

Amendment No. 252

Assembly Amendment to Assembly Bill No. 384

(BDR 16-820)

Proposed by: Assembly Committee on Corrections, Parole, and Probation**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

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.

AMI/RRY



Date: 4/9/2009

A.B. No. 384—Revises provisions governing certain unlawful acts committed by prisoners. (BDR 16-820)



ASSEMBLY BILL NO. 384—ASSEMBLYMEN KIHUEN, MANENDO, ANDERSON; DENIS, GUSTAVSON, HAMBRICK, HORNE, MCARTHUR, MORTENSON, MUNFORD, OHRENSCHALL AND SEGERBLOM

MARCH 16, 2009

Referred to Committee on Corrections, Parole, and Probation

SUMMARY—Revises provisions governing certain unlawful acts committed by prisoners. (BDR 16-820)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; revising provisions making it a crime for prisoners to commit certain acts involving human excrement or bodily fluid; requiring certain law enforcement agencies to pay for certain examinations and testing requested by certain officers and employees who are victims of such a crime; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law makes it a crime for a prisoner who is in lawful custody or confinement, other than residential confinement, to commit certain acts involving human excrement or bodily fluid. (NRS 212.189) This bill expands the applicability of that crime to include a prisoner who is under lawful arrest. In *Dumaine v. State* (103 Nev. 121 (1987)), the Nevada Supreme Court interpreted the phrase “under lawful arrest” as used in the definition of “prisoner” set forth in existing law (NRS 193.022 and 208.085) to mean that there is an actual restraint of the liberty of the person. The Court stated that one cannot be a prisoner until “one either submits to the control of the arresting officer or is captured, *i.e.*, taken and held in control.” (*Dumaine*, 103 Nev. 121, 124) Thus, this bill provides that such a crime applies to a person being arrested if there has been an actual restraint of the liberty of that person because either the person has submitted to the control of the arresting law enforcement officer or the person has been captured.

Existing law also provides that if the victim of such a crime is an officer or employee of a prison, the person or governmental entity operating the prison in which the act occurred is required to pay for certain examinations or tests requested by the officer or employee to determine whether a communicable disease was transmitted to him as a result of the crime. (NRS 212.189) This bill expands that provision by providing that if the victim of such a crime is an officer or employee of a law enforcement agency, the law enforcement agency that employs the officer or employee is required to pay for such examinations and testing requested by the officer or employee.

Existing law prohibits a prosecuting attorney from dismissing charges for such a crime, under certain circumstances, if the victim or intended victim is an officer or employee of a prison. (NRS 212.189) This bill amends existing law to apply similarly in cases in which the victim or intended victim is an officer or employee of a law enforcement agency.

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

Section 1. NRS 212.189 is hereby amended to read as follows:

212.189 1. Except as otherwise provided in subsection ~~10, 10,~~ a prisoner ~~{other than a prisoner who is in residential confinement,}~~ who is under lawful arrest, in lawful custody or in lawful confinement ~~{,} {other than residential confinement,}~~ shall not knowingly:

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

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

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

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

(1) With the intent to have the excrement or bodily fluid come into physical contact with any portion of the body of another person, including, without limitation, an officer or employee of a prison or ~~{any other person,}~~ law enforcement agency, whether or not such physical contact actually occurs; or

(2) Under circumstances in which the excrement or bodily fluid is reasonably likely to come into physical contact with any portion of the body of another person, including, without limitation, an officer or employee of a prison or ~~{any other person,}~~ law enforcement agency, whether or not such physical contact actually occurs.

2. Except as otherwise provided in subsection ~~10, 4,~~ if a prisoner who is under lawful arrest or in lawful custody violates any provision of subsection 1, the prisoner is guilty of :

(a) For a first offense, a gross misdemeanor.

(b) For a second offense or any subsequent offense, a category D felony and shall be punished as provided in NRS 193.130.

3. Except as otherwise provided in subsection 4, if a prisoner who is in lawful confinement, other than residential confinement, violates any provision of subsection 1, the prisoner 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 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

~~10, 4,~~ 4. If a prisoner who is under lawful arrest, in lawful custody or in lawful confinement violates any provision of paragraph (d) of subsection 1 and, at the time of the offense, the prisoner knew that any portion of the excrement or bodily fluid involved in the offense contained a communicable disease that causes or is reasonably likely to cause substantial bodily harm, whether or not the communicable disease was transmitted to a victim as a result of the offense, the prisoner is guilty of a category A felony and shall be punished by imprisonment in the state prison:

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

(b) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served,

and may be further punished by a fine of not more than \$50,000.

~~10, 5,~~ 5. A sentence imposed upon a prisoner pursuant to subsection 2 ~~{or 3,}~~ 3 or 4:

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

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

~~5-4~~ **6.** In addition to any other penalty, the court shall order a prisoner who violates any provision of paragraph (d) of subsection 1 to reimburse the appropriate person or governmental body for the cost of any examinations or testing:

(a) Conducted pursuant to paragraphs (a) and (b) of subsection ~~7-4~~ **8**; or

(b) Paid for pursuant to subparagraph (2) of paragraph (c) of subsection ~~7-4~~ **8**.

~~6-4~~ **7.** The warden, sheriff, administrator or other person responsible for administering a prison shall immediately and fully investigate any act described in subsection 1 that is reported or suspected to have been committed in the prison.

~~7-4~~ **8.** If there is probable cause to believe that an act described in paragraph (d) of subsection 1 has been committed in a prison:

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

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

(c) If the excrement or bodily fluid involved in the act came into physical contact with any portion of the body of an officer or employee of a prison or ~~any other person~~ **law enforcement agency**:

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

(2) For each such officer or employee ~~H~~ :

(I) Of a prison, the person or governmental body operating the prison where the act was committed shall pay for any appropriate examinations and testing requested by the officer or employee to determine whether a communicable disease was transmitted to him as a result of the act ~~H~~ ; and

(II) Of any law enforcement agency, the law enforcement agency that employs the officer or employee shall pay for any appropriate examinations and testing requested by the officer or employee to determine whether a communicable disease was transmitted to him as a result of the act.

(d) The results of the investigation conducted pursuant to subsection ~~6-4~~ **7** and the results of any examinations or testing conducted pursuant to paragraphs (a) and (b) must be submitted to the district attorney of the county in which the act was committed or to the Office of the Attorney General for possible prosecution of each prisoner who committed the act.

~~8-4~~ **9.** If a prisoner is charged with committing an act described in paragraph (d) of subsection 1 and a victim or an intended victim of the act was an officer or employee of a prison ~~H~~ **or law enforcement agency**, the prosecuting attorney shall not dismiss the charge in exchange for a plea of guilty, guilty but mentally ill or nolo contendere to a lesser charge or for any other reason unless the prosecuting attorney knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

~~9-4~~ **10.** The provisions of this section do not apply to a prisoner **who is in residential confinement or to a prisoner** who commits an act described in subsection 1 if the act:

(a) Is otherwise lawful and is authorized by the warden, sheriff, administrator or other person responsible for administering the prison, or his designee, and the

1 prisoner performs the act in accordance with the directions or instructions given to
2 him by that person;

3 (b) Involves the discharge of human excrement or bodily fluid directly from
4 the body of the prisoner and the discharge is the direct result of a temporary or
5 permanent injury, disease or medical condition afflicting the prisoner that prevents
6 the prisoner from having physical control over the discharge of his own excrement
7 or bodily fluid; or

8 (c) Constitutes voluntary sexual conduct with another person in violation of the
9 provisions of NRS 212.187.