

Amendment No. 397

Assembly Amendment to Assembly Bill No. 405	(BDR 14-729)
Proposed by: Assembly 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.

MR/BAW



Date: 4/21/2023

A.B. No. 405—Revises provisions relating to court programs for the treatment of mental illness or intellectual disabilities. (BDR 14-729)



ASSEMBLY BILL NO. 405—COMMITTEE ON JUDICIARY

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to court programs for the treatment of mental illness or intellectual disabilities. (BDR 14-729)

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 criminal procedure; authorizing a justice court or municipal court to establish a program for the treatment of mental illness or intellectual disabilities; ~~revising provisions regarding the eligibility of a defendant for assignment to such a program;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a district court to establish an appropriate program for the treatment of mental illness or intellectual disabilities to which it may assign an eligible defendant. Under existing law, a justice court or municipal court is authorized, upon approval of a district court, to transfer original jurisdiction of a case involving such an eligible defendant to the district court. (NRS 4.370, 5.050, 176A.250, 176A.255) **Sections 1, 2 and 4-6** of this bill additionally authorize a justice court or municipal court to establish such a program and to transfer original jurisdiction of a case involving an eligible defendant to the district court if the justice court or municipal court has not established such a program.

~~Existing law provides that if a defendant who suffers from a 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, certain offenses, the district court may assign the defendant to a program for the treatment of mental illness or intellectual disabilities under certain circumstances. Under existing law, if the offense committed by the defendant is a category A felony or a sexual offense that is punishable as a category B felony, the defendant is not eligible for assignment to such a program. (NRS 176A.260) Section 3 of this bill revises such eligibility for assignment to the program and authorizes a defendant who tenders a plea of guilty, guilty but mentally ill or nolo contendere to, or is found guilty or guilty but mentally ill of, a sexual offense that is punishable as a category B felony to be assigned to the program, but only as a condition of probation. Under section 3, such a defendant is not eligible for a suspension or deferment of proceedings or a dismissal of a case after the defendant completes the program.~~

Existing law provides that upon a violation of a term or condition of such a program, the court may: (1) enter a judgement of conviction and proceed as provided in the section pursuant to which the defendant was charged; and (2) order the defendant to the custody of the Department of Corrections if the offense is punishable by imprisonment in the state prison. (NRS 176A.260) **Section 3** authorizes the imposition of certain sanctions against a defendant for such a violation.

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

Section 1. NRS 176A.250 is hereby amended to read as follows:

176A.250 A *district court, justice court or municipal* 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 174.032, 176.211, 176A.260 or 176A.400. 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. 2. NRS 176A.255 is hereby amended to read as follows:

176A.255 1. ~~[(A)]~~ *If a justice court or municipal court has not established a program pursuant to NRS 176A.250, the* justice court or ~~[(A)]~~ municipal court, *as applicable*, may, upon approval of the district court, transfer original jurisdiction to the district court of a case involving an eligible defendant.

2. As used in this section, "eligible defendant" means a person who:

(a) Has not tendered a plea of guilty, guilty but mentally ill or nolo contendere to, or been found guilty or guilty but mentally ill of, an offense that is a misdemeanor;

(b) Appears to suffer from mental illness or to be intellectually disabled; and

(c) Would benefit from assignment to a program established pursuant to NRS 176A.250.

Sec. 3. NRS 176A.260 is hereby amended to read as follows:

176A.260 1. Except as otherwise provided in subparagraph (1) of paragraph (a) of subsection 3 of NRS 176.211, 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 *district court, justice court or municipal* court, *as applicable*, may:

(a) Without entering a judgment of conviction and with the consent of the defendant, suspend or defer 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 if the *district court, justice court or municipal* court determines that the defendant is eligible for participation in such a program; 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, if the *district court, justice court or municipal* court determines that the defendant is eligible for participation in such a program.

2. Except as otherwise provided in subsection 4, a defendant is eligible for participation in a program established pursuant to NRS 176A.250 if the defendant is diagnosed as having a mental illness or an intellectual disability:

(a) After an in-person clinical assessment by:

(1) A counselor who is licensed or certified to make such a diagnosis; or

(2) A duly licensed physician qualified by the Board of Medical Examiners to make such a diagnosis; and

(b) If the defendant appears to suffer from a mental illness, pursuant to a mental health screening that indicates the presence of a mental illness.

3. A counselor or physician who diagnoses a defendant as having a mental illness or intellectual disability shall submit a report and recommendation to the

1 *district court, justice court or municipal* court concerning the length and type of
2 treatment required for the defendant within the maximum probation terms
3 applicable to the offense for which the defendant is convicted.

4 4. If ~~the offense committed by~~ the defendant ~~is a~~ ~~tenders a plea of guilty,~~
5 ~~guilty but mentally ill or nolo contendere to, or is found guilty but mentally ill of,~~

6 ~~(a) A} category A felony~~ ~~the defendant is not eligible for assignment to the~~
7 ~~program}~~ ~~or a~~

8 ~~(b) A} sexual offense as defined in NRS 179D.097 that is punishable as a~~
9 ~~category B felony, the defendant~~ ~~may be assigned to the program after being~~
10 ~~placed on probation upon terms and conditions that the defendant attend and~~
11 ~~successfully complete the program. The defendant}~~ is not eligible for assignment
12 ~~to~~ ~~the~~

13 ~~(1) A suspension or deferment of proceedings pursuant to paragraph (a)~~
14 ~~of subsection 1; or~~

15 ~~(2) A dismissal of the action after completion of}~~ the program ~~the~~ ~~pursuant~~
16 ~~to subsection 6 or 7}~~

17 5. Upon violation of a term or condition:

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

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

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

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

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

35 6. Except as otherwise provided in subsection 8, upon fulfillment of the terms
36 and conditions, the *district court, justice court or municipal court* ~~H~~ *, as*
37 *applicable:*

38 (a) Shall discharge the defendant and dismiss the proceedings or set aside the
39 judgment of conviction, as applicable, unless the defendant:

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

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

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

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

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

48 7. Discharge and dismissal pursuant to this section is without adjudication of
49 guilt and is not a conviction for purposes of this section or for purposes of
50 employment, civil rights or any statute or regulation or license or questionnaire or
51 for any other public or private purpose, but is a conviction for the purpose of
52 additional penalties imposed for second or subsequent convictions or the setting of
53 bail. Discharge and dismissal restores the defendant, in the contemplation of the

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

6 8. If the defendant was charged with a violation of NRS 200.485, 484C.110
7 or 484C.120, upon fulfillment of the terms and conditions, the district court, justice
8 court or municipal court, as applicable, may conditionally dismiss the charges or set
9 aside the judgment of conviction, as applicable. If a court conditionally dismisses
10 the charges or sets aside the judgment of conviction, the court shall notify the
11 defendant that any conditionally dismissed charge or judgment of conviction that is
12 set aside is a conviction for the purpose of additional penalties imposed for second
13 or subsequent convictions or the setting of bail in a future case, but is not a
14 conviction for purposes of employment, civil rights or any statute or regulation or
15 license or questionnaire or for any other public or private purpose. Conditional
16 dismissal or having a judgment of conviction set aside restores the defendant, in the
17 contemplation of the law, to the status occupied before the arrest, complaint,
18 indictment or information. The defendant may not be held thereafter under any law
19 to be guilty of perjury or otherwise giving a false statement by reason of failure to
20 recite or acknowledge that arrest, complaint, indictment, information or trial in
21 response to an inquiry made of the defendant for any purpose.

22 **Sec. 4.** NRS 176A.265 is hereby amended to read as follows:

23 176A.265 1. Except as otherwise provided in subsection 2, after a defendant
24 is discharged from probation or a case is dismissed pursuant to NRS 176A.260, the
25 *district court, justice court or municipal court, as applicable*, shall order sealed all
26 documents, papers and exhibits in the defendant's record, minute book entries and
27 entries on dockets, and other documents relating to the case in the custody of such
28 other agencies and officers as are named in the court's order if the defendant fulfills
29 the terms and conditions imposed by the court and the Division. The *district court,*
30 *justice court or municipal court, as applicable*, shall order those records sealed
31 without a hearing unless the Division petitions the court, for good cause shown, not
32 to seal the records and requests a hearing thereon.

33 2. If the defendant is charged with a violation of NRS 200.485, 484C.110 or
34 484C.120 and the charges are conditionally dismissed or the judgment of
35 conviction is set aside as provided in NRS 176A.260, not sooner than 7 years after
36 the charges are conditionally dismissed or the judgment of conviction is set aside
37 and upon the filing of a petition by the defendant, the justice court, municipal court
38 or district court, as applicable, shall order that all documents, papers and exhibits in
39 the defendant's record, minute book entries and entries on dockets, and other
40 documents relating to the case in the custody of such other agencies and officers as
41 are named in the court's order be sealed. The justice court, municipal court or
42 district court, as applicable, shall order those records sealed without a hearing
43 unless the Division petitions the court, for good cause shown, not to seal the records
44 and requests a hearing thereon.

45 3. If the *district court, justice court or municipal court, as applicable*, orders
46 sealed the record of a defendant who is discharged from probation, whose case is
47 dismissed, whose charges were conditionally dismissed or whose judgment of
48 conviction was set aside pursuant to NRS 176A.260, the court shall send a copy of
49 the order to each agency or officer named in the order. Each such agency or officer
50 shall notify the *district court, justice court or municipal court, as applicable*, in
51 writing of its compliance with the order.

1 **Sec. 5.** NRS 4.370 is hereby amended to read as follows:

2 4.370 1. Except as otherwise provided in subsection 2, justice courts have
3 jurisdiction of the following civil actions and proceedings and no others except as
4 otherwise provided by specific statute:

5 (a) In actions arising on contract for the recovery of money only, if the sum
6 claimed, exclusive of interest, does not exceed \$15,000.

7 (b) In actions for damages for injury to the person, or for taking, detaining or
8 injuring personal property, or for injury to real property where no issue is raised by
9 the verified answer of the defendant involving the title to or boundaries of the real
10 property, if the damage claimed does not exceed \$15,000.

11 (c) Except as otherwise provided in paragraph (l), in actions for a fine, penalty
12 or forfeiture not exceeding \$15,000, given by statute or the ordinance of a county,
13 city or town, where no issue is raised by the answer involving the legality of any
14 tax, impost, assessment, toll or municipal fine.

15 (d) In actions upon bonds or undertakings conditioned for the payment of
16 money, if the sum claimed does not exceed \$15,000, though the penalty may
17 exceed that sum. Bail bonds and other undertakings posted in criminal matters may
18 be forfeited regardless of amount.

19 (e) In actions to recover the possession of personal property, if the value of the
20 property does not exceed \$15,000.

21 (f) To take and enter judgment on the confession of a defendant, when the
22 amount confessed, exclusive of interest, does not exceed \$15,000.

23 (g) Of actions for the possession of lands and tenements where the relation of
24 landlord and tenant exists, when damages claimed do not exceed \$15,000 or when
25 no damages are claimed.

26 (h) Of actions when the possession of lands and tenements has been unlawfully
27 or fraudulently obtained or withheld, when damages claimed do not exceed \$15,000
28 or when no damages are claimed.

29 (i) Of suits for the collection of taxes, where the amount of the tax sued for
30 does not exceed \$15,000.

31 (j) Of actions for the enforcement of mechanics' liens, where the amount of the
32 lien sought to be enforced, exclusive of interest, does not exceed \$15,000.

33 (k) Of actions for the enforcement of liens of owners of facilities for storage,
34 where the amount of the lien sought to be enforced, exclusive of interest, does not
35 exceed \$15,000.

36 (l) In actions for a civil penalty imposed for a violation of NRS 484D.680.

37 (m) Except as otherwise provided in this paragraph, in any action for the
38 issuance of a temporary or extended order for protection against domestic violence
39 pursuant to NRS 33.020. A justice court does not have jurisdiction in an action for
40 the issuance of a temporary or extended order for protection against domestic
41 violence:

42 (1) In a county whose population is 100,000 or more and less than
43 700,000;

44 (2) In any township whose population is 100,000 or more located within a
45 county whose population is 700,000 or more;

46 (3) If a district court issues a written order to the justice court requiring that
47 further proceedings relating to the action for the issuance of the order for protection
48 be conducted before the district court; or

49 (4) Where the adverse party against whom the order is sought is under 18
50 years of age.

51 (n) Except as otherwise provided in this paragraph, in any action for the
52 issuance of an emergency or extended order for protection against high-risk
53 behavior pursuant to NRS 33.570 or 33.580. A justice court does not have

jurisdiction in an action for the issuance of an emergency or extended order for protection against high-risk behavior:

(1) In a county whose population is 100,000 or more but less than 700,000;
(2) In any township whose population is 100,000 or more located within a county whose population is 700,000 or more;

(3) If a district court issues a written order to the justice court requiring that further proceedings relating to the action for the issuance of the order for protection be conducted before the district court; or

(4) Where the adverse party against whom the order is sought is under 18 years of age.

(o) In an action for the issuance of a temporary or extended order for protection against harassment in the workplace pursuant to NRS 33.200 to 33.360, inclusive, where the adverse party against whom the order is sought is 18 years of age or older.

(p) In small claims actions under the provisions of chapter 73 of NRS.

(q) In actions to contest the validity of liens on mobile homes or manufactured homes.

(r) In any action pursuant to NRS 200.591 for the issuance of a protective order against a person alleged to be committing the crime of stalking, aggravated stalking or harassment where the adverse party against whom the order is sought is 18 years of age or older.

(s) In any action pursuant to NRS 200.378 for the issuance of a protective order against a person alleged to have committed the crime of sexual assault where the adverse party against whom the order is sought is 18 years of age or older.

(t) In actions transferred from the district court pursuant to NRS 3.221.

(u) In any action for the issuance of a temporary or extended order pursuant to NRS 33.400.

(v) In any action seeking an order pursuant to NRS 441A.195.

(w) In any action to determine whether a person has committed a civil infraction punishable pursuant to NRS 484A.703 to 484A.705, inclusive.

2. The jurisdiction conferred by this section does not extend to civil actions, other than for forcible entry or detainer, in which the title of real property or mining claims or questions affecting the boundaries of land are involved.

3. Justice courts have jurisdiction of all misdemeanors and no other criminal offenses except as otherwise provided by specific statute. Upon approval of the district court, a justice court may transfer original jurisdiction of a misdemeanor to the district court for the purpose of assigning an offender to , *if the justice court has not established its own program pursuant to:*

(a) *NRS 176A.250*, a program established *by the district court* pursuant to ~~NRS 176A.250 or, if the justice court has not established a program pursuant to that section.~~

(b) NRS 176A.280, ~~to~~ a program established *by the district court* pursuant to that section.

4. Except as otherwise provided in subsections 5, 6 and 7, in criminal cases the jurisdiction of justices of the peace extends to the limits of their respective counties.

5. A justice of the peace may conduct a pretrial release hearing for a person located outside of the township of the justice of the peace.

6. In the case of any arrest made by a member of the Nevada Highway Patrol, the jurisdiction of the justices of the peace extends to the limits of their respective counties and to the limits of all counties which have common boundaries with their respective counties.

7. Each justice court has jurisdiction of any violation of a regulation governing vehicular traffic on an airport within the township in which the court is established.

Sec. 6. NRS 5.050 is hereby amended to read as follows:

5.050 1. Municipal courts have jurisdiction of civil actions or proceedings:

(a) For the violation of any ordinance of their respective cities.

(b) To determine whether a person has committed a civil infraction punishable pursuant to NRS 484A.703 to 484A.705, inclusive.

(c) To prevent or abate a nuisance within the limits of their respective cities.

2. Except as otherwise provided in subsection 2 of NRS 173.115, the municipal courts have jurisdiction of all misdemeanors committed in violation of the ordinances of their respective cities. Upon approval of the district court, a municipal court may transfer original jurisdiction of a misdemeanor to the district court for the purpose of assigning an offender to , *if the municipal court has not established its own program pursuant to:*

(a) *NRS 176A.250*, a program established *by the district court* pursuant to ~~NRS 176A.250 or, if the municipal court has not established a program pursuant to that section.~~

(b) NRS 176A.280, ~~to~~ a program established *by the district court* pursuant to that section.

3. The municipal courts have jurisdiction of:

(a) Any action for the collection of taxes or assessments levied for city purposes, when the principal sum thereof does not exceed \$2,500.

(b) Actions to foreclose liens in the name of the city for the nonpayment of those taxes or assessments when the principal sum claimed does not exceed \$2,500.

(c) Actions for the breach of any bond given by any officer or person to or for the use or benefit of the city, and of any action for damages to which the city is a party, and upon all forfeited recognizances given to or for the use or benefit of the city, and upon all bonds given on appeals from the municipal court in any of the cases named in this section, when the principal sum claimed does not exceed \$2,500.

(d) Actions for the recovery of personal property belonging to the city, when the value thereof does not exceed \$2,500.

(e) Actions by the city for the collection of any damages, debts or other obligations when the amount claimed, exclusive of costs or attorney's fees, or both if allowed, does not exceed \$2,500.

(f) Actions seeking an order pursuant to NRS 441A.195.

4. Nothing contained in subsection 3 gives the municipal court jurisdiction to determine any such cause when it appears from the pleadings that the validity of any tax, assessment or levy, or title to real property, is necessarily an issue in the cause, in which case the court shall certify the cause to the district court in like manner and with the same effect as provided by law for certification of causes by justice courts.

5. The municipal courts may hold a jury trial for any matter:

(a) Within the jurisdiction of the municipal court; and

(b) Required by the United States Constitution, the Nevada Constitution or statute.

Sec. 7. This act becomes effective on July 1, 2023.