

SENATE BILL NO. 149—COMMITTEE ON JUDICIARY

FEBRUARY 10, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning prisoners. (BDR 16-512)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: 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 prisoners; revising the provisions governing the allowance of credits against the sentence of certain prisoners; making it unlawful for prisoners to commit certain acts involving human excrement or bodily fluid; requiring that prisoners who commit certain acts involving human excrement or bodily fluid be tested for communicable diseases; providing penalties; and providing other matters properly relating thereto.

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

- 1 **Section 1.** Chapter 209 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 1. *Except as otherwise provided in subsection 2, an offender who is*
4 *sentenced to prison for a crime committed on or after the effective date of*
5 *this act, who has no serious infraction of the regulations of the*
6 *department, the terms and conditions of his residential confinement or*
7 *the laws of the state recorded against him, and who performs in a*
8 *faithful, orderly and peaceable manner the duties assigned to him, must*
9 *be allowed:*
10 (a) *For the period he is actually incarcerated pursuant to his*
11 *sentence; and*
12 (b) *For the period he is in residential confinement,*
13 *a deduction of 10 days from his sentence for each month he serves.*
14 2. *If an offender commits any infraction and, after receiving or*
15 *waiving the right to receive a disciplinary hearing concerning the*
16 *infraction, the offender is ordered to serve 1 or more days of his sentence*

1 *in disciplinary segregation, disciplinary detention or austere housing*
2 *because of the infraction:*

3 *(a) Any deduction from the sentence of the offender that otherwise*
4 *would have been allowed pursuant to subsection 1 must be reduced by 1*
5 *day for each day or portion of a day in the month that the offender serves*
6 *his sentence in disciplinary segregation, disciplinary detention or austere*
7 *housing because of the infraction; and*

8 *(b) Any reduction pursuant to paragraph (a) must not exceed 10 days*
9 *for each such month.*

10 *3. In addition to the credits allowed pursuant to subsection 1, the*
11 *director may allow not more than 10 days of credit each month for an*
12 *offender whose diligence in labor and study merits such credits. In*
13 *addition to the credits allowed pursuant to this subsection, an offender is*
14 *entitled to the following credits for educational achievement:*

15 *(a) For earning a general equivalency diploma, 30 days.*

16 *(b) For earning a high school diploma, 60 days.*

17 *(c) For earning his first associate degree, 90 days.*

18 *4. The director may, in his discretion, authorize an offender to*
19 *receive a maximum of 90 days of credit for each additional degree of*
20 *higher education earned by the offender.*

21 *5. The director may allow not more than 10 days of credit each*
22 *month for an offender who participates in a diligent and responsible*
23 *manner in a center for the purpose of making restitution, conservation*
24 *camp, program of work release or another program conducted outside of*
25 *the prison. Except as otherwise provided in subsection 2, an offender*
26 *who earns credit pursuant to this subsection is eligible to earn the entire*
27 *20 days of credit each month that is allowed pursuant to subsections 1*
28 *and 3.*

29 *6. The director may allow not more than 90 days of credit each year*
30 *for an offender who engages in exceptional meritorious service.*

31 *7. The board shall adopt regulations governing the award, forfeiture*
32 *and restoration of credits pursuant to this section.*

33 *8. Credits earned pursuant to this section:*

34 *(a) Must be deducted from the maximum term imposed by the*
35 *sentence; and*

36 *(b) Apply to eligibility for parole unless the offender was sentenced*
37 *pursuant to a statute which specifies a minimum sentence that must be*
38 *served before a person becomes eligible for parole.*

39 **Sec. 2.** NRS 209.432 is hereby amended to read as follows:

40 209.432 As used in NRS ~~209.433~~ 209.432 to 209.451, inclusive,
41 *and section 1 of this act,* unless the context otherwise requires:

1 1. "Offender" includes a person who is convicted of a felony under the
2 laws of this state and sentenced, ordered or otherwise assigned to serve a
3 term of residential confinement.

4 2. "Residential confinement" means the confinement of a person
5 convicted of a felony to his place of residence under the terms and
6 conditions established pursuant to specific statute. The term does not
7 include any confinement ordered pursuant to NRS 176A.530 to 176A.560,
8 inclusive, 176A.660 to 176A.690, inclusive, 213.15105, 213.15193 or
9 213.152 to 213.1528, inclusive.

10 **Sec. 3.** NRS 209.4465 is hereby amended to read as follows:

11 209.4465 1. An offender who is sentenced to prison for a crime
12 committed on or after July 17, 1997, *but before the effective date of this*
13 *act*, who has no serious infraction of the regulations of the department, the
14 terms and conditions of his residential confinement or the laws of the state
15 recorded against him, and who performs in a faithful, orderly and peaceable
16 manner the duties assigned to him, must be allowed:

17 (a) For the period he is actually incarcerated pursuant to his sentence;
18 and

19 (b) For the period he is in residential confinement,
20 a deduction of 10 days from his sentence for each month he serves.

21 2. In addition to the credits allowed pursuant to subsection 1, the
22 director may allow not more than 10 days of credit each month for an
23 offender whose diligence in labor and study merits such credits. In addition
24 to the credits allowed pursuant to this subsection, an offender is entitled to
25 the following credits for educational achievement:

26 (a) For earning a general equivalency diploma, 30 days.

27 (b) For earning a high school diploma, 60 days.

28 (c) For earning his first associate degree, 90 days.

29 3. The director may, in his discretion, authorize an offender to receive
30 a maximum of 90 days of credit for each additional degree of higher
31 education earned by the offender.

32 4. The director may allow not more than 10 days of credit each month
33 for an offender who participates in a diligent and responsible manner in a
34 center for the purpose of making restitution, conservation camp, program of
35 work release or another program conducted outside of the prison. An
36 offender who earns credit pursuant to this subsection is eligible to earn the
37 entire 20 days of credit each month that is allowed pursuant to subsections
38 1 and 2.

39 5. The director may allow not more than 90 days of credit each year for
40 an offender who engages in exceptional meritorious service.

41 6. The board shall adopt regulations governing the award, forfeiture
42 and restoration of credits pursuant to this section.

43 7. Credits earned pursuant to this section:

1 (a) Must be deducted from the maximum term imposed by the sentence;
2 and

3 (b) Apply to eligibility for parole unless the offender was sentenced
4 pursuant to a statute which specifies a minimum sentence that must be
5 served before a person becomes eligible for parole.

6 **Sec. 4.** NRS 209.447 is hereby amended to read as follows:

7 209.447 1. An offender who is sentenced after June 30, 1991, for a
8 crime committed before July 1, 1985, and who is released on parole for a
9 term less than life must, if he has no serious infraction of the terms and
10 conditions of his parole or the laws of this state recorded against him, be
11 allowed for the period he is actually on parole a deduction of 2 months for
12 each of the first 2 years, 4 months for each of the next 2 years, and 5
13 months for each of the remaining years of the term, and pro rata for any
14 part of a year where the actual term served is for more or less than a year.
15 Credit must be recorded on a monthly basis as earned. Credits accumulate
16 pursuant to this subsection as shown in the table set forth in subsection 2 of
17 NRS 209.443.

18 2. An offender who is sentenced after June 30, 1991, for a crime
19 committed on or after July 1, 1985, and who is released on parole for a
20 term less than life must, if he has no serious infraction of the terms and
21 conditions of his parole or the laws of this state recorded against him, be
22 allowed for the period he is actually on parole a deduction of 10 days from
23 his sentence for each month he serves.

24 3. An offender is entitled to the deductions authorized by this section
25 only if he satisfies the conditions of subsection 1 or 2, as determined by the
26 director. The chief parole and probation officer or other person responsible
27 for the supervision of an offender shall report to the director the failure of
28 an offender to satisfy those conditions.

29 4. Credits earned pursuant to this section must, in addition to any
30 credits earned pursuant to NRS 209.443, 209.446, 209.4465, 209.448 ~~and~~
31 **or** 209.449, **or section 1 of this act**, be deducted from the maximum term
32 imposed by the sentence.

33 5. The director shall maintain records of the credits to which each
34 offender is entitled pursuant to this section.

35 **Sec. 5.** NRS 209.448 is hereby amended to read as follows:

36 209.448 1. An offender who has no serious infraction of the
37 regulations of the department or the laws of the state recorded against him
38 must be allowed, in addition to the credits provided pursuant to NRS
39 209.433, 209.443, 209.446 or 209.4465, **or section 1 of this act**, a
40 deduction of not more than 30 days from the maximum term of his sentence
41 for the successful completion of a program of treatment for the abuse of
42 alcohol or drugs which is conducted jointly by the department and a person
43 certified as a counselor by the bureau of alcohol and drug abuse of the

1 rehabilitation division of the department of employment, training and
2 rehabilitation.

3 2. The provisions of this section apply to any offender who is
4 sentenced on or after October 1, 1991.

5 **Sec. 6.** NRS 209.449 is hereby amended to read as follows:

6 209.449 An offender who has no serious infraction of the regulations
7 of the department, the terms and conditions of his residential confinement,
8 or the laws of the state recorded against him must be allowed, in addition to
9 the credits provided pursuant to NRS 209.433, 209.443, 209.446 or
10 209.4465, *or section 1 of this act*, a deduction of 30 days from the
11 maximum term of his sentence for the completion of a program of
12 vocational education and training. If the offender completes the program of
13 vocational education and training with meritorious or exceptional
14 achievement, the director may allow not more than 60 days of credit in
15 addition to the 30 days allowed for completion of the program.

16 **Sec. 7.** Chapter 212 of NRS is hereby amended by adding thereto a
17 new section to read as follows:

18 *1. Except as otherwise provided in subsection 9, a prisoner who is in*
19 *lawful custody or confinement, other than residential confinement, shall*
20 *not knowingly:*

21 *(a) Store or stockpile any human excrement or bodily fluid;*

22 *(b) Sell, supply or provide any human excrement or bodily fluid to any*
23 *other person;*

24 *(c) Buy, receive or acquire any human excrement or bodily fluid from*
25 *any other person; or*

26 *(d) Use, propel, discharge, spread or conceal, or cause to be used,*
27 *propelled, discharged, spread or concealed, any human excrement or*
28 *bodily fluid:*

29 *(1) With the intent to have the excrement or bodily fluid come into*
30 *physical contact with any portion of the body of an officer or employee of*
31 *a prison or any other person, whether or not such physical contact*
32 *actually occurs; or*

33 *(2) Under circumstances in which the excrement or bodily fluid is*
34 *reasonably likely to come into physical contact with any portion of the*
35 *body of an officer or employee of a prison or any other person, whether*
36 *or not such physical contact actually occurs.*

37 *2. Except as otherwise provided in subsection 3, if a prisoner violates*
38 *any provision of subsection 1, the prisoner is guilty of a category B felony*
39 *and shall be punished by imprisonment in the state prison for a*
40 *minimum term of not less than 2 years and a maximum term of not more*
41 *than 10 years, and may be further punished by a fine of not more than*
42 *\$10,000.*

1 3. If a prisoner violates any provision of paragraph (d) of subsection
2 1 and, at the time of the offense, the prisoner knew that any portion of
3 the excrement or bodily fluid involved in the offense contained a
4 communicable disease that causes or is reasonably likely to cause
5 substantial bodily harm, whether or not the communicable disease was
6 transmitted to a victim as a result of the offense, the prisoner is guilty of
7 a category A felony and shall be punished by imprisonment in the state
8 prison:

9 (a) For life with the possibility of parole, with eligibility for parole
10 beginning when a minimum of 10 years has been served; or

11 (b) For a definite term of 25 years, with eligibility for parole
12 beginning when a minimum of 10 years has been served,
13 and may be further punished by a fine of not more than \$50,000.

14 4. A sentence imposed upon a prisoner pursuant to subsection 2 or 3:

15 (a) Is not subject to suspension or the granting of probation; and

16 (b) Must run consecutively after the prisoner has served any sentences
17 imposed upon him for the offense or offenses for which the prisoner was
18 in lawful custody or confinement when he violated the provisions of
19 subsection 1.

20 5. In addition to any other penalty, the court shall order a prisoner
21 who violates any provision of paragraph (d) of subsection 1 to reimburse
22 the appropriate person or governmental body for the cost of any
23 examinations or testing:

24 (a) Conducted pursuant to paragraphs (a) and (b) of subsection 7; or

25 (b) Paid for pursuant to subparagraph (2) of paragraph (c) of
26 subsection 7.

27 6. The warden, sheriff, administrator or other person responsible for
28 administering a prison shall immediately and fully investigate any act
29 described in subsection 1 that is reported or suspected to have been
30 committed in the prison.

31 7. If there is probable cause to believe that an act described in
32 paragraph (d) of subsection 1 has been committed in a prison:

33 (a) Each prisoner believed to have committed the act or to have been
34 the bodily source of any portion of the excrement or bodily fluid involved
35 in the act must submit to any appropriate examinations and testing to
36 determine whether each such prisoner has any communicable disease.

37 (b) If possible, a sample of the excrement or bodily fluid involved in
38 the act must be recovered and tested to determine whether any
39 communicable disease is present in the excrement or bodily fluid.

40 (c) If the excrement or bodily fluid involved in the act came into
41 physical contact with any portion of the body of an officer or employee of
42 a prison or any other person:

1 (1) *The results of any examinations or testing conducted pursuant*
2 *to paragraphs (a) and (b) must be provided to each such officer,*
3 *employee or other person; and*

4 (2) *For each such officer or employee, the person or governmental*
5 *body operating the prison where the act was committed shall pay for any*
6 *appropriate examinations and testing requested by the officer or*
7 *employee to determine whether a communicable disease was transmitted*
8 *to him as a result of the act.*

9 (d) *The results of the investigation conducted pursuant to subsection 6*
10 *and the results of any examinations or testing conducted pursuant to*
11 *paragraphs (a) and (b) must be submitted to the district attorney of the*
12 *county in which the act was committed or to the office of the attorney*
13 *general for possible prosecution of each prisoner who committed the act.*

14 8. *If a prisoner is charged with committing an act described in*
15 *paragraph (d) of subsection 1 and a victim or an intended victim of the*
16 *act was an officer or employee of a prison, the prosecuting attorney shall*
17 *not dismiss the charge in exchange for a plea of guilty, guilty but*
18 *mentally ill or nolo contendere to a lesser charge or for any other reason*
19 *unless the prosecuting attorney knows or it is obvious that the charge is*
20 *not supported by probable cause or cannot be proved at the time of trial.*

21 9. *The provisions of this section do not apply to a prisoner who*
22 *commits an act described in subsection 1 if the act:*

23 (a) *Is otherwise lawful and is authorized by the warden, sheriff,*
24 *administrator or other person responsible for administering the prison,*
25 *or his designee, and the prisoner performs the act in accordance with the*
26 *directions or instructions given to him by that person;*

27 (b) *Involves the discharge of human excrement or bodily fluid directly*
28 *from the body of the prisoner and the discharge is the direct result of a*
29 *temporary or permanent injury, disease or medical condition afflicting*
30 *the prisoner that prevents the prisoner from having physical control over*
31 *the discharge of his own excrement or bodily fluid; or*

32 (c) *Constitutes voluntary sexual conduct with another person in*
33 *violation of the provisions of NRS 212.187.*

34 **Sec. 8.** The amendatory provisions of section 7 of this act do not apply
35 to offenses committed before the effective date of this act.

36 **Sec. 9.** This act becomes effective upon passage and approval.