

SENATE BILL NO. 35—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ATTORNEY GENERAL)

PREFILED NOVEMBER 15, 2024

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing certain offenses relating to prisoners. (BDR 16-444)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 crimes; prohibiting an employee of or a contractor or volunteer for a prison from engaging in certain communication with a prisoner; defining the term “intoxicant” for the purpose of certain provisions which prohibit furnishing an intoxicant to a prisoner; revising provisions governing certain crimes relating to prisoners; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 1 of this bill provides that an employee of or a contractor or volunteer for a prison who communicates with a prisoner outside of the course and scope of his or her duties for prurient or other illegal purposes is guilty of a category E felony. **Section 1** also provides that an employee of or a contractor or volunteer for a prison who communicates with a prisoner with the intent to arouse, appeal to or gratify his or her own sexual desires or the sexual desires of a prisoner is guilty of a category D felony.

Existing law provides that an employee of or a contractor or volunteer for a prison who voluntarily engages or attempts to engage in sexual abuse of a prisoner is guilty of a category D felony. (NRS 212.188) **Section 3** of this bill: (1) increases the penalty for sexual abuse of a prisoner from a category D felony to a category B felony; and (2) makes the crime punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years.

Existing law provides that an employee of or a contractor or volunteer for a prison who voluntarily: (1) engages in unauthorized custodial conduct is guilty of a



17 gross misdemeanor; or (2) attempts to engage in such conduct is guilty of a
18 misdemeanor. (NRS 212.188) **Section 3** increases the penalty for unauthorized
19 custodial conduct from a gross misdemeanor to a category C felony. **Section 3** also
20 eliminates provisions relating to attempted unauthorized custodial conduct.

21 Existing law makes it a crime for certain persons to furnish a controlled
22 substance or intoxicating liquor to a prisoner. (NRS 212.160) **Section 2** of this bill
23 changes the term “intoxicating liquor” to “intoxicant” and defines the term
24 intoxicant for the purposes of this prohibition to mean: (1) a controlled substance
25 analog; (2) a spirituous or malt liquor or beverage; (3) a synthetic cannabinoid; or
26 (4) any other chemical, poison or organic solvent, or any compound or combination
27 thereof, which may be inhaled, ingested, applied or otherwise used to achieve a
28 stimulant, depressant or hallucinogenic effect.

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

1 **Section 1.** NRS 212.140 is hereby amended to read as follows:
2 212.140 **1.** Every person who, not being authorized by law or
3 by any officer authorized thereby, shall have any verbal
4 communication with any prisoner in any jail, prison or other penal
5 institution, or shall bring into or convey out of the same any writing,
6 clothing, food, tobacco or any article whatsoever, shall be guilty of a
7 misdemeanor.

8 **2.** *An employee of or a contractor or volunteer for a prison*
9 *who communicates with a prisoner outside of the course and scope*
10 *of his or her duties for prurient or other illegal purposes is guilty*
11 *of a category E felony and shall be punished as provided in*
12 *NRS 193.130.*

13 **3.** *An employee of or a contractor or volunteer for a prison*
14 *who communicates with a prisoner with the intent to arouse,*
15 *appeal to or gratify his or her own sexual desires or the sexual*
16 *desires of the prisoner is guilty of a category D felony and shall be*
17 *punished as provided in NRS 193.130.*

18 **4.** *As used in this section:*

19 **(a)** *“Communicate” means to contact or attempt to contact a*
20 *prisoner by any means of oral, written or electronic*
21 *communication, including, without limitation, communication*
22 *through text message or through the written or electronic*
23 *transmission of an image or video.*

24 **(b)** *“Prisoner” means a prisoner who is in lawful custody or*
25 *confinement, other than in the custody of the Division of Parole*
26 *and Probation of the Department of Public Safety pursuant to*
27 *NRS 209.4886 or 209.4888 or residential confinement.*

28 **Sec. 2.** NRS 212.160 is hereby amended to read as follows:

29 212.160 **1.** A person, who is not authorized by law, who
30 knowingly furnishes, attempts to furnish, or aids or assists in



1 furnishing or attempting to furnish to a prisoner confined in an
2 institution of the Department of Corrections, or any other place
3 where prisoners are authorized to be or are assigned by the Director
4 of the Department, any deadly weapon, explosive, a facsimile of a
5 firearm or an explosive, any controlled substance or ~~intoxicating~~
6 ~~liquor,~~ *intoxicant*, shall be punished:

7 (a) Where a deadly weapon, controlled substance, explosive or a
8 facsimile of a firearm or explosive is involved, for a category B
9 felony by imprisonment in the state prison for a minimum term of
10 not less than 1 year and a maximum term of not more than 6 years,
11 and may be further punished by a fine of not more than \$5,000.

12 (b) Where an intoxicant is involved, for a gross misdemeanor.

13 2. Knowingly leaving or causing to be left any deadly weapon,
14 explosive, facsimile of a firearm or explosive, controlled substance
15 or ~~intoxicating liquor~~ *intoxicant* where it may be obtained by any
16 prisoner constitutes, within the meaning of this section, the
17 furnishing of the article to the prisoner.

18 3. A prisoner confined in an institution of the Department of
19 Corrections, or any other place where prisoners are authorized to be
20 or are assigned by the Director of the Department, who possesses a
21 controlled substance without lawful authorization or marijuana or
22 marijuana paraphernalia, regardless of whether the person holds a
23 valid registry identification card to engage in the medical use of
24 cannabis pursuant to chapter 678C of NRS, is guilty of a category D
25 felony and shall be punished as provided in NRS 193.130.

26 **4. As used in this section:**

27 (a) *“Controlled substance analog” has the meaning ascribed*
28 *to it in NRS 453.043.*

29 (b) *“Intoxicant” means:*

30 (1) *A controlled substance analog;*

31 (2) *A spirituous or malt liquor or beverage;*

32 (3) *A synthetic cannabinoid; or*

33 (4) *Any other chemical, poison or organic solvent, or any*
34 *compound or combination thereof, which may be inhaled,*
35 *ingested, applied or otherwise used to achieve a stimulant,*
36 *depressant or hallucinogenic effect.*

37 (c) *“Synthetic cannabinoid” has the meaning ascribed to it in*
38 *NRS 678A.239.*

39 **Sec. 3.** NRS 212.188 is hereby amended to read as follows:

40 212.188 1. An employee of or a contractor or volunteer for a
41 prison who voluntarily engages in, or attempts to engage in, with a
42 prisoner who is in lawful custody or confinement, other than in the
43 custody of the Division of Parole and Probation of the Department
44 of Public Safety pursuant to NRS 209.4886 or 209.4888 or
45 residential confinement, any of the acts set forth in:



1 (a) Paragraph (a) of subsection 3, commits sexual abuse of a
2 prisoner.

3 (b) Paragraph (b) of subsection 3, commits unauthorized
4 custodial conduct.

5 2. Unless a greater penalty is provided pursuant to any other
6 applicable provision of law, an employee of or a contractor or
7 volunteer for a prison who commits:

8 (a) Sexual abuse of a prisoner is guilty of a category ~~D~~ **B**
9 felony and shall be punished ~~as provided~~ **by imprisonment in**
10 ~~NRS 193.130.~~ **the state prison for a minimum term of not less**
11 **than 1 year and a maximum term of not more than 10 years.**

12 (b) Unauthorized custodial conduct by engaging in any of the
13 acts described in paragraph (b) of subsection 3 is guilty of a ~~gross~~
14 ~~misdemeanor.~~

15 ~~—(c) Unauthorized custodial conduct by attempting to engage in~~
16 ~~any of the acts described in paragraph (b) of subsection 3 is guilty of~~
17 ~~a misdemeanor.] category C felony and shall be punished as~~
18 ~~provided in NRS 193.130.~~

19 3. As used in this section:

20 (a) “Sexual abuse”:

21 (1) Includes any of the following acts between an employee
22 of or a contractor or volunteer for a prison and a prisoner, regardless
23 of whether the prisoner consents to the act:

24 (I) Sexual intercourse or anal intercourse, including
25 penetration, however slight;

26 (II) Fellatio, cunnilingus or contact between the mouth
27 and the anus;

28 (III) Penetration, however slight, of an object into the
29 genital or anal opening of the body of a prisoner committed with the
30 intent to abuse the prisoner or to arouse, appeal to or gratify
31 the sexual desires of either person;

32 (IV) Any other intentional contact with a prisoner’s
33 unclothed genitals, pubic area, anus, buttocks, inner thigh or breasts
34 committed with the intent to abuse the prisoner or to arouse, appeal
35 to or gratify the sexual desires of either person;

36 (V) Watching a prisoner change clothing or use a shower,
37 toilet or urinal;

38 (VI) Requiring a prisoner to expose his or her genitals,
39 buttocks or breasts; or

40 (VII) Capturing an image of the private area of a prisoner
41 in violation of NRS 200.604.

42 (2) Does not include acts of an employee of or a contractor
43 or volunteer for the prison in which the prisoner is confined that are
44 performed to carry out the official duties of such an employee,
45 contractor or volunteer.



1 (b) "Unauthorized custodial conduct":

2 (1) Includes any of the following acts between an employee
3 of or a contractor or volunteer for a prison and a prisoner, regardless
4 of whether the prisoner consents to the act:

5 (I) Contact between the mouth and any part of the body
6 committed with the intent to abuse the prisoner or to arouse, appeal
7 to or gratify the sexual desires of either person;

8 (II) Any other intentional contact with a prisoner's
9 clothed genitals, pubic area, anus, buttocks, inner thigh or breasts
10 committed with the intent to abuse the prisoner or to arouse, appeal
11 to or gratify the sexual desires of either person;

12 (III) Any threat or request by an employee or a contractor
13 or volunteer to engage in any act described in sub-subparagraphs (I)
14 or (II); or

15 (IV) Any display by an employee or a contractor or
16 volunteer of his or her unclothed genitals, buttocks or breasts in the
17 presence of a prisoner.

18 (2) Does not include acts of an employee of or a contractor
19 or volunteer for the prison in which the prisoner is confined that are
20 performed to carry out the official duties of such an employee,
21 contractor or volunteer.



