



A Criminal JUSTICE REFORM BILL Aimed at Decongesting Nevada's Prison Population

BY MARK MILLS, ESQ.

In recent years, Nevada has experienced a notable increase in its prison population. A 2018 study conducted by the Crime and Justice Institute (CJI) found that Nevada prison admissions increased by 6 percent between the years 2008 and 2017—a concerning trend, given the high cost of housing inmates to Nevada taxpayers.¹

In order to reverse this trend, in 2019, the Nevada Legislature passed AB 236, a criminal justice reform bill aimed at decongesting Nevada's prisons (and thereby potentially saving Nevada's taxpayers hundreds of millions of dollars). On July 1, 2020, AB 236 went into effect, revising various aspects of the Nevada criminal justice system in an effort to reduce Nevada's prison population. The purpose of this article is to provide a brief overview of some of the more prominent features of AB 236.

Focus on Treatment and Diversion Programs

Anyone with even a passing familiarity with the criminal justice system recognizes the stark reality that drug addiction is a primary driving force behind much of the crime committed in our communities. Likewise, mental health issues, including those stemming from post-traumatic stress disorder (PTSD), are significant contributing factors to crime. Recognizing these realities, the Nevada Legislature revised Nevada's specialty courts (e.g., drug court, mental health court, and veterans' court) to make them accessible to a wider range of defendants.

Nevada’s previous drug court diversion program under NRS 458.290 et seq. has been moved to NRS 176A.230 et seq. The new drug court diversion statutory scheme is similar to the old one in that it authorizes courts to establish programs of treatment of alcohol and other substance-use disorders, and results in a dismissal of the defendant’s case if the defendant successfully completes the treatment program and otherwise follows the terms of probation. A significant difference between the old program and the new one is that the eligibility requirements have been relaxed significantly. Under the previous statutory scheme, numerous categories of defendants were excluded from participating in the program, including violent offenders, offenders with multiple prior convictions, offenders with other currently pending felony cases, and offenders already on probation or parole. In contrast, the new statutory scheme contains only two disqualifiers: a defendant is ineligible only if his underlying offense is either (1) a category A felony, or (2) a category B felony sexual offense.²

This change brings the drug court diversion statute into alignment with the mental health court and veterans’ court statutes, which were revised last year to relax the eligibility requirements. Previously, defendants who were charged with a violent crime, or who had previously been convicted of a violent felony, were ineligible for the mental health and veterans’ court programs without the consent of the prosecuting attorney. Now, the disqualifiers are uniform for all three specialty courts: only a defendant charged with a category A felony or a serious sexual offense is ineligible. The result of these changes will be to funnel more defendants into specialty court programs in lieu of prison.

Reclassification of Drug Crimes

In addition to the changes to the treatment and diversion programs discussed above, AB 236 also made significant changes to various areas of substantive criminal law. Most notably, AB 236 revamped the classification of drug crimes. Previously, possession of less than four grams of a schedule I controlled substance—such as methamphetamine or heroin—was categorized as a category E felony, and any possession of four grams or more of these drugs was classified as a “trafficking” offense, punishable by mandatory prison terms. Specifically, a trafficking offense involving the possession of between four to 14 grams of a schedule I controlled substance was a category B felony punishable by one to six years in prison; possession of 14-28 grams of a schedule I controlled substance was a category B felony punishable by between two to 15 years in prison; and possession of more than 28 grams was a category A felony punishable by either 10-25 years in prison, or 10 years to life in prison.

AB 236 revises these classifications significantly. Now, depending on the weight of the controlled substance possessed, the possession of a schedule I or schedule II controlled substance falls within one of six different crime classifications:

1. Possession of a controlled substance (less than 14 grams), punishable as a category E felony (one to four years in prison);
2. Low-level possession of a controlled substance (14 grams or more but less than 28 grams), punishable as a category C felony (one to five years in prison);
3. Mid-level possession of a controlled substance (28 grams or more but less than 42 grams), punishable as a category B felony (one to 10 years in prison);
4. High-level possession of a controlled substance (42 grams or more but less than 100 grams), punishable as a category B felony (two to 15 years in prison);³
5. Low-level trafficking (100 grams or more but less than 400 grams), punishable as a category B felony (two to 20 years); and

6. High-level trafficking (400 grams or more), punishable as a category A felony (10 years to life, or 10-25 years).⁴

Only the trafficking-level offenses entail mandatory prison; for all other drug offenses listed above, a defendant is eligible for probation.

To put these changes into perspective: Previously, a person convicted for possessing 28 grams of methamphetamine or heroin would have been subjected to a mandatory minimum prison sentence of 10 years. Now, a person must possess 400 grams or more to reach that threshold.

By passing AB 236, the Nevada Legislature attempted to strike a balance between enacting measures designed to reduce Nevada’s prison population, while simultaneously focusing on rehabilitation by making programs of treatment available to a wider range of defendants.

Reclassification of Property Crimes

In addition to reclassifying drug crimes, AB 236 also reclassified property offenses. Previously, the value threshold for felony property offenses was \$650. Now, in order for a property crime such as theft or larceny to be considered a felony, the value of the property must exceed \$1,200. Under the new classifications, theft or larceny of property valued at: less than \$1,200 is a misdemeanor; \$1,200 or more but less than \$5,000 is a category D felony (punishable by one to four years in prison); \$5,000 or more but less than \$25,000 is a category C

felony (punishable by one to five years in prison); \$25,000 or more but less than \$100,000 is a category B felony (punishable by one to 10 years in prison); \$100,000 or more is a category B felony (punishable by one to 20 years in prison).⁵

Additionally, the crime of burglary has been subdivided into different categories of crimes based on the type of burglary committed. Previously, the burglary of *any* kind of structure or vehicle constituted the same crime, carrying the same penalty: one to 10 years in prison. Now, different types of burglaries carry different penalties. For example, the burglary of a vehicle is a category E felony (one to four years in prison); the

burglary of a structure is a category D felony (one to four years); the burglary of a business is a category C felony (one to five years); and the burglary of a residence is a category B felony (one to 10 years).⁶

Like the reclassification of drug offenses, the reclassification of these property offenses is likely to result in a reduction of the Nevada prison population.

Revision to Probation Terms and Violation Procedures

The CJJ study found that 39 percent of Nevada inmates end up in prison as a result of probation violations.⁷ Consequently, when drafting this criminal justice reform bill, the Nevada Legislature paid particular attention to probation procedures.

Specifically, AB 236 implemented two changes designed to reduce the number of probationers sent to prison for probation violations. First, AB 236 reduced the probationary periods. Previously, a person convicted of any felony could be supervised on probation for up to 60 months, and a person convicted of a gross misdemeanor could be supervised for up to 36 months. Now, the period of supervision for a person convicted of a gross misdemeanor may not exceed 12 months, 18 months for a person convicted of a category E felony, 24 months for a person convicted of a category C or D felony, 36 months for a person convicted of a category B felony, or 60 months for a person convicted of a violent or sexual offense.⁸

Second, AB 236 revised the procedures for dealing with probation violations. Prior to the passage of AB 236, district court judges had the discretion to revoke probationers' probation and send them to prison if the judge found that a probationer had violated a term of their probation, regardless of the nature of the violation. Now, district court judges must determine whether a probationer

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committed a "technical violation"—defined as a violation other than the commission of a felony, gross misdemeanor or certain serious misdemeanors.⁹ If a probationer commits a non-technical violation, the court has the discretion to revoke the probationer's probation and send the probationer to prison. However, if a probationer commits a "technical violation," the court may temporarily revoke the probationer and sentence the probationer to up to 30 days in jail for a first violation; 90 days for a second technical violation; and 180 days for a third violation. For a fourth or subsequent

technical violation, the court may fully revoke the probationer's probation and send the probationer to prison.¹⁰ This graduated system of sanctions will result in fewer probationers ending up in prison for probation violations.

In summary, these changes to the Nevada criminal justice system will likely curb, and hopefully reverse, the trend of an increasing prison population in Nevada—which in turn will save Nevada taxpayers millions of dollars in the coming years. However, because fewer defendants will be sent to prison (and those who are will spend less time there), in order to protect our communities it is imperative that defendants receive the rehabilitation and treatment they need to address the underlying issues giving rise to their criminal conduct. By passing AB 236, the Nevada Legislature attempted to strike a balance between enacting measures designed to reduce Nevada's prison population, while

simultaneously focusing on rehabilitation by making programs of treatment available to a wider range of defendants.

1. https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=44352&file-DownloadName=AB%20236_Justice%20Reinvestment%20Presentation_Assemblyman%20Steve%20Yeager.pdf
2. NRS 176A.240.
3. NRS 453.336.
4. NRS 453.3385.
5. NRS 205.0835; NRS 205.222.
6. NRS 206.060.
7. https://www.leg.state.nv.us/App/NELIS/REL/80th2019/ExhibitDocument/OpenExhibitDocument?exhibitId=44352&file-DownloadName=AB%20236_Justice%20Reinvestment%20Presentation_Assemblyman%20Steve%20Yeager.pdf
8. NRS 176A.500.
9. NRS 176A.630(5)(b).
10. NRS 176A.630.

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