

ASSEMBLY BILL NO. 330—ASSEMBLYMAN NOLAN

MARCH 13, 2001

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning prisons and offenders. (BDR 16-662)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Contains Appropriation not included in Executive Budget.

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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 prisons; requiring the director of the department of prisons to establish a program to provide mandatory treatment of sex offenders; requiring the department to establish a program to test certain employees of the department for the use of alcohol and controlled substances; requiring the department to test at least 20 percent of offenders each year for the use of alcohol or a controlled substance; making various changes concerning criminal acts committed in a prison; making various changes concerning persons visiting a prison; requiring the attorney general to retain private legal counsel to prosecute certain crimes involving prisons; providing a penalty; making an appropriation; 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
2 the provisions set forth as sections 2 to 5, inclusive, of this act.
3 **Sec. 2. 1. *The director shall establish a program of treatment, to be***
4 ***carried out within each facility and institution, for the treatment of each***
5 ***sex offender. The program must provide that each sex offender shall***
6 ***participate in the program.***
7 ***2. The director shall adopt, with the approval of the board,***
8 ***regulations governing the operation of the program of treatment.***
9 ***3. The department may sanction, pursuant to subsection 4, an***
10 ***offender:***
11 ***(a) Who refuses or fails to participate in the program of treatment;***
12 ***(b) Who fails to comply with any requirement of the program of***
13 ***treatment; or***
14 ***(c) Who fails to comply with any regulation adopted by the director***
15 ***concerning the program of treatment.***



1 4. *In addition to any other sanction or penalty that may be imposed*
2 *pursuant to law or regulation, an offender who violates subsection 3 may*
3 *be sanctioned by:*

4 (a) *Forfeiture of all deductions of time earned by the offender before*
5 *commission of the violation or forfeiture of such part of those deductions*
6 *as the director considers just, pursuant to NRS 209.451; and*

7 (b) *Denial of the privilege to have visitors for a specified period, as*
8 *determined by the director.*

9 5. *As used in this section, "sex offender" means an offender who is*
10 *imprisoned for any of the offenses listed in subsection 5 of NRS*
11 *213.1214, except for abuse or neglect of a child pursuant to NRS 200.508*
12 *if such abuse or neglect did not involve sexual abuse or sexual*
13 *exploitation.*

14 **Sec. 3.** 1. *The director shall establish a program that provides for*
15 *the testing of certain employees of the department for the use of alcohol*
16 *and controlled substances.*

17 2. *The program must:*

18 (a) *Provide for periodic testing for the use of alcohol and controlled*
19 *substances of all employees of the department who come into regular*
20 *contact with offenders or who have access to firearms in the regular*
21 *course of their duties;*

22 (b) *Provide for the testing of at least 50 percent of such employees*
23 *each year, considering the attrition of such employees;*

24 (c) *Require such employees to report for testing on the same day that*
25 *they are notified that they are to be tested; and*

26 (d) *Provide for the testing of any employee of the department if there*
27 *is reasonable suspicion, based on objective information or physical*
28 *observation of the employee, that the employee is under the influence of*
29 *alcohol or is illegally using a controlled substance.*

30 3. *The director shall maintain confidential records concerning the*
31 *program, including, without limitation, the number of employees tested,*
32 *the number of positive and negative test results, the substances detected,*
33 *and the number of tests that were conducted as a result of reasonable*
34 *suspicion that the employee was under the influence of alcohol or*
35 *illegally using a controlled substance.*

36 4. *The director shall use the most cost-effective means possible in*
37 *operating the program, and shall actively seek grants from the Federal*
38 *Government and other sources to operate and expand the program.*

39 5. *The director shall adopt regulations, with the approval of the*
40 *board, governing the operation of the program. The regulations must set*
41 *forth:*

42 (a) *The types of tests to be used;*

43 (b) *The manner in which a sample for a test is to be obtained;*

44 (c) *The persons who are authorized to obtain a sample for a test;*

45 (d) *The method for preserving the chain of custody of a sample*
46 *obtained for a test;*

47 (e) *The actions that will be taken if the results of a test are positive or*
48 *if an employee refuses to submit to a test;*



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1 (f) Any training that will be provided to employees of the department
2 to carry out the program, including, without limitation, training
3 concerning determining whether reasonable suspicion exists that a
4 person is under the influence of alcohol or illegally using a controlled
5 substance;

6 (g) The assistance and treatment concerning alcohol and substance
7 abuse that the department provides to the employees of the department;
8 and

9 (h) Any other regulations necessary to carry out the program.

10 **Sec. 4.** 1. Each person seeking to visit an institution shall, before
11 entering the institution, sign a consent form in which the person:

12 (a) Gives his consent to be stopped and searched by a person of the
13 same sex without probable cause while in the institution; and

14 (b) If he is driving a vehicle on to the grounds of the institution, gives
15 his consent to have his vehicle searched without probable cause while it
16 is on the grounds of the institution.

17 2. A search conducted without probable cause pursuant to a consent
18 form signed pursuant to this section must be reasonable under the
19 circumstances.

20 3. A person seeking to visit an institution must not be admitted to the
21 institution unless he has signed the consent form required pursuant to
22 this section.

23 4. The director shall, with assistance from the office of the attorney
24 general, prescribe:

25 (a) The consent form to be used pursuant to this section; and

26 (b) The manner in which searches conducted pursuant to this section
27 must be conducted.

28 **Sec. 5.** The director shall post and maintain a sign at the entrance to
29 each institution which is clearly readable and which explains in clear
30 language:

31 1. The requirement set forth in section 4 of this act that a person
32 seeking to visit the institution sign a consent form; and

33 2. The prohibitions set forth in NRS 212.160 and the penalties for
34 violating a provision of that section.

35 **Sec. 6.** NRS 209.367 is hereby amended to read as follows:

36 209.367 1. The director shall establish a program, to be carried out
37 within each facility and institution, that provides for periodic testing of
38 offenders for use of alcohol and controlled substances. The program must
39 ~~provide~~ :

40 (a) Provide that the selection of offenders to be tested for use of alcohol
41 and controlled substances must be made on a random basis ~~+~~ ; and

42 (b) Provide that at least 20 percent of offenders are tested for use of
43 alcohol and controlled substances each year, considering the attrition of
44 offenders.

45 2. The director shall adopt, with the approval of the board, regulations
46 governing the operation of the program. The regulations must set forth the
47 procedure for testing, including, but not limited to:

48 (a) The types of tests to be used;

49 (b) The manner in which a sample for a test is to be obtained;



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- 1 (c) The persons who are authorized to obtain a sample for a test; and
2 (d) The method for preserving the chain of custody of a sample obtained
3 for a test.

4 3. The department shall inform the offenders in each facility and
5 institution of the requirement to submit to a test and the sanctions for
6 refusing or failing to submit to a test and for using alcohol or a controlled
7 substance. The department may provide this information through a general
8 notice posted or distributed in each facility and institution.

9 4. The department may sanction, pursuant to subsection 5, an offender:

- 10 (a) Who refuses or fails to submit to a test;
11 (b) Whose test detects alcohol or a controlled substance;
12 (c) Who manufactures, possesses, uses, sells, supplies, provides,
13 distributes, conceals or stores alcohol or a controlled substance; or
14 (d) Who attempts to manufacture, possess, use, sell, supply, provide,
15 distribute, conceal or store alcohol or a controlled substance.

16 5. In addition to any other sanction or penalty that may be imposed
17 pursuant to law or regulation, an offender who violates subsection 4 may
18 be sanctioned by:

- 19 (a) Forfeiture of all deductions of time earned by the offender before
20 commission of the violation or forfeiture of such part of those deductions
21 as the director considers just, pursuant to NRS 209.451; and
22 (b) Denial of the privilege to have visitors for a specified period, as
23 determined by the director.

24 6. If alcohol or a controlled substance is found in a facility or
25 institution, the director may order that for a specified period:

- 26 (a) The offenders housed in the general area where the alcohol or
27 controlled substance is found; or
28 (b) All offenders in the facility or institution,
29 be confined to their cells or housing units or be denied the privilege to have
30 visitors, or both.

31 7. The establishment of the program to test offenders for use of alcohol
32 and controlled substances pursuant to this section does not affect:

- 33 (a) The authority of the department to test an offender for use of alcohol
34 or a controlled substance for any other lawful purpose or reason; or
35 (b) The procedures used by the department to conduct such tests.

36 **Sec. 7.** NRS 209.451 is hereby amended to read as follows:

37 209.451 1. If an offender:

- 38 (a) Commits an assault upon his keeper or a foreman, officer, offender
39 or other person, or otherwise endangers life;
40 (b) Is guilty of a flagrant disregard of the regulations of the department
41 or of the terms and conditions of his residential confinement;
42 (c) Commits a misdemeanor, gross misdemeanor or felony; or
43 (d) In a civil action, in state or federal court, is found by the court to
44 have presented a pleading, written motion or other document in writing to
45 the court which:

46 (1) Contains a claim or defense that is included for an improper
47 purpose, including, without limitation, for the purpose of harassing his
48 opponent, causing unnecessary delay in the litigation or increasing the cost
49 of the litigation;



1 (2) Contains a claim, defense or other argument which is not
2 warranted by existing law or by a reasonable argument for a change in
3 existing law or a change in the interpretation of existing law; or

4 (3) Contains allegations or information presented as fact for which
5 evidentiary support is not available or is not likely to be discovered after
6 further investigation,

7 he forfeits all deductions of time earned by him before the commission of
8 that offense or act, or forfeits such part of those deductions as the director
9 considers just.

10 2. If an offender commits a serious violation of the regulations of the
11 department or of the terms and conditions of his residential confinement or
12 if an offender violates subsection 4 of NRS 209.367, *or subsection 3 of*
13 *section 2 of this act*, he may forfeit all or part of such deductions, in the
14 discretion of the director.

15 3. A forfeiture may be made only by the director after proof of the
16 commission of an act prohibited pursuant to this section and notice to the
17 offender in the manner prescribed in the regulations of the department. The
18 decision of the director regarding a forfeiture is final.

19 4. The director may restore credits forfeited for such reasons as he
20 considers proper.

21 5. As used in this section, "civil action" includes a petition for a writ of
22 habeas corpus filed in state or federal court.

23 **Sec. 8.** NRS 212.160 is hereby amended to read as follows:

24 212.160 1. A *prisoner or other* person, who is not authorized by law,
25 ~~who knowingly furnishes, attempts~~ *shall not knowingly:*

26 (a) *Furnish, attempt to furnish, or* ~~aids or assists~~ *aid or assist* in
27 furnishing or attempting to furnish to a prisoner confined in an institution
28 of the department of prisons, or any other place where prisoners are
29 authorized to be or are assigned by the director of the department, any
30 deadly weapon, explosive, a facsimile of a firearm or an explosive, any
31 controlled substance or intoxicating liquor ~~or~~ ;

32 (b) *Bring or send into or assist in bringing or sending into a prison*
33 *any deadly weapon, explosive, a facsimile of a firearm or an explosive,*
34 *any controlled substance or intoxicating liquor; or*

35 (c) *Possess in a prison any deadly weapon, explosive, a facsimile of a*
36 *firearm or an explosive, any controlled substance or intoxicating liquor.*

37 2. *A person who violates the provisions of subsection 1* shall be
38 punished:

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

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

45 ~~2-1~~ 3. Knowingly leaving or causing to be left any deadly weapon,
46 explosive, facsimile of a firearm or explosive, controlled substance or
47 intoxicating liquor where it may be obtained by any prisoner constitutes,
48 within the meaning of this section, the furnishing of the article to the
49 prisoner.



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~~13. A prisoner confined in an institution of the department of prisons, or any other place where prisoners are authorized to be or are assigned by the director of the department, who possesses a controlled substance without lawful authorization is guilty of a category D felony and shall be punished as provided in NRS 193.130.~~

Sec. 9. NRS 228.170 is hereby amended to read as follows:

228.170 1. Whenever the governor directs or when, in the opinion of the attorney general, to protect and secure the interest of the state it is necessary that a suit be commenced or defended in any federal or state court, the attorney general shall commence the action or make the defense.

2. The attorney general may investigate and prosecute any crime committed by a person:

(a) Confined in or committed to an institution or facility of the department of prisons.

(b) Acting in concert with, whether as a principal or accessory, any person confined in or committed to an institution or facility of the department of prisons.

(c) In violation of chapter 212 of NRS, if the crime involves:

(1) An institution or facility of the department of prisons; or

(2) A person confined in or committed to such an institution or facility.

3. The attorney general shall retain private legal counsel to investigate and prosecute any crime described in subsection 2.

Sec. 10. Chapter 284 of NRS is hereby amended by adding thereto a new section to read as follows:

The provisions of NRS 284.406 to 284.407, inclusive, do not apply to employees of the department of prisons who are subject to the program established pursuant to section 3 of this act.

Sec. 11. NRS 284.4061 is hereby amended to read as follows:

284.4061 As used in NRS 284.406 to 284.407, inclusive, *and section 10 of this act*, unless the context otherwise requires:

1. "Employee" means a person in the classified service of the state, except:

(a) Officers and members of the Nevada National Guard;

(b) Persons engaged in public work for the state but employed by contractors when the performance of the contract is authorized by the legislature or another competent authority; and

(c) Patient and inmate help in state charitable, penal, mental and correctional institutions.

2. "Screening test" means a test of a person's:

(a) Breath or blood to detect the general presence of alcohol; or

(b) Urine to detect the general presence of a controlled substance or any other drug, which could impair that person's ability to perform the duties of employment safely and efficiently.

Sec. 12. 1. There is hereby appropriated from the state general fund to the department of prisons the sum of \$150,000 for purchasing one portable ion scanner for each institution and one ion scanner for use at the entrance for visitors at each institution.



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1 2. Any remaining balance of the appropriation made by subsection 1
2 must not be committed for expenditure after June 30, 2002, and reverts to
3 the state general fund as soon as all payments of money committed have
4 been made.

5 **Sec. 13.** The amendatory provisions of this act do not apply to
6 offenses committed before July 1, 2001.

7 **Sec. 14.** This act becomes effective on July 1, 2001.

