

Amendment No. 364

Assembly Amendment to Assembly Bill No. 325 (BDR 14-1028)

Proposed by: Assembly Committee on Corrections, Parole, and Probation**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) *green bold italic underlining* is new language proposed 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 that is proposed to be retained in this amendment; and (6) *green bold dashed underlining* is newly added transitory language.

NCA/BAW



Date: 4/17/2009

A.B. No. 325—Revises provisions relating to sex offenders. (BDR 14-1028)



ASSEMBLY BILL NO. 325—ASSEMBLYMEN STEWART, GANSERT; COBB, GOEDHART, GRADY, GUSTAVSON, HAMBRICK, HARDY, KIRKPATRICK, MCARTHUR, MUNFORD, SETTELMAYER AND WOODBURY

MARCH 13, 2009

Referred to Committee on Corrections, Parole, and Probation

SUMMARY—Revises provisions relating to sex offenders. (BDR 14-1028)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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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 sex offenders; ~~establishing certain restrictions regarding residency for~~ **prohibiting** persons who are convicted of certain sexual offenses, ~~from having contact with a victim or witness~~; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that if a person is convicted of ~~certain offenses against a child under the age of 14 years, the person is a Tier III sex offender and the person is on probation, lifetime supervision or parole, the person is subject to certain restrictions concerning the place of his residence, such as not residing within 1,000 feet of any place that is designed primarily for use by or for children. (NRS 176A.410, 213.1243, 213.1255)~~ This bill provides that such a person may reside at a location only if the residence is not located within 1,000 feet of the property line of the property on which a victim of the person resides. This bill also clarifies that: (1) the previously enacted restrictions on the residency of such a person apply only to a person who establishes a residence on or after October 1, 2007, which is the date on which those restrictions became law; and (2) the additional restrictions on residency of such a person contained in this bill apply only to a person who establishes a residence on or after October 1, 2009, which is the date this bill becomes effective. **certain sexual offenses and the court grants probation or suspends the sentence of the defendant, or if such a person is released on parole, that person must not have any contact with the victim or a witness who testified against him unless approved by a parole and probation officer. (NRS 176A.410, 213.1245) Sections 1 and 2.5 of this bill provide that such a person may not have any such contact unless approved in writing by the Chief Parole and Probation Officer or his designee. Section 2 of this bill similarly prohibits a sex offender under lifetime supervision from having any contact with a victim or a witness who testified against him unless approved in writing by the Chief. (NRS 213.1243)**

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

Section 1. NRS 176A.410 is hereby amended to read as follows:

176A.410 1. Except as otherwise provided in subsection 6, if a defendant is convicted of a sexual offense and the court grants probation or suspends the sentence, the court shall, in addition to any other condition ordered pursuant to NRS 176A.400, order as a condition of probation or suspension of sentence that the defendant:

(a) Submit to a search and seizure of his person, residence or vehicle or any property under his control, at any time of the day or night, without a warrant, by any parole and probation officer or any peace officer, for the purpose of determining whether the defendant has violated any condition of probation or suspension of sentence or committed any crime.

(b) Reside at a location only if:

(1) The residence has been approved by the parole and probation officer assigned to the defendant.

(2) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS.

(3) The defendant keeps the parole and probation officer assigned to the defendant informed of his current address.

(c) Accept a position of employment or a position as a volunteer only if it has been approved by the parole and probation officer assigned to the defendant and keep the parole and probation officer informed of the location of his position of employment or position as a volunteer.

(d) Abide by any curfew imposed by the parole and probation officer assigned to the defendant.

(e) Participate in and complete a program of professional counseling approved by the Division.

(f) Submit to periodic tests, as requested by the parole and probation officer assigned to the defendant, to determine whether the defendant is using a controlled substance.

(g) Submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the defendant.

(h) Abstain from consuming, possessing or having under his control any alcohol.

(i) Not have contact or communicate with a victim of the sexual offense or a witness who testified against the defendant or solicit another person to engage in such contact or communication on behalf of the defendant, unless approved by the ~~parole and probation officer assigned to the defendant,~~ Chief Parole and Probation Officer or his designee and a written agreement is entered into and signed in the manner set forth in subsection 5.

(j) Not use aliases or fictitious names.

(k) Not obtain a post office box unless the defendant receives permission from the parole and probation officer assigned to the defendant.

(l) Not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of a sexual offense is present and permission has been obtained from the parole and probation officer assigned to the defendant in advance of each such contact.

(m) Unless approved by the parole and probation officer assigned to the defendant and by a psychiatrist, psychologist or counselor treating the defendant, if

any, not knowingly be within 500 feet of any place, or if the place is a structure, within 500 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater. The provisions of this paragraph apply only to a defendant who is a Tier III offender.

(n) Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including, without limitation, any protocol concerning the use of psychotropic medication.

(o) Not possess any sexually explicit material that is deemed inappropriate by the parole and probation officer assigned to the defendant.

(p) Not patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the parole and probation officer assigned to the defendant.

(q) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless possession of such a device or such access is approved by the parole and probation officer assigned to the defendant.

(r) Inform the parole and probation officer assigned to the defendant if the defendant expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education. As used in this paragraph, "institution of higher education" has the meaning ascribed to it in NRS 179D.045.

2. Except as otherwise provided in subsection 6, if a defendant is convicted of an offense listed in subsection 6 of NRS 213.1255 against a child under the age of 14 years, the defendant is a Tier III offender and the court grants probation or suspends the sentence of the defendant, the court shall, in addition to any other condition ordered pursuant to subsection 1, order as a condition of probation or suspension of sentence that the defendant:

(a) Reside at a location only if the residence is not located within 1,000 feet of any place, or if the place is a structure, within 1,000 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater. ~~[The provisions of this paragraph apply to a defendant who establishes a residence at a location on or after October 1, 2007.]~~

(b) ~~[Reside at a location only if the residence is not located within 1,000 feet of the property line of the property on which a victim of the defendant resides. The provisions of this paragraph apply to a defendant who establishes a residence at a location on or after October 1, 2009.]~~

~~—(c)—~~ As deemed appropriate by the Chief Parole and Probation Officer, be placed under a system of active electronic monitoring that is capable of identifying his location and producing, upon request, reports or records of his presence near or within a crime scene or prohibited area or his departure from a specified geographic location.

~~(c)~~ ~~(d)~~ Pay any costs associated with his participation under the system of active electronic monitoring, to the extent of his ability to pay.

3. A defendant placed under the system of active electronic monitoring pursuant to subsection 2 shall:

(a) Follow the instructions provided by the Division to maintain the electronic monitoring device in working order.

(b) Report any incidental damage or defacement of the electronic monitoring device to the Division within 2 hours after the occurrence of the damage or defacement.

(c) Abide by any other conditions set forth by the Division with regard to his participation under the system of active electronic monitoring.

4. Except as otherwise provided in this subsection, a person who intentionally removes or disables or attempts to remove or disable an electronic monitoring device placed on a defendant pursuant to this section is guilty of a gross misdemeanor. The provisions of this subsection do not prohibit a person authorized by the Division from performing maintenance or repairs to an electronic monitoring device.

5. A written agreement entered into pursuant to paragraph (i) of subsection 1 must state that the contact or communication is in the best interest of the victim or witness, and specify the type of contact or communication authorized. The written agreement must be signed and agreed to by:

(a) The victim or the witness;

(b) The defendant;

(c) The parole and probation officer assigned to the defendant;

(d) The psychiatrist, psychologist or counselor treating the defendant, victim or witness, if any; ~~and~~

(e) If the victim or witness is a child under 18 years of age, each parent, guardian or custodian of the child; ~~and~~

(f) The Chief Parole and Probation Officer or his designee.

6. The court is not required to impose a condition of probation or suspension of sentence listed in subsections 1 and 2 if the court finds that extraordinary circumstances are present and the court enters those extraordinary circumstances in the record.

7. As used in this section, "sexual offense" has the meaning ascribed to it in NRS 179D.097.

Sec. 2. NRS 213.1243 is hereby amended to read as follows:

213.1243 1. The Board shall establish by regulation a program of lifetime supervision of sex offenders to commence after any period of probation or any term of imprisonment and any period of release on parole. The program must provide for the lifetime supervision of sex offenders by parole and probation officers.

2. Lifetime supervision shall be deemed a form of parole for:

(a) The limited purposes of the applicability of the provisions of NRS 213.1076, subsection 9 of NRS 213.1095, NRS 213.1096 and subsection 2 of NRS 213.110; and

(b) The purposes of the Interstate Compact for Adult Offender Supervision ratified, enacted and entered into by the State of Nevada pursuant to NRS 213.215.

3. Except as otherwise provided in subsection 9, the Board shall require as a condition of lifetime supervision that the sex offender reside at a location only if:

(a) The residence has been approved by the parole and probation officer assigned to the person.

(b) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS.

(c) The person keeps the parole and probation officer informed of his current address.

4. Except as otherwise provided in subsection 9, the Board shall require as a condition of lifetime supervision that the sex offender, unless approved by the parole and probation officer assigned to the sex offender and by a psychiatrist, psychologist or counselor treating the sex offender, if any, not knowingly be within

500 feet of any place, or if the place is a structure, within 500 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater. The provisions of this subsection apply only to a sex offender who is a Tier ~~3~~ ~~III~~ offender.

5. Except as otherwise provided in subsection 9, if a sex offender is convicted of a sexual offense listed in subsection 6 of NRS 213.1255 against a child under the age of 14 years, the sex offender is a Tier ~~3~~ ~~III~~ offender and the sex offender is sentenced to lifetime supervision, the Board shall require as a condition of lifetime supervision that the sex offender:

(a) Reside at a location only if the residence is not located within 1,000 feet of any place, or if the place is a structure, within 1,000 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater. ~~[The provisions of this paragraph apply to a sex offender who establishes a residence at a location on or after October 1, 2007.]~~

(b) ~~[Reside at a location only if the residence is not located within 1,000 feet of the property line of the property on which a victim of the sex offender resides. The provisions of this paragraph apply to a sex offender who establishes a residence at a location on or after October 1, 2009.]~~

~~—(c)—~~ As deemed appropriate by the Chief, be placed under a system of active electronic monitoring that is capable of identifying his location and producing, upon request, reports or records of his presence near or within a crime scene or prohibited area or his departure from a specified geographic location.

~~(c) ~~[(d)]~~~~ Pay any costs associated with his participation under the system of active electronic monitoring, to the extent of his ability to pay.

6. A sex offender placed under the system of active electronic monitoring pursuant to subsection 4 shall:

(a) Follow the instructions provided by the Division to maintain the electronic monitoring device in working order.

(b) Report any incidental damage or defacement of the electronic monitoring device to the Division within 2 hours after the occurrence of the damage or defacement.

(c) Abide by any other conditions set forth by the Division with regard to his participation under the system of active electronic monitoring.

7. Except as otherwise provided in this subsection, a person who intentionally removes or disables or attempts to remove or disable an electronic monitoring device placed on a sex offender pursuant to this section is guilty of a gross misdemeanor. The provisions of this subsection do not prohibit a person authorized by the Division from performing maintenance or repairs to an electronic monitoring device.

8. Except as otherwise provided in subsection 7, a sex offender who commits a violation of a condition imposed on him pursuant to the program of lifetime supervision is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

9. The Board is not required to impose a condition pursuant to the program of lifetime supervision listed in subsections 3, 4 and 5 if the Board finds that

extraordinary circumstances are present and the Board states those extraordinary circumstances in writing.

10. The Board shall require as a condition of lifetime supervision that the sex offender not have contact or communicate with a victim of the sexual offense or a witness who testified against the sex offender or solicit another person to engage in such contact or communication on behalf of the sex offender, unless approved by the Chief or his designee and a written agreement is entered into and signed.

11. If a court issues a warrant for arrest for a violation of this section, the court shall cause to be transmitted, in the manner prescribed by the Central Repository for Nevada Records of Criminal History, notice of the issuance of the warrant for arrest in a manner which ensures that such notice is received by the Central Repository within 3 business days.

~~12.~~ 12. For the purposes of prosecution of a violation by a sex offender of a condition imposed upon him pursuant to the program of lifetime supervision, the violation shall be deemed to have occurred in, and may only be prosecuted in, the county in which the court that imposed the sentence of lifetime supervision pursuant to NRS 176.0931 is located, regardless of whether the acts or conduct constituting the violation took place, in whole or in part, within or outside that county or within or outside this State.

Sec. 2.5. NRS 213.1245 is hereby amended to read as follows:

213.1245 1. Except as otherwise provided in subsection 3, if the Board releases on parole a prisoner convicted of an offense listed in NRS 179D.097, the Board shall, in addition to any other condition of parole, require as a condition of parole that the parolee:

(a) Reside at a location only if:

(1) The residence has been approved by the parole and probation officer assigned to the parolee.

(2) If the residence is a facility that houses more than three persons who have been released from prison, the facility is a facility for transitional living for released offenders that is licensed pursuant to chapter 449 of NRS.

(3) The parolee keeps the parole and probation officer informed of his current address.

(b) Accept a position of employment or a position as a volunteer only if it has been approved by the parole and probation officer assigned to the parolee and keep the parole and probation officer informed of the location of his position of employment or position as a volunteer.

(c) Abide by any curfew imposed by the parole and probation officer assigned to the parolee.

(d) Participate in and complete a program of professional counseling approved by the Division.

(e) Submit to periodic tests, as requested by the parole and probation officer assigned to the parolee, to determine whether the parolee is using a controlled substance.

(f) Submit to periodic polygraph examinations, as requested by the parole and probation officer assigned to the parolee.

(g) Abstain from consuming, possessing or having under his control any alcohol.

(h) Not have contact or communicate with a victim of the offense or a witness who testified against the parolee or solicit another person to engage in such contact or communication on behalf of the parolee, unless approved by the ~~parole and probation officer assigned to the parolee,~~ Chief or his designee and a written agreement is entered into and signed in the manner set forth in subsection 2.

(i) Not use aliases or fictitious names.

(j) Not obtain a post office box unless the parolee receives permission from the parole and probation officer assigned to the parolee.

(k) Not have contact with a person less than 18 years of age in a secluded environment unless another adult who has never been convicted of an offense listed in NRS 179D.097 is present and permission has been obtained from the parole and probation officer assigned to the parolee in advance of each such contact.

(l) Unless approved by the parole and probation officer assigned to the parolee and by a psychiatrist, psychologist or counselor treating the parolee, if any, not knowingly be within 500 feet of any place, or if the place is a structure, within 500 feet of the actual structure, that is designed primarily for use by or for children, including, without limitation, a public or private school, a school bus stop, a center or facility that provides day care services, a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth sports, or a motion picture theater. The provisions of this paragraph apply only to a parolee who is a Tier 3 offender.

(m) Comply with any protocol concerning the use of prescription medication prescribed by a treating physician, including, without limitation, any protocol concerning the use of psychotropic medication.

(n) Not possess any sexually explicit material that is deemed inappropriate by the parole and probation officer assigned to the parolee.

(o) Not patronize a business which offers a sexually related form of entertainment and which is deemed inappropriate by the parole and probation officer assigned to the parolee.

(p) Not possess any electronic device capable of accessing the Internet and not access the Internet through any such device or any other means, unless possession of such a device or such access is approved by the parole and probation officer assigned to the parolee.

(q) Inform the parole and probation officer assigned to the parolee if the parolee expects to be or becomes enrolled as a student at an institution of higher education or changes the date of commencement or termination of his enrollment at an institution of higher education. As used in this paragraph, "institution of higher education" has the meaning ascribed to it in NRS 179D.045.

2. A written agreement entered into pursuant to paragraph (h) of subsection 1 must state that the contact or communication is in the best interest of the victim or witness, and specify the type of contact or communication authorized. The written agreement must be signed and agreed to by:

(a) The victim or the witness;

(b) The parolee;

(c) The parole and probation officer assigned to the parolee;

(d) The psychiatrist, psychologist or counselor treating the parolee, victim or witness, if any; ~~and~~

(e) If the victim or witness is a child under 18 years of age, each parent, guardian or custodian of the child ~~;~~ and

(f) The Chief or his designee.

3. The Board is not required to impose a condition of parole listed in subsection 1 if the Board finds that extraordinary circumstances are present and the Board states those extraordinary circumstances in writing.

Sec. 3. ~~NRS 213.1255 is hereby amended to read as follows:~~

~~213.1255 1. Except as otherwise provided in subsection 4, in addition to any conditions of parole required to be imposed pursuant to NRS 213.1245, as a condition of releasing on parole a prisoner who was convicted of committing a~~

1 offense listed in subsection 6 against a child under the age of 14 years and who is a
2 Tier 2 ~~[[III]]~~ offender, the Board shall require that the parolee;

3 ~~— (a) Reside at a location only if the residence is not located within 1,000 feet of~~
4 ~~any place, or if the place is a structure, within 1,000 feet of the actual structure, that~~
5 ~~is designed primarily for use by or for children, including, without limitation, a~~
6 ~~public or private school, a school bus stop, a center or facility that provides day~~
7 ~~care services, a video arcade, an amusement park, a playground, a park, an athletic~~
8 ~~field or a facility for youth sports, or a motion picture theater. [The provisions of~~
9 ~~this paragraph apply to a parolee who establishes a residence at a location on or~~
10 ~~after October 1, 2007.]~~

11 ~~— (b) [Reside at a location only if the residence is not located within 1,000 feet~~
12 ~~of the property line of the property on which a victim of the parolee resides. The~~
13 ~~provisions of this paragraph apply to a parolee who establishes a residence at a~~
14 ~~location on or after October 1, 2009.]~~

15 ~~— (c) As deemed appropriate by the Chief, be placed under a system of active~~
16 ~~electronic monitoring that is capable of identifying his location and producing,~~
17 ~~upon request, reports or records of his presence near or within a crime scene or~~
18 ~~prohibited area or his departure from a specified geographic location.~~

19 ~~— (e) ~~[(d)]~~ Pay any costs associated with his participation under the system of~~
20 ~~active electronic monitoring, to the extent of his ability to pay.~~

21 ~~2. A parolee placed under the system of active electronic monitoring pursuant~~
22 ~~to subsection 1 shall:~~

23 ~~— (a) Follow the instructions provided by the Division to maintain the electronic~~
24 ~~monitoring device in working order.~~

25 ~~— (b) Report any incidental damage or defacement of the electronic monitoring~~
26 ~~device to the Division within 2 hours after the occurrence of the damage or~~
27 ~~defacement.~~

28 ~~— (c) Abide by any other conditions set forth by the Division with regard to his~~
29 ~~participation under the system of active electronic monitoring.~~

30 ~~3. Except as otherwise provided in this subsection, a person who intentionally~~
31 ~~removes or disables or attempts to remove or disable an electronic monitoring~~
32 ~~device placed on a parolee pursuant to this section is guilty of a gross misdemeanor.~~
33 ~~The provisions of this subsection do not prohibit a person authorized by the~~
34 ~~Division from performing maintenance or repairs to an electronic monitoring~~
35 ~~device.~~

36 ~~4. The Board is not required to impose a condition of parole listed in~~
37 ~~subsection 1 if the Board finds that extraordinary circumstances are present and the~~
38 ~~Board states those extraordinary circumstances in writing.~~

39 ~~5. In addition to any conditions of parole required to be imposed pursuant to~~
40 ~~subsection 1 and NRS 213.1245, as a condition of releasing on parole a prisoner~~
41 ~~who was convicted of committing an offense listed in subsection 6 against a child~~
42 ~~under the age of 14 years, the Board shall, when appropriate:~~

43 ~~— (a) Require the parolee to participate in psychological counseling;~~

44 ~~— (b) Prohibit the parolee from being alone with a child unless another adult who~~
45 ~~has never been convicted of a sexual offense is present.~~

46 ~~6. The provisions of subsections 1 and 5 apply to a prisoner who was~~
47 ~~convicted of:~~

48 ~~— (a) Sexual assault pursuant to paragraph (c) of subsection 3 of NRS 200.366;~~

49 ~~— (b) Abuse or neglect of a child pursuant to subparagraph (1) of paragraph (a) of~~
50 ~~subsection 1 or subparagraph (1) of paragraph (a) of subsection 2 of NRS 200.508;~~

51 ~~— (c) An offense punishable pursuant to subsection 2 of NRS 200.750;~~

~~(d) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to subparagraph (1) of paragraph (a) of subsection 1 of NRS 201.195;~~

~~(e) Lewdness with a child pursuant to NRS 201.230;~~

~~(f) Luring a child or a person with mental illness pursuant to NRS 201.560, if punished as a felony; or~~

~~(g) Any combination of the crimes listed in paragraphs (a) to (f), inclusive.]~~

~~(Deleted by amendment.)~~

~~Sec. 4. The amendatory provisions of §~~

~~1. Section 1 of this act apply to a person who is granted probation or a suspension of sentence before, on or after October 1, 2009.~~

~~2. Section 2 of this act apply to a person who is placed under a program of lifetime supervision before, on or after October 1, 2009.~~

~~3. Section 3 of] this act apply to a person who is [released on parole before,] convicted] on or after October 1, 2009.~~