

(Reprinted with amendments adopted on May 24, 2019)

THIRD REPRINT

A.B. 222

ASSEMBLY BILL NO. 222—COMMITTEE ON JUDICIARY

FEBRUARY 21, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to specialty courts.
(BDR 14-842)

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 specialty courts; revising provisions relating to the eligibility of certain defendants for participation in certain programs in specialty courts; authorizing certain courts to enter a judgment of conviction against a defendant before placing the defendant on probation and requiring the defendant to participate in certain programs in specialty courts; authorizing certain courts to set aside a judgment of conviction of a defendant upon completion of certain programs in specialty courts under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a district court, justice court or municipal court to place certain defendants who are veterans or members of the military on probation upon terms and conditions that must include attendance and successful completion of an appropriate program for the treatment of such defendants. However, the court may not assign a defendant to such a program without the prosecuting attorney stipulating to the assignment if: (1) the offense committed by the defendant involved the use or threatened use of force or violence; or (2) the defendant was previously convicted of a felony that involved the use or threatened use of force or violence. (NRS 176A.290) Existing law also contains a similar provision relating to the eligibility of defendants for assignment to a program for defendants with mental illness or intellectual disabilities. (NRS 176A.260)

The Nevada Supreme Court has held that subsection 2 of NRS 176A.290, which provides that the court may not assign a defendant who is a veteran or member of the military to a program without the prosecuting attorney stipulating to the assignment, violates the separation of powers clause in the Nevada Constitution. (*State v. Hearn*, 134 Nev. Adv. Op. 96 (2018)) The Court further held that the language providing for such a stipulation by the prosecuting attorney is severable



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from the statute, thereby rendering all defendants who committed a violent offense or who have previously been convicted of a violent felony ineligible for assignment to the program. (*Id.* at 10)

Sections 2 and 3 of this bill, which pertain to the eligibility for assignment to the program for defendants who are veterans or members of the military: (1) remove the language in the statute found unconstitutional by the Nevada Supreme Court that requires the stipulation by the prosecuting attorney before the court may assign to the program a defendant who committed a violent offense or who has previously been convicted of a violent felony; and (2) provide that a defendant who has committed a category A felony or a sexual offense punishable as a category B felony is ineligible for assignment to the program. **Section 1** of this bill, which pertains to a program of treatment for defendants with mental illness or intellectual disabilities, makes similar changes.

Existing law authorizes a district court, justice court or municipal court, as applicable, to, without entering a judgment of conviction, suspend further proceedings and place a defendant on probation and require the defendant to complete a program for defendants who are veterans or members of the military under certain circumstances. Upon the defendant's fulfillment of the terms and conditions of the program, existing law requires the district court, justice court or municipal court, as applicable, to discharge the defendant and dismiss the proceedings. (NRS 176A.290) **Section 3** of this bill: (1) retains existing law as applicable to justice courts and municipal courts; and (2) authorizes a district court to enter a judgment of conviction against the defendant for certain felony or gross misdemeanor offenses before placing the defendant on probation and requiring the defendant to complete the program for defendants who are veterans or members of the military. **Section 3** also requires the district court to discharge and dismiss the proceedings against or set aside the judgment of conviction of the defendant unless the defendant: (1) has previously been convicted of a felony under certain circumstances; or (2) has previously failed to complete a specialty court program. If the defendant has been previously convicted of a felony or has previously failed to complete a specialty court program, **section 3** authorizes the district court to discharge and dismiss the proceedings against or set aside the judgment of conviction of the defendant.

Section 1 authorizes a court with a program of treatment for defendants with mental illness or intellectual disabilities to take similar action as a district court with a program for the treatment of defendants who are veterans or members of the military.

Section 2 also removes the provision in existing law that makes a defendant who has previously been assigned to the program ineligible for assignment to the program, thereby making such a defendant eligible for assignment to the program.

Section 4 of this bill makes a conforming change.

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

Section 1. NRS 176A.260 is hereby amended to read as follows:

176A.260 1. Except as otherwise provided in subsection 2, if a defendant who suffers from mental illness or is intellectually disabled tenders a plea of guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, any



offense for which the suspension of sentence or the granting of probation is not prohibited by statute, the court may ~~[, without]~~ :

(a) *Without* entering a judgment of conviction and with the consent of the defendant, suspend further proceedings and place the defendant on probation upon terms and conditions that must include attendance and successful completion of a program established pursuant to NRS 176A.250 ~~[,]~~ ; or

(b) *Enter a judgment of conviction and place the defendant on probation upon terms and conditions that must include attendance and successful completion of a program established pursuant to NRS 176A.250.*

2. If the offense committed by the defendant ~~[involved the use or threatened use of force or violence or if the defendant was previously convicted in this State or in any other jurisdiction of a felony that involved the use or threatened use of force or violence, the court may not assign the defendant to the program unless the prosecuting attorney stipulates to the assignment.]~~ *is a category A felony or a sexual offense as defined in NRS 179D.097 that is punishable as a category B felony, the defendant is not eligible for assignment to the program.*

3. Upon violation of a term or condition:

(a) The court may enter a judgment of conviction , *if applicable*, and proceed as provided in the section pursuant to which the defendant was charged.

(b) Notwithstanding the provisions of paragraph (e) of subsection 2 of NRS 193.130, the court may order the defendant to the custody of the Department of Corrections if the offense is punishable by imprisonment in the state prison.

4. Upon fulfillment of the terms and conditions, the court ~~[shall]~~ :

(a) *Shall* discharge the defendant and dismiss the proceedings ~~[,]~~ *or set aside the judgment of conviction, as applicable, unless the defendant:*

(1) *Has been previously convicted in this State or in any other jurisdiction of a felony; or*

(2) *Has previously failed to complete a specialty court program; or*

(b) *May discharge the defendant and dismiss the proceedings or set aside the judgment of conviction, as applicable, if the defendant:*

(1) *Has been previously convicted in this State or in any other jurisdiction of a felony; or*

(2) *Has previously failed to complete a specialty court program.*



5. Discharge and dismissal pursuant to this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, indictment or information. 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 that arrest, indictment, information or trial in response to an inquiry made of the defendant for any purpose.

Sec. 2. NRS 176A.287 is hereby amended to read as follows:

176A.287 1. Except as otherwise provided in subsection 2, a defendant is not eligible for assignment to a program of treatment established pursuant to NRS 176A.280 if : ~~{the defendant:}~~

(a) ~~{Has previously been assigned to such a program;}~~ *The offense committed by the defendant was a category A felony or a sexual offense as defined in NRS 179D.097 that is punishable as a category B felony;* or

(b) ~~{Was}~~ *The defendant was* discharged or released from the Armed Forces of the United States, a reserve component thereof or the National Guard under dishonorable conditions.

2. A defendant described in paragraph (b) of subsection 1 may be assigned to a program of treatment established pursuant to NRS 176A.280 if a justice court, municipal court or district court, as applicable, determines that extraordinary circumstances exist which warrant the assignment of the defendant to the program.

Sec. 3. NRS 176A.290 is hereby amended to read as follows:

176A.290 1. Except as otherwise provided in ~~{subsection 2 and}~~ NRS 176A.287, if a defendant described in NRS 176A.280 tenders a plea of guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of ~~{, any} :~~

(a) *Any offense punishable as a felony or gross misdemeanor* for which the suspension of sentence or the granting of probation is not prohibited by statute, the district court ~~{, justice court or municipal court, as applicable,}~~ may ~~{, without} :~~

(1) *Without* entering a judgment of conviction and with the consent of the defendant, suspend further proceedings and place the defendant on probation upon terms and conditions that must include attendance and successful completion of a program established pursuant to NRS 176A.280 ~~{,}~~ ; or

(2) *Enter a judgment of conviction and place the defendant on probation upon terms and conditions that must include*



attendance and successful completion of a program established pursuant to NRS 176A.280; or

(b) Any offense punishable as a misdemeanor for which the suspension of sentence is not prohibited by statute, the justice court or municipal court, as applicable, may, without entering a judgment of conviction and with the consent of the defendant, suspend further proceedings upon terms and conditions that must include attendance and successful completion of a program established pursuant to NRS 176A.280.

~~2. If the offense committed by the defendant involved the use or threatened use of force or violence or if the defendant was previously convicted in this State or in any other jurisdiction of a felony that involved the use or threatened use of force or violence, the district court, justice court or municipal court, as applicable, may not assign the defendant to the program unless the prosecuting attorney stipulates to the assignment. For the purposes of this subsection, in determining whether an offense involved the use or threatened use of force or violence, the district court, justice court or municipal court, as applicable, shall consider the facts and circumstances surrounding the offense, including, without limitation, whether the defendant intended to place another person in reasonable apprehension of bodily harm.~~

~~—3.}~~ Upon violation of a term or condition:

(a) The district court, justice court or municipal court, as applicable, may impose sanctions against the defendant for the violation, but allow the defendant to remain in the program. Before imposing a sanction, the court shall notify the defendant of the violation and provide the defendant an opportunity to respond. Any sanction imposed pursuant to this paragraph:

(1) Must be in accordance with any applicable guidelines for sanctions established by the National Association of Drug Court Professionals or any successor organization; and

(2) May include, without limitation, imprisonment in a county or city jail or detention facility for a term set by the court, which must not exceed 25 days.

(b) The district court, justice court or municipal court, as applicable, may enter a judgment of conviction, *if applicable*, and proceed as provided in the section pursuant to which the defendant was charged.

(c) Notwithstanding the provisions of paragraph (e) of subsection 2 of NRS 193.130, the district court may order the defendant to the custody of the Department of Corrections if the offense is punishable by imprisonment in the state prison.

~~[4.}~~ 3. Except as otherwise provided in subsection 5, upon fulfillment of the terms and conditions ~~[, the]~~:



(a) *The district court ~~[, justice court or municipal court, as applicable, shall]~~:*

(1) Shall discharge the defendant and dismiss the proceedings ~~[, or set aside the judgment of conviction, as applicable, unless the defendant:~~

(I) Has been previously convicted in this State or in any other jurisdiction of a felony; or

(II) Has previously failed to complete a specialty court program; or

(2) May discharge the defendant and dismiss the proceedings or set aside the judgment of conviction, as applicable, if the defendant:

(I) Has been previously convicted in this State or in any other jurisdiction of a felony; or

(II) Has previously failed to complete a specialty court program; or

(b) The justice court or municipal court, as applicable, shall discharge the defendant and dismiss the proceedings.

4. Discharge and dismissal pursuant to this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, complaint, indictment or information. 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 that arrest, complaint, indictment, information or trial in response to an inquiry made of the defendant for any purpose.

5. If the defendant was charged with a violation of NRS 200.485, 484C.110 or 484C.120, upon fulfillment of the terms and conditions, the district court, justice court or municipal court, as applicable, may conditionally dismiss the charges. If a court conditionally dismisses the charges, the court shall notify the defendant that the conditionally dismissed charges are a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail in a future case, but are 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. Conditional dismissal restores the defendant, in the contemplation of the law, to the status occupied before the arrest, complaint, indictment or information. 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 that arrest, complaint, indictment, information or trial in response to an inquiry made of the defendant for any purpose.

Sec. 4. NRS 176A.295 is hereby amended to read as follows:

176A.295 1. Except as otherwise provided in subsection 2, after a defendant is discharged from probation pursuant to NRS 176A.290, the justice court, municipal court or district court, as applicable, shall order sealed all documents, papers and exhibits in the defendant's record, 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 court's order if the defendant fulfills the terms and conditions imposed by the court and the Division. The justice court, municipal court or district court, as applicable, shall order those records sealed without a hearing unless the Division petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.

2. If the defendant is charged with a violation of NRS 200.485, 484C.110 or 484C.120 and the charges are conditionally dismissed as provided in ~~subsection 5 of~~ NRS 176A.290, not sooner than 7 years after such a conditional dismissal and upon the filing of a petition by the defendant, the justice court, municipal court or district court, as applicable, shall order that all documents, papers and exhibits in the defendant's record, 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 court's order be sealed. The justice court, municipal court or district court, as applicable, shall order those records sealed without a hearing unless the Division petitions the court, for good cause shown, not to seal the records and requests a hearing thereon.

3. If the justice court, municipal court or district court, as applicable, orders sealed the record of a defendant discharged or whose charges were conditionally dismissed pursuant to NRS 176A.290, the court shall send a copy of the order to each agency or officer named in the order. Each such agency or officer shall notify the justice court, municipal court or district court, as applicable, in writing of its compliance with the order.

Sec. 4.5. (Deleted by amendment.)

Sec. 5. The amendatory provisions of this act apply to offenses committed before, on or after the effective date of this act.

Sec. 6. This act becomes effective upon passage and approval.

