

Senate Bill No. 35–Committee on Judiciary

CHAPTER.....

AN ACT relating to crimes; defining the term “intoxicant” for the purpose of certain provisions which prohibit furnishing an intoxicant to a prisoner; revising provisions governing certain crimes relating to prisoners; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that an employee of or a contractor or volunteer for a prison who voluntarily engages or attempts to engage in sexual abuse of a prisoner is guilty of a category D felony. (NRS 212.188) **Section 3** of this bill: (1) increases the penalty for sexual abuse of a prisoner from a category D felony to a category B felony; and (2) makes the crime punishable by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years.

Existing law provides that an employee of or a contractor or volunteer for a prison who voluntarily: (1) engages in unauthorized custodial conduct is guilty of a gross misdemeanor; or (2) attempts to engage in such conduct is guilty of a misdemeanor. (NRS 212.188) **Section 3** increases the penalty for unauthorized custodial conduct from a gross misdemeanor to a category C felony. **Section 3** also eliminates provisions relating to attempted unauthorized custodial conduct.

Existing law makes it a crime for certain persons to furnish a controlled substance or intoxicating liquor to a prisoner. (NRS 212.160) **Section 2** of this bill changes the term “intoxicating liquor” to “intoxicant” and defines the term intoxicant for the purposes of this prohibition to mean: (1) a controlled substance analog; (2) a spirituous or malt liquor or beverage; (3) a synthetic cannabinoid; or (4) any other chemical, poison or organic solvent, or any compound or combination thereof, which may be inhaled, ingested, applied or otherwise used to achieve a stimulant, depressant or hallucinogenic effect.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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

Section 1. (Deleted by amendment.)

Sec. 2. NRS 212.160 is hereby amended to read as follows:

212.160 1. A person, who is not authorized by law, who knowingly furnishes, attempts to furnish, or aids or assists in furnishing or attempting to furnish to a prisoner confined in an institution of the Department of Corrections, or any other place where prisoners are authorized to be or are assigned by the Director of the Department, any deadly weapon, explosive, a facsimile of a firearm or an explosive, any controlled substance or ~~intoxicating liquor,~~ *intoxicant*, shall be punished:



(a) Where a deadly weapon, controlled substance, explosive or a facsimile of a firearm or explosive is involved, for a category B felony 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.

(b) Where an intoxicant is involved, for a gross misdemeanor.

2. Knowingly leaving or causing to be left any deadly weapon, explosive, facsimile of a firearm or explosive, controlled substance or ~~intoxicating liquor~~ *intoxicant* where it may be obtained by any prisoner constitutes, within the meaning of this section, the furnishing of the article to the prisoner.

3. A prisoner confined in an institution of the Department of Corrections, or any other place where prisoners are authorized to be or are assigned by the Director of the Department, who possesses a controlled substance without lawful authorization or marijuana or marijuana paraphernalia, regardless of whether the person holds a valid registry identification card to engage in the medical use of cannabis pursuant to chapter 678C of NRS, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

4. As used in this section:

(a) "Controlled substance analog" has the meaning ascribed to it in NRS 453.043.

(b) "Intoxicant" means:

(1) A controlled substance analog;

(2) A spirituous or malt liquor or beverage;

(3) A synthetic cannabinoid; or

(4) Any other chemical, poison or organic solvent, or any compound or combination thereof, which may be inhaled, ingested, applied or otherwise used to achieve a stimulant, depressant or hallucinogenic effect.

(c) "Synthetic cannabinoid" has the meaning ascribed to it in NRS 678A.239.

Sec. 3. NRS 212.188 is hereby amended to read as follows:

212.188 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]~~ **B** felony and shall be punished ~~[as provided]~~ **by imprisonment in [NRS 193.130.] the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years.**

(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.]~~ **category C felony and shall be punished as provided in NRS 193.130.**

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 sub-subparagraph (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.

