

ASSEMBLY BILL NO. 16—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE DEPARTMENT OF CORRECTIONS)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning sexual conduct between certain prisoners in lawful custody or confinement and other persons. (BDR 16-343)

FISCAL NOTE: Effect on Local Government: No.  
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 prisoners; providing that an employee of or a contractor or volunteer for a prison commits sexual abuse of a prisoner or unauthorized custodial conduct if he or she voluntarily engages or attempts to engage in certain acts with certain prisoners in lawful custody or confinement; revising provisions relating to voluntary sexual conduct between certain prisoners in lawful custody or confinement and other persons; providing penalties; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law provides that a prisoner who: (1) is in lawful custody or confinement, other than in the custody of the Division of Parole and Probation of the Department of Public Safety or residential confinement; and (2) voluntarily engages in sexual conduct with another person is guilty of a category D felony. (NRS 212.187) Under federal regulations adopted pursuant to the Prison Rape Elimination Act of 2003 (42 U.S.C. §§ 15601 et seq.), which set forth national standards relating to the Act, an agency with direct responsibility for the operation of any facility that confines inmates, detainees or residents is authorized to discipline an inmate in an adult prison or jail or a resident of a community confinement facility or juvenile facility for sexual contact with a staff member of the agency only if the staff member did not consent to the contact. (28 C.F.R. §§ 115.78, 115.278, 115.378) Accordingly, **section 7** of this bill revises existing law to provide that a prisoner who voluntarily engages in sexual conduct with a person



who is not an employee of or a contractor or volunteer for a prison is guilty of a category D felony.

Existing law also provides that a person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than in the custody of the Division of Parole and Probation or residential confinement, is guilty of a category D felony. (NRS 212.187) **Section 6** of this bill provides that an employee of or a contractor or volunteer for a prison who voluntarily engages or attempts to engage in certain acts with such a prisoner, regardless of whether the prisoner consents to the act, commits either sexual abuse of a prisoner or unauthorized custodial conduct, depending on the type of act. Such an employee, contractor or volunteer who commits: (1) sexual abuse of a prisoner is guilty of a category D felony; (2) unauthorized custodial conduct by engaging in certain acts is guilty of a gross misdemeanor; or (3) unauthorized custodial conduct by attempting to engage in certain acts is guilty of a misdemeanor. The definitions of the terms "sexual abuse" and "unauthorized custodial conduct," as they are used in **section 6**, are based on the definition of the term "sexual abuse" as it is used for purposes of the federal regulations adopted pursuant to the Prison Rape Elimination Act. (28 C.F.R. § 115.6)

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

**Section 1.** Chapter 212 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

**Sec. 2.** *As used in NRS 212.140 to 212.189, inclusive, and sections 2 to 6, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 4 and 5 of this act have the meanings ascribed to them in those sections.*

**Sec. 3.** *"Contractor" means a person who provides services on a recurring basis to a prison pursuant to a contractual agreement with the Department of Corrections or the sheriff, chief of police or other officer responsible for the operation of the prison.*

**Sec. 4.** *"Employee" means a person who works directly for a prison.*

**Sec. 5.** *"Volunteer" means a person who donates his or her time and effort on a recurring basis to a prison to enhance the activities and programs of the prison.*

**Sec. 6. 1.** *An employee of or a contractor or volunteer for a prison who voluntarily engages in, or attempts to engage in, with a prisoner who is in lawful custody or confinement, other than in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888 or residential confinement, any of the acts set forth in:*

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



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

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

(a) Sexual abuse of a prisoner is guilty of a category D felony and shall be punished as provided in NRS 193.130.

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

(c) Unauthorized custodial conduct by attempting to engage in any of the acts described in paragraph (b) of subsection 3 is guilty of a misdemeanor.

3. As used in this section:

(a) "Sexual abuse":

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

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

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

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

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

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

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

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

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

(b) "Unauthorized custodial conduct":

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



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

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

(III) *Any threat or request by an employee or a contractor or volunteer to engage in any act described in subparagraphs (I) or (II); or*

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

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

**Sec. 7.** NRS 212.187 is hereby amended to read as follows:

212.187 1. A prisoner who is in lawful custody or confinement, other than in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888 or residential confinement, and who voluntarily engages in sexual conduct with another person *who is not an employee of or a contractor or volunteer for a prison* is guilty of a category D felony and shall be punished as provided in NRS 193.130.

2. ~~[A]~~ *Except as otherwise provided in section 6 of this act, a person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888 or residential confinement, is guilty of a category D felony and shall be punished as provided in NRS 193.130.*

3. As used in this section, "sexual conduct":

(a) Includes acts of masturbation, sexual penetration or physical contact with another person's clothed or unclothed genitals or pubic area to arouse, appeal to or gratify the sexual desires of a person.

(b) Does not include acts of a person who has custody of a prisoner or an employee of *or a contractor or volunteer for the [institution] prison* in which the prisoner is confined that are performed to carry out the necessary duties of such a person, ~~[or]~~ *employee [ ], contractor or volunteer.*



**Sec. 8.** NRS 200.604 is hereby amended to read as follows:

200.604 1. Except as otherwise provided in subsection 4, a person shall not knowingly and intentionally capture an image of the private area of another person:

(a) Without the consent of the other person; and

(b) Under circumstances in which the other person has a reasonable expectation of privacy.

2. Except as otherwise provided in subsection 4, a person shall not distribute, disclose, display, transmit or publish an image that the person knows or has reason to know was made in violation of subsection 1.

3. ~~1A~~ *Unless a greater penalty is provided pursuant to section 6 of this act,* a person who violates this section:

(a) For a first offense, is guilty of a gross misdemeanor.

(b) For a second or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

4. This section does not prohibit any lawful law enforcement or correctional activity, including, without limitation, capturing, distributing, disclosing, displaying, transmitting or publishing an image for the purpose of investigating or prosecuting a violation of this section.

5. If a person is charged with a violation of this section, any image of the private area of a victim that is contained within:

(a) Court records;

(b) Intelligence or investigative data, reports of crime or incidents of criminal activity or other information;

(c) Records of criminal history, as that term is defined in NRS 179A.070; and

(d) Records in the Central Repository for Nevada Records of Criminal History,

is confidential and, except as otherwise provided in subsections 6 and 7, must not be inspected by or released to the general public.

6. An image that is confidential pursuant to subsection 5 may be inspected or released:

(a) As necessary for the purposes of investigation and prosecution of the violation;

(b) As necessary for the purpose of allowing a person charged with a violation of this section and his or her attorney to prepare a defense; and

(c) Upon authorization by a court of competent jurisdiction as provided in subsection 7.

7. A court of competent jurisdiction may authorize the inspection or release of an image that is confidential pursuant to subsection 5, upon application, if the court determines that:



(a) The person making the application has demonstrated to the satisfaction of the court that good cause exists for the inspection or release; and

(b) Reasonable notice of the application and an opportunity to be heard have been given to the victim.

8. As used in this section:

(a) “Broadcast” means to transmit electronically an image with the intent that the image be viewed by any other person.

(b) “Capture,” with respect to an image, means to videotape, photograph, film, record by any means or broadcast.

(c) “Female breast” means any portion of the female breast below the top of the areola.

(d) “Private area” means the naked or undergarment clad genitals, pubic area, buttocks or female breast of a person.

(e) “Under circumstances in which the other person has a reasonable expectation of privacy” means:

(1) Circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of his or her private area would be captured; or

(2) Circumstances in which a reasonable person would believe that his or her private area would not be visible to the public, regardless of whether the person is in a public or private place.

