

SENATE BILL NO. 398—COMMITTEE ON FINANCE

APRIL 2, 2009

Referred to Committee on Finance

SUMMARY—Provides for the establishment of intermediate sanction facilities within the Department of Corrections to provide treatment to certain probation violators and offenders. (BDR S-1222)

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 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:

1 Existing law provides that a person who violates the conditions of his probation
2 must be brought before the court to determine the actions to be taken, which may
3 include causing the sentence imposed to be executed. (NRS 176A.630) Existing
4 law also authorizes the establishment of programs of treatment for alcohol and drug
5 abuse by the district courts for the treatment of certain offenders. (NRS 453.580) A
6 person who elects to participate in such a treatment program may have his sentence
7 set aside upon successful completion of the treatment program. (NRS 458.330)
8 **Section 1** of this bill requires the Department of Corrections to establish
9 intermediate sanction facilities within the facilities maintained by the Department.
10 Such facilities must be used to provide intensive treatment to certain probation
11 violators and offenders who are determined to be alcoholics or drug addicts and are
12 ordered to the custody of the Department to receive such treatment. The
13 Department of Corrections is required to provide food and housing as well as
14 necessary medical and dental services, but is not responsible for providing



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15 treatment to the persons placed in the facilities, which instead is to be provided by
16 the Department of Health and Human Services. **Section 2** of this bill requires the
17 Director of the Department of Health and Human Services to provide for
18 the evaluation of probation violators and offenders referred to the Department by
19 the court and authorizes the Director to enter into contracts with qualified persons
20 or entities to provide such evaluations and treatment.

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

31 **Section 7** of this bill provides that the court will defer sentencing of a probation
32 violator or offender who is placed in an intermediate sanction facility. Upon
33 successful completion of the treatment, the court may set aside the conviction of an
34 offender, or may require him to first complete a period of probation and then set
35 aside the conviction. Upon successful completion of treatment by a probation
36 violator, he will be returned to the custody of the Division of Parole and Probation
37 of the Department of Public Safety to complete the period of probation without
38 having the sentence executed. If a probation violator or offender does not
39 successfully complete treatment, the court may execute the sentence. If a person
40 placed in an intermediate sanction facility is not benefitting from treatment, the
41 Director of the Department of Health and Human Services may inform the court,
42 which may then determine whether to terminate or continue the treatment. **Section**
43 **8** of this bill requires the Department of Corrections to collect data concerning the
44 persons placed in intermediate sanction facilities and to provide a report which
45 aggregates the data to each regular session of the Legislature. **Section 10** of this bill
46 makes an appropriation to the Department of Health and Human Services to pay for
47 the evaluation and treatment of probation violators and offenders. This bill is
48 established as a pilot program, and **section 11** of this bill makes it expire by
49 limitation on July 1, 2013.

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
2 intermediate sanction facilities within the correctional institutions or
3 other facilities maintained by the Department. The intermediate
4 sanction facilities must be used to provide intensive treatment to
5 certain probation violators and offenders who are ordered to the
6 custody of the Department to receive such treatment pursuant to
7 sections 3 and 4 of this act.

8 2. The Department of Corrections shall ensure that
9 intermediate sanction facilities are available in the northern and
10 southern regions of the State and have a total capacity of not less
11 than 400 offenders, with not less than 250 offenders placed in
12 facilities in the southern region of the State.



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

7 4. Probation violators and offenders who are placed in the
8 intermediate sanction facilities must be kept separate from and have
9 no direct contact with the general prison population.

10 **Sec. 2.** 1. The Director of the Department of Health and
11 Human Services shall provide for the evaluation of probation
12 violators and offenders to determine if they are drug or alcohol
13 abusers, and for the provision of treatment to any such probation
14 violators and offenders who are placed in the intermediate sanction
15 facilities pursuant to section 5 of this act. The Director may enter
16 into contracts with persons or private entities that are qualified to
17 evaluate and provide such treatment to probation violators and
18 offenders who are drug or alcohol abusers.

19 2. When a person has completed treatment for the term for
20 which he was assigned to the intermediate sanction facility, the
21 Director of the Department or his designee shall submit a report to
22 the court indicating:

23 (a) Whether the person successfully completed the treatment;

24 (b) Whether the person is believed to be rehabilitated; and

25 (c) Any recommendations for actions to ensure that the person
26 does not begin to abuse alcohol or drugs upon release.

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

29 **Sec. 3.** 1. A district court may allow a probationer who is
30 returned to the district court for a violation of his probation to elect
31 to be placed in the custody of an intermediate sanction facility
32 established pursuant to section 1 of this act to receive treatment for
33 alcohol or drug abuse if the court has reason to believe that the
34 probationer is an alcoholic or drug addict and the court finds that the
35 probationer is eligible to elect to receive such treatment.

36 2. A probationer is eligible to elect to receive treatment in the
37 custody of an intermediate sanction facility if the probationer:

38 (a) Committed a technical violation of his probation;

39 (b) Has never been placed in an intermediate sanction facility;

40 (c) Did not commit another crime for which he will be tried; and

41 (d) Was not returned to the court for committing an act
42 involving violence, the use of force, or the threat of violence or the
43 use of force.

44 **Sec. 4.** A district court may allow an offender who is found
45 guilty of a crime involving the use of alcohol or drugs to elect to be



1 placed in the custody of an intermediate sanction facility established
2 pursuant to section 1 of this act to receive treatment for drug or
3 alcohol abuse if:

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

9 2. The court has reason to believe that the offender is an
10 alcoholic or drug addict and the offender elects to receive the
11 treatment.

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

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

23 (a) Sentencing will be postponed if he elects to submit to
24 treatment and that the court may impose any conditions upon the
25 election of treatment that could be imposed as a condition of
26 probation;

27 (b) He may be required to complete an additional period of
28 probation after his release from the intermediate sanction facility;

29 (c) During treatment, he will be confined in the intermediate
30 sanction facility and will not be allowed to leave the facility; and

31 (d) Upon successful completion of the treatment and any
32 additional period of probation, the sentence of a probation violator
33 will not be executed and the conviction of an offender will be set
34 aside.

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

38 (a) If the probation violator or offender elects to receive
39 treatment, order him to the custody of the Department of
40 Corrections for placement in an intermediate sanction facility for a
41 period not to exceed 6 months; and

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

44 4. If the court assigns the probation violator or offender to an
45 intermediate sanction facility, the assignment must include the terms



1 and conditions for successful completion of the treatment, and may
2 provide for an additional period of probation upon release.

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

13 6. Assignment to an intermediate sanction facility pursuant to
14 this section after a determination of alcoholism or drug addiction is
15 a civil commitment and shall not be deemed a criminal conviction.

16 **Sec. 6.** 1. A probation violator or offender who is placed in
17 an intermediate sanction facility to receive treatment shall pay the
18 cost of his treatment and supervision to the extent of his financial
19 resources.

20 2. A court shall not refuse to place a probation violator or
21 offender in an intermediate sanction facility if he does not have the
22 financial resources to pay any or all of the related costs.

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

31 **Sec. 7.** 1. When a probation violator or offender is placed in
32 an intermediate sanction facility, his sentencing must be deferred,
33 and if the Department of Health and Human Services certifies to the
34 court that the probation violator or offender has satisfactorily
35 completed the treatment program, and the court approves the
36 certification and determines that the conditions upon the election of
37 treatment have been satisfied, the court shall:

38 (a) For an offender, set aside the conviction, or place the person
39 into the custody of the Division of Parole and Probation of the
40 Department of Public Safety to complete a period of probation. If an
41 offender is required to complete an additional period of probation
42 after completion of the treatment, upon the successful completion of
43 probation, his conviction must be set aside.



1 (b) For a probation violator, return the probationer to the
2 custody of the Division of Parole and Probation to complete any
3 remaining period of probation.

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

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

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

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

25 (a) Race and ethnicity;

26 (b) Gender;

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

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

31 (e) The number of persons placed in an intermediate sanction
32 facility who are incarcerated in state prison within 2 years after
33 completing treatment in such a facility; and

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

35 2. The Director shall submit a report of aggregate data
36 collected pursuant to subsection 1 to the Director of the Legislative
37 Counsel Bureau for distribution to each regular session of the
38 Legislature on or before January 15 of each odd-numbered year.

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

41 **Sec. 10.** 1. There is hereby appropriated from the State
42 General Fund to the Department of Health and Human Services to
43 evaluate probation violators and offenders to determine whether
44 they are alcoholics or drug addicts and to provide treatment to such



1 probation violators and offenders who are placed in intermediate
2 sanction facilities as required pursuant to section 2 of this act:

3	For the Fiscal Year 2009-2010.....	\$250,000
4	For the Fiscal Year 2010-2011.....	\$250,000

5 2. The sums appropriated by subsection 1 are available for
6 either fiscal year. Any remaining balance of those sums must not be
7 committed for expenditure after June 30, 2011, by the entity to
8 which the appropriation is made or any entity to which money from
9 the appropriation is granted or otherwise transferred in any manner,
10 and any portion of the appropriated money remaining must not be
11 spent for any purpose after September 16, 2011, by either the entity
12 to which the money was appropriated or the entity to which the
13 money was subsequently granted or transferred, and must be
14 reverted to the State General Fund on or before September 16, 2011.

15 **Sec. 11.** 1. This section and sections 1 to 9, inclusive, of this
16 act become effective upon passage and approval for the purposes of
17 adopting regulations, entering into contracts for the provision of
18 services and taking any other preparatory actions to carry out the
19 provisions of this act and on January 1, 2010, for all other purposes,
20 and expires by limitation on July 1, 2013.

21 2. Section 10 of this act becomes effective on July 1, 2009.

