

Amendment No. 140

Senate Amendment to Senate Bill No. 35	(BDR 16-444)
Proposed by: Senate Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



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

Existing law makes it a crime for certain persons to furnish a controlled substance or intoxicating liquor to a prisoner. (NRS 212.160) **Section 2** of this bill changes the term “intoxicating liquor” to “intoxicant” and defines the term intoxicant for the purposes of this

22 prohibition to mean: (1) a controlled substance analog; (2) a spirituous or malt liquor or
 23 beverage; (3) a synthetic cannabinoid; or (4) any other chemical, poison or organic solvent, or
 24 any compound or combination thereof, which may be inhaled, ingested, applied or otherwise
 25 used to achieve a 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 by any officer~~
 3 ~~authorized thereby, shall have any verbal communication with any prisoner in any~~
 4 ~~jail, prison or other penal institution, or shall bring into or convey out of the same~~
 5 ~~any writing, clothing, food, tobacco or any article whatsoever, shall be guilty of a~~
 6 ~~misdemeanor.~~

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

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

15 ~~4. As used in this section:~~

16 ~~(a) "Communicate" means to contact or attempt to contact a prisoner by any~~
 17 ~~means of oral, written or electronic communication, including, without~~
 18 ~~limitation, communication through text message or through the written or~~
 19 ~~electronic transmission of an image or video.~~

20 ~~(b) "Prisoner" means a prisoner who is in lawful custody or confinement,~~
 21 ~~other than in the custody of the Division of Parole and Probation of the~~
 22 ~~Department of Public Safety pursuant to NRS 209.4886 or 209.4888 or~~
 23 ~~residential confinement.) (Deleted by amendment.)~~

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

25 212.160 1. A person, who is not authorized by law, who knowingly
 26 furnishes, attempts to furnish, or aids or assists in furnishing or attempting to
 27 furnish to a prisoner confined in an institution of the Department of Corrections, or
 28 any other place where prisoners are authorized to be or are assigned by the Director
 29 of the Department, any deadly weapon, explosive, a facsimile of a firearm or an
 30 explosive, any controlled substance or ~~intoxicating liquor,~~ **intoxicant**, shall be
 31 punished:

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

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

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

41 3. A prisoner confined in an institution of the Department of Corrections, or
 42 any other place where prisoners are authorized to be or are assigned by the Director

1 of the Department, who possesses a controlled substance without lawful
 2 authorization or marijuana or marijuana paraphernalia, regardless of whether the
 3 person holds a valid registry identification card to engage in the medical use of
 4 cannabis pursuant to chapter 678C of NRS, is guilty of a category D felony and
 5 shall be punished as provided in NRS 193.130.

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

7 (a) *“Controlled substance analog” has the meaning ascribed to it in NRS*
 8 *453.043.*

9 (b) *“Intoxicant” means:*

10 (1) *A controlled substance analog;*

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

12 (3) *A synthetic cannabinoid; or*

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

16 (c) *“Synthetic cannabinoid” has the meaning ascribed to it in NRS*
 17 *678A.239.*

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

19 212.188 1. An employee of or a contractor or volunteer for a prison who
 20 voluntarily engages in, or attempts to engage in, with a prisoner who is in lawful
 21 custody or confinement, other than in the custody of the Division of Parole and
 22 Probation of the Department of Public Safety pursuant to NRS 209.4886 or
 23 209.4888 or residential confinement, any of the acts set forth in:

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

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

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

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

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

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

38 3. As used in this section:

39 (a) *“Sexual abuse”:*

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

43 (I) Sexual intercourse or anal intercourse, including penetration,
 44 however slight;

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

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

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

52 (V) Watching a prisoner change clothing or use a shower, toilet or
 53 urinal;

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

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

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

8 (b) "Unauthorized custodial conduct":

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

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

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

18 (III) Any threat or request by an employee or a contractor or volunteer
19 to engage in any act described in sub-subparagraph (I) or (II); or

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

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