

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:

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

14 Existing law requires the Director to establish a program for the treatment of
15 abusers of alcohol or drugs who are imprisoned for certain felonies involving
16 driving under the influence of intoxicating liquor or a controlled substance. (NRS
17 209.425) **Section 2** of this bill replaces a provision that requires the Director to
18 assign certain participants in this program to residential confinement with a
19 provision that allows the Director to assign those participants to residential



20 confinement. (NRS 209.429) **Section 2** also prohibits the Director from assigning a
21 participant in the program who is imprisoned for causing death or substantial bodily
22 harm while driving under the influence of intoxicating liquor or a controlled
23 substance to residential confinement unless that participant has served the
24 minimum term of imprisonment in the state prison which was imposed by the court.

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

1 **Section 1.** NRS 209.392 is hereby amended to read as follows:
2 209.392 1. Except as otherwise provided in NRS 209.3925
3 and 209.429, the Director may, at the request of an offender who is
4 eligible for residential confinement pursuant to the standards
5 adopted by the Director pursuant to subsection 3 and who has:

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

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

10 (c) Demonstrated an ability to pay for all or part of the costs of
11 the offender's confinement and to meet any existing obligation for
12 restitution to any victim of his or her crime,

13 ➔ assign the offender to the custody of the Division of Parole and
14 Probation of the Department of Public Safety to serve a term of
15 residential confinement, pursuant to NRS 213.380, for not longer
16 than the remainder of his or her sentence.

17 2. Upon receiving a request to serve a term of residential
18 confinement from an eligible offender, the Director shall notify the
19 Division of Parole and Probation. If any victim of a crime
20 committed by the offender has, pursuant to subsection 4 of NRS
21 213.130, requested to be notified of the consideration of a prisoner
22 for parole and has provided a current address, the Division of Parole
23 and Probation shall notify the victim of the offender's request and
24 advise the victim that the victim may submit documents regarding
25 the request to the Division of Parole and Probation. If a current
26 address has not been provided as required by subsection 4 of NRS
27 213.130, the Division of Parole and Probation must not be held
28 responsible if such notification is not received by the victim. All
29 personal information, including, but not limited to, a current or
30 former address, which pertains to a victim and which is received by
31 the Division of Parole and Probation pursuant to this subsection is
32 confidential.

33 3. The Director, after consulting with the Division of Parole
34 and Probation, shall adopt, by regulation, standards providing which
35 offenders are eligible for residential confinement. The standards
36 adopted by the Director must provide that an offender who:



1 (a) Has recently committed a serious infraction of the rules of an
2 institution or facility of the Department;

3 (b) Has not performed the duties assigned to the offender in a
4 faithful and orderly manner;

5 (c) Has been convicted of:

6 (1) Any crime that is punishable as a felony involving the use
7 or threatened use of force or violence against the victim within the
8 immediately preceding 3 years;

9 (2) A sexual offense that is punishable as a felony; or

10 (3) Except as otherwise provided in subsection 4, a category
11 A or B felony;

12 (d) Has more than one prior conviction for any felony in this
13 State or any offense in another state that would be a felony if
14 committed in this State, not including a violation of NRS 484C.110,
15 484C.120, 484C.130 or 484C.430; or

16 (e) Has escaped or attempted to escape from any jail or
17 correctional institution for adults,

18 ➤ is not eligible for assignment to the custody of the Division of
19 Parole and Probation to serve a term of residential confinement
20 pursuant to this section.

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

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

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

33 5. *The standards adopted by the Director pursuant to*
34 *subsection 3 must provide that an offender who is serving a*
35 *sentence for a violation of NRS 484C.430 is not eligible for*
36 *assignment to the custody of the Division of Parole and Probation*
37 *to serve a term of residential confinement pursuant to this section*
38 *unless the offender has served the minimum term of imprisonment*
39 *in the state prison which was imposed by the court.*

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



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

4 (b) The offender forfeits all or part of the credits for good
5 behavior earned by the offender before the escape or violation, as
6 determined by the Director. The Director may provide for a
7 forfeiture of credits pursuant to this paragraph only after proof of the
8 offense and notice to the offender and may restore credits forfeited
9 for such reasons as the Director considers proper. The decision of
10 the Director regarding such a forfeiture is final.

11 ~~[6-]~~ 7. The assignment of an offender to the custody of the
12 Division of Parole and Probation pursuant to this section shall be
13 deemed:

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

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

18 ↪ except that the offender is not entitled to obtain any benefits or to
19 participate in any programs provided to offenders in the custody of the
20 Department.

21 ~~[7-]~~ 8. An offender does not have a right to be assigned to the
22 custody of the Division of Parole and Probation pursuant to this
23 section, or to remain in that custody after such an assignment, and it
24 is not intended that the provisions of this section or of NRS 213.371
25 to 213.410, inclusive, create any right or interest in liberty or
26 property or establish a basis for any cause of action against the
27 State, its political subdivisions, agencies, boards, commissions,
28 departments, officers or employees.

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

30 209.429 1. Except as otherwise provided in subsection 6, the
31 Director ~~[shall]~~ **may** assign an offender to the custody of the
32 Division of Parole and Probation of the Department of Public Safety
33 to serve a term of residential confinement, pursuant to NRS
34 213.380, for not longer than the remainder of the maximum term of
35 his or her sentence if the offender has:

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

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

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

43 2. Before a person may be assigned to serve a term of
44 residential confinement pursuant to this section, he or she must



1 submit to the Division of Parole and Probation a signed document
2 stating that:

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

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

8 3. If an offender assigned to the custody of the Division of
9 Parole and Probation pursuant to this section escapes or violates any
10 of the terms or conditions of his or her residential confinement:

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

14 (b) The offender forfeits all or part of the credits earned by the
15 offender to reduce his or her sentence pursuant to this chapter before
16 the escape or violation, as determined by the Director. The Director
17 may provide for a forfeiture of credits pursuant to this paragraph
18 only after proof of the offense and notice to the offender and may
19 restore credits forfeited for such reasons as the Director considers
20 proper. The decision of the Director regarding forfeiture of credits is
21 final.

22 4. The assignment of an offender to the custody of the Division
23 of Parole and Probation pursuant to this section shall be deemed:

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

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

28 ↪ except that the offender is not entitled to obtain any benefits or to
29 participate in any programs provided to offenders in the custody of the
30 Department.

31 5. A person does not have a right to be assigned to the custody
32 of the Division of Parole and Probation pursuant to this section, or
33 to remain in that custody after such an assignment, and it is not
34 intended that the provisions of this section or of NRS 213.371 to
35 213.410, inclusive, create any right or interest in liberty or property
36 or establish a basis for any cause of action against the State, its
37 political subdivisions, agencies, boards, commissions, departments,
38 officers or employees.

39 6. The Director shall not assign an offender who is serving a
40 sentence for committing **[a]**:

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



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

