

SENATE BILL NO. 383—SENATORS SCHEIBLE AND RATTI

MARCH 20, 2019

Referred to Committee on Judiciary

**SUMMARY**—Revises provisions relating to sexual conduct between a law enforcement officer and a person in his or her custody. (BDR 3-113)

**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 sexual conduct; establishing a rebuttable presumption in civil actions concerning unwelcome or nonconsensual sexual conduct between a law enforcement officer and a person in his or her custody; revising provisions relating to sexual conduct between a law enforcement officer and a person in his or her custody; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law prohibits a person from voluntarily engaging in sexual conduct with a prisoner who is in lawful custody or confinement and provides that any person who violates such a prohibition is guilty of a category D felony. (NRS 212.187) Existing law defines the term "prisoner" for the purposes of such a prohibition as including any person held in custody under process of law or under lawful arrest. (NRS 208.085) **Section 2** of this bill: (1) clarifies that such a prohibition applies to a law enforcement officer who voluntarily engages in sexual conduct with a person who is in his or her custody; and (2) provides that if a law enforcement officer violates such a prohibition by voluntarily engaging in sexual conduct with a person who is in his or her custody, it is not a defense that the person in his or her custody consented to the sexual conduct.

**Section 1** of this bill establishes a rebuttable presumption in any civil action concerning any unwelcome or nonconsensual sexual conduct, including sexual harassment, that the sexual conduct was unwelcome or nonconsensual if the alleged perpetrator was a law enforcement officer and the alleged victim was a person in the custody of the law enforcement officer.



\* S B 3 8 3 \*

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

**Section 1.** Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. In any civil action concerning any unwelcome or nonconsensual sexual conduct, including, without limitation, sexual harassment, there is a rebuttable presumption that the sexual conduct was unwelcome or nonconsensual if the alleged perpetrator was a law enforcement officer and the alleged victim was a person in the custody of the law enforcement officer.*

*2. As used in this section, "sexual harassment" has the meaning ascribed to it in NRS 176A.280.*

**Sec. 2.** 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. Except as otherwise provided in NRS 212.188, 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,~~ *including, without limitation, a law enforcement officer who voluntarily engages in sexual conduct with a person who is in his or her custody,* is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. *If a law enforcement officer violates this section by voluntarily engaging in sexual conduct with a person who is in his or her custody, it is not a defense that the person in his or her custody consented to the sexual conduct.*

4. As used in this section ~~["sexual"]~~:

(a) *"Lawful custody or confinement" does not include being 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.*

(b) *"Sexual conduct":*

~~[(a)]~~ (1) 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.



1       ~~(b)~~ (2) Does not include acts of a person who has custody of a  
2 prisoner or an employee of or a contractor or volunteer for the  
3 prison in which the prisoner is confined that are performed to carry  
4 out the necessary duties of such a person, employee, contractor or  
5 volunteer.

