

Amendment No. 210

Assembly Amendment to Assembly Bill No. 271

(BDR 14-903)

Proposed by: Assembly Committee on Judiciary**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.

BAW



Date: 4/5/2009

A.B. No. 271—Makes various changes relating to the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 14-903)



ASSEMBLY BILL No. 271—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION ON THE ADMINISTRATION OF JUSTICE)

MARCH 9, 2009

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to the collection of fines, administrative assessments, fees and restitution owed by certain convicted persons. (BDR 14-903)

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 convicted persons; requiring the Office of Court Administrator to collect fines, administrative assessments, fees and restitution from a person convicted of certain offenses; providing that a person convicted of certain offenses may be placed on administrative probation under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a fine, administrative assessment, fee or restitution imposed upon a defendant is delinquent: (1) the defendant is liable for a collection fee; (2) the entity responsible for collecting the delinquent amount may report the delinquency to credit reporting agencies, may contract with a collection agency and may request that the court take appropriate action; and (3) the court may request that a prosecuting attorney undertake collection efforts, may order the suspension of the driver's license of the defendant and may, in the case of a delinquent fine or administrative assessment, order that the defendant be confined in the appropriate prison, jail or detention facility. (NRS 176.064)

Sections 1, 3 and 6 of this bill provide that if a defendant is ordered to pay a fine, administrative assessment, fee or restitution for a felony or gross misdemeanor, the Office of Court Administrator is responsible for: (1) collecting the fine, administrative assessment, fee or restitution; and (2) distributing the fine, administrative assessment, fee or restitution to the entity entitled to receive it. **Section 1** also requires ;(1) each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections to provide, upon request and in the manner prescribed by the Office of Court Administrator, necessary information to the Office of Court Administrator regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor ~~;~~ and (2) the Office of Court Administrator to collaborate with each judicial district, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution.

Existing law provides that a court may suspend the execution of the sentence of a person and grant probation to the person under certain circumstances. (NRS 176A.100) **Sections 2 and 5** of this bill provide that at the time of granting probation to a person convicted of a

felony or gross misdemeanor ~~or during or at the termination of the period of probation of such a person,~~ the court may also place the person on administrative probation, to commence after termination of the period of probation, if any fine, administrative assessment, fee or restitution is imposed against the person as part of his sentence. During the period of administrative probation: (1) the Office of Court Administrator is required to supervise the person to ensure the collection of any fine, administrative assessment, fee or restitution owed; (2) the person is not required to pay any fee for supervision; and (3) the person remains subject to certain statutory provisions that authorize the court to take action against the person, including suspending his driver's license, ~~and ordering him to be imprisoned for willful failure to pay the amount owed.~~

Section 4 of this bill authorizes the court to terminate the period of probation of a person and order that the person be placed on administrative probation if the person has satisfied all conditions of his probation other than the payment of any fines, administrative assessments, fees or restitution. (NRS 176A.500)

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

Section 1. NRS 176.064 is hereby amended to read as follows:

176.064 1. *If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter for a felony or gross misdemeanor, the Office of Court Administrator shall ~~or~~, in collaboration with the appropriate district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution:*

(a) Collect the fine, administrative assessment, fee or restitution from each defendant through any lawful means, including, without limitation, taking any or all of the actions set forth in this section; and

(b) Distribute the fine, administrative assessment, fee or restitution collected to the entity that is entitled to receive the fine, administrative assessment, fee or restitution.

2. If a fine, administrative assessment, fee or restitution is imposed upon a defendant pursuant to this chapter, whether or not the fine, administrative assessment, fee or restitution is in addition to any other punishment, and the fine, administrative assessment, fee or restitution or any part of it remains unpaid after the time established by the court for its payment, the defendant is liable for a collection fee, to be imposed by the court at the time it finds that the fine, administrative assessment, fee or restitution is delinquent, of:

(a) Not more than \$100, if the amount of the delinquency is less than \$2,000.

(b) Not more than \$500, if the amount of the delinquency is \$2,000 or greater, but is less than \$5,000.

(c) Ten percent of the amount of the delinquency, if the amount of the delinquency is \$5,000 or greater.

~~{2. A state}~~

3. *The Office of Court Administrator or a local entity that is responsible for collecting a delinquent fine, administrative assessment, fee or restitution may, in addition to attempting to collect the fine, administrative assessment, fee or restitution through any other lawful means, take any or all of the following actions:*

(a) Report the delinquency to reporting agencies that assemble or evaluate information concerning credit.

(b) Request that the court take appropriate action pursuant to subsection ~~{3}~~ 4.

(c) Contract with a collection agency licensed pursuant to NRS 649.075 to collect the delinquent amount and the collection fee. The collection agency must be

1 paid as compensation for its services an amount not greater than the amount of the
2 collection fee imposed pursuant to subsection ~~4-4~~ 2, in accordance with the
3 provisions of the contract.

4 ~~3-4~~ 4. The court may, on its own motion or at the request of ~~{a-state}~~ *the*
5 *Office of Court Administrator* or *a* local entity that is responsible for collecting the
6 delinquent fine, administrative assessment, fee or restitution, take any or all of the
7 following actions, in the following order of priority if practicable:

8 (a) Request that a prosecuting attorney undertake collection of the delinquency,
9 including, without limitation, the original amount and the collection fee, by
10 attachment or garnishment of the defendant's property, wages or other money
11 receivable.

12 (b) Order the suspension of the driver's license of the defendant. If the
13 defendant does not possess a driver's license, the court may prohibit the defendant
14 from applying for a driver's license for a specified period. If the defendant is
15 already the subject of a court order suspending or delaying the issuance of his
16 driver's license, the court may order the additional suspension or delay, as
17 appropriate, to apply consecutively with the previous order. At the time the court
18 issues an order suspending the driver's license of a defendant pursuant to this
19 paragraph, the court shall require the defendant to surrender to the court all driver's
20 licenses then held by the defendant. The court shall, within 5 days after issuing the
21 order, forward to the Department of Motor Vehicles the licenses, together with a
22 copy of the order. At the time the court issues an order pursuant to this paragraph
23 delaying the ability of a defendant to apply for a driver's license, the court shall,
24 within 5 days after issuing the order, forward to the Department of Motor Vehicles
25 a copy of the order. The Department of Motor Vehicles shall report a suspension
26 pursuant to this paragraph to an insurance company or its agent inquiring about the
27 defendant's driving record, but such a suspension must not be considered for the
28 purpose of rating or underwriting.

29 (c) For a delinquent fine or administrative assessment, order the confinement
30 of the person in the appropriate prison, jail or detention facility, as provided in NRS
31 176.065 and 176.075.

32 ~~4-4~~ 5. Money collected from a collection fee imposed pursuant to subsection
33 ~~4-4~~ 2 must be distributed in the following manner:

34 (a) Except as otherwise provided in paragraph (d), if the money is collected by
35 or on behalf of a municipal court, the money must be deposited in a special fund in
36 the appropriate city treasury. The city may use the money in the fund only to
37 develop and implement a program for the collection of fines, administrative
38 assessments, fees and restitution.

39 (b) Except as otherwise provided in paragraph (d), if the money is collected by
40 or on behalf of a Justice Court or district court, the money must be deposited in a
41 special fund in the appropriate county treasury. The county may use the money in
42 the special fund only to develop and implement a program for the collection of
43 fines, administrative assessments, fees and restitution.

44 (c) Except as otherwise provided in paragraph (d), if the money is collected by
45 ~~{a-state-entity,}~~ *the Office of Court Administrator*, the money must be deposited in
46 an account, which is hereby created in the State Treasury. The *Office of Court*
47 *Administrator* may use the money in the account ~~{only}~~ to develop and implement a
48 program for the collection of fines, administrative assessments, fees and restitution
49 ~~{in this State,}~~ *and to pay any costs associated with the administrative probation of*
50 *persons as set forth in section 2 of this act.*

51 (d) If the money is collected by a collection agency, after the collection agency
52 has been paid its fee pursuant to the terms of the contract, any remaining money
53 must be deposited in the state, city or county treasury, whichever is appropriate, to

be used ~~only~~ for the purposes set forth in paragraph (a), (b) or (c) of this subsection.

6. To carry out the provisions of this section ~~for each~~ :

(a) Each district court, the Chief of the Division of Parole and Probation of the Department of Public Safety and the Director of the Department of Corrections shall, upon the request of and in the manner prescribed by the Office of Court Administrator, provide to the Office of Court Administrator such information in their possession regarding the amount of any fine, administrative assessment, fee or restitution owed by a person convicted of a felony or gross misdemeanor as determined necessary by the Office of Court Administrator.

(b) The Office of Court Administrator shall collaborate with each district court, the Department of Public Safety, the Department of Corrections and any other state or local agency involved in the collection of fines, administrative assessments, fees or restitution.

Sec. 2. Chapter 176A of NRS is hereby amended by adding thereto a new section to read as follows:

1. ~~At the time of granting probation to~~ If a person is convicted of a felony or gross misdemeanor and granted probation pursuant to this chapter, the court may, at the time of granting probation or, upon request of the Office of Court Administrator or the Chief Parole and Probation Officer, during or at the termination of the period of probation, also impose a period of administrative probation, to commence after termination of the period of probation, if any fine, administrative assessment, fee or restitution is imposed on the person as part of his judgment and sentence.

2. During the period of administrative probation, the Office of Court Administrator shall supervise the person placed on administrative probation to ensure the collection of any fine, administrative assessment, fee or restitution imposed on the person as part of his judgment and sentence.

3. The period of administrative probation must last for a fixed time as determined by the court, except that the court may terminate the administrative probation before the fixed time if the person placed on administrative probation has paid all required fines, administrative assessments, fees and restitution.

4. A person placed on administrative probation:

(a) Is not required to pay any fee for supervision pursuant to NRS 213.1076 or any other provision of law during the period of administrative probation; and

(b) ~~Remains~~ Except as otherwise provided in this paragraph, remains subject to the provisions of NRS 176.064 ~~for the~~, and the Office of Court Administrator may attempt to collect any fines, administrative assessments, fees and restitution owed by the person through any lawful means, including, without limitation, taking any or all of the actions set forth in NRS 176.064. A person placed on administrative probation is not subject to confinement in the appropriate prison, jail or detention facility, as provided in NRS 176.065 and 176.075, for a delinquent fine or administrative assessment.

5. Except as otherwise provided in this section, administrative probation pursuant to this section shall be deemed not to constitute a form of probation for the purposes of any other provision of law.

Sec. 3. NRS 176A.430 is hereby amended to read as follows:

176A.430 1. The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured. In appropriate

1 circumstances, the court shall include as a condition of probation or suspension of
2 sentence that the defendant execute an assignment of wages earned by him while on
3 probation or subject to the conditions of suspension of sentence to the ~~[Division]~~
4 *Office of Court Administrator* for restitution.

5 2. All money received by the ~~[Division]~~ *Office of Court Administrator* for
6 restitution for:

7 (a) One victim may; and

8 (b) More than one victim must,

9 ➤ be deposited with the State Treasurer for credit to the Restitution Trust Fund. All
10 payments from the Fund must be paid as other claims against the State are paid.

11 3. If restitution is not required, the court shall set forth the circumstances
12 upon which it finds restitution impracticable in its order of probation or suspension
13 of sentence.

14 4. Failure to comply with the terms of an order for restitution is a violation of
15 a condition of probation or suspension of sentence unless the defendant's failure
16 has been caused by economic hardship resulting in his inability to pay the amount
17 due. The defendant is entitled to a hearing to show the existence of such a hardship.

18 5. If, within 3 years after the defendant has been discharged from probation,
19 the ~~[Division]~~ *Office of Court Administrator* has not located the person to whom
20 the restitution was ordered, the money paid by the defendant must be deposited
21 with the State Treasurer for credit to the Fund for the Compensation of Victims of
22 Crime.

23 **Sec. 4.** NRS 176A.500 is hereby amended to read as follows:

24 176A.500 1. The period of probation or suspension of sentence may be
25 indeterminate or may be fixed by the court and may at any time be extended or
26 terminated by the court, but the period, including any extensions thereof, must not
27 be more than:

28 (a) Three years for a:

29 (1) Gross misdemeanor; or

30 (2) Suspension of sentence pursuant to NRS 176A.260 or 453.3363; or

31 (b) Five years for a felony.

32 ➤ *At any time during the period of probation or suspension of sentence, if a*
33 *probationer has satisfied all conditions of probation other than the payment of*
34 *any fines, administrative assessments, fees or restitution, the court may terminate*
35 *the period of probation and order that the person be placed on administrative*
36 *probation as set forth in section 2 of this act. Any period of administrative*
37 *probation ordered by the court pursuant to this subsection or section 2 of this act*
38 *must not be counted or considered for the purposes of the limitation on the period*
39 *of probation set forth in this subsection.*

40 2. At any time during probation or suspension of sentence, the court may
41 issue a warrant for violating any of the conditions of probation or suspension of
42 sentence and cause the defendant to be arrested. Except for the purpose of giving a
43 dishonorable discharge from probation, and except as otherwise provided in this
44 subsection, the time during which a warrant for violating any of the conditions of
45 probation is in effect is not part of the period of probation. If the warrant is
46 cancelled or probation is reinstated, the court may include any amount of that time
47 as part of the period of probation.

48 3. Any parole and probation officer or any peace officer with power to arrest
49 may arrest a probationer without a warrant, or may deputize any other officer with
50 power to arrest to do so by giving him a written statement setting forth that the
51 probationer has, in the judgment of the parole and probation officer, violated the
52 conditions of probation. Except as otherwise provided in subsection 4, the parole
53 and probation officer, or the peace officer, after making an arrest shall present to

1 the detaining authorities, if any, a statement of the charges against the probationer.
2 The parole and probation officer shall at once notify the court which granted
3 probation of the arrest and detention or residential confinement of the probationer
4 and shall submit a report in writing showing in what manner the probationer has
5 violated the conditions of probation.

6 4. A parole and probation officer or a peace officer may immediately release
7 from custody without any further proceedings any person he arrests without a
8 warrant for violating a condition of probation if the parole and probation officer or
9 peace officer determines that there is no probable cause to believe that the person
10 violated the condition of probation.

11 5. An offender who is sentenced to serve a period of probation for a felony
12 who has no serious infraction of the regulations of the Division, the terms and
13 conditions of his probation or the laws of the State recorded against him, and who
14 performs in a faithful, orderly and peaceable manner the duties assigned to him,
15 must be allowed for the period of his probation a deduction of 20 days from that
16 period for each month he serves.

17 **Sec. 5.** NRS 213.1076 is hereby amended to read as follows:

18 213.1076 1. The Division shall:

19 (a) Except as otherwise provided in this section, charge each parolee,
20 probationer or person supervised by the Division through residential confinement a
21 fee to defray the cost of his supervision.

22 (b) Adopt by regulation a schedule of fees to defray the costs of supervision of
23 a parolee, probationer or person supervised by the Division through residential
24 confinement. The regulation must provide for a monthly fee of at least \$30.

25 2. The Chief may waive the fee to defray the cost of supervision, in whole or
26 in part, if he determines that payment of the fee would create an economic hardship
27 on the parolee, probationer or person supervised by the Division through residential
28 confinement.

29 3. Unless waived pursuant to subsection 2, the payment by a parolee,
30 probationer or person supervised by the Division through residential confinement of
31 a fee charged pursuant to subsection 1 is a condition of his parole, probation or
32 residential confinement.

33 *4. This section does not apply to a person who is subject to administrative*
34 *probation pursuant to NRS 176A.500 or section 2 of this act.*

35 **Sec. 6.** NRS 213.126 is hereby amended to read as follows:

36 213.126 1. Unless complete restitution was made while the parolee was
37 incarcerated, the Board shall impose as a condition of parole, in appropriate
38 circumstances, a requirement that the parolee make restitution to the person or
39 persons named in the statement of parole conditions, including restitution to a
40 governmental entity for expenses related to extradition, at the times specified in the
41 statement unless the Board finds that restitution is impracticable. The amount of
42 restitution must be the amount set by the court pursuant to NRS 176.033. In
43 appropriate circumstances, the Board shall include as a condition of parole that the
44 parolee execute an assignment of wages earned by him while on parole to the
45 ~~[Division]~~ *Office of Court Administrator* for restitution.

46 2. All money received by the ~~[Division]~~ *Office of Court Administrator* for
47 restitution for:

48 (a) One victim may; and

49 (b) More than one victim must,

50 ➤ be deposited in the State Treasury for credit to the Restitution Trust Fund which
51 is hereby created.

1 3. The ~~{Division}~~ *Office of Court Administrator* shall make pro rata
2 payments from the money received from the parolee to each person to whom the
3 restitution was ordered pursuant to NRS 176.033. Such a payment must be made:

4 (a) If the money received from the parolee in a single payment is \$200 or more
5 or if the total accumulated amount received from the parolee is \$200 or more,
6 whenever money is received from the parolee.

7 (b) If the money received from the parolee in a single payment is less than
8 \$200 or if the total accumulated amount received from the parolee is less than \$200,
9 at the end of each year until the parolee has paid the entire restitution owed.

10 ➤ Any money received from the parolee that is remaining at the end of each year
11 must be paid at that time in pro rata payments to each person to whom the
12 restitution was ordered. A final pro rata payment must be made to such persons
13 when the parolee pays the entire restitution owed.

14 4. A person to whom restitution was ordered pursuant to NRS 176.033 may at
15 any time file an application with the ~~{Division}~~ *Office of Court Administrator*
16 requesting the ~~{Division}~~ *Office of Court Administrator* to make a pro rata
17 payment from the money received from the parolee. If the ~~{Division}~~ *Office of*
18 *Court Administrator* finds that the applicant is suffering a serious financial
19 hardship and is in need of financial assistance, the ~~{Division}~~ *Office of Court*
20 *Administrator* shall pay to the applicant his pro rata share of the money received
21 from the parolee.

22 5. All payments from the Fund must be paid as other claims against the State
23 are paid.

24 6. If restitution is not required, the Board shall set forth the circumstances
25 upon which it finds restitution impracticable in its statement of parole conditions.

26 7. Failure to comply with a restitution requirement imposed by the Board is a
27 violation of a condition of parole unless the parolee's failure was caused by
28 economic hardship resulting in his inability to pay the amount due. The defendant is
29 entitled to a hearing to show the existence of that hardship.

30 8. If, within 3 years after the parolee is discharged from parole, the ~~{Division}~~
31 *Office of Court Administrator* has not located the person to whom the restitution
32 was ordered, the money paid to the ~~{Division}~~ *Office of Court Administrator* by the
33 parolee must be deposited in the fund for the compensation of victims of crime.

34 **Sec. 7.** This act becomes effective on ~~July 1, 2009.~~ **January 1, 2010.**