

SENATE BILL NO. 184—COMMITTEE ON FINANCE

(ON BEHALF OF CLARK COUNTY)

FEBRUARY 15, 1999

Referred to Committee on Finance

SUMMARY—Provides that certain prisoners may be assigned to custody of court to participate in program of treatment for abuse of alcohol or drugs and makes appropriation to Second Judicial District Court and Eighth Judicial District Court. (BDR 16-262)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Contains Appropriation not included in Executive Budget.

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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 programs of treatment for abuse of alcohol or drugs; providing that certain prisoners may be assigned to the custody of a court to participate in a program of treatment for the abuse of alcohol or drugs; making an appropriation to the Second Judicial District Court and the Eighth Judicial District Court for the continuation of their programs of treatment for abuse of alcohol or drugs by certain persons; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 209 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 5, inclusive, of this act.
3 **Sec. 2. 1.** *Except as otherwise provided in this section, if an*
4 *advisory board has been created pursuant to section 4 of this act in the*
5 *judicial district in which an offender was sentenced to imprisonment, the*
6 *director shall, after consulting with the division of parole and probation*
7 *of the department of motor vehicles and public safety, refer the offender*
8 *to the advisory board if the director believes that the offender would*
9 *participate successfully in and benefit from a program of treatment for*
10 *the abuse of alcohol or drugs established pursuant to NRS 453.580 and:*
11 (a) *The offender has:*

1 (1) Established a position of employment in the community, or a
2 judge in the judicial district in which the offender was sentenced will
3 assist the offender to establish a position of employment in the
4 community; and

5 (2) Demonstrated an ability to pay for all or part of the costs of his
6 participation in a program of treatment for the abuse of alcohol or drugs
7 established pursuant to NRS 453.580, including, without limitation, costs
8 for room and board, and to meet any existing obligation for restitution to
9 any victim of his crime, or a judge in the judicial district in which the
10 offender was sentenced will assist the offender to ensure that the offender
11 has the ability to pay for such costs and to meet such obligations; and

12 (b) The offender:

13 (1) Is within 2 years of his probable release from prison as
14 determined by the director; or

15 (2) Is imprisoned as a result of having had his parole or probation
16 revoked on or after July 1, 1998, for a reason other than for committing
17 a crime while on parole or probation.

18 2. Except as otherwise provided in this section, if the director is
19 notified by an advisory board pursuant to section 4 of this act that an
20 offender should be assigned to the custody of a court to participate in a
21 program of treatment established pursuant to NRS 453.580, the director
22 shall assign the offender to the custody of the court to participate in the
23 program for not longer than the remainder of his sentence.

24 3. The director shall adopt, by regulation, standards providing which
25 offenders are eligible to be assigned to the custody of a court pursuant to
26 this section. The standards adopted by the director must provide that an
27 offender who:

28 (a) Has recently committed a serious infraction of the rules of an
29 institution or facility of the department;

30 (b) Has not performed the duties assigned to him in a faithful and
31 orderly manner;

32 (c) Has ever been convicted of:

33 (1) Any crime involving the use or threatened use of force or
34 violence against the victim that is punishable as a gross misdemeanor or
35 felony; or

36 (2) A sexual offense;

37 (d) Has more than one prior incident which resulted in one or more
38 convictions for any felony in this state or any offense in another state
39 that would be a felony if committed in this state, not including a violation
40 of NRS 484.3792 or 484.3795;

41 (e) Has escaped or attempted to escape from any jail or correctional
42 institution for adults; or

1 (f) Has not made an effort in good faith to participate in or to
2 complete any educational or vocational program or any program of
3 treatment, as ordered by the director,
4 is not eligible for assignment to the custody of a court to participate in a
5 program of treatment pursuant to this section.

6 4. A court to which an offender has been assigned pursuant to this
7 section may return the offender to the custody of the department at any
8 time.

9 5. If an offender assigned to the custody of a court pursuant to this
10 section violates any of the terms or conditions imposed by the court and
11 is returned to the custody of the department, the offender forfeits all or
12 part of the credits for good behavior earned by him before he was
13 returned to the custody of the department, as determined by the director.
14 The director may provide for a forfeiture of credits pursuant to this
15 subsection only after proof of the violation and notice to the offender,
16 and may restore credits forfeited for such reasons as he considers proper.
17 The decision of the director regarding such a forfeiture is final.

18 6. The assignment of an offender to the custody of a court pursuant
19 to this section shall be deemed:

20 (a) A continuation of his imprisonment and not a release on parole;
21 and

22 (b) For the purposes of NRS 209.341, an assignment to a facility of
23 the department,
24 except that the offender is not entitled to obtain any benefits or to
25 participate in any programs provided to offenders in the custody of the
26 department.

27 7. An offender does not have a right to be assigned to the custody of
28 a court pursuant to this section, or to remain in that custody after such
29 an assignment, and it is not intended that the provisions of sections 2 to
30 5, inclusive, of this act, or NRS 453.580 create any right or interest in
31 liberty or property or establish a basis for any cause of action against the
32 State of Nevada, its political subdivisions, agencies, boards, commissions,
33 departments, officers or employees.

34 8. The director shall not assign more than 150 offenders to the
35 custody of a court to participate in a program of treatment for the abuse
36 of alcohol or drugs pursuant to this section during each biennium.

37 Sec. 3. 1. A court to which an offender is assigned pursuant to
38 section 2 of this act shall submit a claim for the cost of the offender to
39 participate in the program of treatment that is incurred before the date
40 on which the offender would probably be released from prison, as
41 determined by the director pursuant to section 2 of this act, at the rate of
42 \$1,500 for the first month that the offender is assigned to the custody of
43 the court and \$250 for each month thereafter that the offender is

1 assigned to the custody of the court, pro rata for any month that the
2 offender is assigned to the custody of the court for less than a month.

3 2. Claims submitted pursuant to subsection 1 must be paid in the
4 same manner as other claims against the state are paid.

5 **Sec. 4. 1.** Each court that has established a program of treatment
6 for the abuse of alcohol or drugs pursuant to NRS 453.580 shall
7 establish an advisory board to determine whether offenders who are
8 referred by the director pursuant to section 2 of this act should be
9 assigned to the custody of the court to participate in the program of
10 treatment established pursuant to NRS 453.580.

11 2. The advisory board established pursuant to subsection 1 shall
12 meet regularly to evaluate each offender referred by the director
13 pursuant to section 2 of this act to determine whether the offender should
14 be assigned to the custody of the court to participate in the program of
15 treatment established pursuant to NRS 453.580.

16 3. If a majority of the members of the advisory board who are
17 present at a meeting of the advisory board determine that an offender
18 should be assigned to the custody of the court to participate in a program
19 of treatment established pursuant to NRS 453.580 and the judge of the
20 court to which the offender would be assigned agrees with the
21 determination, the advisory board shall promptly notify the director of its
22 determination.

23 **Sec. 5. 1.** An advisory board established pursuant to section 4 of
24 this act must consist of at least:

25 (a) One judge of the court that established the advisory board who has
26 experience related to a program of treatment for the abuse of alcohol or
27 drugs established pursuant to NRS 453.580;

28 (b) A representative of the office of the district attorney of the county
29 in which the court that established the advisory board is located;

30 (c) A representative of the office of the public defender of the county
31 in which the court that established the advisory board is located, if such
32 an office has been created in the county;

33 (d) A representative from a local law enforcement agency; and

34 (e) A person who has professional experience in the treatment of
35 abuse of alcohol or drugs.

36 2. A majority of the members of the advisory board constitute a
37 quorum. Except as otherwise provided in this subsection, a quorum may
38 exercise all the power and authority conferred on the advisory board. An
39 offender may not be assigned to the custody of a court without the
40 approval of the judge of the court.

41 3. The members of the advisory board serve without compensation
42 and may not receive a per diem allowance or travel expenses.

1 **4. A member of the advisory board who is an officer or employee of**
2 **this state or a political subdivision of this state must be relieved from his**
3 **duties without loss of his regular compensation so that he may prepare**
4 **for and attend meetings of the advisory board and perform any work**
5 **necessary to carry out the duties of the advisory board in the most timely**
6 **manner practicable. A state agency or political subdivision of this state**
7 **shall not require an officer or employee who is a member of the advisory**
8 **board to make up the time he is absent from work to carry out his duties**
9 **as a member of the advisory board or use annual vacation or**
10 **compensatory time for the absence.**

11 **5. Notwithstanding any other provision of law, a member of the**
12 **advisory board:**

13 **(a) Is not disqualified from public employment or holding a public**
14 **office because of his membership on the advisory board; and**

15 **(b) Does not forfeit his public office or public employment because of**
16 **his membership on the advisory board.**

17 **Sec. 6.** NRS 209.432 is hereby amended to read as follows:

18 209.432 As used in NRS 209.433 to 209.451, inclusive, unless the
19 context otherwise requires:

20 1. "Offender" includes ~~the~~ :

21 **(a) A person who is convicted of a felony under the laws of this state**
22 **and sentenced, ordered or otherwise assigned to serve a term of residential**
23 **confinement.**

24 **(b) A person who is convicted of a felony under the laws of this state**
25 **and assigned to the custody of a court pursuant to section 2 of this act.**

26 2. "Residential confinement" means the confinement of a person
27 convicted of a felony to his place of residence under the terms and
28 conditions established pursuant to specific statute. The term does not
29 include any confinement ordered pursuant to NRS 176A.530 to 176A.560,
30 inclusive, 176A.660 to 176A.690, inclusive, 213.15105, 213.15193 or
31 213.152 to 213.1528, inclusive.

32 **Sec. 7.** NRS 209.446 is hereby amended to read as follows:

33 209.446 1. Every offender who is sentenced to prison for a crime
34 committed on or after July 1, 1985, but before July 17, 1997, who has no
35 serious infraction of the regulations of the department, the terms and
36 conditions of his residential confinement, or the laws of the state recorded
37 against him, and who performs in a faithful, orderly and peaceable manner
38 the duties assigned to him, must be allowed:

39 (a) For the period he is actually incarcerated under sentence; ~~and~~

40 (b) For the period he is in residential confinement ~~;~~ **and**

1 *(c) For the period he is in the custody of a court pursuant to section 2*
2 *of this act,*

3 a deduction of 10 days from his sentence for each month he serves.

4 2. In addition to the credit provided for in subsection 1, the director
5 may allow not more than 10 days of credit each month for an offender
6 whose diligence in labor and study merits such credits. In addition to the
7 credits allowed pursuant to this subsection, an offender is entitled to the
8 following credits for educational achievement:

9 (a) For earning a general equivalency diploma, 30 days.

10 (b) For earning a high school diploma, 60 days.

11 (c) For earning an associate degree, 90 days.

12 3. The director may allow not more than 10 days of credit each month
13 for an offender who participates in a diligent and responsible manner in a
14 center for the purpose of making restitution, conservation camp, program of
15 work release or another program conducted outside of the prison. An
16 offender who earns credit pursuant to this subsection is entitled to the entire
17 20 days of credit each month which is authorized in subsections 1 and 2.

18 4. The director may allow not more than 90 days of credit each year for
19 an offender who engages in exceptional meritorious service.

20 5. The board shall adopt regulations governing the award, forfeiture
21 and restoration of credits pursuant to this section.

22 6. Credits earned pursuant to this section:

23 (a) Must be deducted from the maximum term imposed by the sentence;
24 and

25 (b) Apply to eligibility for parole unless the offender was sentenced
26 pursuant to a statute which specifies a minimum sentence which must be
27 served before a person becomes eligible for parole.

28 **Sec. 8.** NRS 209.4465 is hereby amended to read as follows:

29 209.4465 1. An offender who is sentenced to prison for a crime
30 committed on or after July 17, 1997, who has no serious infraction of the
31 regulations of the department, the terms and conditions of his residential
32 confinement or the laws of the state recorded against him, and who
33 performs in a faithful, orderly and peaceable manner the duties assigned to
34 him, must be allowed:

35 (a) For the period he is actually incarcerated pursuant to his sentence;

36 ~~and~~

37 (b) For the period he is in residential confinement ~~H~~; and

38 *(c) For the period he is in the custody of a court pursuant to section 2*
39 *of this act,*

40 a deduction of 10 days from his sentence for each month he serves.

41 2. In addition to the credits allowed pursuant to subsection 1, the
42 director may allow not more than 10 days of credit each month for an
43 offender whose diligence in labor and study merits such credits. In addition

1 to the credits allowed pursuant to this subsection, an offender is entitled to
2 the following credits for educational achievement:

3 (a) For earning a general equivalency diploma, 30 days.

4 (b) For earning a high school diploma, 60 days.

5 (c) For earning his first associate degree, 90 days.

6 3. The director may, in his discretion, authorize an offender to receive
7 a maximum of 90 days of credit for each additional degree of higher
8 education earned by the offender.

9 4. The director may allow not more than 10 days of credit each month
10 for an offender who participates in a diligent and responsible manner in a
11 center for the purpose of making restitution, conservation camp, program of
12 work release or another program conducted outside of the prison. An
13 offender who earns credit pursuant to this subsection is eligible to earn the
14 entire 20 days of credit each month that is allowed pursuant to subsections
15 1 and 2.

16 5. The director may allow not more than 90 days of credit each year for
17 an offender who engages in exceptional meritorious service.

18 6. The board shall adopt regulations governing the award, forfeiture
19 and restoration of credits pursuant to this section.

20 7. Credits earned pursuant to this section:

21 (a) Must be deducted from the maximum term imposed by the sentence;
22 and

23 (b) Apply to eligibility for parole unless the offender was sentenced
24 pursuant to a statute which specifies a minimum sentence that must be
25 served before a person becomes eligible for parole.

26 **Sec. 9.** NRS 212.187 is hereby amended to read as follows:

27 212.187 1. A prisoner who is in lawful custody or confinement, other
28 than *in the custody of a court pursuant to section 2 of this act or*
29 residential confinement, and who voluntarily engages in sexual conduct
30 with another person is guilty of a category D felony and shall be punished
31 as provided in NRS 193.130.

32 2. A person who voluntarily engages in sexual conduct with a prisoner
33 who is in lawful custody or confinement, other than *in the custody of a*
34 *court pursuant to section 2 of this act or* residential confinement, is guilty
35 of a category D felony and shall be punished as provided in NRS 193.130.

36 3. As used in this section, "sexual conduct":

37 (a) Includes acts of masturbation, homosexuality, sexual intercourse or
38 physical contact with another person's clothed or unclothed genitals or
39 pubic area to arouse, appeal to or gratify the sexual desires of a person.

40 (b) Does not include acts of a person who has custody of a prisoner or
41 an employee of the institution in which the prisoner is confined that are
42 performed to carry out the necessary duties of such a person or employee.

1 **Sec. 10.** NRS 453.580 is hereby amended to read as follows:

2 453.580 1. A court may establish an appropriate treatment program
3 to which it may assign a person pursuant to NRS 453.3363 or 458.300 *or to*
4 *which a person may be assigned pursuant to section 2 of this act*, or it
5 may assign ~~[such]~~ a person *pursuant to NRS 453.3363 or 458.300* to an
6 appropriate facility for the treatment of abuse of alcohol or drugs which is
7 certified by the bureau of alcohol and drug abuse of the rehabilitation
8 division of the department of employment, training and rehabilitation. The
9 assignment must include the terms and conditions for successful completion
10 of the program and provide for progress reports at intervals set by the court
11 to ensure that the person is making satisfactory progress towards
12 completion of the program.

13 2. A program to which a court assigns a person pursuant to subsection
14 1 *or to which a person is assigned pursuant to section 2 of this act* must
15 include:

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

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

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

24 3. If the offense with which the person was charged involved the use or
25 possession of a controlled substance, in addition to the program or as a part
26 of the program the court must also require frequent urinalysis to determine
27 that the person is not using a controlled substance. The court shall specify
28 how frequent such examinations must be and how many must be
29 successfully completed, independently of other requisites for successful
30 completion of the program.

31 4. Before the court assigns a person to a program pursuant to this
32 section, the person must agree to pay the cost of the program to which he is
33 assigned and the cost of any additional supervision required pursuant to
34 subsection 3, to the extent of his financial resources. If the person does not
35 have the financial resources to pay all of the related costs, the court shall, to
36 the extent practicable, arrange for the person to be assigned to a program at
37 a facility that receives a sufficient amount of federal or state funding to
38 offset the remainder of the costs.

39 **Sec. 11.** There is hereby appropriated from the state general fund to
40 the Administrator of the Courts of the Second Judicial District of the State
41 of Nevada the sum of \$330,000 for the continuation of its programs of
42 treatment for the abuse of alcohol or drugs by certain persons established
43 pursuant to NRS 453.580. The appropriation must be disbursed as follows:

1 1. For the district court, the sum of \$250,000.

2 2. For the family court, the sum of \$80,000.

3 **Sec. 12.** 1. There is hereby appropriated from the state general fund
4 to the Administrator of the Courts of the Eighth Judicial District of the
5 State of Nevada the sum of \$700,000 for the continuation of its program of
6 treatment for the abuse of alcohol or drugs by certain persons established
7 pursuant to NRS 453.580.

8 2. The money appropriated by subsection 1 must be used to
9 supplement and not to support or cause to be reduced any other source of
10 funding for the program of treatment established in the Eighth Judicial
11 District pursuant to NRS 453.580.

12 **Sec. 13.** Any remaining balance of an appropriation made by section
13 11 or 12 of this act must not be committed for expenditure after June 30,
14 2001, and reverts to the state general fund as soon as all payments of
15 money committed have been made.

16 **Sec. 14.** 1. This act becomes effective on July 1, 1999.

17 2. Sections 1 to 10, inclusive, of this act expire by limitation on
18 June 30, 2001.