

ASSEMBLY BILL NO. 470—ASSEMBLYMAN YEAGER

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—Creates a preprosecution diversion program for defendants charged with certain misdemeanor offenses. (BDR 14-1062)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

~

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

AN ACT relating to criminal procedure; creating a preprosecution diversion program for defendants charged with certain misdemeanor offenses; establishing qualifications for participation in the program; requiring discharge of the defendant and dismissal of the original charge upon the successful completion of the program; requiring a defendant who fails to complete the program to enter a plea on the original charge; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law creates a diversion program for certain offenders who have
2 violated the terms of their probation. (NRS 209.4291) Existing law authorizes a
3 court to assign such an offender to a program of treatment for mental illness or
4 substance abuse issues. (NRS 209.4293) Existing law also authorizes a person who
5 has successfully completed a preprosecution diversion program to request that any
6 biological or DNA sample which was provided by the person to the State be
7 destroyed. (NRS 176.09125) **Sections 2-5** of this bill create a preprosecution
8 diversion program for certain persons who have been accused of committing a
9 crime which is punishable as a misdemeanor. **Section 2** provides that a defendant is
10 eligible to complete a preprosecution diversion program if the defendant: (1) is
11 charged with a misdemeanor other than a violent crime or driving under the
12 influence of intoxicating liquor or a controlled substance; (2) has not previously
13 been convicted of a crime other than a minor traffic offense; and (3) has not been
14 previously ordered by a court to complete a preprosecution diversion program in
15 this State. **Section 2** authorizes, but does not require, a justice court or municipal
16 court to order a defendant to complete a preprosecution diversion program and
17 provides that the decision of the court relating to the participation of a defendant in
18 the program may not be appealed.



* A B 4 7 0 R 1 *

19 **Section 3** of this bill requires a justice court or municipal court to establish the
20 terms and conditions which a defendant must complete as part of a preprosecution
21 diversion program, if a defendant is ordered to complete such a program pursuant
22 to **section 2**. **Section 3** authorizes the court to include in the terms and conditions
23 that the defendant complete a program of treatment and to impose any appropriate
24 sanctions on the defendant, which may include, without limitation, community
25 service, restitution or a curfew. **Section 3** requires the court to issue an order
26 containing the terms and conditions for successful completion of the preprosecution
27 diversion program. **Section 3** provides that the defendant must: (1) complete the
28 program before the date established by the court in the order, which must not be
29 more than 18 months after the date of the order; and (2) appear before the court at
30 least once every 3 months for a status hearing. **Section 4** of this bill requires the
31 court to dismiss the charge or charges against the defendant if he or she
32 successfully completes the terms and conditions of the preprosecution diversion
33 program. Finally, **section 4** of this bill requires a defendant who fails to complete
34 the terms and conditions of the preprosecution diversion program to be dismissed
35 from the program and be prosecuted in the normal manner provided by law.

36 Existing law requires the criminal records of a defendant to be sealed and
37 treated as confidential if a defendant is acquitted or the charges are dropped, a
38 certain period of time has passed since the conviction or if he or she completes a
39 program for reentry or a program of treatment for: (1) veterans and the members of
40 the military; (2) persons with mental illness or intellectual disabilities; or (3)
41 substance abuse issues. (NRS 176A.265, 176A.295, 179.245, 179.255, 179.259,
42 453.3365, 458.330) **Sections 5 and 10-12** of this bill similarly provide that the
43 criminal records of a defendant who has successfully completed a preprosecution
44 diversion program are sealed and confidential except as otherwise required by law.
45 **Section 7** of this bill authorizes the defendant to request that any biological or DNA
46 sample provided to the State by the defendant be destroyed upon the successful
47 completion of the preprosecution diversion program.

48 Existing law authorizes a court to establish a program of treatment for certain
49 offenders who are charged with specified offenses, including, without limitation,
50 veterans and members of the military, persons with mental illness or intellectual
51 disabilities or persons with substance abuse issues. (NRS 176A.250, 176A.280,
52 453.580) **Sections 3, 8, 9 and 13** of this bill authorize a justice court or municipal
53 court, as part of a preprosecution diversion program, to require a defendant to
54 complete a program of treatment. **Section 3** provides that such a program of
55 treatment may include, without limitation, a program of treatment for veterans and
56 members of the military, persons with mental illness or intellectual disabilities or
57 persons with substance abuse issues, educational programs, participation in a
58 support group, anger management therapy or counseling.

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

1 **Section 1.** Chapter 174 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this
3 act.

4 **Sec. 2. 1. *At the arraignment of a defendant in justice court***
5 ***or municipal court, but before the entry of a plea, the court shall***
6 ***determine whether the defendant is eligible to complete a***
7 ***preprosecution diversion program.***



* A B 4 7 0 R 1 *

1 2. A defendant is eligible to complete a preprosecution
2 diversion program if the defendant:

3 (a) Is charged with a misdemeanor other than:

4 (1) A crime of violence as defined in NRS 200.408; or

5 (2) Driving under the influence of intoxicating liquor or a
6 controlled substance in violation of NRS 484C.110, 484C.120 or
7 484C.130; and

8 (b) Has not previously been:

9 (1) Convicted of violating any criminal law other than a
10 minor traffic offense; or

11 (2) Ordered by a court to complete a preprosecution
12 diversion program in this State.

13 3. If a defendant is eligible to complete a preprosecution
14 diversion program pursuant to subsection 2, the justice court or
15 municipal court may order the defendant to complete a
16 preprosecution diversion program pursuant to section 3 of this act.

17 4. If a defendant is ordered to complete a preprosecution
18 diversion program, the defendant must be immediately released
19 from custody upon his or her own recognizance.

20 5. A defendant has no right to complete a preprosecution
21 diversion program or to appeal the decision of the justice court or
22 municipal court relating to the participation of the defendant in
23 such program.

24 **Sec. 3.** 1. If a defendant is ordered by a justice court or
25 municipal court to complete a preprosecution diversion program
26 pursuant to section 2 of this act, the court shall develop an
27 appropriate preprosecution diversion program for the defendant.
28 The court shall receive input from the prosecuting attorney, the
29 attorney for the defendant and the defendant relating to the terms
30 and conditions of the program.

31 2. A preprosecution diversion program created by a justice
32 court or municipal court pursuant to this section may include,
33 without limitation:

34 (a) A program of treatment which may rehabilitate the
35 defendant, including, without limitation, educational programs,
36 participation in a support group, anger management therapy,
37 counseling or a program of treatment for veterans and members of
38 the military, mental illness or intellectual disabilities or the abuse
39 of alcohol or drugs;

40 (b) Any appropriate sanctions to impose on the defendant,
41 which may include, without limitation, community service,
42 restitution, prohibiting contact with certain persons or the
43 imposition of a curfew; and

44 (c) Any other factor which may be relevant to determining an
45 appropriate program of treatment or sanctions to require for



1 *participation of the defendant in the preprosecution diversion*
2 *program.*

3 *3. If the justice court or municipal court determines that the*
4 *defendant may be rehabilitated by a program of treatment for*
5 *veterans and members of the military, persons with mental illness*
6 *or intellectual disabilities or the abuse of alcohol or drugs, the*
7 *court may refer the defendant to an appropriate program of*
8 *treatment established pursuant to NRS 176A.250, 176A.280 or*
9 *453.580. The court shall retain jurisdiction over the defendant*
10 *while the defendant completes such a program of treatment.*

11 *4. The justice court or municipal court shall issue an order*
12 *setting forth the terms and conditions for successful completion of*
13 *the preprosecution diversion program, which may include, without*
14 *limitation:*

15 *(a) Any program of treatment the defendant is required to*
16 *complete;*

17 *(b) Any sanctions and the manner in which they must be*
18 *carried out by the defendant;*

19 *(c) The date by which the terms and conditions must be*
20 *completed by the defendant, which must not be more than 18*
21 *months after the date of the order;*

22 *(d) A requirement that the defendant appear before the court*
23 *at least one time every 3 months for a status hearing on the*
24 *progress of the defendant toward completion of the terms and*
25 *conditions set forth in the order; and*

26 *(e) A notice relating to the provisions of subsection 3 of section*
27 *4 of this act.*

28 *5. The defendant shall pay the cost of any program of*
29 *treatment required by this section to the extent of his or her*
30 *financial resources. The court shall not refuse to place a*
31 *defendant in a program of treatment if the defendant does not*
32 *have the financial resources to pay any or all of the costs of such*
33 *program.*

34 *6. If restitution is ordered to be paid pursuant to subsection 4,*
35 *the defendant must make a good faith effort to pay the required*
36 *amount of restitution in full. If the justice court or municipal*
37 *court determines that a defendant is unable to pay such*
38 *restitution, the court must require the defendant to enter into a*
39 *judgment by confession for the amount of restitution.*

40 **Sec. 4. 1. If the justice court or municipal court determines**
41 **that a defendant has successfully completed the terms and**
42 **conditions of a preprosecution diversion program ordered**
43 **pursuant to subsection 4 of section 3 of this act, the court must**
44 **discharge the defendant and dismiss the indictment, information,**
45 **complaint or citation.**



1 2. *Discharge and dismissal pursuant to subsection 1 is*
2 *without adjudication of guilt and is not a conviction for purposes*
3 *of employment, civil rights or any statute or regulation or license*
4 *or questionnaire or for any other public or private purpose.*
5 *Discharge and dismissal restores the defendant, in the*
6 *contemplation of the law, to the status occupied before the*
7 *indictment, information, complaint or citation. The defendant may*
8 *not be held thereafter under any law to be guilty of perjury or*
9 *otherwise giving a false statement by reason of failure to recite or*
10 *acknowledge the indictment, information, complaint or citation in*
11 *response to an inquiry made of the defendant for any purpose.*

12 3. *If the justice court or municipal court determines that a*
13 *defendant has not successfully completed the terms or conditions*
14 *of a preprosecution diversion program ordered pursuant to*
15 *subsection 4 of section 3 of this act, the court must issue an order*
16 *terminating the participation of the defendant in the*
17 *preprosecution diversion program and order the defendant to*
18 *appear for an arraignment to enter a plea based on the original*
19 *indictment, information, complaint or citation pursuant to*
20 *NRS 174.015.*

21 **Sec. 5.** 1. *If the defendant is discharged and the indictment,*
22 *information, complaint or citation is dismissed pursuant to section*
23 *4 of this act, the justice court or municipal court must order sealed*
24 *all documents, papers and exhibits in the record of the defendant,*
25 *minute book entries and entries on dockets, and other documents*
26 *relating to the case in the custody of such other agencies and*
27 *officers as are named in the order of the court. The court shall*
28 *order those records sealed without a hearing unless the district*
29 *attorney petitions the court, for good cause shown, not to seal the*
30 *records and requests a hearing thereon.*

31 2. *If the justice court or municipal court orders the record of*
32 *a defendant sealed, the court must send a copy of the order to each*
33 *agency or officer named in the order. Each such agency or officer*
34 *shall notify the court in writing of its compliance with the order.*

35 **Sec. 6.** NRS 174.015 is hereby amended to read as follows:

36 174.015 1. ~~Arraignment~~ *Except as otherwise provided in*
37 *subsection 3, arraignment shall be conducted in open court and*
38 *shall consist of reading the indictment or information to the*
39 *defendant or stating the substance of the charge and calling on the*
40 *defendant to plead thereto. The defendant shall be given a copy of*
41 *the indictment or information before the defendant is called upon to*
42 *plead.*

43 2. In justice court ~~or~~ *or municipal court*, before the trial
44 commences, the complaint must be distinctly read to the defendant
45 before the defendant is called upon to plead.



1 **3. In justice court or municipal court, before the defendant is**
2 **called upon to plead, the court shall determine whether the**
3 **defendant is eligible to complete a preprosecution diversion**
4 **program pursuant to section 2 of this act.**

5 **Sec. 7.** NRS 176.09125 is hereby amended to read as follows:

6 176.09125 1. A person whose record of criminal history
7 indicates the collection of a biological specimen and whose DNA
8 profile and DNA record have been included in the State DNA
9 Database and CODIS pursuant to NRS 176.09123 may make a
10 written request to the Central Repository for Nevada Records of
11 Criminal History, using the form created pursuant to NRS
12 176.09165, that the biological specimen be destroyed and the DNA
13 profile and DNA record be purged from the forensic laboratory, the
14 State DNA Database and CODIS on the grounds that:

15 (a) The conviction on which the authority for keeping the
16 biological specimen or the DNA profile or DNA record has been
17 reversed and the case dismissed; or

18 (b) The arrest which led to the inclusion of the biological
19 specimen or the DNA profile or DNA record:

20 (1) Has resulted in a felony charge that has been resolved by
21 a dismissal, the successful completion of a preprosecution diversion
22 program **†† pursuant to section 4 of this act**, a conditional
23 discharge, an acquittal or an agreement entered into by a prosecuting
24 attorney and a defendant in which the defendant, in exchange for a
25 plea of guilty, guilty but mentally ill or nolo contendere, receives a
26 charge other than a felony; or

27 (2) Has not resulted in any additional criminal charge for a
28 felony within 3 years after the date of the arrest.

29 2. Within 6 weeks after receiving a written request pursuant to
30 subsection 1, the Central Repository for Nevada Records of
31 Criminal History shall forward the request and all supporting
32 documentation to the forensic laboratory holding the biological
33 specimen. Except as otherwise provided in subsection 3, upon
34 receipt of the written request, the forensic laboratory shall destroy
35 any biological specimen from the person and purge the DNA profile
36 of the person if the written request is accompanied by:

37 (a) A certified copy of the court order reversing and dismissing
38 the conviction; or

39 (b) For any biological specimen obtained pursuant to an arrest
40 for which a biological specimen must be provided pursuant to
41 NRS 176.09123:

42 (1) A certified copy of the dismissal, the successful
43 completion of a preprosecution diversion program **†† pursuant to**
44 **section 4 of this act**, a conditional discharge, an acquittal or the
45 agreement entered into by the prosecuting attorney and the



1 defendant in which the defendant, in exchange for a plea of guilty,
2 guilty but mentally ill or nolo contendere, received a charge other
3 than a felony; or

4 (2) A sworn affidavit from the law enforcement agency
5 which submitted the biological specimen that no felony charges
6 arising from the arrest have been filed within 3 years after the date
7 of the arrest.

8 3. The forensic laboratory shall not destroy a biological
9 specimen or purge the DNA profile of a person if the forensic
10 laboratory is notified by a law enforcement agency that the person
11 has a prior felony, a new felony arrest or a pending felony charge
12 for which collection of a biological specimen is authorized pursuant
13 to NRS 176.09123.

14 4. If a forensic laboratory:

15 (a) Determines that the requirements to destroy a biological
16 specimen or purge a DNA profile or DNA record of a person have
17 not been met, the forensic laboratory shall notify the Central
18 Repository of Nevada Records of Criminal History of that fact. The
19 Central Repository shall, as soon as reasonably practicable, notify
20 the person that his or her request has been denied.

21 (b) Destroys a biological specimen and purges a DNA profile
22 pursuant to this section, the forensic laboratory shall take the
23 following actions:

24 (1) Notify the State DNA Database that the DNA profile and
25 DNA record of the person must be purged from the State DNA
26 Database and from CODIS. Upon receipt of such notification, the
27 DNA profile and DNA record of the person must be purged from
28 the State DNA Database and CODIS.

29 (2) Notify the Central Repository for Nevada Records of
30 Criminal History that the forensic laboratory has destroyed the
31 biological specimen and purged the DNA profile of the person and
32 has notified the State DNA Database that the DNA profile and DNA
33 record of the person must be purged from the State DNA Database
34 and CODIS. Upon receipt of such notification, the Central
35 Repository shall, as soon as reasonably practicable, notify the
36 person that his or her request has been granted, his or her biological
37 specimen has been destroyed by the forensic laboratory and his or
38 her DNA profile and DNA record have been purged from the
39 forensic laboratory, the State DNA Database and CODIS.

40 **Sec. 8.** NRS 176A.250 is hereby amended to read as follows:

41 176A.250 A court may establish an appropriate program for
42 the treatment of mental illness or intellectual disabilities to which it
43 may assign a defendant pursuant to NRS 176A.260 **† or section 3**
44 **of this act.** The assignment must include the terms and conditions
45 for successful completion of the program and provide for progress



1 reports at intervals set by the court to ensure that the defendant is
2 making satisfactory progress towards completion of the program.

3 **Sec. 9.** NRS 176A.280 is hereby amended to read as follows:

4 176A.280 A court may establish an appropriate program for
5 the treatment of veterans and members of the military to which it
6 may assign a defendant pursuant to NRS 176A.290 **† or section 3**
7 **of this act.** The assignment must include the terms and conditions
8 for successful completion of the program and provide for progress
9 reports at intervals set by the court to ensure that the defendant is
10 making satisfactory progress towards completion of the program.

11 **Sec. 10.** NRS 179.275 is hereby amended to read as follows:

12 179.275 Where the court orders the sealing of a record
13 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259,
14 453.3365 or 458.330, **or section 5 of this act,** a copy of the order
15 must be sent to:

16 1. The Central Repository for Nevada Records of Criminal
17 History; and

18 2. Each agency of criminal justice and each public or private
19 company, agency, official or other custodian of records named in
20 the order, and that person shall seal the records in his or her custody
21 which relate to the matters contained in the order, shall advise the
22 court of compliance and shall then seal the order.

23 **Sec. 11.** NRS 179.285 is hereby amended to read as follows:

24 179.285 Except as otherwise provided in NRS 179.301:

25 1. If the court orders a record sealed pursuant to NRS
26 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
27 458.330 **† or section 5 of this act:**

28 (a) All proceedings recounted in the record are deemed never to
29 have occurred, and the person to whom the order pertains may
30 properly answer accordingly to any inquiry, including, without
31 limitation, an inquiry relating to an application for employment,
32 concerning the arrest, conviction, dismissal or acquittal and the
33 events and proceedings relating to the arrest, conviction, dismissal
34 or acquittal.

35 (b) The person is immediately restored to the following civil
36 rights if the person's civil rights previously have not been restored:

- 37 (1) The right to vote;
38 (2) The right to hold office; and
39 (3) The right to serve on a jury.

40 2. Upon the sealing of the person's records, a person who is
41 restored to his or her civil rights pursuant to subsection 1 must be
42 given:

43 (a) An official document which demonstrates that the person has
44 been restored to the civil rights set forth in paragraph (b) of
45 subsection 1; and



1 (b) A written notice informing the person that he or she has not
2 been restored to the right to bear arms, unless the person has
3 received a pardon and the pardon does not restrict his or her right to
4 bear arms.

5 3. A person who has had his or her records sealed in this State
6 or any other state and whose official documentation of the
7 restoration of civil rights is lost, damaged or destroyed may file a
8 written request with a court of competent jurisdiction to restore his
9 or her civil rights pursuant to this section. Upon verification that the
10 person has had his or her records sealed, the court shall issue an
11 order restoring the person to the civil rights to vote, to hold office
12 and to serve on a jury. A person must not be required to pay a fee to
13 receive such an order.

14 4. A person who has had his or her records sealed in this State
15 or any other state may present official documentation that the person
16 has been restored to his or her civil rights or a court order restoring
17 civil rights as proof that the person has been restored to the right to
18 vote, to hold office and to serve as a juror.

19 **Sec. 12.** NRS 179.295 is hereby amended to read as follows:

20 179.295 1. The person who is the subject of the records that
21 are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
22 179.259, 453.3365 or 458.330 *or section 5 of this act* may petition
23 the court that ordered the records sealed to permit inspection of the
24 records by a person named in the petition, and the court may order
25 such inspection. Except as otherwise provided in this section,
26 subsection 8 of NRS 179.255 and NRS 179.259 and 179.301, the
27 court may not order the inspection of the records under any other
28 circumstances.

29 2. If a person has been arrested, the charges have been
30 dismissed and the records of the arrest have been sealed, the court
31 may order the inspection of the records by a prosecuting attorney
32 upon a showing that as a result of newly discovered evidence, the
33 person has been arrested for the same or a similar offense and that
34 there is sufficient evidence reasonably to conclude that the person
35 will stand trial for the offense.

36 3. The court may, upon the application of a prosecuting
37 attorney or an attorney representing a defendant in a criminal action,
38 order an inspection of such records for the purpose of obtaining
39 information relating to persons who were involved in the incident
40 recorded.

41 4. This section does not prohibit a court from considering a
42 conviction for which records have been sealed pursuant to NRS
43 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
44 458.330 *or section 5 of this act* in determining whether to grant a



1 petition pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
2 179.259, 453.3365 or 458.330 for a conviction of another offense.

3 **Sec. 13.** NRS 453.580 is hereby amended to read as follows:

4 453.580 1. A court may establish an appropriate treatment
5 program to which it may assign a person pursuant to subsection 4 of
6 NRS 453.336, NRS 453.3363 or 458.300 ~~H~~ or *section 3 of this act,*
7 *or* it may assign such a person to an appropriate treatment provider.
8 The assignment must include the terms and conditions for successful
9 completion of the program and provide for progress reports at
10 intervals set by the court to ensure that the person is making
11 satisfactory progress toward completion of the program.

12 2. A program to which a court assigns a person pursuant to
13 subsection 1 must include:

14 (a) Information and encouragement for the participant to cease
15 abusing alcohol or using controlled substances through educational,
16 counseling and support sessions developed with the cooperation of
17 various community, health, substance abuse, religious, social service
18 and youth organizations;

19 (b) The opportunity for the participant to understand the
20 medical, psychological and social implications of substance abuse;
21 and

22 (c) Alternate courses within the program based on the different
23 substances abused and the addictions of participants.

24 3. If the offense with which the person was charged involved
25 the use or possession of a controlled substance, in addition to the
26 program or as a part of the program, the court must also require
27 random testing or screening to determine that the person is not using
28 a controlled substance.

29 4. Before the court assigns a person to a program pursuant to
30 this section, the person must agree to pay the cost of the program to
31 which the person is assigned and the cost of any additional
32 supervision required pursuant to subsection 3, to the extent of the
33 financial resources of the person. If the person does not have the
34 financial resources to pay all of the related costs, the court shall, to
35 the extent practicable, arrange for the person to be assigned to a
36 program with a treatment provider that receives a sufficient amount
37 of federal or state funding to offset the remainder of the costs.

38 5. If a court places a person under the supervision of a
39 treatment provider to receive treatment for the abuse of alcohol or
40 use of controlled substances pursuant to this section, the court may
41 authorize the person to complete any period of treatment remaining
42 under the supervision of a treatment provider in another jurisdiction
43 if the court determines that:

44 (a) The person is eligible to receive treatment under a program
45 of treatment in the other jurisdiction; and



- 1 (b) The program of treatment in the other jurisdiction is
2 substantially similar to the program of treatment to which the person
3 is assigned in this State.
- 4 6. As used in this section:
- 5 (a) "Treatment provider" has the meaning ascribed to it in
6 NRS 458.010.
- 7 (b) "Treatment provider in another jurisdiction" means a person
8 or a public or private agency, residential treatment center, facility
9 for the treatment of abuse of alcohol or drugs, or voluntary
10 organization which holds a license, certificate or other credential
11 issued by a regulatory agency in another jurisdiction.

