

SENATE BILL NO. 144—SENATOR KIECKHEFER

FEBRUARY 11, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to crimes committed with the use of a deadly weapon or tear gas. (BDR 15-261)

FISCAL NOTE: Effect on Local Government: No. Effect on the State: Yes.

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

AN ACT relating to crimes; revising the length of the term of the additional penalty for crimes committed with the use of a deadly weapon or tear gas; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law provides that a person who uses a firearm or other deadly weapon  
2 or a weapon containing or capable of emitting tear gas in the commission of a crime  
3 must be punished by the imposition of an additional penalty which must be a  
4 minimum term of not less than 1 year and a maximum term of not more than 20  
5 years, except that the additional term of imprisonment must not exceed the sentence  
6 imposed for the underlying crime. When the court determines the length of the  
7 additional punishment to be imposed, existing law requires a court to consider  
8 certain factors and state on the record that the court considered those factors. (NRS  
9 193.165) **Section 1** of this bill provides that the additional penalty imposed: (1) is  
10 no longer subject to judicial determination; and (2) must be equal to and in addition  
11 to the term of imprisonment for the underlying crime.

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

1 **Section 1.** NRS 193.165 is hereby amended to read as follows:  
2 193.165 1. Except as otherwise provided in NRS 193.169,  
3 any person who uses a firearm or other deadly weapon or a weapon  
4 containing or capable of emitting tear gas, whether or not its  
5 possession is permitted by NRS 202.375, in the commission of a  
6 crime shall ~~f, in addition to the term of imprisonment prescribed by~~



1 ~~statute for the crime,]~~ be punished by imprisonment in the state  
2 prison for a ~~[minimum]~~ term ~~[of not less than 1 year and a~~  
3 ~~maximum]~~ *equal to and in addition to the* term of ~~[not more than~~  
4 ~~20 years. In determining the length of the additional penalty~~  
5 ~~imposed, the court shall consider the following information:~~

6 —(a) The facts and circumstances of the crime;

7 —(b) The criminal history of the person;

8 —(c) The impact of the crime on any victim;

9 —(d) Any mitigating factors presented by the person; and

10 —(e) Any other relevant information.

11 ~~→ The court shall state on the record that it has considered the~~  
12 ~~information described in paragraphs (a) to (e), inclusive, in~~  
13 ~~determining the length of the additional penalty imposed.]~~  
14 *imprisonment prescribed by statute for the crime.*

15 2. The sentence prescribed by this section ~~]:~~

16 —(a) ~~Must not exceed the sentence imposed for the crime; and~~

17 —(b) ~~Runs]~~ *runs* consecutively with the sentence prescribed by  
18 statute for the crime.

19 3. This section does not create any separate offense but  
20 provides an additional penalty for the primary offense, whose  
21 imposition is contingent upon the finding of the prescribed fact.

22 4. The provisions of subsections 1, 2 and 3 do not apply where  
23 the use of a firearm, other deadly weapon or tear gas is a necessary  
24 element of such crime.

25 5. The court shall not grant probation to or suspend the  
26 sentence of any person who is convicted of using a firearm, other  
27 deadly weapon or tear gas in the commission of any of the following  
28 crimes:

29 (a) Murder;

30 (b) Kidnapping in the first degree;

31 (c) Sexual assault; or

32 (d) Robbery.

33 6. As used in this section, “deadly weapon” means:

34 (a) Any instrument which, if used in the ordinary manner  
35 contemplated by its design and construction, will or is likely to  
36 cause substantial bodily harm or death;

37 (b) Any weapon, device, instrument, material or substance  
38 which, under the circumstances in which it is used, attempted to be  
39 used or threatened to be used, is readily capable of causing  
40 substantial bodily harm or death; or

41 (c) A dangerous or deadly weapon specifically described in  
42 NRS 202.255, 202.265, 202.290, 202.320 or 202.350.



1       **Sec. 2.** The amendatory provisions of this act apply to a person  
2 who is sentenced on or after October 1, 2019, for a crime committed  
3 before, on or after October 1, 2019.

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