

SENATE BILL NO. 49—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DEPARTMENT OF CORRECTIONS)

PREFILED NOVEMBER 19, 2018

Referred to Committee on Judiciary

SUMMARY—Requires the Director of the Department of Corrections to establish a program of treatment for offenders with substance use disorders. (BDR 16-201)

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

~

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

AN ACT relating to offenders; defining certain terms; requiring the Director of the Department of Corrections to establish a program of treatment for offenders with substance use disorders; revising provisions related to programs of aftercare; repealing provisions relating to therapeutic communities; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Director of the Department of Corrections, in conjunction with the Division of Public and Behavioral Health of the Department of Health and Human Services and with the approval of the Board of State Prison Commissioners, to establish therapeutic communities to provide treatment to certain offenders who are substance abusers. (NRS 209.4236) **Section 7** of this bill requires the Director, in conjunction with the Division and with the approval of the Board, to establish programs of treatment for offenders with substance use disorders rather than establishing therapeutic communities for offenders who are substance abusers. **Section 15** of this bill repeals the provisions which define "substance abuser" and "therapeutic community." **Section 2** of this bill defines the term "program of treatment for offenders with substance use disorders," and **section 3** of this bill defines the term "substance use disorder" for the purposes of **section 7**.

Existing law requires that, to the extent practicable, offenders assigned to a therapeutic community be housed in areas of a facility or institution that are segregated from offenders who are not assigned to the therapeutic community. (NRS 209.4236) **Section 7** authorizes, rather than requires, the Director to



segregate certain offenders assigned to a program of treatment for offenders with substance use disorders. **Section 7** also: (1) authorizes an offender assigned to a program of treatment for offenders with substance use disorders to be taken outside an institution or facility, under appropriate precautions to prevent the offender's escape, to participate in a program of treatment for offenders with substance use disorders; and (2) requires an offender to participate in such a program of treatment for not less than 3 months.

Existing law requires the Director, in conjunction with the Division of Public and Behavioral Health of the Department of Health and Human Services and with the approval of the Board of State Prison Commissioners, to establish programs of aftercare to provide continuing treatment to offenders who successfully complete treatment in a therapeutic community. (NRS 209.4238) **Section 9** of this bill instead requires the Director to establish such programs of aftercare for those offenders who successfully complete a program of treatment for offenders with substance use disorders established pursuant to **section 7**.

Sections 4-14 of this bill make conforming changes by replacing the term "therapeutic community" with the term "program of treatment for offenders with substance use disorders," as applicable.

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

Section 1. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *"Program of treatment for offenders with substance use disorders" means a program:*

1. Established pursuant to NRS 209.4236 to treat offenders with substance use disorders; and

2. Which is evidence-based or based on best practices supported by research.

Sec. 3. *"Substance use disorder" means a behavioral or mental disorder associated with the use of or withdrawal from drugs or alcohol.*

Sec. 4. NRS 209.247 is hereby amended to read as follows:

209.247 Except as otherwise provided in NRS 209.2475, the Director may make the following deductions, in the following order of priority, from any money deposited in the individual account of an offender from any source other than the offender's wages:

1. An amount the Director deems reasonable for deposit with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime created pursuant to NRS 217.260.

2. An amount the Director considers reasonable to meet an existing obligation of the offender for the support of the offender's family.

3. An amount determined by the Director, with the approval of the Board, to offset the cost of maintaining the offender in the institution, as reflected in the budget of the Department. An amount



deducted pursuant to this subsection may include, but is not limited to, an amount to offset the cost of participation by the offender pursuant to NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act* in a ~~[therapeutic community]~~ *program of treatment for offenders with substance use disorders* or a program of aftercare, or both.

4. A deduction pursuant to NRS 209.246.

5. An amount determined by the Director for deposit in a savings account for the offender, in which interest on the money deposited does not accrue, to be used for the payment of the expenses of the offender related to his or her release or, if the offender dies before his or her release, to defray expenses related to arrangements for the offender's funeral.

6. An amount the Director considers reasonable to meet an existing obligation of the offender for restitution to a victim of his or her crime.

7. An amount the Director considers reasonable to pay the balance of an administrative assessment included in the judgment entered against the offender for each crime for which the offender is incarcerated and the balance of an unpaid administrative assessment included in a judgment entered against the offender for a crime committed in this state for which the offender was previously convicted. An amount deducted from a source other than the wages earned by the offender during his or her incarceration, pursuant to this subsection, must be submitted:

(a) If the offender does not have an administrative assessment owing from a judgment entered for a crime previously committed in this state, to the court that entered the judgment against the offender for which he or she is incarcerated.

(b) If the offender has an administrative assessment owing from a judgment entered for a crime previously committed in this state, to the court that first entered a judgment for which an administrative assessment is owing, until the balance owing has been paid.

8. An amount the Director considers reasonable to pay the balance of a fine included in the judgment entered against the offender for each crime for which the offender is incarcerated and the balance of an unpaid fine included in a judgment entered against the offender for a crime committed in this state for which the offender was previously convicted. An amount deducted from any source other than the wages earned by the offender during his or her incarceration, pursuant to this subsection, must be submitted:

(a) If the offender does not have a fine owing from a judgment entered for a crime previously committed in this state, to the court that entered the judgment against the offender for which he or she is incarcerated.



(b) If the offender has a fine owing from a judgment entered for a crime previously committed in this state, to the court that first entered a judgment for which any fine or administrative assessment is owing, until the balance owing has been paid.

9. An amount the Director considers reasonable to pay the balance of any fee imposed upon the offender for genetic marker analysis and included in the judgment entered against the offender pursuant to NRS 176.0915.

➤ The Director shall determine the priority of any other deduction authorized by law from any source other than the wages earned by the offender during his or her incarceration.

Sec. 5. NRS 209.4231 is hereby amended to read as follows:

209.4231 As used in NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act*, unless the context otherwise requires, the words and terms defined in NRS 209.4232 ~~to 209.4235, inclusive,~~ *and 209.4233 and sections 2 and 3 of this act* have the meanings ascribed to them in those sections.

Sec. 6. NRS 209.4233 is hereby amended to read as follows:

209.4233 "Program of aftercare" means a program that is established pursuant to NRS 209.4238 to provide continuing treatment to those offenders who successfully complete treatment in a ~~therapeutic community,~~ *program of treatment for offenders with substance use disorders.*

Sec. 7. NRS 209.4236 is hereby amended to read as follows:

209.4236 1. The Director shall, in conjunction with the Division and with the approval of the Board, establish one or more ~~therapeutic communities to provide~~ *programs of* treatment ~~to certain~~ *for* offenders ~~who are~~ *with* substance ~~abusers,~~ *use disorders.* A ~~therapeutic community,~~ *program of treatment for offenders with substance use disorders* must include, but is not limited to, the requirements set forth in this section.

2. A ~~therapeutic community,~~ *program of treatment for offenders with substance use disorders* must provide an offender with:

- (a) Intensive treatment for substance ~~abuse,~~ *use disorders;*
- (b) A clearly defined set of goals;
- (c) A clearly defined structure of authority; and
- (d) A highly structured schedule that includes, but is not limited to, the treatment listed in paragraph (a) and, if practicable, programs of employment, general education or vocational training.

3. Except as otherwise provided in NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act*, offenders who are assigned to a ~~therapeutic community,~~ *program of treatment for offenders with substance use disorders*, to the extent practicable as determined by the Director or a person designated by the Director:



(a) ~~[Must]~~ *May* be housed in areas of a facility or institution that are segregated from other areas of the facility or institution in which offenders who are not assigned to the ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* are housed; ~~{and}~~

(b) *May be taken outside an institution or facility, under appropriate precautions to prevent the offender's escape, to participate in a program of treatment for offenders with substance use disorders; and*

(c) Must participate in the ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* for a period of ~~{1 year and a program of aftercare for a period of 1 year if a program of aftercare is required pursuant to NRS 209.4238.}~~ *not less than 3 months as deemed appropriate for the level of care being offered.*

Sec. 8. NRS 209.4237 is hereby amended to read as follows:

209.4237 1. The Director shall, in conjunction with the Division and with the approval of the Board, establish a program to evaluate an offender in the custody of the Department to determine whether the offender ~~{is}~~ *has* a substance ~~{abuser}~~ *use disorder* and whether the offender may benefit from participation in a ~~{therapeutic community.}~~ *program of treatment for offenders with substance use disorders.*

2. An evaluation of an offender must be conducted pursuant to subsection 1 if the offender is eligible to be assigned to a ~~{therapeutic community.}~~ *program of treatment for offenders with substance use disorders.*

3. After an evaluation is conducted pursuant to subsection 1, the Director or a person designated by the Director shall determine whether the offender ~~{is}~~ *has* a substance ~~{abuser}~~ *use disorder* and whether the offender may benefit from participation in a ~~{therapeutic community.}~~ *program of treatment for offenders with substance use disorders.*

4. If a determination is made that the offender ~~{is}~~ *has* a substance ~~{abuser}~~ *use disorder* and that the offender may benefit from participation in a ~~{therapeutic community.}~~ *program of treatment for offenders with substance use disorders*, the Director or a person designated by the Director shall determine whether to assign the offender to participate in a ~~{therapeutic community.}~~ *program of treatment for offenders with substance use disorders.* In determining whether to assign an offender to participate in a ~~{therapeutic community.}~~ *program of treatment for offenders with substance use disorders*, the Director or a person designated by the Director shall:



(a) Consider the severity of the ~~{problem of}~~ substance ~~{abuse by}~~ *use disorder* of the offender and the availability of space in each ~~{therapeutic community;} program of treatment for offenders with substance use disorders;~~ and

(b) Give preference, to the extent practicable, to those offenders who appear to be most capable of successfully participating in and completing treatment in a ~~{therapeutic community;} program of treatment for offenders with substance use disorders.~~

5. To be eligible to be assigned to participate in a ~~{therapeutic community;} program of treatment for offenders with substance use disorders,~~ an offender must be within 2 years of the date on which the offender is reasonably expected to be released, as determined by the Director.

Sec. 9. NRS 209.4238 is hereby amended to read as follows:

209.4238 1. The Director shall, in conjunction with the Division and with the approval of the Board, establish one or more programs of aftercare to provide continuing treatment to those offenders who successfully complete treatment in a ~~{therapeutic community;} program of treatment for offenders with substance use disorders.~~

2. Except as otherwise provided in NRS 209.4231 to 209.4244, inclusive ~~{-}~~, *and sections 2 and 3 of this act:*

(a) An offender who successfully completes treatment in a ~~{therapeutic community;} program of treatment for offenders with substance use disorders~~ must be assigned, to the extent practicable as determined by the Director or a person designated by the Director, to a program of aftercare upon completion of treatment in a ~~{therapeutic community;} program of treatment for offenders with substance use disorders.~~

(b) An offender shall participate, to the extent practicable as determined by the Director or a person designated by the Director, in a program of aftercare for a period of 1 year.

(c) If an offender is assigned to a program of aftercare and, before or during participation in such a program, the offender is released on parole:

(1) The offender shall continue to participate in a program of aftercare, to the extent practicable as determined by the Director or a person designated by the Director and by the State Board of Parole Commissioners; and

(2) That participation, if any, must be made a condition of parole pursuant to NRS 213.1235.

(d) If an offender is assigned to a program of aftercare and, before or during participation in such a program, the offender is assigned to serve a term of residential confinement pursuant to NRS 209.392, the offender shall continue to participate in a program of



aftercare to the extent practicable as determined by the Director or a person designated by the Director.

Sec. 10. NRS 209.4239 is hereby amended to read as follows:

209.4239 1. The Director or a person designated by the Director may remove an offender from a ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* or a program of aftercare, temporarily or permanently, for any lawful reason or purpose.

2. The Director may impose conditions on the participation of an offender in a ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* or a program of aftercare and may establish sanctions and incentives relating to participation in a ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* or a program of aftercare.

3. The provisions of NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act* do not create a right on behalf of an offender to participate in a ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* or a program of aftercare and do not establish a basis for any cause of action against the State or its officers or employees for denial of the ability to participate in or for removal from a ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* or a program of aftercare.

Sec. 11. NRS 209.424 is hereby amended to read as follows:

209.424 An offender may not participate in a ~~{therapeutic community}~~ *program of treatment for offenders with substance use disorders* if the offender:

1. Was sentenced to death or a term of imprisonment for life without the possibility of parole; or

2. Is or was eligible to participate in the program of treatment established pursuant to NRS 209.425, whether or not the offender actually participated in or completed that program of treatment.

Sec. 12. NRS 209.4242 is hereby amended to read as follows:

209.4242 To carry out the provisions of NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act*, the Director may contract with persons or private entities that are qualified to evaluate offenders ~~{who are}~~ *with* substance ~~{abusers}~~ *use disorders* or qualified to administer ~~{therapeutic communities}~~ *programs of treatment for offenders with substance use disorders* or programs of aftercare.

Sec. 13. NRS 209.4244 is hereby amended to read as follows:

209.4244 The Director shall provide the following information to the Interim Finance Committee on or before January 31 of each even-numbered year and to the Senate Standing Committee on



Finance and the Assembly Standing Committee on Ways and Means at the beginning of each regular session of the Legislature:

1. The number of offenders who are currently participating in ~~therapeutic communities~~ *programs of treatment for offenders with substance use disorders* and programs of aftercare;

2. The number of offenders who have participated in ~~therapeutic communities~~ *programs of treatment for offenders with substance use disorders* and programs of aftercare and the number of those offenders who subsequently have been arrested for other offenses; and

3. The number of offenders who have successfully completed treatment in ~~therapeutic communities~~ *programs of treatment for offenders with substance use disorders* and programs of aftercare and the number of those offenders who subsequently have been arrested for other offenses.

➤ The Central Repository for Nevada Records of Criminal History shall assist the Director in obtaining all data that is necessary to prepare the information required by subsections 2 and 3.

Sec. 14. NRS 209.463 is hereby amended to read as follows:

209.463 Except as otherwise provided in NRS 209.2475, the Director may make the following deductions, in the following order of priority, from the wages earned by an offender from any source during the offender's incarceration:

1. If the hourly wage of the offender is equal to or greater than the federal minimum wage:

(a) An amount the Director deems reasonable for deposit with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime.

(b) An amount the Director considers reasonable to meet an existing obligation of the offender for the support of his or her family.

(c) An amount determined by the Director, with the approval of the Board, for deposit in the State Treasury for credit to the Fund for New Construction of Facilities for Prison Industries, but only if the offender is employed through a program for prison industries.

(d) An amount determined by the Director for deposit in the individual account of the offender in the Prisoners' Personal Property Fund.

(e) An amount determined by the Director, with the approval of the Board, to offset the cost of maintaining the offender in the institution, as reflected in the budget of the Department. An amount deducted pursuant to this paragraph may include, but is not limited to, an amount to offset the cost of participation by the offender pursuant to NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act* in a ~~therapeutic community~~ *program of*



1 *treatment for offenders with substance use disorders* or a program
2 of aftercare, or both.

3 (f) A deduction pursuant to NRS 209.246.

4 (g) An amount determined by the Director for deposit in a
5 savings account for the offender, in which interest on the money
6 deposited does not accrue, to be used for the payment of the
7 expenses of the offender related to his or her release, or if the
8 offender dies before his or her release, to defray expenses related to
9 arrangements for his or her funeral.

10 (h) An amount the Director considers reasonable to meet an
11 existing obligation of the offender for restitution to any victim of his
12 or her crime.

13 (i) An amount the Director considers reasonable to pay the
14 balance of any fee imposed upon the offender for genetic marker
15 analysis and included in the judgment entered against the offender
16 pursuant to NRS 176.0915.

17 (j) An amount the Director considers reasonable to pay the
18 balance of an administrative assessment included in the judgment
19 entered against the offender for each crime for which the offender is
20 incarcerated and the balance of an unpaid administrative assessment
21 included in a judgment entered against the offender for a crime
22 committed in this state for which the offender was previously
23 convicted. An amount deducted from the wages of the offender
24 pursuant to this paragraph must be submitted:

25 (1) If the offender does not have an administrative
26 assessment owing from a judgment entered for a crime previously
27 committed in this state, to the court that entered the judgment
28 against the offender for which the offender is incarcerated.

29 (2) If the offender has an administrative assessment owing
30 from a judgment entered for a crime previously committed in this
31 state, to the court that first entered a judgment for which an
32 administrative assessment is owing, until the balance owing has
33 been paid.

34 (k) An amount the Director considers reasonable to pay the
35 balance of a fine included in the judgment entered against the
36 offender for each crime for which the offender is incarcerated and
37 the balance of an unpaid fine included in a judgment entered against
38 the offender for a crime committed in this state for which the
39 offender was previously convicted. An amount deducted from the
40 wages of the offender pursuant to this paragraph must be submitted:

41 (1) If the offender does not have a fine owing from a
42 judgment entered for a crime previously committed in this state, to
43 the court that entered the judgment against the offender for which
44 the offender is incarcerated.



(2) If the offender has a fine owing from a judgment entered for a crime previously committed in this state, to the court that first entered a judgment for which a fine or administrative assessment is owing, until the balance owing has been paid.

➤ The Director shall determine the priority of any other deduction authorized by law from the wages earned by the offender from any source during the offender's incarceration.

2. If the hourly wage of the offender is less than the federal minimum wage:

(a) An amount the Director deems reasonable for deposit with the State Treasurer for credit to the Fund for the Compensation of Victims of Crime.

(b) An amount determined by the Director, with the approval of the Board, for deposit in the State Treasury for credit to the Fund for New Construction of Facilities for Prison Industries, but only if the offender is employed through a program for prison industries.

(c) An amount determined by the Director for deposit in the individual account of the offender in the Prisoners' Personal Property Fund.

(d) An amount determined by the Director, with the approval of the Board, to offset the cost of maintaining the offender in the institution, as reflected in the budget of the Department. An amount deducted pursuant to this paragraph may include, but is not limited to, an amount to offset the cost of participation by the offender pursuant to NRS 209.4231 to 209.4244, inclusive, *and sections 2 and 3 of this act* in a ~~[therapeutic—community]~~ *program of treatment for offenders with substance use disorders* or a program of aftercare, or both.

(e) A deduction pursuant to NRS 209.246.

(f) An amount the Director considers reasonable to pay the balance of any fee imposed upon the offender for genetic marker analysis and included in the judgment entered against the offender pursuant to NRS 176.0915.

(g) An amount determined by the Director for deposit in a savings account for the offender, in which interest on the money deposited does not accrue, to be used for the payment of the expenses of the offender related to the offender's release, or if the offender dies before the offender's release, to defray expenses related to arrangements for the offender's funeral.

➤ The Director shall determine the priority of any other deduction authorized by law from the wages earned by the offender from any source during the offender's incarceration.

Sec. 15. NRS 209.4234 and 209.4235 are hereby repealed.

Sec. 16. This act becomes effective:



- 1 1. Upon passage and approval for the purpose of adopting
- 2 regulations and performing any other preparatory administrative
- 3 tasks that are necessary to carry out the provisions of this act; and
- 4 2. On July 1, 2019, for all other purposes.

TEXT OF REPEALED SECTIONS

209.4234 “Substance abuser” defined. “Substance abuser” means a person who abuses, is addicted to or is psychologically or physically dependent on:

1. Alcohol;
2. A controlled substance; or
3. A drug, poison, solvent or toxic inhalant. This subsection does not include tobacco or products made from tobacco.

209.4235 “Therapeutic community” defined. “Therapeutic community” means a program that is established pursuant to NRS 209.4236 to provide treatment to certain offenders who are substance abusers.

