

Amendment No. 371

Assembly Amendment to Assembly Bill No. 93

(BDR S-509)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: Yes 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) *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 underlining* is newly added transitory language.

DP/KEL



Date: 4/25/2011

A.B. No. 93—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)



ASSEMBLY BILL NO. 93—ASSEMBLYMAN SEGERBLOM

PREFILED JANUARY 13, 2011

JOINT SPONSORS: SENATORS HORSFORD AND PARKS

Referred to Committee on Judiciary

SUMMARY—Provides for the establishment of ~~intermediate sanction facilities~~ a pilot diversion program within the Department of Corrections to provide treatment for alcohol or drug abuse or mental illness 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.

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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; requiring the Department of Corrections to establish ~~intermediate sanction facilities~~ a pilot diversion program for certain probation violators ~~and offenders~~ to receive treatment for alcohol or drug abuse ~~and~~ or mental illness; 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:

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

17 in writing the Department of Corrections from liability as a condition of participation in
18 the pilot diversion program. Section 2 of this bill requires the Director of the Department of
19 Health and Human Services to provide for the evaluation of probation violators ~~and~~
20 ~~offenders~~ referred to the Department of Health and Human Services by the court and
21 authorizes the Director to enter into contracts with qualified persons or entities to provide such
22 evaluations and treatment.

23 ~~[Sections.]~~ Section 3 ~~and 4~~ of this bill ~~identify~~ identifies the probation violators ~~and~~
24 ~~offenders~~ who are eligible to elect placement in ~~an intermediate sanction facility.~~ Section 5
25 of this bill provides that assignment to an intermediate sanction facility is a civil commitment,
26 and not a criminal conviction. Section 5 further provides that placement in an intermediate
27 sanction facility is not a right and is within the discretion of the district court. the pilot
28 diversion program. Section 6 of this bill provides that a person placed in ~~an intermediate~~
29 ~~sanction facility~~ the pilot diversion program is required to pay for the cost of his or her
30 treatment and supervision to the extent of his or her financial resources and authorizes a court
31 to require such a person to perform community service upon completion of treatment to
32 contribute toward the cost of his or her treatment and supervision.

33 Section ~~7~~ 7.5 of this bill provides that ~~the court will defer sentencing of a probation~~
34 ~~violinor or offender who is placed in an intermediate sanction facility. Upon successful~~
35 ~~completion of the treatment, the court may set aside the conviction of an offender, or may~~
36 ~~require the offender to first complete a period of probation and then set aside the conviction.~~
37 ~~Upon successful completion of treatment by a probation violator, he or she will be returned to~~
38 ~~the custody of the Division of Parole and Probation of the Department of Public Safety.]~~ upon
39 satisfaction of the terms and conditions imposed upon a probation violator for
40 participation in the pilot diversion program, the court shall release the probationer from
41 supervision and order the probationer to complete any period of probation. ~~[without~~
42 ~~having the sentence executed.]~~ If a probation violator ~~for an offender~~ violates the rules of
43 the program or does not satisfy the terms and conditions of participation or successfully
44 complete treatment, the court may ~~execute the sentence. If a person placed in an intermediate~~
45 ~~sanction facility is not benefiting from treatment, the Director of the Department of Health~~
46 ~~and Human Services may inform the court, which may then determine whether to terminate or~~
47 ~~continue the treatment.]~~ revoke probation. Section 8 of this bill requires the Department of
48 Corrections ~~to collect data concerning the persons placed in intermediate sanction facilities~~
49 ~~and~~ the Department of Health and Human Services and the Division of Parole and
50 Probation of the Department of Public Safety to jointly provide a report which ~~[aggregates~~
51 ~~the]~~ provides certain data ~~to each regular session of the Legislature.]~~ for the Interim
52 Finance Committee. Section 10 of this bill makes an appropriation to the Department of
53 Health and Human Services to pay for the evaluation and treatment of probation violators.
54 ~~and offenders.]~~ This bill is established as a pilot program, and section 11 of this bill makes it
55 expire by limitation on July 1, 2015.

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

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

7 2. The Department of Corrections shall ensure that ~~[intermediate sanction]~~
8 facilities of adequate capacity for the pilot diversion program are available in
9 ~~[the northern and southern regions of]~~ one or more suitable locations within the
10 ~~[State and have a total capacity of not less than 400 offenders, with not less than~~
11 ~~250 offenders placed in facilities in the southern region of the]~~ State. The

Department shall not be required to provide housing for more than 50 probation violators at one time.

3. The Department of Corrections shall provide a healthful diet and appropriate, secure and sanitary housing and necessary emergency medical ~~and dental~~ services for the probation violators ~~and offenders~~ who are placed in ~~an intermediate sanction facility. The~~ the pilot division program, but the Department is not responsible for providing treatment to the probation violators ~~for offenders placed in an intermediate sanction facility.~~

~~4. Probation violators and offenders who are placed in an intermediate sanction facility must be kept separate from and have no direct contact with the general prison population.~~ remanded to the pilot diversion program pursuant to section 3 of this act.

4. As a condition of participation in the program, a probationer must release in writing the Department from liability and agree to abide by the applicable rules and regulations of the Department.

Sec. 2. 1. ~~The~~ To the extent practicable within the appropriation provided in section 10 of this act, the Director of the Department of Health and Human Services shall provide for the evaluation of each probation violator ~~and offender~~ who is ordered to be evaluated by a court pursuant to section 5 of this act to determine if the probation violator ~~for offender~~ is an abuser of alcohol or drugs or in need of treatment for a mental illness, and shall provide treatment to any such probation violator ~~for offender~~ who is ~~placed in an intermediate sanction facility~~ remanded to the pilot diversion program pursuant to section 5 of this act. The Director may ~~enter~~ :

(a) Enter into contracts with persons or private entities that are qualified to evaluate and provide such treatment to probation violators ~~and offenders~~ who are alcohol or drug abusers or in need of treatment for a mental illness; and

(b) Accept donations, gifts or grants of money or services to supplement the appropriation in section 10 of this act.

2. When a person has completed treatment for the term for which the person was assigned to the ~~intermediate sanction facility~~ pilot diversion program, the Director of the Department or a designee of the Director shall submit a report certifying to the court:

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

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

Sec. 3. 1. A district court may ~~allow~~ remand a probationer who is returned to the district court for a violation of his or her probation to ~~be placed in the custody of an intermediate sanction facility~~ the pilot diversion program established pursuant to section 1 of this act for supervision. The court may allow the probationer who is remanded to the pilot diversion program to:

(a) Leave the facilities of the Department of Corrections during the day for education, treatment or employment; or

(b) Reside outside the facilities of the Department.

2. The court may require the probationer to receive treatment for alcohol or drug abuse or a mental illness if the court has reason to believe that the probationer is an alcoholic or drug addict or in need of treatment for a mental illness and the court finds that the probationer:

~~1. Committed only a technical violation of his or her probation;~~

~~2. Has not previously been placed in an intermediate sanction facility for a violation related to the same offense; and~~

~~3. (a) Agrees to participate in the pilot diversion program;~~

~~(b) 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; and~~

~~(c) Meets the requirements for assignment to an institution or facility of minimum security as set forth in NRS 209.481; and~~

~~(d) Is not rejected for participation in the pilot diversion program by the Department of Corrections as posing a threat to the health, safety and welfare of;~~

~~(1) Other probationers remanded to the program;~~

~~(2) Employees of the Department of Corrections and its agents; or~~

~~(3) Employees of the Department of Health and Human Services and its agents.~~

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.] (Deleted by amendment.)~~

Sec. 5. 1. ~~[If the] Before a court [determines that] remands~~ a probation violator ~~[for offender is eligible] to [elect placement in an intermediate sanction facility to receive treatment rather than serving a term of imprisonment,] the pilot diversion program,~~ the court ~~[shall] may~~ order the examination of the probationer ~~[for 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 [for offender] is an alcoholic or drug addict or in need of treatment for a mental illness~~ 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 [for offender is an alcoholic or a drug addict,] would benefit from and is likely to be rehabilitated through treatment and [is a good candidate for treatment,] the court remands the probationer to the pilot diversion program,~~ the court ~~[may]~~

~~(a) If the probation violator or offender elects to receive treatment, order the probation violator or offender to the custody of the Department of Corrections for~~

placement in an intermediate sanction facility for a period not to exceed 6 months; and

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

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

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

~~6. Assignment of a probation violator or offender to an intermediate sanction facility pursuant to this section after a determination of alcoholism or drug addiction is a civil commitment and shall not be deemed a criminal conviction.~~ in addition to the terms and conditions that the court establishes pursuant to section 3 of this act.

Sec. 6. 1. A probation violator ~~for offender~~ who is placed in ~~an intermediate sanction facility~~ the pilot diversion program for supervision and, if appropriate, to receive treatment for alcohol or drug abuse or a mental illness shall pay the cost of his or her treatment and supervision to the extent of his or her financial resources.

2. A court shall not refuse to place a probation violator ~~for offender~~ in ~~an intermediate sanction facility~~ the pilot diversion program if the probation violator ~~for offender~~ does not have the financial resources to pay any or all of the related costs.

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

4. The court may issue a judgment against a probation violator and in favor of the State for the costs of treatment and supervision which remain unpaid when the probationer is released from the pilot diversion program but in no event may the amount of the judgment include any amount of debt which was extinguished by the successful completion of community service pursuant to subsection 3.

Sec. 7. ~~{1. When a probation violator or offender is placed in an intermediate sanction facility, the court must defer sentencing for the violation or offense, and if the Department of Health and Human Services certifies to the court pursuant to section 2 of this act that the probation violator or offender has satisfactorily completed the treatment program, and the court approves the certification and determines that the conditions upon the election of treatment have been satisfied, the court must:~~

~~(a) For an offender, set aside the conviction, or place the offender into the custody of the Division of Parole and Probation of the Department of Public Safety~~

~~to complete a period of probation. If an offender is required to complete an additional period of probation after completion of the treatment, upon the successful completion of probation, his or her conviction must be set aside.~~

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

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

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

~~4. Any time that a probation violator or offender is confined in an intermediate sanction facility must be deducted from any sentence that is imposed pursuant to this section.] (Deleted by amendment.)~~

Sec. 7.5. 1. When the court determines that a probation violator who was remanded to the pilot diversion program has satisfied the applicable terms and conditions established pursuant to sections 3 and 5 of this act, the court shall release the probationer from supervision and order the probationer to complete any remaining or additional period of probation as determined by the court.

2. If the court determines that a probation violator who was remanded to the pilot diversion program is violating the rules of participation in the program, has not satisfied the terms or conditions of participation in the program or has not successfully completed the treatment for alcohol or drug abuse or a mental illness, the court may revoke probation.

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

~~(a) Race and ethnicity;~~

~~(b) Gender;~~

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

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

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

~~(f) The fiscal impact of the program, including any cost savings.~~

~~2.] The [Director] Department of Corrections, the Department of Health and Human Services and the Division of Parole and Probation of the Department of Public Safety shall jointly submit a report for aggregate data collected pursuant to subsection 1) at least twice annually to the Director of the Legislative Counsel Bureau for [distribution to each regular session of the Legislature on or before January 15 of each odd-numbered year.] transmittal to the Interim Finance Committee. The report must include:~~

1. The number of probationers participating in the pilot diversion program;

- 1 2. The reasons the probationers entered the program;
2 3. The number of probationers who satisfied the terms and conditions of
3 their participation in the program; and
4 4. The status of the probationers who are in the program at the time the
5 report is prepared.

6 ~~Sec. 9. [The Department of Corrections shall adopt any regulations necessary~~
7 ~~to carry out the provisions of this act.] (Deleted by amendment.)~~

8 **Sec. 10.** 1. There is hereby appropriated from the State General Fund to the
9 Department of Health and Human Services for the evaluation of probation violators
10 ~~and offenders~~ to determine whether they are alcoholics or drug addicts **or in need**
11 **of treatment for mental illness** and to provide treatment to such probation
12 violators ~~and offenders~~ who are ~~placed in an intermediate sanction facility~~
13 **remanded to the pilot diversion program** as required pursuant to section 5 of this
14 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 either fiscal year.
18 Any remaining balance of those sums must not be committed for expenditure after
19 June 30, 2013, by the entity to which the appropriation is made or any entity to
20 which money from the appropriation is granted or otherwise transferred in any
21 manner, and any portion of the appropriated money remaining must not be spent for
22 any purpose after September 20, 2013, by either the entity to which the money was
23 appropriated or the entity to which the money was subsequently granted or
24 transferred, and must be reverted to the State General Fund on or before September
25 20, 2013.

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

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

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

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