

SENATE BILL NO. 317—SENATORS WIENER AND AMODEI

MARCH 17, 2003

JOINT SPONSOR: ASSEMBLYWOMAN LESLIE

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to incarcerated persons. (BDR 34-594)

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 incarcerated persons; requiring the Department of Education to adopt regulations that establish a statewide program of education for incarcerated persons and to coordinate with and assist school districts in operating programs of education for incarcerated persons; creating in the State Treasury the Fund for Programs of Education for Incarcerated Persons; authorizing school districts to operate programs of education for incarcerated persons under certain circumstances; providing procedures if a manager or warden excludes from a facility or institution a person employed by a school district to operate a program of education for incarcerated persons in the facility or institution; authorizing the University and Community College System of Nevada to offer courses that lead to a postsecondary degree for incarcerated persons; providing free tuition to certain incarcerated persons under certain conditions; waiving the registration fees of certain incarcerated persons; making various changes to provisions relating to credits against the sentence of an offender; revising the provisions governing the manner in which prisoners may be released from jail when the jail becomes overcrowded; and providing other matters properly relating thereto.



* S B 3 1 7 R 2 *

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

- 1 **Section 1.** Chapter 388 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 7, inclusive, of this
3 act.
- 4 **Sec. 2.** *As used in sections 2 to 7, inclusive, of this act, unless*
5 *the context otherwise requires, “incarcerated persons” means*
6 *persons who are incarcerated in a facility or institution operated*
7 *by the Department of Corrections.*
- 8 **Sec. 3. 1.** *The Department of Education, after consulting*
9 *with the Department of Corrections, shall:*
- 10 (a) *Adopt regulations that establish a statewide program of*
11 *education for incarcerated persons; and*
- 12 (b) *Coordinate with and assist school districts in operating*
13 *programs of education for incarcerated persons.*
- 14 **2.** *The statewide program may include courses of study for:*
- 15 (a) *A high school diploma;*
- 16 (b) *Basic literacy;*
- 17 (c) *English as a second language;*
- 18 (d) *General educational development;*
- 19 (e) *Life skills;*
- 20 (f) *Occupational education; and*
- 21 (g) *Postsecondary education.*
- 22 **3.** *The statewide program does not include the programs of*
23 *general education, vocational education and training established*
24 *by the Board of State Prison Commissioners pursuant to*
25 *NRS 209.389.*
- 26 **4.** *The statewide program must establish:*
- 27 (a) *Standards for each course of study that set forth the:*
- 28 (1) *Curriculum;*
- 29 (2) *Qualifications for entry; and*
- 30 (3) *Evaluation of incarcerated persons for placement; and*
- 31 (b) *Procedures to ensure that an incarcerated person who*
32 *earns credits in a program of education for incarcerated persons*
33 *operated by a school district at a facility or institution shall, if*
34 *transferred to a different facility or institution, transfer those*
35 *credits to the program operated by a school district at that facility*
36 *or institution.*
- 37 **5.** *As used in this section, “general educational development”*
38 *means preparation for and administration of the standardized*
39 *examinations that enable persons who have not graduated from*
40 *high school to demonstrate that they have achieved an educational*
41 *level which denotes competency in core curriculum. The term*



1 includes programs for obtaining a general educational
2 development certificate.

3 **Sec. 4. 1.** There is hereby created in the State Treasury the
4 Fund for Programs of Education for Incarcerated Persons. The
5 Fund is administered by the State Board. The Superintendent of
6 Public Instruction may accept gifts and grants of money from any
7 source for deposit in the Fund. The interest and income earned on
8 the money in the Fund, after deducting any applicable charges,
9 must be credited to the Fund.

10 2. Money in the Fund must be used for programs of
11 education for incarcerated persons.

12 3. Money in the Fund must not be:

13 (a) Considered in negotiations between a recognized
14 organization of employees of a school district and the school
15 district; or

16 (b) Used to reduce the amount of money which would
17 otherwise be made available for programs of education for
18 incarcerated persons in the absence of this section.

19 4. The Department shall establish a formula for equitably
20 allocating money from the Fund to each school district that
21 operates a program of education for incarcerated persons.

22 5. The State Board shall establish annually, within the limits
23 of money available in the Fund, a basic allocation to each school
24 district that operates a program of education for incarcerated
25 persons.

26 **Sec. 5. 1.** The board of trustees of a school district may,
27 with the cooperation of the Department of Corrections, operate a
28 program of education for incarcerated persons in any facility or
29 institution operated by the Department of Corrections in the
30 county of the school district.

31 2. A school district that operates a program of education for
32 incarcerated persons shall:

33 (a) Comply with the standards for such programs established
34 by the Department of Education in the statewide program
35 established pursuant to section 3 of this act;

36 (b) As a condition for obtaining an allocation from the Fund
37 for Programs of Education for Incarcerated Persons, submit to the
38 Department of Education:

39 (1) An application to operate such a program; and

40 (2) A detailed budget for the program; and

41 (c) If the school district receives an allocation from the Fund,
42 obtain the approval of the Department of Education before it
43 makes any changes in categorical expenditures.

44 **Sec. 6.** The Board of Regents of the University of Nevada
45 may, with the cooperation of the Department of Corrections, offer



1 *courses that lead to a postsecondary degree for incarcerated*
2 *persons in any facility or institution operated by the Department of*
3 *Corrections.*

4 **Sec. 7. 1.** *If a manager or warden excludes from the facility*
5 *or institution a person employed by a school district to operate a*
6 *program of education for incarcerated persons in the facility or*
7 *institution, an interagency panel must be convened.*

8 **2.** *The interagency panel must:*

9 **(a)** *Consist of:*

10 **(1)** *The Director of the Department of Corrections or his*
11 *designee;*

12 **(2)** *The Superintendent of Public Instruction or his*
13 *designee; and*

14 **(3)** *The immediate supervisor of the person employed by the*
15 *school district.*

16 **(b)** *Conduct a hearing in compliance with all applicable*
17 *provisions of chapter 233B of NRS.*

18 **3.** *The decision of the interagency panel is a final decision in*
19 *a contested case.*

20 **Sec. 8.** (Deleted by amendment.)

21 **Sec. 9.** NRS 209.396 is hereby amended to read as follows:

22 209.396 1. Except as otherwise provided in this section, an
23 offender who is illiterate may not be assigned to an industrial or a
24 vocational program unless:

25 **(a)** He is regularly attending and making satisfactory progress in
26 a program for general education; or

27 **(b)** The Director for good cause determines that the limitation on
28 assignment should be waived under the circumstances with respect
29 to a particular offender.

30 **2.** An offender whose:

31 **(a)** Native language is not English;

32 **(b)** Ability to read and write in his native language is at or above
33 the level of literacy designated by the Board in its regulations; and

34 **(c)** Ability to read and write the English language is
35 below the level of literacy designated by the Board in its
36 regulations,

37 may not be assigned to an industrial or a vocational program unless
38 he is regularly attending and making satisfactory progress in a
39 course which teaches English as a second language or the Director
40 for good cause determines that the limitation on assignment should
41 be waived under the circumstances with respect to a particular
42 offender.

43 **3.** Upon written documentation that an illiterate offender has a
44 developmental, learning or other similar disability which affects his
45 ability to learn, the Director may:



1 (a) Adapt or create an educational program or guidelines for
2 evaluating the educational progress of the offender to meet his
3 particular needs; or

4 (b) Exempt the offender from the required participation in an
5 educational program prescribed by this section.

6 4. The provisions of this section do not apply to an offender
7 who presents satisfactory evidence that he has a high school
8 *diploma* or ~~general equivalency diploma.~~ *a general educational*
9 *development certificate.*

10 5. As used in this section, "illiterate" means having an ability
11 to read and write that is below the level of literacy designated by the
12 Board in its regulations.

13 **Sec. 10.** NRS 209.433 is hereby amended to read as follows:

14 209.433 1. Every offender who was sentenced to prison on or
15 before June 30, 1969, who has no serious infraction of the
16 regulations of the Department, the terms and conditions of his
17 residential confinement, or the laws of the State recorded against
18 him, and who performs in a faithful, orderly and peaceable manner
19 the duties assigned to him, must be allowed for his term a deduction
20 of 2 months in each of the first 2 years, 4 months in each of the next
21 2 years, and 5 months in each of the remaining years of the term,
22 and pro rata for any part of a year where the sentence is for more or
23 less than a year.

24 2. In addition to the credits for good behavior provided for in
25 subsection 1, the Board shall adopt regulations allowing credits for
26 offenders whose diligence in labor or study merits the credits and
27 for offenders who donate their blood for charitable purposes. The
28 regulations must provide that an offender is entitled to the following
29 credits for educational achievement:

30 (a) For earning a general ~~equivalency diploma,~~ *educational*
31 *development certificate*, 30 days.

32 (b) For earning a high school diploma, 60 days.

33 (c) For earning an associate degree, 90 days.

34 3. Each offender is entitled to the deductions allowed by this
35 section if he has satisfied the conditions of subsection 1 or 2 as
36 determined by the Director.

37 **Sec. 11.** NRS 209.443 is hereby amended to read as follows:

38 209.443 1. Every offender who is sentenced to prison after
39 June 30, 1969, for a crime committed before July 1, 1985, who has
40 no serious infraction of the regulations of the Department, the terms
41 and conditions of his residential confinement, or the laws of the
42 State recorded against him, and who performs in a faithful, orderly
43 and peaceable manner the duties assigned to him, must be allowed:

44 (a) For the period he is actually incarcerated under sentence; and

45 (b) For the period he is in residential confinement,



1 a deduction of 2 months for each of the first 2 years, 4 months for
2 each of the next 2 years ~~§~~ and 5 months for each of the remaining
3 years of the term, and pro rata for any part of a year where the actual
4 term served is for more or less than a year. Credit must be recorded
5 on a monthly basis as earned for actual time served.

6 2. The credits earned by an offender must be deducted from the
7 maximum term imposed by the sentence and, except as otherwise
8 provided in subsection 5, *must* apply to eligibility for parole.

9 3. In addition to the credits for good behavior provided for in
10 subsection 1, the Board shall adopt regulations allowing credits for
11 offenders whose diligence in labor or study merits such credits and
12 for offenders who donate their blood for charitable purposes. The
13 regulations must provide that an offender is entitled to the following
14 credits for educational achievement:

15 (a) For earning a general ~~[equivalency diploma,]~~ *educational*
16 *development certificate*, 30 days.

17 (b) For earning a high school diploma, 60 days.

18 (c) For earning an associate degree, 90 days.

19 4. Each offender is entitled to the deductions allowed by this
20 section if he has satisfied the conditions of subsection 1 or 3 as
21 determined by the Director.

22 5. Credits earned pursuant to this section do not apply to
23 eligibility for parole if a statute specifies a minimum sentence which
24 must be served before a person becomes eligible for parole.

25 **Sec. 12.** NRS 209.446 is hereby amended to read as follows:

26 209.446 1. Every offender who is sentenced to prison for a
27 crime committed on or after July 1, 1985, but before July 17, 1997,
28 who has no serious infraction of the regulations of the Department,
29 the terms and conditions of his residential confinement, or the laws
30 of the State recorded against him, and who performs in a faithful,
31 orderly and peaceable manner the duties assigned to him, must be
32 allowed:

33 (a) For the period he is actually incarcerated under sentence;

34 (b) For the period he is in residential confinement; and

35 (c) For the period he is in the custody of the Division of Parole
36 and Probation of the Department of Public Safety pursuant to
37 NRS 209.4886,

38 a deduction of 10 days from his sentence for each month he serves.

39 2. In addition to the credit provided for in subsection 1, the
40 Director may allow not more than 10 days of credit each month for
41 an offender whose diligence in labor and study merits such credits.
42 In addition to the credits allowed pursuant to this subsection, an
43 offender is entitled to the following credits for educational
44 achievement:



- 1 (a) For earning a general ~~[equivalency diploma,]~~ *educational*
2 *development certificate*, 30 days.
- 3 (b) For earning a high school diploma, 60 days.
- 4 (c) For earning an associate degree, 90 days.
- 5 3. The Director may allow not more than 10 days of credit each
6 month for an offender who participates in a diligent and responsible
7 manner in a center for the purpose of making restitution,
8 conservation camp, program of work release or another program
9 conducted outside of the prison. An offender who earns credit
10 pursuant to this subsection is entitled to the entire 20 days of credit
11 each month which is authorized in subsections 1 and 2.
- 12 4. The Director may allow not more than 90 days of credit each
13 year for an offender who engages in exceptional meritorious service.
- 14 5. The Board shall adopt regulations governing the award,
15 forfeiture and restoration of credits pursuant to this section.
- 16 6. Credits earned pursuant to this section:
- 17 (a) Must be deducted from the maximum term imposed by the
18 sentence; and
- 19 (b) Apply to eligibility for parole unless the offender was
20 sentenced pursuant to a statute which specifies a minimum sentence
21 which must be served before a person becomes eligible for parole.
- 22 **Sec. 13.** NRS 209.4465 is hereby amended to read as follows:
23 209.4465 1. An offender who is sentenced to prison for a
24 crime committed on or after July 17, 1997, who has no serious
25 infraction of the regulations of the Department, the terms and
26 conditions of his residential confinement or the laws of the State
27 recorded against him, and who performs in a faithful, orderly and
28 peaceable manner the duties assigned to him, must be allowed:
- 29 (a) For the period he is actually incarcerated pursuant to his
30 sentence;
- 31 (b) For the period he is in residential confinement; and
- 32 (c) For the period he is in the custody of the Division of Parole
33 and Probation of the Department of Public Safety pursuant to
34 NRS 209.4886,
35 a deduction of 10 days from his sentence for each month he serves.
- 36 2. In addition to the credits allowed pursuant to subsection 1,
37 the Director may allow not more than 10 days of credit each month
38 for an offender whose diligence in labor and study merits such
39 credits. In addition to the credits allowed pursuant to this subsection,
40 an offender is entitled to the following credits for educational
41 achievement:
- 42 (a) For earning a general ~~[equivalency diploma,]~~ *educational*
43 *development certificate*, 30 days.
- 44 (b) For earning a high school diploma, 60 days.
- 45 (c) For earning his first associate degree, 90 days.



1 3. The Director may, in his discretion, authorize an offender to
2 receive a maximum of 90 days of credit for each additional degree
3 of higher education earned by the offender.

4 4. The Director may allow not more than 10 days of credit each
5 month for an offender who participates in a diligent and responsible
6 manner in a center for the purpose of making restitution,
7 conservation camp, program of work release or another program
8 conducted outside of the prison. An offender who earns credit
9 pursuant to this subsection is eligible to earn the entire 20 days of
10 credit each month that is allowed pursuant to subsections 1 and 2.

11 5. The Director may allow not more than 90 days of credit each
12 year for an offender who engages in exceptional meritorious service.

13 6. The Board shall adopt regulations governing the award,
14 forfeiture and restoration of credits pursuant to this section.

15 7. Credits earned pursuant to this section:

16 (a) Must be deducted from the maximum term imposed by the
17 sentence; and

18 (b) Apply to eligibility for parole unless the offender was
19 sentenced pursuant to a statute which specifies a minimum sentence
20 that must be served before a person becomes eligible for parole.

21 **Sec. 14.** NRS 209.449 is hereby amended to read as follows:

22 209.449 *1.* An offender who has no serious infraction of the
23 regulations of the Department, the terms and conditions of his
24 residential confinement, or the laws of the State recorded against
25 him must be allowed, in addition to the credits provided pursuant to
26 NRS 209.433, 209.443, 209.446 or 209.4465, a deduction of 30
27 days from the maximum term of his sentence for the completion of
28 ~~{a}~~:

29 (a) A program of vocational education and training ~~{}~~; or

30 (b) Any other program approved by the Director.

31 *2.* If the offender completes ~~{the program of vocational~~
32 ~~education and training}~~ *such a program* with meritorious or
33 exceptional achievement, the Director may allow not more than 60
34 days of credit in addition to the 30 days allowed for completion of
35 the program.

36 **Sec. 15.** NRS 211.240 is hereby amended to read as follows:

37 211.240 *1.* ~~{The}~~ *Except as otherwise provided in subsection*
38 *2, the* sheriff with respect to a county jail, or the officer in charge
39 with respect to a city jail, may apply to the ~~{presiding judge, or to~~
40 ~~the judges jointly if there is no presiding judge,}~~ *chief judge of the*
41 *judicial district* for authority to release prisoners pursuant to the
42 provisions of this section. *After considering the application, the*
43 *chief judge may enter an order consistent with the provisions of*
44 *this section granting authority to release prisoners in the manner*



1 *set forth in the order.* The duration of this authority , if granted ,
2 must not exceed 30 days.

3 2. *In a county in which there is not a city jail, the sheriff may*
4 *apply to the chief judge of the judicial district for authority to*
5 *release prisoners pursuant to the provisions of this section. Upon*
6 *receipt of such an application, the chief judge shall consult with a*
7 *justice of the peace designated by the justices of the peace for the*
8 *county and a judge designated by the municipal courts for the*
9 *county. After the consultation, the chief judge may enter an order*
10 *consistent with the provisions of this section granting authority to*
11 *release prisoners in the manner set forth in the order. The*
12 *duration of this authority, if granted, must not exceed 30 days.*

13 3. At any time within the duration of an authority granted when
14 the number of prisoners exceeds the number of beds available in the
15 jail, the sheriff or other officer in charge may release the lesser of:

- 16 (a) The number of prisoners eligible under this section; or
- 17 (b) The difference between the number of prisoners and the
18 number of beds.

19 ~~[3.]~~ 4. A prisoner is eligible for release only if:

20 (a) He ~~[is serving a sentence of fixed duration and has already~~
21 ~~served at least 90 percent of the sentence after deduction of any~~
22 ~~credit; and~~

23 ~~—(b) His sentence would expire or he would otherwise be released~~
24 ~~within 5 days.~~

25 ~~—4.]~~ *has served at least 75 percent of his sentence;*

26 *(b) He is not serving a sentence for a crime for which a*
27 *mandatory sentence is required by statute;*

28 *(c) He is not serving a sentence for a crime which involved an*
29 *act of violence; and*

30 *(d) He does not pose a danger to the community.*

31 5. Among prisoners eligible, priority must be given to those
32 whose expiration of sentence or other release is closest.

33 6. *A prisoner released pursuant to this section may be*
34 *required to remain on residential confinement for the remainder*
35 *of his sentence or may be required to participate in another*
36 *alternative program of supervision.*

37 **Sec. 16.** NRS 211.330 is hereby amended to read as follows:

38 211.330 1. In addition to the credits on a term of
39 imprisonment provided for in NRS 211.310, 211.320 and 211.340,
40 the sheriff of the county or the chief of police of the municipality in
41 which a prisoner is incarcerated shall deduct 5 days from his term of
42 imprisonment for earning a ~~[general equivalency diploma or the~~
43 ~~equivalence]~~ *general educational development certificate, or the*
44 *equivalent* thereof , by successfully completing an educational
45 program for adults conducted jointly by the local detention facility



1 in which he is incarcerated and the school district in which the
2 facility is located.

3 2. The provisions of this section apply to any prisoner who is
4 sentenced on or after October 1, 1991, to a term of imprisonment of
5 90 days or more.

6 **Sec. 17.** NRS 213.315 is hereby amended to read as follows:

7 213.315 1. Except as otherwise provided in this section, an
8 offender who is illiterate is not eligible to participate in a program of
9 work release unless:

10 (a) He is regularly attending and making satisfactory progress in
11 a program for general education; or

12 (b) The Director, for good cause, determines that the limitation
13 on eligibility should be waived under the circumstances with respect
14 to a particular offender.

15 2. An offender whose:

16 (a) Native language is not English;

17 (b) Ability to read and write in his native language is at or above
18 the level of literacy designated by the Board of State Prison
19 Commissioners in its regulations; and

20 (c) Ability to read and write the English language is below the
21 level of literacy designated by the Board of State Prison
22 Commissioners in its regulations,

23 may not be assigned to an industrial or a vocational program unless
24 he is regularly attending and making satisfactory progress in a
25 course which teaches English as a second language or the Director,
26 for good cause, determines that the limitation on eligibility should
27 be waived under the circumstances with respect to a particular
28 offender.

29 3. Upon written documentation that an illiterate offender has a
30 developmental, learning or other similar disability which affects his
31 ability to learn, the Director of the Department of Corrections may:

32 (a) Adapt or create an educational program or guidelines for
33 evaluating the educational progress of the offender to meet his
34 particular needs; or

35 (b) Exempt the offender from the required participation in an
36 educational program prescribed by this section.

37 4. The provisions of this section do not apply to an offender
38 who:

39 (a) Presents satisfactory evidence that he has a high school
40 *diploma* or ~~[general equivalency diploma;]~~ *a general educational*
41 *development certificate*; or

42 (b) Is admitted into a program of work release for the purpose of
43 obtaining additional education in this state.



1 5. As used in this section, "illiterate" means having an ability
2 to read and write that is below the level of literacy designated by the
3 Board of State Prison Commissioners in its regulations.
4 **Sec. 18.** This act becomes effective on July 1, 2003.

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