

SENATE BILL NO. 19—COMMITTEE ON JUDICIARY
(ON BEHALF OF THE DEPARTMENT OF CORRECTIONS)

PREFILED NOVEMBER 15, 2018

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the penalties for certain unlawful acts related to human excrement or bodily fluid committed by prisoners. (BDR 16-341)

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 crimes; increasing the penalties for certain unlawful acts related to human excrement or bodily fluid committed by prisoners; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that a prisoner who is under lawful arrest, in lawful custody or in lawful confinement and who commits certain acts related to human excrement or bodily fluid is guilty of a gross misdemeanor for the first offense and a category D felony for a second or subsequent offense. (NRS 212.189) This bill increases the penalties for such unlawful acts related to human excrement or bodily fluid committed by a prisoner to a category D felony for the first offense and a category C felony for a second or subsequent offense.

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, a prisoner who is under lawful arrest, in lawful custody or in lawful 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 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 law enforcement agency, whether or not such physical contact actually occurs.

2. Except as otherwise provided in subsection 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.]~~ *category D felony and shall be punished as provided in NRS 193.130.*

(b) For a second offense or any subsequent offense, a category ~~D~~ *C* 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.

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.

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



1 (a) Is not subject to suspension or the granting of probation; and
2 (b) Must run consecutively after the prisoner has served any
3 sentences imposed upon the prisoner for the offense or offenses for
4 which the prisoner was under lawful arrest, in lawful custody or in
5 lawful confinement when the prisoner violated the provisions of
6 subsection 1.

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

11 (a) Conducted pursuant to paragraphs (a) and (b) of subsection
12 8; or

13 (b) Paid for pursuant to subparagraph (2) of paragraph (c) of
14 subsection 8.

15 7. The warden, sheriff, administrator or other person
16 responsible for administering a prison shall immediately and fully
17 investigate any act described in subsection 1 that is reported or
18 suspected to have been committed in the prison.

19 8. If there is probable cause to believe that an act described in
20 paragraph (d) of subsection 1 has been committed in a prison:

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

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

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

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

36 (2) For each such officer or employee:

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

42 (II) Of any law enforcement agency, the law enforcement
43 agency that employs the officer or employee shall pay for any
44 appropriate examinations and testing requested by the officer or



1 employee to determine whether a communicable disease was
2 transmitted to the officer or employee as a result of the act.

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

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

17 10. The provisions of this section do not apply to a prisoner
18 who is in residential confinement or to a prisoner who commits an
19 act described in subsection 1 if the act:

20 (a) Is otherwise lawful and is authorized by the warden, sheriff,
21 administrator or other person responsible for administering the
22 prison, or his or her designee, and the prisoner performs the act in
23 accordance with the directions or instructions given to the prisoner
24 by that person;

25 (b) Involves the discharge of human excrement or bodily fluid
26 directly from the body of the prisoner and the discharge is the direct
27 result of a temporary or permanent injury, disease or medical
28 condition afflicting the prisoner that prevents the prisoner from
29 having physical control over the discharge of his or her own
30 excrement or bodily fluid; or

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

33 **Sec. 2.** This act becomes effective upon passage and approval.

