

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 division of parole and probation of department of motor vehicles and public safety 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 the division of parole and probation of the department of motor vehicles and public safety 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 1.3 to 5, inclusive, of this act.
- 3 **Sec. 1.3.** *As used in sections 1.3 to 5, inclusive, of this act, unless the*
- 4 *context otherwise requires, the words and terms defined in sections 1.5*
- 5 *and 1.7 of this act have the meanings ascribed to them in those sections.*
- 6 **Sec. 1.5.** *“Division” means the division of parole and probation of*
- 7 *the department of motor vehicles and public safety.*
- 8 **Sec. 1.7.** *“Program of treatment” means a program of treatment for*
- 9 *the abuse of alcohol or drugs that is supervised by a judge.*

1 **Sec. 2. 1.** *Except as otherwise provided in this section, if an*
2 *advisory board has been created pursuant to section 4 of this act in the*
3 *judicial district in which an offender was sentenced to imprisonment, the*
4 *director shall, after consulting with the division, refer the offender to the*
5 *advisory board if the director believes that the offender would participate*
6 *successfully in and benefit from a program of treatment and:*

7 **(a)** *The offender has:*

8 **(1)** *Established a position of employment in the community, or a*
9 *judge in the judicial district to which the offender would be assigned*
10 *pursuant to section 10 of this act will assist the offender to establish a*
11 *position of employment in the community; and*

12 **(2)** *Demonstrated an ability to pay for all or part of the costs of his*
13 *participation in a program of treatment, including, without limitation,*
14 *costs for room and board, and to meet any existing obligation for*
15 *restitution to any victim of his crime, or a judge in the judicial district to*
16 *which the offender would be assigned will assist the offender to ensure*
17 *that the offender has the ability to pay for such costs and to meet such*
18 *obligations; and*

19 **(b)** *The offender:*

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

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

25 **2.** *Except as otherwise provided in this section, if the director is*
26 *notified by an advisory board pursuant to section 4 of this act that an*
27 *offender should be assigned to the custody of the division to be assigned*
28 *to participate in a program of treatment, the director shall assign the*
29 *offender to the custody of the division to be assigned to participate in a*
30 *program of treatment for a minimum of 1 year, but not longer than the*
31 *remainder of his sentence.*

32 **3.** *The director shall adopt, by regulation, standards providing which*
33 *offenders are eligible to be assigned to the custody of the division*
34 *pursuant to this section. The standards must be approved by the board*
35 *and reviewed by the interim finance committee. The standards adopted*
36 *by the director must provide that an offender who:*

37 **(a)** *Has recently committed a serious infraction of the rules of an*
38 *institution or facility of the department;*

39 **(b)** *Has not performed the duties assigned to him in a faithful and*
40 *orderly manner;*

41 **(c)** *Has ever been convicted of:*

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

4 (2) A sexual offense;

5 (d) Has been convicted of more than one felony in this state or any
6 offense in another state that would be a felony if committed in this state,
7 unless each felony or offense which the offender has been convicted of
8 arose out of the same act, transaction or occurrence;

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

11 (f) Has not made an effort in good faith to participate in or to
12 complete any educational or vocational program or any program of
13 treatment, as ordered by the director,
14 is not eligible for assignment to the custody of the division pursuant to
15 this section to be assigned to participate in a program of treatment.

16 4. The director shall adopt regulations requiring offenders who are
17 assigned to the custody of the division pursuant to this section to
18 reimburse a court, the division and the department for any costs incurred
19 pursuant to sections 1.3 to 5, inclusive, and 10 of this act. The
20 regulations must be approved by the board and reviewed by the interim
21 finance committee.

22 5. A court to which an offender has been assigned pursuant to
23 section 10 of this act may return the offender to the custody of the
24 department at any time.

25 6. If an offender assigned to the custody of the division pursuant to
26 this section violates any of the terms or conditions imposed by a court to
27 which the offender has been assigned pursuant to section 10 of this act
28 and is returned to the custody of the department, the offender forfeits all
29 or part of the credits for good behavior earned by him before he was
30 returned to the custody of the department, as determined by the director.
31 The director may provide for a forfeiture of credits pursuant to this
32 subsection only after proof of the violation and notice to the offender,
33 and may restore credits forfeited for such reasons as he considers proper.
34 The decision of the director regarding such a forfeiture is final.

35 7. The assignment of an offender to the custody of the division
36 pursuant to this section shall be deemed:

37 (a) A continuation of his imprisonment and not a release on parole;
38 and

39 (b) For the purposes of NRS 209.341, an assignment to a facility of
40 the department,
41 except that the offender is not entitled to obtain any benefits or to
42 participate in any programs provided to offenders in the custody of the
43 department.

1 8. An offender does not have a right to be assigned to the custody of
2 the division pursuant to this section, or to remain in that custody after
3 such an assignment, and it is not intended that the provisions of sections
4 1.3 to 5, inclusive, or section 10 of this act create any right or interest in
5 liberty or property or establish a basis for any cause of action against the
6 State of Nevada, its political subdivisions, agencies, boards, commissions,
7 departments, officers or employees.

8 9. The director shall not assign more than 150 offenders to the
9 custody of the division pursuant to this section to be assigned to
10 participate in a program of treatment during each biennium.

11 **Sec. 3.** 1. A court that operates a program of treatment to which
12 an offender is assigned pursuant to section 10 of this act shall submit a
13 claim to the department for the cost of the offender to participate in the
14 program of treatment at the rate of \$1,500 for the first month that the
15 offender participates in the program and \$250 for each month thereafter
16 that the offender participates in the program, pro rata for any month that
17 the offender participates for less than a month, up to the date on which
18 the offender would probably be released from prison, as determined by
19 the director pursuant to section 2 of this act.

20 2. For each offender assigned to the custody of the division pursuant
21 to section 2 of this act, the division shall submit a claim to the
22 department for the cost of supervising the participation of the offender in
23 the program at the rate of \$100 for each month that the offender
24 participates in the program, pro rata for any month that the offender
25 participates for less than a month, up to the date on which the offender
26 would probably be released from prison, as determined by the director
27 pursuant to section 2 of this act.

28 3. Except as otherwise provided in subsection 4, claims submitted
29 pursuant to subsections 1 and 2 must be paid in the same manner as
30 other claims against the state are paid, from money appropriated to the
31 department.

32 4. Funding for the payments made by the department pursuant to
33 this section must be accrued from the savings incurred by the department
34 as the result of assigning offenders to the custody of the division
35 pursuant to section 2 of this act. Such savings must be documented, and
36 the documentation must be reviewed and approved by the director of the
37 department of administration. Upon the recommendation of the governor
38 and after being approved by the interim finance committee, the amount
39 of the savings must be transferred from the purpose for which it was
40 designated to the budget of the director for payment pursuant to this
41 section.

1 **Sec. 4. 1.** *Each court that has established a program of treatment*
2 *shall establish an advisory board to determine whether offenders who are*
3 *referred by the director pursuant to section 2 of this act should be*
4 *assigned to the custody of the division to be assigned to participate in a*
5 *program of treatment.*

6 2. *The advisory board established pursuant to subsection 1 shall*
7 *evaluate each offender referred by the director pursuant to section 2 of*
8 *this act to determine whether the offender should be assigned to the*
9 *custody of the division to be assigned to participate in a program of*
10 *treatment.*

11 3. *If a majority of the members of the advisory board determine that*
12 *an offender should be assigned to the custody of the division to be*
13 *assigned to participate in a program of treatment and the judge of the*
14 *court to which the offender would be assigned agrees with the*
15 *determination, the advisory board shall promptly notify the director of its*
16 *determination.*

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

19 (a) *One judge of the court that established the advisory board who has*
20 *experience related to a program of treatment;*

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

23 (c) *An attorney regularly assigned to represent offenders who are*
24 *participating in a program of treatment, or a representative of the office*
25 *of the public defender of the county in which the court that established*
26 *the advisory board is located, if such an office has been created in the*
27 *county;*

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

29 (e) *A person who has professional experience in the treatment of*
30 *abuse of alcohol or drugs.*

31 2. *A majority of the members of the advisory board constitute a*
32 *quorum. Except as otherwise provided in this subsection, a quorum may*
33 *exercise all the power and authority conferred on the advisory board. An*
34 *offender may not be assigned to the custody of a court without the*
35 *approval of the judge of the court.*

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

38 4. *A member of the advisory board who is an officer or employee of*
39 *this state or a political subdivision of this state must be relieved from his*
40 *duties without loss of his regular compensation so that he may prepare*
41 *for and attend meetings of the advisory board and perform any work*
42 *necessary to carry out the duties of the advisory board in the most timely*
43 *manner practicable. A state agency or political subdivision of this state*

1 *shall not require an officer or employee who is a member of the advisory*
2 *board to make up the time he is absent from work to carry out his duties*
3 *as a member of the advisory board or use annual vacation or*
4 *compensatory time for the absence.*

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

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

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

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

12 209.432 As used in NRS 209.433 to 209.451, inclusive, unless the
13 context otherwise requires:

14 1. "Offender" includes ~~that~~ :

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

18 *(b) A person who is convicted of a felony under the laws of this state*
19 *and assigned to the custody of the division of parole and probation of the*
20 *department of motor vehicles and public safety pursuant to section 2 of*
21 *this act.*

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

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

29 209.446 1. Every offender who is sentenced to prison for a crime
30 committed on or after July 1, 1985, but before July 17, 1997, who has no
31 serious infraction of the regulations of the department, the terms and
32 conditions of his residential confinement, or the laws of the state recorded
33 against him, and who performs in a faithful, orderly and peaceable manner
34 the duties assigned to him, must be allowed:

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

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

37 *(c) For the period he is in the custody of the division of parole and*
38 *probation of the department of motor vehicles and public safety pursuant*
39 *to section 2 of this act,*

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

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

1 credits allowed pursuant to this subsection, an offender is entitled to the
2 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 an associate degree, 90 days.

6 3. The director may allow not more than 10 days of credit each month
7 for an offender who participates in a diligent and responsible manner in a
8 center for the purpose of making restitution, conservation camp, program of
9 work release or another program conducted outside of the prison. An
10 offender who earns credit pursuant to this subsection is entitled to the entire
11 20 days of credit each month which is authorized in subsections 1 and 2.

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

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

16 6. Credits earned pursuant to this section:

17 (a) Must be deducted from the maximum term imposed by the sentence;
18 and

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

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

23 209.4465 1. An offender who is sentenced to prison for a crime
24 committed on or after July 17, 1997, who has no serious infraction of the
25 regulations of the department, the terms and conditions of his residential
26 confinement or the laws of the state recorded against him, and who
27 performs in a faithful, orderly and peaceable manner the duties assigned to
28 him, must be allowed:

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

30 ~~and~~

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

32 *(c) For the period he is in the custody of the division of parole and*
33 *probation of the department of motor vehicles and public safety pursuant*
34 *to section 2 of this act,*

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

36 2. In addition to the credits allowed pursuant to subsection 1, the
37 director may allow not more than 10 days of credit each month for an
38 offender whose diligence in labor and study merits such credits. In addition
39 to the credits allowed pursuant to this subsection, an offender is entitled to
40 the following credits for educational achievement:

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

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

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

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

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

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

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

15 7. Credits earned pursuant to this section:

16 (a) Must be deducted from the maximum term imposed by the sentence;
17 and

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

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

22 212.187 1. A prisoner who is in lawful custody or confinement, other
23 than *in the custody of the division of parole and probation of the*
24 *department of motor vehicles and public safety pursuant to section 2 of*
25 *this act or* residential confinement, and who voluntarily engages in sexual
26 conduct with another person is guilty of a category D felony and shall be
27 punished as provided in NRS 193.130.

28 2. A person who voluntarily engages in sexual conduct with a prisoner
29 who is in lawful custody or confinement, other than *in the custody of the*
30 *division of parole and probation of the department of motor vehicles and*
31 *public safety pursuant to section 2 of this act or* residential confinement,
32 is guilty of a category D felony and shall be punished as provided in NRS
33 193.130.

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

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

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

1 **Sec. 10.** Chapter 213 of NRS is hereby amended by adding thereto a
2 new section to read as follows:

3 *The division of parole and probation of the department of motor*
4 *vehicles and public safety shall:*

5 1. *Supervise each offender who is assigned to the custody of the*
6 *division pursuant to section 2 of this act; and*

7 2. *Assign each offender who is assigned to the custody of the division*
8 *pursuant to section 2 of this act to participate in a program of treatment*
9 *for the abuse of alcohol or drugs.*

10 **Sec. 11.** There is hereby appropriated from the state general fund to
11 the Administrator of the Courts of the Second Judicial District of the State
12 of Nevada the sum of \$330,000 for the continuation of its programs of
13 treatment for the abuse of alcohol or drugs by certain persons that are
14 supervised by a judge in the Second Judicial District. The appropriation
15 must be disbursed as follows:

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

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

18 **Sec. 12.** 1. There is hereby appropriated from the state general fund
19 to the Administrator of the Courts of the Eighth Judicial District of the
20 State of Nevada the sum of \$700,000 for the continuation of its programs
21 of treatment for the abuse of alcohol or drugs by certain persons that are
22 supervised by a judge in the Eighth Judicial District.

23 2. The money appropriated by subsection 1 must be used to
24 supplement and not to support or cause to be reduced any other source of
25 funding for the program of treatment established in the Eighth Judicial
26 District.

27 **Sec. 13.** Any remaining balance of an appropriation made by section
28 11 or 12 of this act must not be committed for expenditure after June 30,
29 2001, and reverts to the state general fund as soon as all payments of
30 money committed have been made.

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

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