

ASSEMBLY BILL NO. 93—ASSEMBLYMAN SEGERBLOM

PREFILED JANUARY 13, 2011

Referred to Committee on Judiciary

SUMMARY—Provides for the establishment of intermediate sanction facilities within the Department of Corrections to provide treatment for alcohol or drug abuse to certain probation violators and offenders. (BDR S-509)

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

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal offenders; requiring the Department of Corrections to establish intermediate sanction facilities for certain probation violators and offenders to receive treatment for alcohol or drug abuse; requiring the Department of Health and Human Services to provide such treatment; authorizing courts to set aside the conviction of an offender or return a probation violator to probation in lieu of imprisonment upon successful completion of treatment at an intermediate sanction facility; making an appropriation; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law provides that a person who violates the conditions of his or her
2 probation must be brought before the court to determine the actions to be taken,
3 which may include causing the sentence imposed to be executed. (NRS 176A.630)
4 Existing law also authorizes the establishment of programs of treatment for alcohol
5 and drug abuse by the district courts for the treatment of certain offenders. (NRS
6 453.580) A person who elects to participate in such a treatment program may have
7 his or her sentence set aside upon successful completion of the treatment program.
8 (NRS 458.330) **Section 1** of this bill requires the Department of Corrections to
9 establish intermediate sanction facilities within the facilities maintained by the
10 Department. The intermediate sanction facilities must be used to provide intensive
11 treatment to certain probation violators and offenders who are determined to be
12 alcoholics or drug addicts and are ordered to the custody of the Department to



receive such treatment. The Department of Corrections is required to provide food and housing as well as necessary medical and dental services, but is not responsible for providing treatment to the persons placed in the facilities, which instead is to be provided by the Department of Health and Human Services. **Section 2** of this bill requires the Director of the Department of Health and Human Services to provide for the evaluation of probation violators and offenders referred to the Department by the court and authorizes the Director to enter into contracts with qualified persons or entities to provide such evaluations and treatment.

Sections 3 and 4 of this bill identify the probation violators and offenders who are eligible to elect placement in an intermediate sanction facility. **Section 5** of this bill provides that assignment to an intermediate sanction facility is a civil commitment, and not a criminal conviction. **Section 5** further provides that placement in an intermediate sanction facility is not a right and is within the discretion of the district court. **Section 6** of this bill provides that a person placed in an intermediate sanction facility is required to pay for the cost of his or her treatment and supervision to the extent of his or her financial resources and authorizes a court to require such a person to perform community service upon completion of treatment to contribute toward the cost of his or her treatment and supervision.

Section 7 of this bill provides that the court will defer sentencing of a probation violator or offender who is placed in an intermediate sanction facility. Upon successful completion of the treatment, the court may set aside the conviction of an offender, or may require the offender to first complete a period of probation and then set aside the conviction. Upon successful completion of treatment by a probation violator, he or she will be returned to the custody of the Division of Parole and Probation of the Department of Public Safety to complete any period of probation without having the sentence executed. If a probation violator or an offender does not successfully complete treatment, the court may execute the sentence. If a person placed in an intermediate sanction facility is not benefiting from treatment, the Director of the Department of Health and Human Services may inform the court, which may then determine whether to terminate or continue the treatment. **Section 8** of this bill requires the Department of Corrections to collect data concerning the persons placed in intermediate sanction facilities and to provide a report which aggregates the data to each regular session of the Legislature. **Section 10** of this bill makes an appropriation to the Department of Health and Human Services to pay for the evaluation and treatment of probation violators and offenders. This bill is established as a pilot program, and **section 11** of this bill makes it expire by limitation on July 1, 2015.

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

Section 1. 1. The Department of Corrections shall establish intermediate sanction facilities within the correctional institutions or other facilities maintained by the Department. The intermediate sanction facilities must be used to provide intensive treatment for alcohol or drug abuse to certain probation violators and offenders who are ordered to the custody of the Department to receive such treatment pursuant to sections 3 and 4 of this act.

2. The Department of Corrections shall ensure that intermediate sanction facilities are available in the northern and



* A B 9 3 *

1 southern regions of the State and have a total capacity of not less
2 than 400 offenders, with not less than 250 offenders placed in
3 facilities in the southern region of the State.

4 3. The Department of Corrections shall provide a healthful diet
5 and appropriate, secure and sanitary housing and necessary medical
6 and dental services for the probation violators and offenders who are
7 placed in an intermediate sanction facility. The Department is not
8 responsible for providing treatment to the probation violators or
9 offenders placed in an intermediate sanction facility.

10 4. Probation violators and offenders who are placed in an
11 intermediate sanction facility must be kept separate from and have
12 no direct contact with the general prison population.

13 **Sec. 2.** 1. The Director of the Department of Health and
14 Human Services shall provide for the evaluation of each probation
15 violator and offender who is ordered to be evaluated by a court
16 pursuant to section 5 of this act to determine if the probation
17 violator or offender is an abuser of alcohol or drugs, and shall
18 provide treatment to any such probation violator or offender who is
19 placed in an intermediate sanction facility pursuant to section 5 of
20 this act. The Director may enter into contracts with persons or
21 private entities that are qualified to evaluate and provide such
22 treatment to probation violators and offenders who are alcohol or
23 drug abusers.

24 2. When a person has completed treatment for the term for
25 which the person was assigned to the intermediate sanction facility,
26 the Director of the Department or a designee of the Director shall
27 submit a report certifying to the court:

- 28 (a) Whether the person successfully completed the treatment;
29 (b) Whether the person is believed to be rehabilitated; and
30 (c) Any recommendations for actions to ensure that the person
31 does not begin to abuse alcohol or drugs upon release.

32 3. The Director of the Department may adopt any regulations
33 necessary to carry out the provisions of this section.

34 **Sec. 3.** A district court may allow a probationer who is
35 returned to the district court for a violation of his or her probation to
36 elect to be placed in the custody of an intermediate sanction facility
37 established pursuant to section 1 of this act to receive treatment for
38 alcohol or drug abuse if the court has reason to believe that the
39 probationer is an alcoholic or drug addict and the court finds that the
40 probationer:

- 41 1. Committed only a technical violation of his or her probation;
42 2. Has not previously been placed in an intermediate sanction
43 facility for a violation related to the same offense; and



3. Was not returned to the court for committing an act involving violence, the use of force, or the threat of violence or the use of force.

Sec. 4. A district court may allow an offender who is found guilty of a crime involving the use of alcohol or drugs to elect to be placed in the custody of an intermediate sanction facility established pursuant to section 1 of this act to receive treatment for alcohol or drug abuse if:

1. The offender is eligible for, but is not able to participate in, a treatment program pursuant to NRS 453.580 because the court has not established such a treatment program, the treatment program cannot accommodate additional offenders or for any other reason; and

2. The court has reason to believe that the offender is an alcoholic or drug addict and the offender elects to be placed in such a facility to receive the treatment.

Sec. 5. 1. If the court determines that a probation violator or offender is eligible to elect placement in an intermediate sanction facility to receive treatment rather than serving a term of imprisonment, the court shall order the examination of the probationer or offender by the Department of Health and Human Services or by a person or entity designated by the Director of the Department to determine whether the probationer or offender is an alcoholic or drug addict and is likely to be rehabilitated through treatment.

2. Before ordering a probation violator or offender to the custody of an intermediate sanction facility, the court shall advise the probation violator or offender that:

(a) Sentencing will be postponed if the probation violator or offender elects to submit to treatment and that the court may impose any conditions upon the election of treatment that it otherwise would be authorized to impose as a condition of probation;

(b) The probation violator or offender may be required to complete a period of probation after his or her release from the intermediate sanction facility;

(c) During treatment, the probation violator or offender will be confined in the intermediate sanction facility and will not be allowed to leave the facility; and

(d) Upon successful completion of the treatment and any subsequent period of probation, the sentence of the probation violator will not be executed or the conviction of the offender will be set aside, as applicable.

3. If the court determines that the probation violator or offender is an alcoholic or a drug addict, is likely to be rehabilitated through treatment and is a good candidate for treatment, the court may:



1 (a) If the probation violator or offender elects to receive
2 treatment, order the probation violator or offender to the custody of
3 the Department of Corrections for placement in an intermediate
4 sanction facility for a period not to exceed 6 months; and

5 (b) Defer sentencing until such time, if any, as sentencing is
6 authorized pursuant to section 7 of this act.

7 4. If the court assigns the probation violator or offender to an
8 intermediate sanction facility, the assignment must include the terms
9 and conditions for successful completion of the treatment, and may
10 provide for a period of probation upon release.

11 5. A probation violator or offender does not have a right to be
12 assigned to an intermediate sanction facility pursuant to this section,
13 or to remain in the custody of such a facility after such an
14 assignment. It is not intended that the establishment or operation of
15 an intermediate sanction facility creates any right or interest in
16 liberty or property or establishes a basis for any cause of action
17 against the State of Nevada, its political subdivisions, agencies,
18 boards, commissions, departments, officers or employees. The
19 decision by the court of whether to place a person in an intermediate
20 sanction facility is not subject to appeal.

21 6. Assignment of a probation violator or offender to an
22 intermediate sanction facility pursuant to this section after a
23 determination of alcoholism or drug addiction is a civil commitment
24 and shall not be deemed a criminal conviction.

25 **Sec. 6.** 1. A probation violator or offender who is placed in
26 an intermediate sanction facility to receive treatment shall pay the
27 cost of his or her treatment and supervision to the extent of his or
28 her financial resources.

29 2. A court shall not refuse to place a probation violator or
30 offender in an intermediate sanction facility if the probation violator
31 or offender does not have the financial resources to pay any or all of
32 the related costs.

33 3. The court may order a probation violator or offender who is
34 placed in an intermediate sanction facility to perform a specified
35 amount of community service upon completion of the treatment to
36 contribute toward the cost of his or her treatment and supervision.
37 Any such community service must be performed for and under the
38 supervising authority of a county, city, town or other political
39 subdivision or agency of the State of Nevada or a charitable
40 organization that renders service to the community or its residents.

41 **Sec. 7.** 1. When a probation violator or offender is placed in
42 an intermediate sanction facility, the court must defer sentencing for
43 the violation or offense, and if the Department of Health and Human
44 Services certifies to the court pursuant to section 2 of this act that
45 the probation violator or offender has satisfactorily completed the



1 treatment program, and the court approves the certification and
2 determines that the conditions upon the election of treatment have
3 been satisfied, the court must:

4 (a) For an offender, set aside the conviction, or place the
5 offender into the custody of the Division of Parole and Probation of
6 the Department of Public Safety to complete a period of probation.
7 If an offender is required to complete an additional period of
8 probation after completion of the treatment, upon the successful
9 completion of probation, his or her conviction must be set aside.

10 (b) For a probation violator, return the probationer to the
11 custody of the Division of Parole and Probation to complete any
12 remaining or additional period of probation.

13 2. If, upon conclusion of the period of treatment in an
14 intermediate sanction facility, the Department of Health and Human
15 Services does not certify that the probation violator or offender has
16 completed his or her treatment program satisfactorily, the court must
17 sentence the probation violator or offender. Such a sentence may
18 include causing the sentence for the underlying crime to be
19 executed.

20 3. If, before the treatment period expires, the Director of the
21 Department of Health and Human Services, or his or her designee,
22 determines that the probation violator or offender is not likely to
23 benefit from further treatment at the facility or is not likely to be
24 rehabilitated, the Director or designee of the Director must so advise
25 the court. The court shall then determine whether to allow the
26 probation violator or offender to remain in the intermediate sanction
27 facility to continue treatment or terminate the treatment and
28 sentence the person.

29 4. Any time that a probation violator or offender is confined in
30 an intermediate sanction facility must be deducted from any
31 sentence that is imposed pursuant to this section.

32 **Sec. 8.** 1. The Department of Corrections shall collect data
33 concerning each person who is placed in an intermediate sanction
34 facility. Such data must include, without limitation, the following
35 information about the person:

36 (a) Race and ethnicity;

37 (b) Gender;

38 (c) The crime committed by the person and the sentence that
39 may be imposed if the person does not successfully complete
40 treatment;

41 (d) The violation committed while on probation, if applicable;

42 (e) The number of persons placed in an intermediate sanction
43 facility who are incarcerated in an institution or facility of the
44 Department within 2 years after completing treatment in an
45 intermediate sanction facility; and



1 (f) The fiscal impact of the program, including any cost savings.
2 2. The Director shall submit a report of aggregate data
3 collected pursuant to subsection 1 to the Director of the Legislative
4 Counsel Bureau for distribution to each regular session of the
5 Legislature on or before January 15 of each odd-numbered year.

6 **Sec. 9.** The Department of Corrections shall adopt any
7 regulations necessary to carry out the provisions of this act.

8 **Sec. 10.** 1. There is hereby appropriated from the State
9 General Fund to the Department of Health and Human Services for
10 the evaluation of probation violators and offenders to determine
11 whether they are alcoholics or drug addicts and to provide treatment
12 to such probation violators and offenders who are placed in an
13 intermediate sanction facility as required pursuant to section 5 of
14 this act:

15 For the Fiscal Year 2011-2012.....\$250,000
16 For the Fiscal Year 2012-2013.....\$250,000

17 2. The sums appropriated by subsection 1 are available for
18 either fiscal year. Any remaining balance of those sums must not be
19 committed for expenditure after June 30, 2013, by the entity to
20 which the appropriation is made or any entity to which money from
21 the appropriation is granted or otherwise transferred in any manner,
22 and any portion of the appropriated money remaining must not be
23 spent for any purpose after September 20, 2013, by either the entity
24 to which the money was appropriated or the entity to which the
25 money was subsequently granted or transferred, and must be
26 reverted to the State General Fund on or before September 20, 2013.

27 **Sec. 11.** 1. This section and sections 1 to 9, inclusive, of this
28 act:

29 (a) Become effective upon passage and approval for the
30 purposes of adopting regulations, entering into contracts for the
31 provision of services and taking any other preparatory actions to
32 carry out the provisions of this act and on January 1, 2012, for all
33 other purposes.

34 (b) Expire by limitation on July 1, 2015.

35 2. Section 10 of this act becomes effective on July 1, 2011.

