

ASSEMBLY BILL NO. 406—ASSEMBLYMEN HETTRICK, CEGAVSKE, ANDERSON, BACHE, TIFFANY, KOIVISTO, MCCLAIN, ANGLE, GUSTAVSON, CLABORN, MORTENSON, BEERS, NOLAN, BROWER, LESLIE, EVANS, PERKINS, HUMKE, BERMAN, COLLINS, THOMAS, LEE, DE BRAGA, NEIGHBORS, PARKS, VON TOBEL, SEGERBLOM, GOLDWATER, DINI, BUCKLEY, GIUNCHIGLIANI, ARBERRY, GIBBONS, CARPENTER AND MARVEL

MARCH 5, 1999

JOINT SPONSOR: SENATOR JACOBSEN

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning suspension of sentence by justices of the peace and municipal judges. (BDR 1-1120)

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

~

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

AN ACT relating to criminal sentences; requiring a justice of the peace and municipal judge to provide notice and a hearing to an offender before determining whether to revoke or modify the suspension of his sentence; authorizing a justice of the peace and municipal judge to extend the suspension of a sentence if an offender violates or fails to fulfill a condition of suspension and the offender is ordered to serve only a part of the sentence; 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 4 of NRS is hereby amended by adding thereto a
- 2 new section to read as follows:
- 3 ***1. Before a justice of the peace may revoke or modify the suspension***
- 4 ***of a sentence of an offender pursuant to subsection 2, the justice of the***
- 5 ***peace shall hold a hearing to determine whether the offender has***

1 *violated or failed to fulfill a condition of his suspended sentence. The*
2 *justice of the peace shall:*

3 *(a) Provide advance notice to the offender of the:*

4 *(1) Place and time of the hearing;*

5 *(2) Purpose of the hearing; and*

6 *(3) Alleged violation of the suspended sentence; and*

7 *(b) Allow the offender to:*

8 *(1) Appear and speak on his own behalf;*

9 *(2) Obtain counsel;*

10 *(3) Present any relevant letters or other documents and any person*
11 *who may provide relevant information; and*

12 *(4) Confront and question any person who appears against him*
13 *unless, in the opinion of the justice of the peace, the person would be*
14 *subjected to a risk of harm by disclosure of his identity.*

15 *2. Except as otherwise provided in this subsection, if a justice of the*
16 *peace determines pursuant to subsection 1 that an offender has violated*
17 *or failed to fulfill a condition of his suspended sentence, the justice of the*
18 *peace may revoke the suspension of the sentence and cause all or part of*
19 *the sentence to be executed. If the offender is ordered to serve only part*
20 *of the sentence, the justice of the peace may suspend the remainder of*
21 *the sentence for not more than 1 year after the date on which the*
22 *offender violated or failed to fulfill the condition of suspension.*

23 **Sec. 2.** NRS 4.373 is hereby amended to read as follows:

24 4.373 1. Except as otherwise provided in subsection 2 ~~6~~ *or section 1*
25 *of this act*, by specific statute or unless the suspension of a sentence is
26 expressly forbidden, a justice of the peace may suspend, for not more than
27 1 year, the sentence of a person convicted of a misdemeanor. When the
28 circumstances warrant, the justice of the peace may order as a condition of
29 suspension that the offender:

30 (a) Make restitution to the owner of any property that is lost, damaged
31 or destroyed as a result of the commission of the offense;

32 (b) Engage in a program of work for the benefit of the community, for
33 not more than 200 hours;

34 (c) Actively participate in a program of professional counseling at the
35 expense of the offender;

36 (d) Abstain from the use of alcohol and controlled substances;

37 (e) Refrain from engaging in any criminal activity;

38 (f) Engage or refrain from engaging in any other conduct deemed
39 appropriate by the justice of the peace;

40 (g) Submit to a search and seizure by the chief of a department of
41 alternative sentencing, an assistant alternative sentencing officer or any
42 other law enforcement officer at any time of the day or night without a
43 search warrant; and

1 (h) Submit to periodic tests to determine whether the offender is using a
2 controlled substance or consuming alcohol.

3 2. If a person is convicted of a misdemeanor that constitutes domestic
4 violence pursuant to NRS 33.018, the justice of the peace may, after the
5 person has served any mandatory minimum period of confinement, suspend
6 the remainder of the sentence of the person for not more than 3 years upon
7 the condition that the person actively participate in:

8 (a) A program of treatment for the abuse of alcohol or drugs which is
9 certified by the bureau of alcohol and drug abuse of the rehabilitation
10 division of the department of employment, training and rehabilitation;

11 (b) A program for the treatment of persons who commit domestic
12 violence that has been certified pursuant to NRS 228.470; or

13 (c) Both programs set forth in paragraphs (a) and (b),
14 and that he comply with any other condition of suspension ordered by the
15 justice of the peace.

16 3. The justice of the peace may order reports from a person whose
17 sentence is suspended at such times as he deems appropriate concerning the
18 compliance of the offender with the conditions of suspension. If the
19 offender complies with the conditions of suspension to the satisfaction of
20 the justice of the peace, the sentence may be reduced to not less than the
21 minimum period of confinement established for the offense.

22 4. The justice of the peace may issue a warrant for the arrest of an
23 offender who violates or fails to fulfill a condition of suspension.

24 **Sec. 3.** Chapter 5 of NRS is hereby amended by adding thereto a new
25 section to read as follows:

26 *1. Before a municipal judge may revoke or modify the suspension of*
27 *a sentence of an offender pursuant to subsection 2, the municipal judge*
28 *shall hold a hearing to determine whether the offender has violated or*
29 *failed to fulfill a condition of his suspended sentence. The municipal*
30 *judge shall:*

31 *(a) Provide advance notice to the offender of the:*

32 *(1) Place and time of the hearing;*

33 *(2) Purpose of the hearing; and*

34 *(3) Alleged violation of the suspended sentence; and*

35 *(b) Allow the offender to:*

36 *(1) Appear and speak on his own behalf;*

37 *(2) Obtain counsel;*

38 *(3) Present any relevant letters or other documents and any person*
39 *who may provide relevant information; and*

40 *(4) Confront and question any person who appears against him*

41 *unless, in the opinion of the municipal judge, the person would be*

42 *subjected to a risk of harm by disclosure of his identity.*

1 **2. Except as otherwise provided in this subsection, if a municipal**
2 **judge determines pursuant to subsection 1 that an offender has violated**
3 **or failed to fulfill a condition of his suspended sentence, the municipal**
4 **judge may revoke the suspension of the sentence and cause all or part of**
5 **the sentence to be executed. If the offender is ordered to serve only part**
6 **of the sentence, the municipal judge may suspend the remainder of the**
7 **sentence for not more than 1 year after the date on which the offender**
8 **violated or failed to fulfill the condition of suspension.**

9 **Sec. 4.** NRS 5.055 is hereby amended to read as follows:

10 5.055 1. Except as otherwise provided in subsection ~~2~~ **2 or section**
11 **3 of this act**, by specific statute or unless the suspension of a sentence is
12 expressly forbidden, a municipal judge may suspend, for not more than 1
13 year, the sentence of a person convicted of a misdemeanor. When the
14 circumstances warrant, the municipal judge may order as a condition of
15 suspension that the offender:

16 (a) Make restitution to the owner of any property that is lost, damaged
17 or destroyed as a result of the commission of the offense;

18 (b) Engage in a program of work for the benefit of the community, for
19 not more than 200 hours;

20 (c) Actively participate in a program of professional counseling at the
21 expense of the offender;

22 (d) Abstain from the use of alcohol and controlled substances;

23 (e) Refrain from engaging in any criminal activity;

24 (f) Engage or refrain from engaging in any other conduct deemed
25 appropriate by the municipal judge;

26 (g) Submit to a search and seizure by the chief of a department of
27 alternative sentencing, an assistant alternative sentencing officer or any
28 other law enforcement officer at any time of the day or night without a
29 search warrant; and

30 (h) Submit to periodic tests to determine whether the offender is using
31 any controlled substance or alcohol.

32 2. If a person is convicted of a misdemeanor that constitutes domestic
33 violence pursuant to NRS 33.018, the municipal judge may, after the
34 person has served any mandatory minimum period of confinement, suspend
35 the remainder of the sentence of the person for not more than 3 years upon
36 the condition that the person actively participate in:

37 (a) A program of treatment for the abuse of alcohol or drugs which is
38 certified by the bureau of alcohol and drug abuse of the rehabilitation
39 division of the department of employment, training and rehabilitation;

40 (b) A program for the treatment of persons who commit domestic
41 violence that has been certified pursuant to NRS 228.470; or

1 (c) Both programs set forth in paragraphs (a) and (b),
2 and that he comply with any other condition of suspension ordered by the
3 municipal judge.

4 3. The municipal judge may order reports from a person whose
5 sentence is suspended at such times as he deems appropriate concerning the
6 compliance of the offender with the conditions of suspension. If the
7 offender complies with the conditions of suspension to the satisfaction of
8 the municipal judge, the sentence may be reduced to not less than the
9 minimum period of confinement established for the offense.

10 4. The municipal judge may issue a warrant for the arrest of an
11 offender who violates or fails to fulfill a condition of suspension.

12 **Sec. 5.** The amendatory provisions of this act do not apply to offenses
13 that were committed before October 1, 1999.

~