

ASSEMBLY BILL NO. 452—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE JOINT INTERIM STANDING
COMMITTEE ON JUDICIARY)

MARCH 27, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to visitation with offenders in a correctional institution or facility. (BDR 16-315)

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 offenders; requiring the Director of the Department of Corrections to adopt regulations establishing and governing a program for the visitation of offenders; requiring the Department to establish a panel to review certain decisions of a warden or manager to deny visitation; requiring a warden or manager who denies visitation to provide certain written notice regarding the denial; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes the warden or manager of a correctional institution or facility to allow visits and correspondence between offenders and appropriate friends, relatives and others. (NRS 209.423) **Section 2** of this bill requires the Director of the Department of Corrections, with the approval of the Board of State Prison Commissioners, to adopt regulations establishing and governing a program for the visitation of offenders. **Section 2** requires such regulations to prescribe: (1) requirements relating to the frequency of visitation; (2) criteria for the eligibility of an offender or prospective visitor to participate in visitation; (3) requirements for the approval or denial of a prospective visitor; and (4) requirements relating to certain notice which must be provided concerning cancelled visits. **Section 4** of this bill requires that a warden or manager who denies a prospective visitor to provide written notice of the denial to the prospective visitor which: (1) states the reason for the denial; (2) notifies the prospective visitor of his or her right to appeal the decision; (3) notifies the prospective visitor of the date on which he or she will be



eligible to reapply to visit an offender; and (4) complies with any other requirements prescribed by the regulations adopted pursuant to **section 2**.

The Nevada Administrative Procedure Act requires agencies of the Executive Department of the State Government to provide certain notice and to hold certain public hearings related to temporary and permanent regulations. (Chapter 233B of NRS) Existing law exempts the Department of Corrections from the provisions of the Act, with certain exceptions. **Section 5** of this bill makes a conforming change to require that the regulations required by **section 2** be adopted pursuant to the Act.

Section 3 of this bill: (1) requires the Department to establish a review panel concerning the program for the visitation of offenders established pursuant to the regulations required by **section 2**; and (2) prescribes the membership of the panel. **Section 3** authorizes a prospective visitor to appeal to the panel a denial of visitation and requires a prospective visitor who wishes to make such an appeal to submit certain information concerning the decision to the panel. **Section 3** requires the panel to review each decision that is the subject of an appeal and overturn the decision if the prospective visitor: (1) meets the eligibility criteria prescribed by the regulations adopted pursuant to **section 2**; and (2) does not present a threat to the safety or security of an institution or facility.

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

Section 1. Chapter 209 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. 1. *The Director shall adopt, with the approval of the Board, regulations establishing and governing a program, to be carried out within each facility and institution, for the visitation of offenders. The regulations must prescribe:*

(a) Requirements relating to the frequency with which opportunities for visitation must be made available to eligible offenders, which must:

(1) Allow in-person visitation at least 2 days per week for eligible offenders;

(2) In addition to any other visitation to which an eligible offender may be entitled, allow:

(I) At least two in-person, contact visits per week for eligible offenders who gave birth at any time during the immediately preceding 6 weeks, regardless of whether the offender is entitled to additional visits pursuant to sub-subparagraphs (II), (III) or (IV);

(II) At least two in-person, contact visits per week for eligible offenders who are hospitalized, regardless of whether the offender is entitled to additional visits pursuant to sub-subparagraphs (I), (III) or (IV);

(III) At least 5 consecutive days of in-person, contact visits per week for eligible offenders who are receiving hospice



care, regardless of whether the offender is entitled to additional visits pursuant to sub-subparagraphs (I), (II) or (IV); and

(IV) At least 5 consecutive days of in-person, contact visits per week for eligible offenders who are parents of children who are less than 1 year of age, regardless of whether the offender is entitled to additional visits pursuant to sub-subparagraphs (I), (II) or (III);

(b) Criteria for the eligibility of:

(1) An offender to receive visitors; and

(2) A prospective visitor;

(c) Requirements relating to the approval or denial of a prospective visitor which must include, without limitation:

(1) Requirements relating to the notice which must be provided by a warden or manager pursuant to NRS 209.423;

(2) An opportunity to appeal a decision made by the warden or manager; and

(3) A procedure for such an appeal; and

(d) Requirements relating to notice which must be provided to a visitor concerning a cancelled visit, which must include, without limitation, a requirement that such notice be:

(1) Provided at least 72 hours in advance of the cancelled visit for institution-wide or facility-wide cancellations; and

(2) Made publicly available on the Internet website of the Department or the institution or facility.

2. The regulations adopted pursuant to this section must be adopted in accordance with the provisions of chapter 233B of NRS.

3. As used in this section, "eligible offender" means an offender who meets the criteria for eligibility to receive visitors prescribed by the regulations adopted pursuant to this section.

Sec. 3. 1. The Department shall establish a review panel concerning the program for the visitation of offenders established pursuant to section 2 of this act. The Director shall appoint to the review panel:

(a) One member who is a mental health professional;

(b) One member who is an administrator of the Department; and

(c) One member who is a case manager.

2. A prospective visitor whose application is denied may appeal that determination to the review panel established pursuant to subsection 1.

3. An appeal filed pursuant to subsection 2 must be submitted in writing and include:

(a) The name of the prospective visitor;



(b) The name of the institution or facility to which an application was denied;

(c) The reasons for the appeal; and

(d) Any additional documentation or evidence supporting the appeal.

4. The review panel established pursuant to subsection 1 shall review a decision that is the subject of an appeal and issue a decision in writing concerning the appeal. The review panel shall overturn a decision that is the subject of an appeal if the prospective visitor:

(a) Meets the criteria for eligibility prescribed by the regulations adopted pursuant to section 2 of this act; and

(b) Does not present a threat to the safety or security of an institution or facility.

5. As used in this section:

(a) "Administrator" means a deputy director, superintendent or other employee of the Department to whom the Director has delegated authority.

(b) "Case manager" means an employee of the Department whose duties include, without limitation, providing rehabilitation and support services to offenders.

Sec. 4. NRS 209.423 is hereby amended to read as follows:

209.423 1. Wardens and managers may authorize visits ~~[and correspondence]~~ between offenders and ~~[appropriate friends, relatives, and others under]~~ prospective visitors in accordance with the regulations adopted ~~[by the Director and approved by the Board.]~~ pursuant to section 2 of this act.

2. A warden or manager who denies a prospective visitor must provide written notice of the denial to the prospective visitor. Such notice must:

(a) State the reason for the denial;

(b) Notify the prospective visitor of:

(1) His or her right to appeal the decision; and

(2) The date on which he or she will be eligible to reapply to visit an offender; and

(c) Comply with any other requirements prescribed by regulations adopted pursuant to section 2 of this act.

3. Wardens and managers may authorize correspondence between offenders and appropriate friends, relatives and others under regulations adopted by the Director and approved by the Board.

Sec. 5. NRS 233B.039 is hereby amended to read as follows:

233B.039 1. The following agencies are entirely exempted from the requirements of this chapter:

(a) The Governor.



(b) Except as otherwise provided in NRS 209.221 and 209.2473, *and section 2 of this act*, the Department of Corrections.

(c) The Nevada System of Higher Education.

(d) The Office of the Military.

(e) The Nevada Gaming Control Board.

(f) Except as otherwise provided in NRS 368A.140 and 463.765, the Nevada Gaming Commission.

(g) Except as otherwise provided in NRS 425.620, the Division of Welfare and Supportive Services of the Department of Health and Human Services.

(h) Except as otherwise provided in NRS 422.390, the Division of Health Care Financing and Policy of the Department of Health and Human Services.

(i) Except as otherwise provided in NRS 533.365, the Office of the State Engineer.

(j) The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375.

(k) The Administrator of the Division of Industrial Relations of the Department of Business and Industry in establishing and adjusting the schedule of fees and charges for accident benefits pursuant to subsection 2 of NRS 616C.260.

(l) The Board to Review Claims in adopting resolutions to carry out its duties pursuant to NRS 445C.310.

(m) The Silver State Health Insurance Exchange.

(n) The Cannabis Compliance Board.

2. Except as otherwise provided in subsection 5 and NRS 391.323, the Department of Education, the Board of the Public Employees' Benefits Program and the Commission on Professional Standards in Education are subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.

3. The special provisions of:

(a) Chapter 612 of NRS for the adoption of an emergency regulation or the distribution of regulations by and the judicial review of decisions of the Employment Security Division of the Department of Employment, Training and Rehabilitation;

(b) Chapters 616A to 617, inclusive, of NRS for the determination of contested claims;

(c) Chapter 91 of NRS for the judicial review of decisions of the Administrator of the Securities Division of the Office of the Secretary of State; and

(d) NRS 90.800 for the use of summary orders in contested cases,

↪ prevail over the general provisions of this chapter.



4. The provisions of NRS 233B.122, 233B.124, 233B.125 and 233B.126 do not apply to the Department of Health and Human Services in the adjudication of contested cases involving the issuance of letters of approval for health facilities and agencies.

5. The provisions of this chapter do not apply to:

(a) Any order for immediate action, including, but not limited to, quarantine and the treatment or cleansing of infected or infested animals, objects or premises, made under the authority of the State Board of Agriculture, the State Board of Health, or any other agency of this State in the discharge of a responsibility for the preservation of human or animal health or for insect or pest control;

(b) An extraordinary regulation of the State Board of Pharmacy adopted pursuant to NRS 453.2184;

(c) A regulation adopted by the State Board of Education pursuant to NRS 388.255 or 394.1694;

(d) The judicial review of decisions of the Public Utilities Commission of Nevada;

(e) The adoption, amendment or repeal of policies by the Rehabilitation Division of the Department of Employment, Training and Rehabilitation pursuant to NRS 426.561 or 615.178;

(f) The adoption or amendment of a rule or regulation to be included in the State Plan for Services for Victims of Crime by the Department of Health and Human Services pursuant to NRS 217.130;

(g) The adoption, amendment or repeal of rules governing the conduct of contests and exhibitions of unarmed combat by the Nevada Athletic Commission pursuant to NRS 467.075;

(h) The adoption, amendment or repeal of regulations by the Director of the Department of Health and Human Services pursuant to NRS 447.335 to 447.350, inclusive;

(i) The adoption, amendment or repeal of standards of content and performance for courses of study in public schools by the Council to Establish Academic Standards for Public Schools and the State Board of Education pursuant to NRS 389.520;

(j) The adoption, amendment or repeal of the statewide plan to allocate money from the Fund for a Resilient Nevada created by NRS 433.732 established by the Department of Health and Human Services pursuant to paragraph (b) of subsection 1 of NRS 433.734; or

(k) The adoption or amendment of a data request by the Commissioner of Insurance pursuant to NRS 687B.404.

6. The State Board of Parole Commissioners is subject to the provisions of this chapter for the purpose of adopting regulations but not with respect to any contested case.



- 1 **Sec. 6.** 1. This section becomes effective upon passage and
2 approval.
3 2. Sections 1 to 5, inclusive, of this act become effective:
4 (a) Upon passage and approval for the purpose of adopting any
5 regulations and performing any other preparatory administrative
6 tasks that are necessary to carry out the provisions of this act; and
7 (b) On January 1, 2024, for all other purposes.

