

Amendment No. 578

Senate Amendment to Assembly Bill No. 259 First Reprint (BDR 16-631)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

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) *green bold italic underlining* is new language proposed 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 that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

AMI/RRY



Date: 4/30/2009

A.B. No. 259—Makes various changes relating to criminal offenders.
(BDR 16-631)



ASSEMBLY BILL NO. 259—COMMITTEE ON
CORRECTIONS, PAROLE, AND PROBATION

(ON BEHALF OF THE ADVISORY COMMISSION ON THE
ADMINISTRATION OF JUSTICE)

MARCH 6, 2009

Referred to Committee on Corrections, Parole, and Probation

SUMMARY—Makes various changes relating to criminal offenders.
(BDR 16-631)

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 offenders; revising provisions relating to the residential confinement of certain offenders; authorizing a court to provide for the forfeiture of credits for good behavior of a probationer under certain circumstances; revising provisions concerning certain credits to be applied to a period of probation or parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that an offender who has been convicted of a category B felony is not eligible for residential confinement. **Section 1** of this bill requires the standards adopted by the Director of the Department of Corrections concerning eligibility for residential confinement to provide that an offender who has been convicted of a category B felony is eligible for residential confinement if: (1) the offender is not otherwise ineligible for residential confinement; and (2) the Director makes a written finding that assigning the offender to residential confinement is not likely to pose a threat to the safety of the public. (NRS 209.392)

Existing law authorizes the State Board of Parole Commissioners to provide for the forfeiture of credits for good behavior of a parolee who violates a condition of his parole and, as appropriate, for the restoration of such credits. **Section 4** of this bill authorizes a court to provide for the forfeiture of credits for good behavior of a probationer who violates a condition of his probation and, as appropriate, for the restoration of such credits.

Existing law provides that an offender who is sentenced to serve a period of probation for a felony and who demonstrates certain good behavior must be allowed certain deductions from his period of probation. **Section 5** of this bill amends existing law to provide generally that a person who is sentenced to a period of probation for a felony or a gross misdemeanor must be allowed a deduction from his period of probation of: (1) ten days for each month he serves and is current on any fee to defray the cost of his supervision and on any fines, fees and restitution ordered by the court; and (2) an additional 10 days for each month he serves and is actively involved in employment or enrolled in certain programs. (NRS 176A.500)

Existing law authorizes a court to order a probationer who violates a condition of his probation to a term of residential confinement and to direct the person to be confined, for not more than 6 months, to a community correctional center, conservation camp, facility of minimum security or other place of confinement operated by the Department of Corrections for the custody, care or training of offenders, other than a prison designed to house 125 or more offenders within a secure perimeter. **Section 6** of this bill authorizes a court to direct such a person who was placed on probation for a felony conviction to be confined to any of those facilities and institutions, including a prison designed to house 125 or more offenders within a secure perimeter. Further, **section 6** of this bill authorizes the Department of Corrections to select the facility or institution in which to place the person. (NRS 176A.660)

Section 3 of this bill amends chapter 213 of NRS, which governs parolees in a manner similar to **section 6** of this bill. **Section 3** provides that a parolee who is returned to confinement in a facility or institution of the Department of Corrections is authorized to earn credits to reduce his sentence pursuant to chapter 209 of NRS, with the exception of certain credits which are earned by an offender who is released on parole. (NRS 213.152)

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

Section 1. NRS 209.392 is hereby amended to read as follows:

209.392 1. Except as otherwise provided in NRS 209.3925 and 209.429, the Director may, at the request of an offender who is eligible for residential confinement pursuant to the standards adopted by the Director pursuant to subsection 3 and who has:

(a) Demonstrated a willingness and ability to establish a position of employment in the community;

(b) Demonstrated a willingness and ability to enroll in a program for education or rehabilitation; or

(c) Demonstrated an ability to pay for all or part of the costs of his confinement and to meet any existing obligation for restitution to any victim of his crime,

➤ assign the offender to the custody of the Division of Parole and Probation of the Department of Public Safety to serve a term of residential confinement, pursuant to NRS 213.380, for not longer than the remainder of his sentence.

2. Upon receiving a request to serve a term of residential confinement from an eligible offender, the Director shall notify the Division of Parole and Probation. If any victim of a crime committed by the offender has, pursuant to subsection 4 of NRS 213.130, requested to be notified of the consideration of a prisoner for parole and has provided a current address, the Division of Parole and Probation shall notify the victim of the offender's request and advise the victim that he may submit documents regarding the request to the Division of Parole and Probation. If a current address has not been provided as required by subsection 4 of NRS 213.130, the Division of Parole and Probation must not be held responsible if such notification is not received by the victim. All personal information, including, but not limited to, a current or former address, which pertains to a victim and which is received by the Division of Parole and Probation pursuant to this subsection is confidential.

3. The Director, after consulting with the Division of Parole and Probation, shall adopt, by regulation, standards providing which offenders are eligible for residential confinement. The standards adopted by the Director must provide that an offender who:

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

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

(c) Has been convicted of:

(1) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim within the immediately preceding 3 years;

(2) A sexual offense that is punishable as a felony; or

(3) ~~1A~~ *Except as otherwise provided in subsection 4, a category A or B felony;*

(d) Has more than one prior conviction for any felony in this State or any offense in another state that would be a felony if committed in this State, not including a violation of NRS 484.379, 484.3795, 484.37955 or 484.379778; or

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

is not eligible for assignment to the custody of the Division of Parole and Probation to serve a term of residential confinement pursuant to this section.

4. *The standards adopted by the Director pursuant to subsection 3 must provide that an offender who has been convicted of a category B felony is eligible for assignment to the custody of the Division of Parole and Probation to serve a term of residential confinement pursuant to this section if:*

(a) *The offender is not otherwise ineligible pursuant to subsection 3 for an assignment to serve a term of residential confinement; and*

(b) *The Director makes a written finding that such an assignment of the offender is not likely to pose a threat to the safety of the public.*

5. If an offender assigned to the custody of the Division of Parole and Probation pursuant to this section escapes or violates any of the terms or conditions of his residential confinement:

(a) The Division of Parole and Probation may, pursuant to the procedure set forth in NRS 213.410, return the offender to the custody of the Department.

(b) The offender forfeits all or part of the credits for good behavior earned by him before the escape or violation, as determined by the Director. The Director may provide for a forfeiture of credits pursuant to this paragraph only after proof of the offense and notice to the offender and may restore credits forfeited for such reasons as he considers proper. The decision of the Director regarding such a forfeiture is final.

~~5.1~~ 6. The assignment of an offender to the custody of the Division of Parole and Probation pursuant to this section shall be deemed:

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

(b) For the purposes of NRS 209.341, an assignment to a facility of the Department,

except that the offender is not entitled to obtain any benefits or to participate in any programs provided to offenders in the custody of the Department.

~~6.1~~ 7. An offender does not have a right to be assigned to the custody of the Division of Parole and Probation pursuant to this section, or to remain in that custody after such an assignment, and it is not intended that the provisions of this section or of NRS 213.371 to 213.410, inclusive, create any right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 213.152 is hereby amended to read as follows:

213.152 1. Except as otherwise provided in subsection ~~6.1~~ 7, if a parolee violates a condition of his parole, the Board may order him to a term of residential

1 confinement in lieu of suspending his parole and returning him to confinement. In
2 making this determination, the Board shall consider the criminal record of the
3 parolee and the seriousness of the crime committed.

4 2. In ordering the parolee to a term of residential confinement, the Board
5 shall:

6 (a) Require:

7 (1) The parolee to be confined to his residence during the time he is away
8 from his employment, community service or other activity authorized by the
9 Division; and

10 (2) Intensive supervision of the parolee, including, without limitation,
11 unannounced visits to his residence or other locations where he is expected to be in
12 order to determine whether he is complying with the terms of his confinement; or

13 (b) Require the parolee to be confined to a facility *or institution* of the
14 Department of Corrections ~~[approved by the Board]~~ for a period not to exceed 6
15 months. *The Department may select the facility or institution in which to place*
16 *the parolee.*

17 3. An electronic device approved by the Division may be used to supervise a
18 parolee ordered to a term of residential confinement. The device must be minimally
19 intrusive and limited in capability to recording or transmitting information
20 concerning the presence of the parolee at his residence, including, but not limited to,
21 the transmission of still visual images which do not concern the activities of the
22 person while inside his residence. A device which is capable of recording or
23 transmitting:

24 (a) Oral or wire communications or any auditory sound; or

25 (b) Information concerning the activities of the parolee while inside his
26 residence,

27 *must not be used.*

28 4. *A parolee who is confined to a facility or institution of the Department of*
29 *Corrections pursuant to paragraph (b) of subsection 2:*

30 (a) *May earn credits to reduce his sentence pursuant to chapter 209 of NRS;*
31 *and*

32 (b) *Shall not be deemed to be released on parole for purposes of NRS*
33 *209.447 or 209.4475 during the period of that confinement.*

34 5. The Board shall not order a parolee to a term of residential confinement
35 unless he agrees to the order.

36 ~~[5.]~~ 6. A term of residential confinement may not be longer than the
37 unexpired maximum term of the original sentence of the parolee.

38 ~~[6.]~~ 7. The Board shall not order a parolee who is serving a sentence for
39 committing a battery which constitutes domestic violence pursuant to NRS 33.018
40 to a term of residential confinement unless the Board makes a finding that the
41 parolee is not likely to pose a threat to the victim of the battery.

42 ~~[7.]~~ 8. As used in this section ~~[, "facility"]~~:

43 (a) *"Facility"* has the meaning ascribed to it in NRS 209.065.

44 (b) *"Institution" has the meaning ascribed to it in NRS 209.071.*

45 **Sec. 4.** Chapter 176A of NRS is hereby amended by adding thereto a new
46 section to read as follows:

47 1. *If a court before which a probationer is brought pursuant to NRS*
48 *176A.630 determines that the probationer has violated a condition of his*
49 *probation, the probationer forfeits all or part of the credits for good behavior*
50 *earned by him pursuant to NRS 176A.500 during his probation, in the discretion*
51 *of the court.*

52 2. *A forfeiture may be made only by the court after proof of the violation*
53 *and notice to the probationer.*

1 3. *The court may restore credits forfeited for such reasons as it considers*
2 *proper.*

3 4. *If the court provides for the forfeiture or restoration of credits for good*
4 *behavior of a probationer pursuant to this section, the clerk of the court shall*
5 *notify the Chief Parole and Probation Officer of the forfeiture or restoration of*
6 *credits.*

7 **Sec. 5.** NRS 176A.500 is hereby amended to read as follows:

8 176A.500 1. The period of probation or suspension of sentence may be
9 indeterminate or may be fixed by the court and may at any time be extended or
10 terminated by the court, but the period, including any extensions thereof, must not
11 be more than:

12 (a) Three years for a:

13 (1) Gross misdemeanor; or

14 (2) Suspension of sentence pursuant to NRS 176A.260 or 453.3363; or

15 (b) Five years for a felony.

16 2. At any time during probation or suspension of sentence, the court may
17 issue a warrant for violating any of the conditions of probation or suspension of
18 sentence and cause the defendant to be arrested. Except for the purpose of giving a
19 dishonorable discharge from probation, and except as otherwise provided in this
20 subsection, the time during which a warrant for violating any of the conditions of
21 probation is in effect is not part of the period of probation. If the warrant is
22 cancelled or probation is reinstated, the court may include any amount of that time
23 as part of the period of probation.

24 3. Any parole and probation officer or any peace officer with power to arrest
25 may arrest a probationer without a warrant, or may deputize any other officer with
26 power to arrest to do so by giving him a written statement setting forth that the
27 probationer has, in the judgment of the parole and probation officer, violated the
28 conditions of probation. Except as otherwise provided in subsection 4, the parole
29 and probation officer, or the peace officer, after making an arrest shall present to
30 the detaining authorities, if any, a statement of the charges against the probationer.
31 The parole and probation officer shall at once notify the court which granted
32 probation of the arrest and detention or residential confinement of the probationer
33 and shall submit a report in writing showing in what manner the probationer has
34 violated the conditions of probation.

35 4. A parole and probation officer or a peace officer may immediately release
36 from custody without any further proceedings any person he arrests without a
37 warrant for violating a condition of probation if the parole and probation officer or
38 peace officer determines that there is no probable cause to believe that the person
39 violated the condition of probation.

40 5. ~~{An offender}~~ **A person** who is sentenced to serve a period of probation for
41 a felony ~~[who has no serious infraction of the regulations of the Division, the terms~~
42 ~~and conditions of his probation or the laws of the State recorded against him, and~~
43 ~~who performs in a faithful, orderly and peaceable manner the duties assigned to~~
44 ~~him.] or a gross misdemeanor~~ must be allowed for the period of his probation a
45 deduction ~~[of 20]~~ **as set forth in subsection 6 if the offender is:**

46 (a) *Current with any fee to defray the cost of his supervision charged*
47 *pursuant to NRS 213.1076 and with any fines, fees and restitution ordered by the*
48 *court, including, without limitation, any payment of restitution required pursuant*
49 *to NRS 176A.430; and*

50 (b) *Actively involved in employment or enrolled in a program of education,*
51 *rehabilitation or any other program approved by the Division.*

52 6. ~~{A}~~ *Except as otherwise provided in subsection 7, a person described in*
53 *subsection 5 must be allowed for the period of his probation a deduction of:*

(a) Ten days from that period for each month he serves ~~and~~ and is current on any fees to defray the cost of his supervision owed and on any fines, fees and restitution ordered by the court; and

(b) ~~Except as otherwise provided in subsection 7, an~~ An additional 10 days from that period for each month he serves and is actively involved in employment or enrolled in a program of education, rehabilitation or any other program approved by the Division.

7. A person who is sentenced to serve a period of probation for a felony or a gross misdemeanor and who ~~is~~:

(a) Is a participant in a specialty court program must be allowed a deduction from the period of probation for being actively involved in employment or enrolled in a program of education, rehabilitation or any other program approved by the Division only if the person successfully completes the specialty court program ~~and~~; or

(b) Owes any restitution ordered by the court, including, without limitation, any payment of restitution required pursuant to NRS 176A.430, must be allowed a deduction from the period of probation for making payments of restitution only if the person pays the full amount of restitution imposed.

➤ Such a deduction must not exceed the length of time remaining on the person's period of probation.

8. As used in this section, "specialty court program" means a program established by a court to facilitate testing, treatment and oversight of certain persons over whom the court has jurisdiction and who the court has determined suffer from mental illnesses or abuse alcohol or drugs. Such a program includes, without limitation, a program established pursuant to NRS 176A.250 or 453.580.

Sec. 6. NRS 176A.660 is hereby amended to read as follows:

176A.660 1. If a person who has been placed on probation violates a condition of his probation, the court may order him to a term of residential confinement in lieu of causing the sentence imposed to be executed. In making this determination, the court shall consider the criminal record of the person and the seriousness of the crime committed.

2. In ordering the person to a term of residential confinement, the court shall:

(a) Direct that he be placed under the supervision of the Division and require:

(1) The person to be confined to his residence during the time he is away from his employment, community service or other activity authorized by the Division; and

(2) Intensive supervision of the person, including, without limitation, unannounced visits to his residence or other locations where he is expected to be in order to determine whether he is complying with the terms of his confinement; or

(b) ~~Direct~~ If the person was placed on probation for a felony conviction, direct that he be placed under the supervision of the Department of Corrections and require the person to be confined to a facility or institution of the Department ~~approved by the Division and the court~~ for a period not to exceed 6 months. The Department may select the facility or institution in which to place the person.

3. An electronic device approved by the Division may be used to supervise a person ordered to a term of residential confinement. The device must be minimally intrusive and limited in capability to recording or transmitting information concerning the person's presence at his residence, including, but not limited to, the transmission of still visual images which do not concern the person's activities while inside his residence. A device which is capable of recording or transmitting:

(a) Oral or wire communications or any auditory sound; or

(b) Information concerning the person's activities while inside his residence, ➤ must not be used.

1 4. The court shall not order a person to a term of residential confinement
2 unless he agrees to the order.

3 5. A term of residential confinement may not be longer than the maximum
4 term of a sentence imposed by the court.

5 6. As used in this section ~~["facility"]~~:

6 (a) *"Facility"* has the meaning ascribed to it in NRS 209.065.

7 (b) *"Institution" has the meaning ascribed to it in NRS 209.071.*

8 **Sec. 7.** 1. The amendatory provisions of this act apply to offenses
9 committed before, on or after July 1, 2009.

10 2. For the purpose of calculating credits earned by a person pursuant to NRS
11 213.152, the amendatory provisions of section 3 of this act must be applied to
12 credits earned by the person before, on or after July 1, 2009.

13 3. For the purpose of calculating credits earned by a person pursuant to NRS
14 176A.500, the amendatory provisions of section 5 of this act must be applied only
15 to credits earned by the person on or after July 1, 2009.

16 **Sec. 8.** This act becomes effective on July 1, 2009.