

ASSEMBLY BILL NO. 400—ASSEMBLYMEN MUNFORD; BOBZIEN,
DALY, HOGAN, LIVERMORE, NEAL, PIERCE AND STEWART

MARCH 18, 2013

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing parole and probation
and criminal offenders. (BDR 14-946)

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 criminal offenders; revising provisions governing genetic marker analysis of certain evidence relating to the conviction of certain offenders; revising provisions concerning violations of probation; requiring offenders who are committed to the custody of the Department of Corrections to submit to tests relating to the detection of the hepatitis C virus; authorizing an elected official to tour and inspect a facility or institution of the Department under certain circumstances; revising provisions concerning violations of parole; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law authorizes a person who has been convicted of a category A or
2 category B felony, and who is currently under imprisonment for that conviction, to
3 file a petition requesting a genetic marker analysis of certain evidence within the
4 possession or custody of the State. (NRS 176.0918) **Section 1** of this bill expands
5 that provision to a person who has been convicted of any felony, and who is
6 currently under imprisonment for that conviction. **Section 1** also authorizes such a
7 person to file an appeal of an order dismissing such a petition for genetic marker
8 analysis.
9 Existing law authorizes a court, upon determining that a person has violated a
10 condition of probation, to: (1) continue or revoke the probation or suspension of
11 sentence; (2) order a term of residential confinement; (3) order a program of
12 regimental discipline; (4) cause the sentence imposed to be executed; or (5) modify
13 the original sentence. (NRS 176A.630) **Section 2** of this bill provides that a court
14 may not revoke the probation or suspended sentence of such a probationer and
15 cause the sentence imposed to be executed unless the court makes certain findings
16 and states those findings on the record. **Section 2** further: (1) provides that a court



* A B 4 0 0 *

17 may not revoke the probation or suspended sentence of such a probationer and
18 cause the sentence imposed to be executed solely based on the probationer's failure
19 to pay an administrative assessment or certain fees and expenses; and (2) authorizes
20 the court to provide for the forfeiture of certain credits for good behavior of the
21 probationer or extend the period of probation of the probationer if the probationer
22 willfully fails to pay those assessments, fees or expenses.

23 **Sections 4 and 7** of this bill require testing for the detection of the hepatitis C
24 virus to be administered to offenders who are committed to the custody of the
25 Department of Corrections.

26 **Section 5** of this bill authorizes elected officials of the State or a local
27 government to tour and inspect a facility or institution operated by the Department
28 under certain circumstances.

29 Existing law requires the State Board of Parole Commissioners to adopt
30 standards for the revocation of parole. (NRS 213.10885) **Section 6** of this bill sets
31 forth certain factors which the Board is required to consider in determining whether
32 to revoke the parole of a parolee.

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

1 **Section 1.** NRS 176.0918 is hereby amended to read as
2 follows:

3 176.0918 1. A person convicted of a ~~category A or B~~ felony
4 who is under sentence of imprisonment for that conviction and who
5 otherwise meets the requirements of this section may file a
6 postconviction petition requesting a genetic marker analysis of
7 evidence within the possession or custody of the State which may
8 contain genetic marker information relating to the investigation or
9 prosecution that resulted in the judgment of conviction. If the case
10 involves a sentence of death, the petition must include, without
11 limitation, the date scheduled for the execution, if it has been
12 scheduled.

13 2. Such a petition must be filed with the clerk of the district
14 court for the county in which the petitioner was convicted on a form
15 prescribed by the Department of Corrections. A copy of the petition
16 must be served by registered mail upon:

17 (a) The Attorney General; and

18 (b) The district attorney in the county in which the petitioner
19 was convicted.

20 3. A petition filed pursuant to this section must be
21 accompanied by a declaration under penalty of perjury attesting that
22 the information contained in the petition does not contain any
23 material misrepresentation of fact and that the petitioner has a good
24 faith basis relying on particular facts for the request. The petition
25 must include, without limitation:



1 (a) Information identifying specific evidence either known or
2 believed to be in the possession or custody of the State that can be
3 subject to genetic marker analysis;

4 (b) The rationale for why a reasonable possibility exists that the
5 petitioner would not have been prosecuted or convicted if
6 exculpatory results had been obtained through a genetic marker
7 analysis of the evidence identified in paragraph (a);

8 (c) An identification of the type of genetic marker analysis the
9 petitioner is requesting to be conducted on the evidence identified in
10 paragraph (a);

11 (d) If applicable, the results of all prior genetic marker analysis
12 performed on evidence in the trial which resulted in the petitioner's
13 conviction; and

14 (e) A statement that the type of genetic marker analysis the
15 petitioner is requesting was not available at the time of trial or, if it
16 was available, that the failure to request genetic marker analysis
17 before the petitioner was convicted was not a result of a strategic or
18 tactical decision as part of the representation of the petitioner at the
19 trial.

20 4. If a petition is filed pursuant to this section, the court may:

21 (a) ~~Dismiss~~ *Enter an order dismissing* the petition without a
22 hearing if the court determines, based on the information contained
23 in the petition, that the petitioner does not meet the requirements set
24 forth in this section;

25 (b) After determining whether the petitioner is indigent pursuant
26 to NRS 171.188 and whether counsel was appointed in the case
27 which resulted in the conviction, appoint counsel for the limited
28 purpose of reviewing, supplementing and presenting the petition to
29 the court; or

30 (c) Schedule a hearing on the petition. If the court schedules a
31 hearing on the petition, the court shall determine which person or
32 agency has possession or custody of the evidence and shall
33 immediately issue an order requiring, during the pendency of the
34 proceeding, each person or agency in possession or custody of the
35 evidence to:

36 (1) Preserve all evidence within the possession or custody of
37 the person or agency that may be subjected to genetic marker
38 analysis pursuant to this section;

39 (2) Within 90 days, prepare an inventory of all evidence
40 relevant to the claims in the petition within the possession or
41 custody of the person or agency that may be subjected to genetic
42 marker analysis pursuant to this section; and

43 (3) Within 90 days, submit a copy of the inventory to the
44 petitioner, the prosecuting attorney and the court.



1 5. Within 90 days after the inventory of all evidence is
2 prepared pursuant to subsection 4, the prosecuting attorney may file
3 a written response to the petition with the court.

4 6. If the court holds a hearing on a petition filed pursuant to
5 this section, the hearing must be presided over by the judge who
6 conducted the trial that resulted in the conviction of the petitioner,
7 unless that judge is unavailable. Any evidence presented at the
8 hearing by affidavit must be served on the opposing party at least 15
9 days before the hearing.

10 7. The court shall order a genetic marker analysis, after
11 considering the information contained in the petition pursuant to
12 subsection 3 and any other evidence, if the court finds that:

13 (a) A reasonable possibility exists that the petitioner would not
14 have been prosecuted or convicted if exculpatory results had been
15 obtained through a genetic marker analysis of the evidence
16 identified in the petition;

17 (b) The evidence to be analyzed exists; and

18 (c) Except as otherwise provided in subsection 8, the evidence
19 was not previously subjected to a genetic marker analysis.

20 8. If the evidence was previously subjected to a genetic marker
21 analysis, the court shall order a genetic marker analysis pursuant to
22 subsection 7 if the court finds that:

23 (a) The result of the previous analysis was inconclusive;

24 (b) The evidence was not subjected to the type of analysis that is
25 now requested and the requested analysis may resolve an issue not
26 resolved by the previous analysis; or

27 (c) The requested analysis would provide results that are
28 significantly more accurate and probative of the identity of the
29 perpetrator than the previous analysis.

30 9. If the court orders a genetic marker analysis pursuant to
31 subsection 7 or 8, the court shall:

32 (a) Order the analysis to be conducted promptly under
33 reasonable conditions designed to protect the interest of the State
34 and the petitioner in the integrity of the evidence and the analysis
35 process.

36 (b) Select a forensic laboratory to conduct or oversee the
37 analysis. The forensic laboratory selected by the court must:

38 (1) Be operated by this state or one of its political
39 subdivisions, when possible; and

40 (2) Satisfy the standards for quality assurance that are
41 established for forensic laboratories by the Federal Bureau of
42 Investigation.

43 (c) Order the forensic laboratory selected pursuant to paragraph
44 (b) to perform a genetic marker analysis of evidence. The analysis to
45 be performed and evidence to be analyzed must:



- 1 (1) Be specified in the order; and
2 (2) Include such analysis, testing and comparison of genetic
3 marker information contained in the evidence and the genetic
4 marker information of the petitioner as the court determines
5 appropriate under the circumstances.

6 (d) Order the production of any reports that are prepared by a
7 forensic laboratory in connection with the analysis and any data and
8 notes upon which the report is based.

9 (e) Order the preservation of evidence used in a genetic marker
10 analysis performed pursuant to this section for purposes of a
11 subsequent proceeding or analysis, if any.

12 (f) Order the results of the genetic marker analysis performed
13 pursuant to this section to be sent to the State Board of Parole
14 Commissioners if the results of the genetic marker analysis are not
15 favorable to the petitioner.

16 10. If the results of a genetic marker analysis performed
17 pursuant to this section are favorable to the petitioner:

18 (a) The petitioner may bring a motion for a new trial based on
19 the ground of newly discovered evidence pursuant to NRS 176.515;
20 and

21 (b) The restriction on the time for filing the motion set forth in
22 subsection 3 of NRS 176.515 is not applicable.

23 11. The court shall ~~{dismiss}~~ *enter an order dismissing* a
24 petition filed pursuant to this section if:

25 (a) The requirements for ordering a genetic marker analysis
26 pursuant to this section are not satisfied; or

27 (b) The results of a genetic marker analysis performed pursuant
28 to this section are not favorable to the petitioner.

29 12. *If the court enters an order dismissing a petition pursuant*
30 *to this section, the person aggrieved by the order may appeal to the*
31 *Supreme Court within 30 days after the notice of the entry of the*
32 *order by filing a notice of appeal with the clerk of the district*
33 *court.*

34 13. For the purposes of a genetic marker analysis pursuant to
35 this section, a person who files a petition pursuant to this section
36 shall be deemed to consent to the:

37 (a) Submission of a biological specimen by the petitioner to
38 determine genetic marker information; and

39 (b) Release and use of genetic marker information concerning
40 the petitioner.

41 ~~{13}~~ 14. The petitioner shall pay the cost of a genetic marker
42 analysis performed pursuant to this section, unless the petitioner is
43 incarcerated at the time the petitioner files the petition, found to be
44 indigent pursuant to NRS 171.188 and the results of the genetic
45 marker analysis are favorable to the petitioner. If the petitioner is



1 not required to pay the cost of the analysis pursuant to this
2 subsection, the expense of an analysis ordered pursuant to this
3 section is a charge against the Department of Corrections and must
4 be paid upon approval by the Board of State Prison Commissioners
5 as other claims against the State are paid.

6 ~~14.1~~ 15. The remedy provided by this section is in addition to,
7 is not a substitute for and is not exclusive of any other remedy, right
8 of action or proceeding available to a person convicted of a crime.

9 ~~15.1~~ 16. If a petitioner files a petition pursuant to this section,
10 the court schedules a hearing on the petition and a victim of the
11 crime for which the petitioner was convicted has requested notice
12 pursuant to NRS 178.5698, the district attorney in the county in
13 which the petitioner was convicted shall provide to the victim notice
14 of:

15 (a) The fact that the petitioner filed a petition pursuant to this
16 section;

17 (b) The time and place of the hearing scheduled by the court as a
18 result of the petition; and

19 (c) The outcome of any hearing on the petition.

20 **Sec. 2.** NRS 176A.630 is hereby amended to read as follows:

21 176A.630 1. If the probationer is arrested, by or without
22 warrant, in another judicial district of this state, the court which
23 granted the probation may assign the case to the district court of that
24 district, with the consent of that court. The court retaining or thus
25 acquiring jurisdiction shall cause the defendant to be brought before
26 it, consider the standards adopted pursuant to NRS 213.10988 and
27 the recommendation, if any, of the Chief Parole and Probation
28 Officer. Upon determining that the probationer has violated a
29 condition of probation, the court shall, if practicable, order the
30 probationer to make restitution for any necessary expenses incurred
31 by a governmental entity in returning the probationer to the court for
32 violation of the probation. ~~The~~ *Except as otherwise provided in*
33 *subsections 2 and 3, the* court may:

34 ~~1.1~~ (a) Continue or revoke the probation or suspension of
35 sentence;

36 ~~1.2~~ (b) Order the probationer to a term of residential
37 confinement pursuant to NRS 176A.660;

38 ~~1.3~~ (c) Order the probationer to undergo a program of
39 regimental discipline pursuant to NRS 176A.780;

40 ~~1.4~~ (d) Cause the sentence imposed to be executed; or

41 ~~1.5~~ (e) Modify the original sentence imposed by reducing the
42 term of imprisonment and cause the modified sentence to be
43 executed. The court shall not make the term of imprisonment less
44 than the minimum term of imprisonment prescribed by the
45 applicable penal statute. If the Chief Parole and Probation Officer



1 recommends that the sentence of a probationer be modified and the
2 modified sentence be executed, the Chief Parole and Probation
3 Officer shall provide notice of the recommendation to any victim of
4 the crime for which the probationer was convicted who has
5 requested in writing to be notified and who has provided a current
6 address to the Division. The notice must inform the victim that he or
7 she has the right to submit documents to the court and to be present
8 and heard at the hearing to determine whether the sentence of a
9 probationer who has violated a condition of probation should be
10 modified. The court shall not modify the sentence of a probationer
11 and cause the sentence to be executed until it has confirmed that the
12 Chief Parole and Probation Officer has complied with the provisions
13 of this ~~subsection~~ **paragraph**. The Chief Parole and Probation
14 Officer must not be held responsible when such notification is not
15 received by the victim if the victim has not provided a current
16 address. All personal information, including, but not limited to, a
17 current or former address, which pertains to a victim and which is
18 received by the Division pursuant to this ~~subsection~~ **paragraph** is
19 confidential.

20 **2. The court may not revoke the probation or suspension of**
21 **sentence of the probationer and cause the sentence imposed to be**
22 **executed unless the court finds on the basis of the circumstances**
23 **of the original crime and the conduct of the probationer while he**
24 **or she was on probation that:**

25 **(a) Imprisonment is necessary to protect the community from**
26 **further criminal activity by the probationer;**

27 **(b) The probationer is in need of treatment which can most**
28 **effectively be provided if he or she is imprisoned;**

29 **(c) The seriousness of the violation or the totality of the**
30 **violations by the probationer warrant revocation of probation or**
31 **suspension of the sentence of the probationer and execution of the**
32 **sentence imposed; or**

33 **(d) The violation demonstrates that the probationer cannot be**
34 **supervised by a parole and probation officer pursuant to the**
35 **practices and policies governing probation established by the**
36 **Division.**

37 **3. The court may not revoke the probation or suspension of**
38 **sentence of the probationer and cause the sentence imposed to be**
39 **executed solely based on the probationer's failure to pay an**
40 **administrative assessment, a fee described in NRS 176.0915 or the**
41 **expenses of his or her defense. If the court determines that a**
42 **probationer willfully failed to pay an administrative assessment, a**
43 **fee described in NRS 176.0915 or the expenses of his or her**
44 **defense, the court may:**



1 (a) Pursuant to NRS 176A.635, provide for the forfeiture of all
2 or part of the credits for good behavior earned by the probationer
3 pursuant to NRS 176A.500; or

4 (b) Extend the period of probation of the probationer.

5 4. If the court revokes the probation or suspension of
6 sentence of the probationer and causes the sentence imposed to be
7 executed, the court shall state on the record the court's findings
8 pursuant to subsection 2 that support the reasons for such
9 revocation and execution of the sentence.

10 Sec. 3. Chapter 209 of NRS is hereby amended by adding
11 thereto the provisions set forth as sections 4 and 5 of this act.

12 Sec. 4. 1. Each offender committed to the custody of the
13 Department for imprisonment shall submit to such initial tests as
14 the Director determines appropriate to detect exposure to the
15 hepatitis C virus. Each such test must be approved by regulation of
16 the State Board of Health. At the time the offender is committed to
17 custody:

18 (a) The appropriate approved tests must be administered; and

19 (b) The offender must receive counseling regarding the virus.

20 2. If the results of an initial test are positive, the offender
21 shall submit to such supplemental tests as the Director determines
22 appropriate. Each such test must be approved for the purpose by
23 regulation of the State Board of Health.

24 3. If the results of a supplemental test are positive, the name
25 of the offender must be disclosed to:

26 (a) The Director;

27 (b) The administrative officers of the Department who are
28 responsible for the classification and medical treatment of
29 offenders;

30 (c) The manager or warden of the facility or institution at
31 which the offender is confined; and

32 (d) Each other employee of the Department whose normal
33 duties involve the employee with the offender or require the
34 employee to come into contact with the blood or bodily fluids of
35 the offender.

36 Sec. 5. 1. Upon reasonable notice and subject to the
37 appropriate safety precautions established by the Director, an
38 elected official of the State or a local government may:

39 (a) Tour and inspect a facility or institution of the Department;
40 and

41 (b) Converse with offenders during the tour and inspection.

42 2. An elected official of the State or a local government is not
43 required to obtain the permission of the Director or the manager
44 or warden of the facility or institution before the tour and



1 *inspection of the facility or institution conducted pursuant to*
2 *subsection 1.*

3 **Sec. 6.** NRS 213.10885 is hereby amended to read as follows:

4 213.10885 1. The Board shall adopt by regulation specific
5 standards for each type of convicted person to assist the Board in
6 determining whether to grant or revoke parole. The regulations must
7 include standards for determining whether to grant or revoke the
8 parole of a convicted person:

9 (a) Who committed a capital offense.

10 (b) Who was sentenced to serve a term of imprisonment for life.

11 (c) Who was convicted of a sexual offense involving the use or
12 threat of use of force or violence.

13 (d) Who was convicted as a habitual criminal.

14 (e) Who is a repeat offender.

15 (f) Who was convicted of any other type of offense.

16 ➔ The standards must be based upon objective criteria for
17 determining the person's probability of success on parole.

18 2. In establishing the standards, the Board shall consider the
19 information on decisions regarding parole that is compiled and
20 maintained pursuant to NRS 213.10887 and all other factors which
21 are relevant in determining the probability that a convicted person
22 will live and remain at liberty without violating the law if parole is
23 granted or continued. The other factors the Board considers must
24 include, but are not limited to:

25 (a) The severity of the crime committed;

26 (b) The criminal history of the person;

27 (c) Any disciplinary action taken against the person while
28 incarcerated;

29 (d) Any previous parole violations or failures;

30 (e) Any potential threat to society or to the convicted person;
31 and

32 (f) The length of his or her incarceration.

33 3. In determining whether to grant parole to a convicted
34 person, the Board shall not consider whether the person has
35 appealed the judgment of imprisonment for which the person is
36 being considered for parole.

37 4. *In determining whether to revoke the parole of a parolee,*
38 *the Board shall consider, based on the circumstances of the*
39 *original crime and the conduct of the parolee while on parole*
40 *whether:*

41 (a) *Imprisonment is necessary to protect the community from*
42 *further criminal activity by the parolee;*

43 (b) *The parolee is in need of treatment which can most*
44 *effectively be provided if he or she is imprisoned;*



1 (c) *The seriousness of the violation or the totality of the*
2 *violations by the parolee warrant revocation of his or her parole;*
3 *and*

4 (d) *The violation demonstrates that the parolee cannot be*
5 *supervised by a parole and probation officer pursuant to the*
6 *practices and policies governing parole established by the*
7 *Division.*

8 5. The standards adopted by the Board must provide for a
9 greater punishment for a convicted person who has a history of
10 repetitive criminal conduct or who commits a serious crime, with a
11 violent crime considered the most serious, than for a convicted
12 person who does not have a history of repetitive crimes and did not
13 commit a serious crime.

14 ~~5.1~~ 6. The Board shall make available to the public a sample
15 of the form the Board uses in determining the probability that a
16 convicted person will live and remain at liberty without violating the
17 law if parole is granted or continued.

18 ~~6.1~~ 7. On or before January 1 of each even-numbered year, the
19 Board shall review comprehensively the standards adopted by
20 the Board. The review must include a determination of whether the
21 standards are effective in predicting the probability that a convicted
22 person will live and remain at liberty without violating the law if
23 parole is granted or continued. If a standard is found to be
24 ineffective, the Board shall not use that standard in its decisions
25 regarding parole and shall adopt revised standards as soon as
26 practicable after the review.

27 ~~7.1~~ 8. The Board shall report to each regular session of the
28 Legislature:

29 (a) The number and percentage of the Board's decisions that
30 conflicted with the standards;

31 (b) The results and conclusions from the Board's review
32 pursuant to subsection ~~6.1~~ 7; and

33 (c) Any changes in the Board's standards, policies, procedures,
34 programs or forms that have been or will be made as a result of the
35 review.

36 **Sec. 7.** 1. As soon as practicable after October 1, 2013, an
37 appropriate test to detect exposure to the hepatitis C virus must be
38 administered to each offender who is serving a term of
39 imprisonment in a facility or institution of the Department of
40 Corrections and to whom a test to detect exposure to the hepatitis C
41 virus has not been administered pursuant to section 4 of this act, and
42 the offender must receive counseling regarding the virus. Each such
43 test must be approved by regulation of the State Board of Health.
44 Each offender to whom such test must be administered shall submit
45 to the test.



- 1 2. If the results of an initial test are positive, the offender shall
2 submit to such supplemental tests as the Director of the Department
3 of Corrections determines appropriate. Each such test must be
4 approved for the purpose by regulation of the State Board of Health.
5 3. If the results of a supplemental test are positive, the name of
6 the offender must be disclosed to:
7 (a) The Director of the Department of Corrections;
8 (b) The administrative officers of the Department of Corrections
9 who are responsible for the classification and medical treatment of
10 offenders;
11 (c) The manager or warden of the facility or institution at which
12 the offender is confined; and
13 (d) Each other employee of the Department of Corrections
14 whose normal duties involve the employee with the offender or
15 require the employee to come into contact with the blood or bodily
16 fluids of the offender.



