

Amendment No. 788

Senate Amendment to Assembly Bill No. 470 First Reprint (BDR 14-1062)

Proposed by: Senate Committee on Judiciary

Amends: Summary: Yes Title: Yes 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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

VG/NCA



Date: 5/24/2017

A.B. No. 470—Creates a preprosecution diversion program for defendants charged with certain misdemeanor offenses. (BDR 14-1062)



ASSEMBLY BILL NO. 470—ASSEMBLYMAN YEAGER

MARCH 27, 2017

Referred to Committee on Judiciary

SUMMARY—~~{Creates}~~ **Authorizes the creation of** 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.

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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 criminal procedure; ~~{creating}~~ **authorizing the creation of** a preprosecution diversion program for defendants charged with certain misdemeanor offenses; establishing qualifications for participation in ~~{the}~~ **such a** program; requiring discharge of the defendant and dismissal of the original charge upon the successful completion of ~~{the}~~ **such a** 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:

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

Section 3 of this bill ~~{requires}~~ authorizes a justice court or municipal court to develop a preprosecution diversion program. Section 3 requires a justice court or municipal court to establish the terms and conditions which a defendant must complete as part of such a preprosecution diversion program, if a defendant is ordered to complete such a

program pursuant to **section 2**. **Section 3** authorizes the court to include in the terms and conditions that the defendant complete a program of treatment and to impose any appropriate sanctions on the defendant, which may include, without limitation, community service, restitution or a curfew. **Section 3** requires the court to issue an order containing the terms and conditions for successful completion of ~~that~~ such a preprosecution diversion program. **Section 3** provides that the defendant must: (1) complete the program before the date established by the court in the order, which must not be more than 18 months after the date of the order; and (2) appear before the court at least once every 3 months for a status hearing. **Section 4** of this bill requires the court to dismiss the charge or charges against the defendant if he or she successfully completes the terms and conditions of ~~that~~ such a preprosecution diversion program. Finally, **section 4** of this bill requires a defendant who fails to complete the terms and conditions of ~~that~~ such a preprosecution diversion program to be dismissed from the program and be prosecuted in the normal manner provided by law.

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

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

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

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

Sec. 2. 1. At the arraignment of a defendant in justice court or municipal court, but before the entry of a plea, the court ~~shall~~ may determine whether the defendant is eligible for assignment to ~~complete~~ a preprosecution diversion program ~~if established pursuant to section 3 of this act. The court shall receive input from the prosecuting attorney and the attorney for the defendant, if any, whether the defendant would benefit from and is eligible for assignment to the program.~~

2. A defendant ~~is~~ may be determined to be eligible by the court for assignment to ~~complete~~ a preprosecution diversion program if the defendant:

(a) Is charged with a misdemeanor other than:

(1) A crime of violence as defined in NRS 200.408; ~~for~~

(2) Vehicular manslaughter as described in NRS 484B.657;

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

(4) A minor traffic offense; and

(b) Has not previously been:

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

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

3. If a defendant is determined to be eligible for assignment to ~~complete~~ a preprosecution diversion program pursuant to subsection 2, the justice court or municipal court may order the defendant to complete ~~a preprosecution diversion~~ the program pursuant to subsection 5 of section 3 of this act.

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

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

Sec. 3. 1. ~~If a defendant is ordered by a~~ A justice court or municipal court ~~to complete~~ may establish a preprosecution diversion program to which it may assign a defendant if he or she is determined to be eligible pursuant to section 2 of this act. ~~the court shall develop an appropriate preprosecution diversion program for the defendant. The court shall~~

2. If a defendant is determined to be eligible for assignment to a preprosecution diversion program pursuant to section 2 of this act, the justice or municipal court must receive input from the prosecuting attorney, the attorney for the defendant, if any, and the defendant relating to the terms and conditions ~~for the defendant's participation in the program.~~

~~3. A preprosecution diversion program~~ created ~~established~~ by a justice court or municipal court pursuant to this section may include, without limitation:

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

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

(c) Any other factor which may be relevant to determining an appropriate program of treatment or sanctions to require for participation of ~~the~~ a defendant in the preprosecution diversion program.

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

~~5. The justice court or municipal court shall~~ , when assigning a defendant to a preprosecution diversion program, issue an order setting forth the terms and conditions for successful completion of the preprosecution diversion program, which may include, without limitation:

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

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

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

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

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

~~5. The~~

6. A defendant assigned to a preprosecution diversion program shall pay the cost of any program of treatment required by this section to the extent of his or her financial resources. The court shall not refuse to place a defendant in a program of treatment if the defendant does not have the financial resources to pay any or all of the costs of such program.

~~6.7. 7.~~ If restitution is ordered to be paid pursuant to subsection ~~4.4. 5.~~ the defendant must make a good faith effort to pay the required amount of restitution in full. If the justice court or municipal court determines that a defendant is unable to pay such restitution, the court must require the defendant to enter into a judgment by confession for the amount of restitution.

Sec. 4. 1. If the justice court or municipal court determines that a defendant has successfully completed the terms and conditions of a preprosecution diversion program ordered pursuant to subsection ~~4.4. 5.~~ of section 3 of this act, the court must discharge the defendant and dismiss the indictment, information, complaint or citation.

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

3. If the justice court or municipal court determines that a defendant has not successfully completed the terms or conditions of a preprosecution diversion program ordered pursuant to subsection ~~4.4. 5.~~ of section 3 of this act, the court must issue an order terminating the participation of the defendant in the preprosecution diversion program and order the defendant to appear for an arraignment to enter a plea based on the original indictment, information, complaint or citation pursuant to NRS 174.015.

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

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

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

174.015 1. ~~Arraignment~~ Except as otherwise provided in subsection 3, arraignment shall be conducted in open court and shall consist of reading the

1 indictment or information to the defendant or stating the substance of the charge
2 and calling on the defendant to plead thereto. The defendant shall be given a copy
3 of the indictment or information before the defendant is called upon to plead.

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

7 3. *In justice court or municipal court, before the defendant is called upon to*
8 *plead, the court shall determine whether the defendant is eligible for assignment*
9 *to ~~complete~~ a preprosecution diversion program pursuant to section 2 of this*
10 *act.*

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

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

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

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

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

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

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

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

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

43 (1) A certified copy of the dismissal, the successful completion of a
44 preprosecution diversion program ~~or~~ *pursuant to section 4 of this act*, a conditional
45 discharge, an acquittal or the agreement entered into by the prosecuting attorney
46 and the defendant in which the defendant, in exchange for a plea of guilty, guilty
47 but mentally ill or nolo contendere, received a charge other than a felony; or

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

51 3. The forensic laboratory shall not destroy a biological specimen or purge the
52 DNA profile of a person if the forensic laboratory is notified by a law enforcement
53 agency that the person has a prior felony, a new felony arrest or a pending felony

charge for which collection of a biological specimen is authorized pursuant to NRS 176.09123.

4. If a forensic laboratory:

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

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

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

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

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

176A.250 A court may establish an appropriate program for the treatment of mental illness or intellectual disabilities to which it may assign a defendant pursuant to NRS 176A.260 **or section 3 of this act**. The assignment must include the terms and conditions for successful completion of the program and provide for progress reports at intervals set by the court to ensure that the defendant is making satisfactory progress towards completion of the program.

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

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

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

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

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

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

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

179.285 Except as otherwise provided in NRS 179.301:

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

(a) All proceedings recounted in the record are deemed never to have occurred, and the person to whom the order pertains may properly answer accordingly to any inquiry, including, without limitation, an inquiry relating to an application for

1 employment, concerning the arrest, conviction, dismissal or acquittal and the events
2 and proceedings relating to the arrest, conviction, dismissal or acquittal.

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

- 5 (1) The right to vote;
- 6 (2) The right to hold office; and
- 7 (3) The right to serve on a jury.

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

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

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

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

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

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

27 179.295 1. The person who is the subject of the records that are sealed
28 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
29 458.330 **or section 5 of this act** may petition the court that ordered the records
30 sealed to permit inspection of the records by a person named in the petition, and the
31 court may order such inspection. Except as otherwise provided in this section,
32 subsection 8 of NRS 179.255 and NRS 179.259 and 179.301, the court may not
33 order the inspection of the records under any other circumstances.

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

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

44 4. This section does not prohibit a court from considering a conviction for
45 which records have been sealed pursuant to NRS 176A.265, 176A.295, 179.245,
46 179.255, 179.259, 453.3365 or 458.330 **or section 5 of this act** in determining
47 whether to grant a petition pursuant to NRS 176A.265, 176A.295, 179.245,
48 179.255, 179.259, 453.3365 or 458.330 for a conviction of another offense.

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

50 453.580 1. A court may establish an appropriate treatment program to
51 which it may assign a person pursuant to subsection 4 of NRS 453.336, NRS
52 453.3363 or 458.300 **or section 3 of this act, or** it may assign such a person to an
53 appropriate treatment provider. The assignment must include the terms and

1 conditions for successful completion of the program and provide for progress
2 reports at intervals set by the court to ensure that the person is making satisfactory
3 progress toward completion of the program.

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

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

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

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

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

18 4. Before the court assigns a person to a program pursuant to this section, the
19 person must agree to pay the cost of the program to which the person is assigned
20 and the cost of any additional supervision required pursuant to subsection 3, to the
21 extent of the financial resources of the person. If the person does not have the
22 financial resources to pay all of the related costs, the court shall, to the extent
23 practicable, arrange for the person to be assigned to a program with a treatment
24 provider that receives a sufficient amount of federal or state funding to offset the
25 remainder of the costs.

26 5. If a court places a person under the supervision of a treatment provider to
27 receive treatment for the abuse of alcohol or use of controlled substances pursuant
28 to this section, the court may authorize the person to complete any period of
29 treatment remaining under the supervision of a treatment provider in another
30 jurisdiction if the court determines that:

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

33 (b) The program of treatment in the other jurisdiction is substantially similar to
34 the program of treatment to which the person is assigned in this State.

35 6. As used in this section:

36 (a) "Treatment provider" has the meaning ascribed to it in NRS 458.010.

37 (b) "Treatment provider in another jurisdiction" means a person or a public or
38 private agency, residential treatment center, facility for the treatment of abuse of
39 alcohol or drugs, or voluntary organization which holds a license, certificate or
40 other credential issued by a regulatory agency in another jurisdiction.