

SENATE BILL NO. 394—SENATORS SEGERBLOM AND PARKS

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Provides for the establishment of intermediate sanction facilities within the Department of Corrections for certain probation violators and offenders. (BDR S-498)

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 for certain probation violators and offenders to receive certain treatment; 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 upon successful completion of treatment at an intermediate sanction facility; making an appropriation; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

During the 2011 Legislative Session, the Nevada Legislature enacted Assembly Bill No. 93 to require the Department of Corrections to establish a pilot diversion program within the facilities maintained by the Department to provide treatment to certain probation violators if a court has reasonable cause to believe that the probation violators are alcoholics or drug addicts or in need of treatment for a mental illness and if the probation violators are ordered to the custody of the Department to receive such treatment. Under the pilot program, the Department of Corrections is required to provide food and housing as well as emergency medical services, but is not responsible for providing treatment to the persons placed in the facilities. (Chapter 433, Statutes of Nevada 2011, p. 2627)

**Section 10** of this bill expires the pilot program enacted in 2011 on June 30, 2013, and **section 11** of this bill makes the provisions of this bill effective on July 1, 2013. In this manner, this bill reenacts the pilot program as a requirement for the Department of Corrections to establish intermediate sanctions facilities and



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adds some requirements not previously included in the pilot program. **Section 1** of this bill requires the Department to establish intermediate sanction facilities within the correctional institutions or other facilities maintained by the Department. **Section 1** further adds the requirement for the Department to ensure that the facilities are available in the northern and southern regions of the State and specifies the total minimum capacity for the facilities. **Section 1** also adds the requirement that the Department provide necessary dental services to persons entering into the intermediate sanction facilities.

**Section 2** of this bill adds the requirement for 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 expand the persons eligible for placement in an intermediate sanction facility, and **section 5** of this bill requires persons placed in an intermediate sanction facility to remain in the facility instead of allowing persons to reside outside the facility and to leave for various purposes. (Section 3 of Chapter 433, Statutes of Nevada 2011, p. 2628) **Section 5** also makes assignment to an intermediate sanction facility a civil commitment and specifies that placement in an intermediate sanction facility is not a right.

**Section 7** of this bill allows the court to defer sentencing of a probation violator or offender who is placed in an intermediate sanction facility and, upon successful completion of the treatment, to set aside the conviction or the court may first require a period of probation and then set aside the conviction. The court is allowed to execute the sentence if treatment is not completed. In addition, the Director of the Department of Health and Human Services may cause the court to determine whether to terminate treatment if a person in a facility is not benefitting from treatment.

**Section 9** 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. The provisions of the existing pilot program are set to expire on July 1, 2015. (Section 11 of Chapter 433, Statutes of Nevada 2011, p. 2629) **Section 11** of this bill instead makes the provisions of this bill effective through June 30, 2017.

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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 addiction, mental illness and post-traumatic stress disorder 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 southern regions of the State and have a total capacity of not less than 400 probation violators and offenders, with not less than 250



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1 probation violators and offenders placed in facilities in the southern  
2 region of the State.

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

10 4. As a condition of placement in an intermediate sanction  
11 facility, a probation violator or an offender must release in writing  
12 the Department from liability and agree to abide by the applicable  
13 rules and regulations of the Department.

14 5. Probation violators and offenders who are placed in an  
15 intermediate sanction facility must be kept separate from and have  
16 no direct contact with the general prison population.

17 **Sec. 2.** 1. The Director of the Department of Health and  
18 Human Services shall provide for the evaluation of each probation  
19 violator and offender who is ordered to be evaluated by a court  
20 pursuant to section 5 of this act to determine if the probation  
21 violator or offender is an addict or suffers from a mental illness or  
22 post-traumatic stress disorder, and shall provide treatment to any  
23 such probation violator or offender who is placed in an intermediate  
24 sanction facility pursuant to section 5 of this act. The Director may  
25 enter into contracts with persons or private entities that are qualified  
26 to evaluate and provide such treatment to probation violators and  
27 offenders who are addicts or who suffer from mental illness or post-  
28 traumatic stress disorder.

29 2. When a person has completed treatment for the term for  
30 which the person was assigned to the intermediate sanction facility,  
31 the Director of the Department or a designee of the Director shall  
32 submit a report certifying to the court:

33 (a) Whether the person successfully completed the treatment;  
34 (b) Whether the person is believed to be rehabilitated; and  
35 (c) Any recommendations for actions to continue treatment for  
36 the addiction, mental illness or post-traumatic stress disorder or to  
37 ensure that the person does not relapse upon release.

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

40 **Sec. 3.** A district court may remand a probationer who is  
41 returned to the district court for violation of his or her probation to  
42 an intermediate sanction facility established pursuant to section 1 of  
43 this act to receive treatment for an addiction, a mental illness or  
44 post-traumatic stress disorder if the court has reason to believe that  
45 the probationer is an addict or in need of treatment for a mental



1 illness or post-traumatic stress disorder and the court finds that the  
2 probationer:

- 3 1. Agrees to be placed in an intermediate sanction facility;
- 4 2. Committed only a technical violation of his or her probation;
- 5 3. Has not previously been placed in an intermediate sanction  
6 facility for a violation related to the same offense;
- 7 4. Was not returned to the court for committing an act  
8 involving violence, the use of force, or the threat of violence or the  
9 use of force;
- 10 5. Meets the requirements for assignment to an institution or  
11 facility of minimum security as set forth in NRS 209.481; and
- 12 6. Is not rejected for placement in an intermediate sanction  
13 facility by the Department of Corrections as posing a threat to the  
14 health, safety and welfare of:

15 (a) Other probationers or offenders placed in the facility; or

16 (b) Employees of the Department of Corrections and its agents.

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

22 (a) The offender is eligible for, but is not able to participate in, a  
23 treatment program pursuant to NRS 453.580 because the court has  
24 not established such a treatment program, the treatment program  
25 cannot accommodate additional offenders or for any other reason;  
26 and

27 (b) The court has reason to believe that the offender is an  
28 alcoholic or a drug addict and the offender elects to be placed in  
29 such a facility to receive the treatment.

30 2. A district court may allow an offender who is found guilty  
31 of a crime and who is a veteran or a member of the military to elect  
32 to be placed in the custody of an intermediate sanction facility  
33 established pursuant to section 1 of this act to receive treatment for  
34 his or her addiction, mental illness or post-traumatic stress disorder  
35 if:

36 (a) The offender is eligible for, but is not able to participate in, a  
37 program pursuant to NRS 176A.280 because the court has not  
38 established such a program, the program cannot accommodate  
39 additional offenders or for any other reason; and

40 (b) The court has reason to believe that the offender suffers from  
41 mental illness, alcohol or drug abuse or post-traumatic stress  
42 disorder as described in NRS 176A.285 and the offender elects to be  
43 placed in such a facility to receive the treatment.

44 **Sec. 5.** 1. If the court determines that a probation violator or  
45 an offender is eligible to elect placement in an intermediate sanction



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1 facility to receive treatment rather than serving a term of  
2 imprisonment, the court shall order the examination of the  
3 probationer or offender by the Department of Health and Human  
4 Services or by a person or entity designated by the Director of the  
5 Department to determine whether the probationer or offender is an  
6 addict or suffers from a mental illness or post-traumatic stress  
7 disorder and is likely to be rehabilitated through treatment.

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

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

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

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

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

25 3. If the court determines that the probation violator or offender  
26 is an addict or suffers from a mental illness or post-traumatic stress  
27 disorder, is likely to be rehabilitated through treatment and is a good  
28 candidate for treatment, the court may:

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

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

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

39 5. A probation violator or an offender does not have a right to  
40 be assigned to an intermediate sanction facility pursuant to this  
41 section, or to remain in the custody of such a facility after such an  
42 assignment. It is not intended that the establishment or operation of  
43 an intermediate sanction facility creates any right or interest in  
44 liberty or property or establishes a basis for any cause of action  
45 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 an offender to an intermediate sanction facility pursuant to this section after a determination of addiction, mental illness or post-traumatic stress disorder is a civil commitment and shall not be deemed a criminal conviction.

**Sec. 6.** 1. A probation violator or an offender who is placed in an intermediate sanction facility to receive treatment 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 or an offender in an intermediate sanction facility if the probation violator or offender does not have the financial resources to pay any or all of the related costs.

3. The court may order a probation violator or an offender who is placed in an intermediate sanction facility to perform a specified amount of community service upon completion of the treatment 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 or an offender in favor of the State for the costs of treatment and supervision which remain unpaid when the probation violator or offender has completed the treatment 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 an 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 a probation violator, return the probationer to the custody of the Division of Parole and Probation of the Department of Public Safety to complete any remaining or additional period of probation.

(b) For an offender, set aside the conviction, or place the offender into the custody of the Division of Parole and Probation of



1 the Department of Public Safety to complete a period of probation.  
2 If an offender is required to complete an additional period of  
3 probation after completion of the treatment, upon the successful  
4 completion of probation, his or her conviction must be set aside.

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

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

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

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

28 (a) Race and ethnicity;

29 (b) Gender;

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

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

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

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

39 2. The Director of the Department of Corrections shall submit  
40 a report of aggregate data collected pursuant to subsection 1 to the  
41 Director of the Legislative Counsel Bureau for distribution to each  
42 regular session of the Legislature on or before January 15 of each  
43 odd-numbered year.

44 3. The Department of Corrections, the Department of Health  
45 and Human Services and the Division of Parole and Probation of the



1 Department of Public Safety shall jointly submit a report at least  
2 twice annually to the Director of the Legislative Counsel Bureau for  
3 transmittal to the Interim Finance Committee. The report must  
4 include:

5 (a) The number of probationers and offenders participating in  
6 treatment at an intermediate sanction facility;

7 (b) The reasons the probationers and offenders entered the  
8 facility;

9 (c) The number of probationers and offenders who satisfied the  
10 terms and conditions of their treatment in the facility; and

11 (d) The status of the probationers and offenders who are in an  
12 intermediate sanction facility at the time the report is prepared.

13 **Sec. 9.** 1. There is hereby appropriated from the State  
14 General Fund to the Department of Health and Human Services for  
15 the evaluation of probation violators and offenders to determine  
16 whether they are addicts or in need of treatment for mental illness or  
17 post-traumatic stress disorder and to provide treatment to such  
18 probation violators and offenders who are placed in an intermediate  
19 sanction facility as required pursuant to section 5 of this act:

20 For the Fiscal Year 2013-2014 ..... \$1,000,000

21 For the Fiscal Year 2014-2015 ..... \$1,000,000

22 2. Any cost savings reported pursuant to paragraph (f) of  
23 subsection 1 of section 8 of this act due to placing probation  
24 violators and offenders in intermediate sanction facilities in lieu of  
25 correctional institutions or other facilities maintained by the  
26 Department of Corrections may be used to offset the cost of the  
27 evaluation and treatment of probation violators and offenders who  
28 are placed in intermediate sanction facilities.

29 3. The sums appropriated by subsection 1 are available for  
30 either fiscal year. Any remaining balance of those sums must not be  
31 committed for expenditure after June 30, 2017, by the entity to  
32 which the appropriation is made or any entity to which money from  
33 the appropriation is granted or otherwise transferred in any manner,  
34 and any portion of the appropriated money remaining must not be  
35 spent for any purpose after September 15, 2017, by either the entity  
36 to which the money was appropriated or the entity to which the  
37 money was subsequently granted or transferred, and must be  
38 reverted to the State General Fund on or before September 15, 2017.

39 **Sec. 10.** Section 11 of chapter 433, Statutes of Nevada 2011,  
40 at page 2629, is hereby amended to read as follows:

41 Sec. 11. This act becomes effective upon passage and  
42 approval and expires by limitation on ~~July 1, 2015.~~ **June 30,**  
43 **2013.**

44 **Sec. 11.** 1. This section and section 10 of this act become  
45 effective upon passage and approval.



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- 1        2. Sections 1 to 9, inclusive, of this act become effective on  
2        July 1, 2013, and expire by limitation on June 30, 2017.

