

Amendment No. 804

Senate Amendment to Assembly Bill No. 222 First Reprint	(BDR 14-842)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No 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.



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 a court 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 a court to dismiss the proceedings against or 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 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 3 also authorizes a court to enter a judgment of conviction against the defendant 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 a 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 a court to discharge and dismiss the proceedings against or set aside the judgment of conviction of the defendant.

Section 1 of this bill, which pertains to a program of treatment for defendants with mental illness or intellectual disabilities, makes a similar change as in sections 2 and 3.

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~~ Sections 4 and 4.5 of this bill makes conforming changes.

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~~ ; 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~~ 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~~ 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~~ 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 offense 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~~ :

(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.280 ~~or~~ ; 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.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, ~~4.]~~ upon fulfillment of the terms and conditions, the district court, justice court or municipal court, as applicable ~~[shall]~~:

(a) Shall discharge the defendant and dismiss the proceedings ~~4.]~~ 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.

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. ~~4.]~~ 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

1 contemplation of the law, to the status occupied before the arrest, complaint,
2 indictment or information. The defendant may not be held thereafter under any law
3 to be guilty of perjury or otherwise giving a false statement by reason of failure to
4 recite or acknowledge that arrest, complaint, indictment, information or trial in
5 response to an inquiry made of the defendant for any purpose.

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

7 176A.295 1. Except as otherwise provided in subsection 2, after a defendant
8 is discharged from probation pursuant to NRS 176A.290, the justice court,
9 municipal court or district court, as applicable, shall order sealed all documents,
10 papers and exhibits in the defendant's record, minute book entries and entries on
11 dockets, and other documents relating to the case in the custody of such other
12 agencies and officers as are named in the court's order if the defendant fulfills the
13 terms and conditions imposed by the court and the Division. The justice court,
14 municipal court or district court, as applicable, shall order those records sealed
15 without a hearing unless the Division petitions the court, for good cause shown, not
16 to seal the records and requests a hearing thereon.

17 2. If the defendant is charged with a violation of NRS 200.485, 484C.110 or
18 484C.120 and the charges are conditionally dismissed as provided in ~~subsection 5~~
19 ~~of~~ NRS 176A.290, not sooner than 7 years after such a conditional dismissal and
20 upon the filing of a petition by the defendant, the justice court, municipal court or
21 district court, as applicable, shall order that all documents, papers and exhibits in
22 the defendant's record, minute book entries and entries on dockets, and other
23 documents relating to the case in the custody of such other agencies and officers as
24 are named in the court's order be sealed. The justice court, municipal court or
25 district court, as applicable, shall order those records sealed without a hearing
26 unless the Division petitions the court, for good cause shown, not to seal the records
27 and requests a hearing thereon.

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

34 **Sec. 4.5.** NRS 484C.400 is hereby amended to read as follows:

35 484C.400 1. Unless a greater penalty is provided pursuant to NRS
36 484C.430 or 484C.440, and except as otherwise provided in NRS 484C.410, a
37 person who violates the provisions of NRS 484C.110 or 484C.120:

38 (a) For the first offense within 7 years, is guilty of a misdemeanor. Unless the
39 person is allowed to undergo treatment as provided in NRS 484C.320, the court
40 shall:

41 (1) Except as otherwise provided in subparagraph (4) of this paragraph or
42 subsection 3 of NRS 484C.420, order the person to pay tuition for an educational
43 course on the abuse of alcohol and controlled substances approved by the
44 Department and complete the course within the time specified in the order, and the
45 court shall notify the Department if the person fails to complete the course within
46 the specified time;

47 (2) Unless the sentence is reduced pursuant to NRS 484C.320, sentence the
48 person to imprisonment for not less than 2 days nor more than 6 months in jail, or
49 to perform not less than 48 hours, but not more than 96 hours, of community
50 service while dressed in distinctive garb that identifies the person as having violated
51 the provisions of NRS 484C.110 or 484C.120;

52 (3) Fine the person not less than \$400 nor more than \$1,000; and

(4) If the person is found to have a concentration of alcohol of 0.18 or more in his or her blood or breath, order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Unless the sentence is reduced pursuant to NRS 484C.330, the court shall:

(1) Sentence the person to:

(I) Imprisonment for not less than 10 days nor more than 6 months in jail; or

(II) Residential confinement for not less than 10 days nor more than 6 months, in the manner provided in NRS 4.376 to 4.3766, inclusive, or 5.0755 to 5.078, inclusive;

(2) Fine the person not less than \$750 nor more than \$1,000, or order the person to perform an equivalent number of hours of community service while dressed in distinctive garb that identifies the person as having violated the provisions of NRS 484C.110 or 484C.120; and

(3) Order the person to attend a program of treatment for the abuse of alcohol or drugs pursuant to the provisions of NRS 484C.360.

➤ A person who willfully fails or refuses to complete successfully a term of residential confinement or a program of treatment ordered pursuant to this paragraph is guilty of a misdemeanor.

(c) Except as otherwise provided in NRS 484C.340, for a third offense within 7 years, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and shall be further punished by a fine of not less than \$2,000 nor more than \$5,000. An offender who is imprisoned pursuant to the provisions of this paragraph must, insofar as practicable, be segregated from offenders whose crimes were violent and, insofar as practicable, be assigned to an institution or facility of minimum security.

2. An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section:

(a) When evidenced by a conviction; or

(b) If the offense is conditionally dismissed pursuant to NRS 176A.290 or dismissed in connection with successful completion of a diversionary program or specialty court program or the judgment of conviction of such an offense was set aside pursuant to NRS 176A.290.

➤ without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. A term of confinement imposed pursuant to the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months after the date of conviction or, if the offender was sentenced pursuant to NRS 484C.320 or 484C.330 and the suspension of his or her sentence was revoked, within 6 months after the date of revocation. Any time for which the offender is confined must consist of not less than 24 consecutive hours.

1 4. Jail sentences simultaneously imposed pursuant to this section and NRS
2 482.456, 483.560, 484C.410 or 485.330 must run consecutively.

3 5. If the defendant was transporting a person who is less than 15 years of age
4 in the motor vehicle at the time of the violation, the court shall consider that fact as
5 an aggravating factor in determining the sentence of the defendant.

6 6. For the purpose of determining whether one offense occurs within 7 years
7 of another offense, any period of time between the two offenses during which, for
8 any such offense, the offender is imprisoned, serving a term of residential
9 confinement, placed under the supervision of a treatment provider, on parole or on
10 probation must be excluded.

11 7. As used in this section, unless the context otherwise requires, "offense"
12 means:

13 (a) A violation of NRS 484C.110, 484C.120 or 484C.430;

14 (b) A homicide resulting from driving or being in actual physical control of a
15 vehicle while under the influence of intoxicating liquor or a controlled substance or
16 resulting from any other conduct prohibited by NRS 484C.110, 484C.130 or
17 484C.430; or

18 (c) A violation of a law of any other jurisdiction that prohibits the same or
19 similar conduct as set forth in paragraph (a) or (b).

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

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