

Amendment No. 79

Senate Amendment to Senate Bill No. 72 (BDR 16-120)

Proposed by: Senate Committee on Judiciary

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

BFG/BAW



Date: 3/31/2011

S.B. No. 72—Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)



SENATE BILL NO. 72—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED DECEMBER 15, 2010

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the assignment of certain criminal offenders to residential confinement. (BDR 16-120)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 concerning the assignment of certain offenders who are imprisoned for causing death or serious bodily harm while driving under the influence of intoxicating liquor or a controlled substance to residential confinement; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a person who causes the death or substantial bodily harm of another person while driving under the influence of intoxicating liquor or a controlled substance is guilty of a category B felony and must be punished by a minimum term of imprisonment of not less than 2 years. (NRS 484C.430) Under existing law, the Director of the Department of Corrections may assign a person imprisoned for a category B felony to residential confinement if the person satisfies certain standards adopted by the Director and the Director finds that the assignment is not likely to pose a threat to public safety. (NRS 209.392) **Section 1** of this bill requires the standards adopted by the Director to prohibit the assignment of certain persons imprisoned for causing death or substantial bodily harm while driving under the influence of intoxicating liquor or a controlled substance to a term of residential confinement unless the person has served the minimum term of imprisonment in the state prison ~~(required by existing law.)~~ **which was imposed by the court.**

Existing law requires the Director to establish a program for the treatment of abusers of alcohol or drugs who are imprisoned for certain felonies involving driving under the influence of intoxicating liquor or a controlled substance. (NRS 209.425) **Section 2** of this bill replaces a provision that requires the Director to assign certain participants in this program to residential confinement with a provision that allows the Director to assign those participants to residential confinement. (NRS 209.429) **Section 2** also prohibits the Director from assigning a participant in the program who is imprisoned for causing death or substantial bodily harm while driving under the influence of intoxicating liquor or a controlled substance to residential confinement unless that participant has served the minimum term of imprisonment in the state prison ~~(required by existing law.)~~ **which was imposed by the court.**

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 the offender's confinement and to meet any existing obligation for restitution to any victim of his or her 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 or her 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 the victim 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 the offender 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) 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 484C.110, 484C.120, 484C.130 or 484C.430; 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.

1 4. ~~[(The)]~~ *Except as otherwise provided in subsection 5, the* standards adopted
2 by the Director pursuant to subsection 3 must provide that an offender who has
3 been convicted of a category B felony is eligible for assignment to the custody of
4 the Division of Parole and Probation to serve a term of residential confinement
5 pursuant to this section if:

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

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

10 5. *The standards adopted by the Director pursuant to subsection 3 must*
11 *provide that an offender who is serving a sentence for a violation of NRS*
12 *484C.430 is not eligible for assignment to the custody of the Division of Parole*
13 *and Probation to serve a term of residential confinement pursuant to this section*
14 *unless the offender has served the minimum term of imprisonment in the state*
15 *prison ~~[set forth in NRS 484C.430.]~~ which was imposed by the court.*

16 6. If an offender assigned to the custody of the Division of Parole and
17 Probation pursuant to this section escapes or violates any of the terms or conditions
18 of the offender's residential confinement:

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

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

27 ~~[(6-)]~~ 7. The assignment of an offender to the custody of the Division of Parole
28 and Probation pursuant to this section shall be deemed:

29 (a) A continuation of the offender's imprisonment and not a release on parole;
30 and

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

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

35 ~~[(7-)]~~ 8. An offender does not have a right to be assigned to the custody of the
36 Division of Parole and Probation pursuant to this section, or to remain in that
37 custody after such an assignment, and it is not intended that the provisions of this
38 section or of NRS 213.371 to 213.410, inclusive, create any right or interest in
39 liberty or property or establish a basis for any cause of action against the State, its
40 political subdivisions, agencies, boards, commissions, departments, officers or
41 employees.

42 **Sec. 2.** NRS 209.429 is hereby amended to read as follows:

43 209.429 1. Except as otherwise provided in subsection 6, the Director
44 ~~[shall]~~ *may* assign an offender to the custody of the Division of Parole and
45 Probation of the Department of Public Safety to serve a term of residential
46 confinement, pursuant to NRS 213.380, for not longer than the remainder of the
47 maximum term of his or her sentence if the offender has:

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

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

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

2. Before a person may be assigned to serve a term of residential confinement pursuant to this section, he or she must submit to the Division of Parole and Probation a signed document stating that:

(a) He or she will comply with the terms or conditions of the residential confinement; and

(b) If he or she fails to comply with the terms or conditions of the residential confinement and is taken into custody outside of this State, he or she waives all rights relating to extradition proceedings.

3. 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 or her 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 earned by the offender to reduce his or her sentence pursuant to this chapter 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 the Director considers proper. The decision of the Director regarding forfeiture of credits is final.

4. 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 the offender's 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.

5. A person 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.

6. The Director shall not assign an offender who is serving a sentence for committing ~~fel~~:

(a) A battery which constitutes domestic violence pursuant to NRS 33.018 to the custody of the Division of Parole and Probation to serve a term of residential confinement unless the Director makes a finding that the offender is not likely to pose a threat to the victim of the battery.

(b) *A violation of NRS 484C.430 to the custody of the Division of Parole and Probation to serve a term of residential confinement unless the offender has served the minimum term of imprisonment in the state prison ~~set forth in NRS 484C.430.~~ which was imposed by the court.*