

Amendment No. 867

Senate Amendment to Assembly Bill No. 102 First Reprint (BDR 40-329)

Proposed by: Senate Committee on Health and Education**Amendment Box:** Replaces Amendment No. 741.**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date	
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____		Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____		Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.

BFG/BAW



Date: 5/20/2009

A.B. No. 102—Revises provisions governing problem gambling. (BDR 40-329)



ASSEMBLY BILL NO. 102—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE HEALTH DIVISION)

PREFILED DECEMBER 15, 2008

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing problem gambling. (BDR 40-329)

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

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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 public health; authorizing a court to establish a program of treatment for problem gambling and to assign a person to the program; authorizing a problem gambler to elect to be assigned to such a program under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a court to assign a person who commits certain crimes to an appropriate program of treatment for the abuse of alcohol or drugs established by the court or to an appropriate facility for the treatment of abuse of alcohol or drugs which is certified by the Health Division of the Department of Health and Human Services. (NRS 453.580) **Section 6** of this bill authorizes a court to establish a program for the treatment of problem gambling. Existing law creates the Advisory Committee on Problem Gambling and provides a grant of money or a contract for services to certain programs for the prevention and treatment of problem gambling. (Chapter 458A of NRS) **Sections 7-12** of this bill provide that a problem gambler who has been convicted of certain crimes and who committed the crime in furtherance or as a result of problem gambling is eligible to be assigned by a court to a program of treatment and provide eligibility requirements and conditions that must be completed for such treatment. The conditions upon the election of treatment must include an agreement to pay restitution to the victim of the crime.

Existing law allows a court to seal the records related to a dismissal or acquittal of criminal charges. (NRS 179.255) **Section 14** of this bill allows a court to seal records relating to the setting aside of a conviction if the person satisfactorily completed a program for treatment of problem gambling and satisfied the conditions upon the election of that treatment. The sealing of these records is subject to the same procedures, and has the same effect, as the sealing of records related to a dismissal or acquittal of criminal charges. (NRS 179.255, 179.265-179.301)

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

Section 1. Chapter 458A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 12, inclusive, of this act.

Sec. 2. (Deleted by amendment.)

Sec. 3. (Deleted by amendment.)

Sec. 4. *“Problem gambler” means a person who suffers from problem gambling.*

Sec. 5. *“Problem gambling” has the meaning ascribed to it in NRS 641C.110.*

Sec. 5.5. 1. *“Qualified mental health professional” means any of the following persons:*

(a) *A person who is certified as a problem gambling counselor pursuant to the provisions of chapter 641C of NRS.*

(b) *A person who is certified as a problem gambling counselor intern pursuant to the provisions of chapter 641C of NRS.*

(c) *A physician who is licensed pursuant to the provisions of chapter 630 or 633 of NRS.*

(d) *A nurse who is licensed pursuant to the provisions of chapter 632 of NRS and is authorized by the State Board of Nursing to engage in the practice of counseling problem gamblers.*

(e) *A psychologist who is licensed pursuant to the provisions of chapter 641 of NRS ~~or~~ or a psychological assistant who is registered with the Board of Psychological Examiners pursuant to the provisions of chapter 641 of NRS and the regulations adopted pursuant thereto.*

(f) *A clinical professional counselor or clinical professional counselor intern who is licensed pursuant to chapter 641A of NRS.*

(g) *A marriage and family therapist or marriage and family therapist intern who is licensed pursuant to the provisions of chapter 641A of NRS and is authorized by the Board of Examiners for Marriage and Family Therapists and Clinical Professional Counselors to engage in the practice of counseling problem gamblers.*

(h) *A person who is licensed as a clinical social worker pursuant to the provisions of chapter 641B of NRS and is authorized by the Board of Examiners for Social Workers to engage in the practice of counseling problem gamblers.*

2. As used in this section, *“practice of counseling problem gamblers” has the meaning ascribed to it in NRS 641C.105.*

Sec. 5.7. *“Restitution” means the total amount of money owed to a victim of a crime to compensate the victim for all losses suffered as a result of the crime and any statutory fees and costs associated with the collection of that amount of money.*

Sec. 6. 1. A court may establish a program for the treatment of problem gambling to which it may assign a person pursuant to section 7 of this act. The assignment must ~~include~~ *:*

(a) *Include the terms and conditions for successful completion of the program ~~and provide~~;*

(b) *Require that the person assigned to the program agree to pay restitution as a condition upon the election of treatment; and*

(c) *Provide for progress reports at intervals set by the court to ensure that the person is making satisfactory progress toward completion of the program.*

2. A program established pursuant to this section must be administered by a qualified mental health professional and must include, without limitation:

(a) Information and encouragement for the participant to cease problem gambling through educational, counseling and support sessions;

(b) The opportunity for the participant to understand the medical, psychological, social and financial implications of problem gambling; and

(c) Appropriate referral to community, health, substance abuse, religious and social service agencies for additional resources and related services, as needed.

3. Before the court assigns a person to a program for the treatment of problem gambling, the person must agree to pay the cost of the program to which he is assigned, to the extent of his financial resources. If the person does not have the financial resources to pay all the related costs, the court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs.

Sec. 7. Subject to the provisions of sections 2 to 12, inclusive, of this act, a problem gambler who has been convicted of a crime and who committed the crime in furtherance or as a result of problem gambling is eligible to elect to be assigned by the court to a program for the treatment of problem gambling before he is sentenced unless:

1. The crime is:

(a) A crime against the person punishable as a felony or gross misdemeanor as provided in chapter 200 of NRS;

(b) A crime against a child as defined in NRS 179D.0357;

(c) A sexual offense as defined in NRS 179D.097; or

(d) An act which constitutes domestic violence as set forth in NRS 33.018;

2. The problem gambler has a record of two or more convictions of a crime described in subsection 1 or a similar crime in violation of the laws of another state, or of three or more convictions of any felony;

3. Other criminal proceedings alleging commission of a felony are pending against the problem gambler; ~~or~~

4. The problem gambler is on probation or parole, except that the problem gambler is eligible to make the election if the appropriate probation or parole authority consents to the election or the court finds that the problem gambler is eligible to make the election after considering any objections made by the appropriate probation or parole authority ~~or~~; or

5. The problem gambler has previously been assigned by a court to a program for the treatment of problem gambling, except that the problem gambler is eligible to make the election if the court, in its discretion, finds that the problem gambler is eligible to make such an election.

Sec. 8. 1. If the court ~~has~~ :

(a) Has reason to believe that ~~is~~ :

(1) A person who has been convicted of a crime is a problem gambler ;
and ~~the court finds~~

(2) The person committed the crime in furtherance or as a result of problem gambling; and

(b) Finds that he is eligible to make the election as provided in section 7 of this act, ~~the~~

the court shall hold a hearing before it sentences the person to determine whether or not the person committed the crime in furtherance or as a result of problem gambling and whether or not he should receive treatment under the supervision of a qualified mental health professional. The district attorney may present the court with any evidence concerning whether the person committed the

crime in furtherance or as a result of problem gambling and the advisability of permitting the person to make the election.

2. At the hearing, the court shall advise the person that sentencing will be postponed if he elects to submit to treatment and is accepted into a program for the treatment of problem gambling. In offering the election, the court shall advise him that:

(a) The court may impose any conditions upon the election of treatment that could be imposed as conditions of probation;

(b) If he elects to submit to treatment and is accepted, he ~~may~~:

(1) May be placed under the supervision of the qualified mental health professional for a period of not less than 1 year and not more than 3 years; and

(2) Must agree to pay restitution as a condition upon the election of treatment;

(c) During treatment, he may be confined in an institution or, at the discretion of the qualified mental health professional, released for treatment or supervised care in the community;

(d) If he satisfactorily completes treatment and satisfies the conditions upon the election of treatment, as determined by the court, the conviction will be set aside, but if he does not satisfactorily complete treatment and satisfy the conditions, he may be sentenced and the sentence executed; and

(e) If his conviction is set aside pursuant to section 10 of this act, he may, at any time after the conviction is set aside, file a petition pursuant to NRS 179.255 for the sealing of all records relating to the setting aside of the conviction.

Sec. 9. 1. If the court, after a hearing, determines that a person is entitled to accept the treatment offered pursuant to section 7 of this act, the court shall order a qualified mental health professional to conduct an examination of the person to determine whether he is a problem gambler, whether he committed the crime in furtherance or as a result of problem gambling and whether he is likely to be rehabilitated through treatment. The qualified mental health professional shall report to the court the results of the examination and recommend whether the person should be placed under supervision for treatment.

2. If the court, acting on the report or other relevant information, determines that the person is not a problem gambler, did not commit the crime in furtherance or as a result of problem gambling, is not likely to be rehabilitated through treatment or is otherwise not a good candidate for treatment, he may be sentenced and the sentence executed.

3. If the court determines that the person is a problem gambler, committed the crime in furtherance or as a result of problem gambling, is likely to be rehabilitated through treatment and is a good candidate for treatment, the court may:

(a) Impose any conditions upon the election of treatment that may be imposed as conditions of probation;

(b) Defer sentencing until such time, if any, as sentencing is authorized pursuant to section 10 of this act; and

(c) Place the person under the supervision of a qualified mental health professional for not less than 1 year and not more than 3 years.

↪ The court may require such progress reports on the treatment of the person as it deems necessary.

4. If the court places a person under the supervision of a qualified mental health professional for the purpose of receiving treatment pursuant to sections 2 to 12, inclusive, of this act, the person must agree to pay restitution as a condition upon the election of treatment.

5. A person who is placed under the supervision of a qualified mental health professional shall pay the cost of the program of treatment to which he is assigned and the cost of any additional supervision that may be required, to the extent of his financial resources. The court may issue a judgment in favor of the court or the qualified mental health professional for the costs of the treatment and supervision which remain unpaid at the conclusion of the treatment. The judgment constitutes a lien in like manner as a judgment for money rendered in a civil action, but in no event may the amount of the judgment include any amount of the debt which was extinguished by the successful completion of community service pursuant to subsection ~~5-7~~ 6.

~~5-7~~ 6. If the person who is placed under the supervision of a qualified mental health professional does not have the financial resources to pay all of the related costs:

(a) The court shall, to the extent practicable, arrange for the person to be assigned to a program that receives a sufficient amount of federal or state funding to offset the remainder of the costs; and

(b) The court may order the person to perform supervised community service in lieu of paying the remainder of the costs relating to his treatment and supervision. The community service must be performed for and under the supervising authority of a county, city, town or other political subdivision or agency of this State or a charitable organization that renders service to the community or its residents. The court may require the person to deposit with the court a reasonable sum of money to pay for the cost of policies of insurance against liability for personal injury and damage to property or for industrial insurance, or both, during those periods in which the person performs the community service, unless, if the insurance is industrial insurance, it is provided by the authority for which he performs the community service.

~~5-7~~ 7. No person may be placed under the supervision of a qualified mental health professional pursuant to this section unless the qualified mental health professional accepts him for treatment.

Sec. 10. 1. Whenever a person is placed under the supervision of a qualified mental health professional, his sentencing must be deferred and, except as otherwise provided in subsection 4, his conviction must be set aside if the qualified mental health professional certifies to the court that he has satisfactorily completed the program of treatment and the court approves the certification and determines that the conditions upon the election of treatment have been satisfied.

2. If, upon the expiration of the treatment period, the qualified mental health professional has not certified that the person has completed his program of treatment, the court shall sentence him. If he has satisfied the conditions upon the election of treatment and the court believes that he will complete his treatment voluntarily, the court may set the conviction aside.

3. If, before the treatment period expires, the qualified mental health professional determines that the person is not likely to benefit from further treatment, the qualified mental health professional shall so advise the court. The court shall then:

(a) Arrange for the transfer of the person to a more suitable program, if any; or

(b) Terminate the supervision and conduct a hearing to determine whether the person should be sentenced.

↳ If a person is sentenced pursuant to this section, any time spent in institutional care must be deducted from any sentence imposed.

1 *4. Regardless of whether the person successfully completes treatment, the*
2 *court shall not set aside the conviction of a person who has a record of two or*
3 *more convictions of any felony for two or more separate incidents.*

4 **Sec. 11. 1. The determination of problem gambling and civil commitment**
5 **pursuant to sections 2 to 12, inclusive, of this act shall not be deemed a criminal**
6 **conviction.**

7 *2. The records relating to the setting aside of a conviction pursuant to*
8 *section 10 of this act may be sealed pursuant to NRS 179.255.*

9 **Sec. 12. The provisions of sections 2 to 12, inclusive, of this act do not**
10 **require this State or any of its political subdivisions to establish or finance any**
11 **program for the treatment of problem gambling.**

12 **Sec. 13. NRS 458A.010 is hereby amended to read as follows:**

13 458A.010 As used in this chapter, unless the context otherwise requires, the
14 words and terms defined in NRS 458A.020 to 458A.050, inclusive, *and sections 2*
15 *to ~~5.5~~ 5.7, inclusive, of this act* have the meanings ascribed to them in those
16 sections.

17 **Sec. 14. NRS 179.255 is hereby amended to read as follows:**

18 179.255 1. If a person has been arrested for alleged criminal conduct and
19 the charges are dismissed or such person is acquitted of the charges, the person may
20 petition:

21 (a) The court in which the charges were dismissed, at any time after the date
22 the charges were dismissed; or

23 (b) The court in which the acquittal was entered, at any time after the date of
24 the acquittal,

25 ➤ for the sealing of all records relating to the arrest and the proceedings leading to
26 the dismissal or acquittal.

27 *2. If the conviction of a person is set aside pursuant to section 10 of this act,*
28 *the person may petition the court that set aside the conviction, at any time after*
29 *the conviction has been set aside, for the sealing of all records relating to the*
30 *setting aside of the conviction.*

31 *3. A petition filed pursuant to ~~this section~~ subsection 1 or 2 must:*

32 (a) Be accompanied by a current, verified record of the criminal history of the
33 petitioner received from the local law enforcement agency of the city or county in
34 which the petitioner appeared in court;

35 (b) Include a list of any other public or private agency, company, official and
36 other custodian of records that is reasonably known to the petitioner to have
37 possession of records of the arrest and of the proceedings leading to the dismissal or
38 acquittal and to whom the order to seal records, if issued, will be directed; and

39 (c) Include information that, to the best knowledge and belief of the petitioner,
40 accurately and completely identifies the records to be sealed.

41 ~~[3.]~~ *4. Upon receiving a petition pursuant to ~~this section,~~ subsection 1, the*
42 *court shall notify the law enforcement agency that arrested the petitioner for the*
43 *crime and:*

44 (a) If the charges were dismissed or the acquittal was entered in a district court
45 or ~~Justice Court,~~ *justice court,* the prosecuting attorney for the county; or

46 (b) If the charges were dismissed or the acquittal was entered in a municipal
47 court, the prosecuting attorney for the city.

48 ➤ The prosecuting attorney and any person having relevant evidence may testify
49 and present evidence at the hearing on the petition.

50 ~~[4.]~~ *5. Upon receiving a petition pursuant to subsection 2, the court shall*
51 *notify:*

52 (a) *If the conviction was set aside in a district court or justice court, the*
53 *prosecuting attorney for the county; or*

1 ***(b) If the conviction was set aside in a municipal court, the prosecuting***
2 ***attorney for the city.***

3 ***↳ The prosecuting attorney and any person having relevant evidence may testify***
4 ***and present evidence at the hearing on the petition.***

5 ***6. If, after the hearing on a petition submitted pursuant to subsection 1, the***
6 ***court finds that there has been an acquittal or that the charges were dismissed and***
7 ***there is no evidence that further action will be brought against the person, the court***
8 ***may order sealed all records of the arrest and of the proceedings leading to the***
9 ***acquittal or dismissal which are in the custody of the court, of another court in the***
10 ***State of Nevada or of a public or private company, agency or official in the State of***
11 ***Nevada.***

12 ***7. If, after the hearing on a petition submitted pursuant to subsection 2, the***
13 ***court finds that the conviction of the petitioner was set aside pursuant to section***
14 ***10 of this act, the court may order sealed all records relating to the setting aside***
15 ***of the conviction which are in the custody of the court, of another court in the***
16 ***State of Nevada or of a public or private company, agency or official in the State***
17 ***of Nevada.***