been sealed by the court may remain sealed until:

(a) The defendant fulfills all of the terms and conditions imposed by the court and by his probation officer, when the record may be expunged; or

(b) His probation is revoked and the sentence is executed.

8. There may be only one suspension of sentence under subsection 6 with respect to any person.

**Sec. 8.** NRS 453.337 is hereby amended to read as follows:

453.337 1. Except as authorized by the provisions of NRS 453.011 to 453.551, inclusive, it is unlawful for any person to possess for the purpose of sale any controlled substance classified in schedule I or II.

2. **[Any]** Unless a greater penalty is provided in section 2, 3 or 4 of this act, any person who violates this section shall be punished:

(a) For the first offense, by imprisonment in the state prison for not less than 1 year nor more than 15 years and may be further punished by a fine of not more than \$5,000.

(b) For a second offense, or if, in the case of a first conviction of violating this section, the offender has previously been convicted of a felony under the Uniform Controlled Substances Act or of an offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the

Uniform Controlled Substances Act, by imprisonment in the state prison for not less than 5 years nor more than 15 years and may be further punished by a fine of not more than \$10,000.

(c) For a third or subsequent offense, or if the offender has previously been convicted two or more times of a felony under the Uniform Controlled Substances Act or of any offense under the laws of the United States or any state, territory or district which, if committed in this state, would amount to a felony under the Uniform Controlled Substances Act, by imprisonment in the state prison for not less than 15 years and may be further punished by a fine of not more than \$20,000 for each offense.

3. The court shall not grant probation to or suspend the sentence of any person convicted of violating this section and punishable pursuant to paragraph (b) or (c) of subsection 2.

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