

Amendment No. CA35

Conference Committee Amendment to Assembly Bill No. 309 Third Reprint	(BDR 15-994)
Proposed by: Conference Committee	
Amendment Box: Replaces Amendments Nos. CA10, CA18, CA30 and CA32.	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) green bold dashed underlining is newly added transitory language.



ASSEMBLY BILL NO. 309—ASSEMBLYMEN KOIVISTO, MCCLAIN, MANENDO, LESLIE, BOBZIEN; AIZLEY, ANDERSON, ARBERRY, ATKINSON, CLABORN, CONKLIN, DONDERO LOOP, HAMBRICK, HOGAN, HORNE, KIHUEN, KIRKPATRICK, MASTROLUCA, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL, PARNELL, SEGERBLOM, SMITH AND SPIEGEL

MARCH 12, 2009

JOINT SPONSORS: SENATORS CARLTON, ~~[BREEDEN,]~~ PARKS, COPENING ; ~~[WIENER,]~~ COFFIN, ~~[MATHEWS,]~~ and SCHNEIDER ~~[AND WOODHOUSE]~~

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to ~~the crime of stalking;~~ **crimes.** (BDR 15-994)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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; revising provisions relating to the crime of stalking; **revising provisions relating to the Nevada Clean Indoor Air Act;** and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law prohibits stalking and authorizes the issuance of a temporary or extended
2 order restricting certain conduct related to the crime of stalking, aggravated stalking or
3 harassment. (NRS 200.575, 200.591) ~~[This bill adds]~~ **Section 1 of this bill includes within**
4 **the definition of the crime of stalking a course of conduct which would cause a**
5 **reasonable person to feel fearful for the immediate safety of a member of the person’s**
6 **family or household and which actually causes a victim to feel such fear. Sections 1, 3**
7 **and 4 of this bill add** text messaging to the existing crime of stalking with the use of a
8 communication device, which is punishable as a category C felony.
9 **The Nevada Clean Indoor Air Act, which is currently codified as NRS 202.2483, was**
10 **proposed by an initiative petition and approved by the voters at the 2006 General**
11 **Election and therefore is not subject to legislative amendment or repeal until after**
12 **December 8, 2009. The Act generally prohibits the smoking of tobacco in certain**
13 **locations, such as within indoor places of employment, within school buildings and on**
14 **school property.**
15 **Section 1.5 of this bill revises the provisions of the Act by authorizing the smoking of**
16 **tobacco in certain convention facilities during certain meetings and trade shows.**

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

1 **Section 1.** NRS 200.575 is hereby amended to read as follows:

2 200.575 1. A person who, without lawful authority, willfully or maliciously
3 engages in a course of conduct that would cause a reasonable person to feel
4 terrorized, frightened, intimidated, ~~(e)~~ harassed ~~(f)~~ or fearful for the immediate
5 safety of a family or household member, and that actually causes the victim to feel
6 terrorized, frightened, intimidated, ~~(e)~~ harassed ~~(f)~~ or fearful for the immediate
7 safety of a family or household member, commits the crime of stalking. Except
8 where the provisions of subsection 2 or 3 are applicable, a person who commits the
9 crime of stalking:

10 (a) For the first offense, is guilty of a misdemeanor.

11 (b) For any subsequent offense, is guilty of a gross misdemeanor.

12 2. A person who commits the crime of stalking and in conjunction therewith
13 threatens the person with the intent to cause him to be placed in reasonable fear of
14 death or substantial bodily harm commits the crime of aggravated stalking. A
15 person who commits the crime of aggravated stalking shall be punished for a
16 category B felony by imprisonment in the state prison for a minimum term of not
17 less than 2 years and a maximum term of not more than 15 years, and may be
18 further punished by a fine of not more than \$5,000.

19 3. A person who commits the crime of stalking with the use of an Internet or
20 network site, ~~(e)~~ electronic mail, *text messaging* or any other similar means of
21 communication to publish, display or distribute information in a manner that
22 substantially increases the risk of harm or violence to the victim shall be punished
23 for a category C felony as provided in NRS 193.130.

24 4. Except as otherwise provided in subsection 2 of NRS 200.571, a criminal
25 penalty provided for in this section may be imposed in addition to any penalty that
26 may be imposed for any other criminal offense arising from the same conduct or for
27 any contempt of court arising from the same conduct.

28 5. The penalties provided in this section do not preclude the victim from
29 seeking any other legal remedy available.

30 6. As used in this section:

31 (a) "Course of conduct" means a pattern of conduct which consists of a series
32 of acts over time that evidences a continuity of purpose directed at a specific
33 person.

34 (b) "Family or household member" means a spouse, a former spouse, a
35 parent or other person who is related by blood or marriage or is or was actually
36 residing with the person.

37 (c) "Internet or network site" has the meaning ascribed to it in NRS 205.4744.

38 ~~(e)~~ (d) "Network" has the meaning ascribed to it in NRS 205.4745.

39 ~~(d)~~ (e) "Provider of Internet service" has the meaning ascribed to it in NRS
40 205.4758.

41 ~~(f)~~ (f) "Text messaging" means a communication in the form of electronic
42 text or one or more electronic images sent from a telephone or computer to
43 another person's telephone or computer by addressing the communication to the
44 recipient's telephone number.

45 ~~(f)~~ (g) "Without lawful authority" includes acts which are initiated or
46 continued without the victim's consent. The term does not include acts which are
47 otherwise protected or authorized by constitutional or statutory law, regulation or
48 order of a court of competent jurisdiction, including, but not limited to:

1 (1) Picketing which occurs during a strike, work stoppage or any other
2 labor dispute.

3 (2) The activities of a reporter, photographer, cameraman or other person
4 while gathering information for communication to the public if that person is
5 employed or engaged by or has contracted with a newspaper, periodical, press
6 association or radio or television station and is acting solely within that professional
7 capacity.

8 (3) The activities of a person that are carried out in the normal course of
9 his lawful employment.

10 (4) Any activities carried out in the exercise of the constitutionally
11 protected rights of freedom of speech and assembly.

12 **Sec. 1.5. NRS 202.2483 is hereby amended to read as follows:**

13 202.2483 1. Except as otherwise provided in subsection 3, smoking tobacco
14 in any form is prohibited within indoor places of employment including, but not
15 limited to, the following:

- 16 (a) Child care facilities;
17 (b) Movie theatres;
18 (c) Video arcades;
19 (d) Government buildings and public places;
20 (e) Malls and retail establishments;
21 (f) All areas of grocery stores; and
22 (g) All indoor areas within restaurants.

23 2. Without exception, smoking tobacco in any form is prohibited within
24 school buildings and on school property.

25 3. Smoking tobacco is not prohibited in:

26 (a) Areas within casinos where loitering by minors is already prohibited by
27 state law pursuant to NRS 463.350;

- 28 (b) Stand-alone bars, taverns and saloons;
29 (c) Strip clubs or brothels;
30 (d) Retail tobacco stores; and

31 (e) Private residences, including private residences which may serve as an
32 office workplace, except if used as a child care, an adult day care or a health care
33 facility; **and**

34 **(f) The area of a convention facility in which a meeting or trade show is**
35 **being held, during the time the meeting or trade show is occurring, if the meeting**
36 **or trade show:**

37 **(1) Is not open to the public;**

38 **(2) Is being produced or organized by a business relating to tobacco or a**
39 **professional association for convenience stores; and**

40 **(3) Involves the display of tobacco products.**

41 4. In areas or establishments where smoking is not prohibited by this section,
42 nothing in state law shall be construed to prohibit the owners of said establishments
43 from voluntarily creating nonsmoking sections or designating the entire
44 establishment as smoke free.

45 5. Nothing in state law shall be construed to restrict local control or otherwise
46 prohibit a county, city or town from adopting and enforcing local tobacco control
47 measures that meet or exceed the minimum applicable standards set forth in this
48 section.

49 6. "No Smoking" signs or the international "No Smoking" symbol shall be
50 clearly and conspicuously posted in every public place and place of employment
51 where smoking is prohibited by this section. Each public place and place of
52 employment where smoking is prohibited shall post, at every entrance, a

1 conspicuous sign clearly stating that smoking is prohibited. All ashtrays and other
2 smoking paraphernalia shall be removed from any area where smoking is
3 prohibited.

4 7. Health authorities, police officers of cities or towns, sheriffs and their
5 deputies shall, within their respective jurisdictions, enforce the provisions of this
6 section and shall issue citations for violations of this section pursuant to NRS
7 202.2492 and NRS 202.24925.

8 8. No person or employer shall retaliate against an employee, applicant or
9 customer for exercising any rights afforded by, or attempts to prosecute a violation
10 of, this section.

11 9. For the purposes of this section, the following terms have the following
12 definitions:

13 (a) "Casino" means an entity that contains a building or large room devoted to
14 gambling games or wagering on a variety of events. A casino must possess a
15 nonrestricted gaming license as described in NRS 463.0177 and typically uses the
16 word 'casino' as part of its proper name.

17 (b) "Child care facility" has the meaning ascribed to it in NRS 432A.024.

18 (c) "Completely enclosed area" means an area that is enclosed on all sides by
19 any combination of solid walls, windows or doors that extend from the floor to the
20 ceiling.

21 (d) "Government building" means any building or office space owned or
22 occupied by:

23 (1) Any component of the Nevada System of Higher Education and used
24 for any purpose related to the System;

25 (2) The State of Nevada and used for any public purpose; or

26 (3) Any county, city, school district or other political subdivision of the
27 State and used for any public purpose.

28 (e) "Health authority" has the meaning ascribed to it in NRS 202.2485.

29 (f) "Incidental food service or sales" means the service of prepackaged food
30 items including, but not limited to, peanuts, popcorn, chips, pretzels or any other
31 incidental food items that are exempt from food licensing requirements pursuant to
32 subsection 2 of NRS 446.870.

33 (g) "Place of employment" means any enclosed area under the control of a
34 public or private employer which employees frequent during the course of
35 employment including, but not limited to, work areas, restrooms, hallways,
36 employee lounges, cafeterias, conference and meeting rooms, lobbies and reception
37 areas.

38 (h) "Public places" means any enclosed areas to which the public is invited or
39 in which the public is permitted.

40 (i) "Restaurant" means a business which gives or offers for sale food, with or
41 without alcoholic beverages, to the public, guests or employees, as well as kitchens
42 and catering facilities in which food is prepared on the premises for serving
43 elsewhere.

44 (j) "Retail tobacco store" means a retail store utilized primarily for the sale of
45 tobacco products and accessories and in which the sale of other products is merely
46 incidental.

47 (k) "School building" means all buildings on the grounds of any public school
48 described in NRS 388.020 and any private school as defined in NRS 394.103.

49 (l) "School property" means the grounds of any public school described in
50 NRS 388.020 and any private school as defined in NRS 394.103.

51 (m) "Stand-alone bar, tavern or saloon" means an establishment devoted
52 primarily to the sale of alcoholic beverages to be consumed on the premises, in

1 which food service is incidental to its operation, and provided that smoke from such
2 establishments does not infiltrate into areas where smoking is prohibited under the
3 provisions of this section. In addition, a stand-alone bar, tavern or saloon must be
4 housed in either:

5 (1) A physically independent building that does not share a common
6 entryway or indoor area with a restaurant, public place or any other indoor
7 workplaces where smoking is prohibited by this section; or

8 (2) A completely enclosed area of a larger structure, such as a strip mall or
9 an airport, provided that indoor windows must remain shut at all times and doors
10 must remain closed when not actively in use.

11 (n) "Video arcade" has the meaning ascribed to it in paragraph (d) of
12 subsection 3 of NRS 453.3345.

13 10. Any statute or regulation inconsistent with this section is null and void.

14 11. The provisions of this section are severable. If any provision of this
15 section or the application thereof is declared by a court of competent jurisdiction to
16 be invalid or unconstitutional, such declaration shall not affect the validity of the
17 section as a whole or any provision thereof other than the part declared to be invalid
18 or unconstitutional.

19 **Sec. 2.** (Deleted by amendment.)

20 **Sec. 3.** NRS 176A.413 is hereby amended to read as follows:

21 176A.413 1. Except as otherwise provided in subsection 2, if a defendant is
22 convicted of stalking with the use of an Internet or network site, ~~for~~ electronic
23 mail, *text messaging* or any other similar means of communication pursuant to
24 subsection 3 of NRS 200.575, an offense involving pornography and a minor
25 pursuant to NRS 200.710 to 200.730, inclusive, or luring a child or a person with
26 mental illness through the use of a computer, system or network pursuant to
27 paragraph (a) or (b) of subsection 4 of NRS 201.560 and the court grants probation
28 or suspends the sentence, the court shall, in addition to any other condition ordered
29 pursuant to NRS 176A.400, order as a condition of probation or suspension that the
30 defendant not own or use a computer, including, without limitation, use electronic
31 mail, a chat room or the Internet.

32 2. The court is not required to impose a condition of probation or suspension
33 of sentence set forth in subsection 1 if the court finds that:

34 (a) The use of a computer by the defendant will assist a law enforcement
35 agency or officer in a criminal investigation;

36 (b) The defendant will use the computer to provide technological training
37 concerning technology of which the defendant has a unique knowledge; or

38 (c) The use of the computer by the defendant will assist companies that require
39 the use of the specific technological knowledge of the defendant that is unique and
40 is otherwise unavailable to the company.

41 3. Except as otherwise provided in subsection 1, if a defendant is convicted of
42 an offense that involved the use of a computer, system or network and the court
43 grants probation or suspends the sentence, the court may, in addition to any other
44 condition ordered pursuant to NRS 176A.400, order as a condition of probation or
45 suspension that the defendant not own or use a computer, including, without
46 limitation, use electronic mail, a chat room or the Internet.

47 4. As used in this section:

48 (a) "Computer" has the meaning ascribed to it in NRS 205.4735.

49 (b) "Network" has the meaning ascribed to it in NRS 205.4745.

50 (c) "System" has the meaning ascribed to it in NRS 205.476.

51 (d) *"Text messaging" has the meaning ascribed to it in NRS 200.575.*

1 **Sec. 4.** NRS 213.1258 is hereby amended to read as follows:

2 213.1258 1. Except as otherwise provided in subsection 2, if the Board
3 releases on parole a prisoner convicted of stalking with the use of an Internet or
4 network site, ~~for~~ electronic mail, *text messaging* or any other similar means of
5 communication pursuant to subsection 3 of NRS 200.575, an offense involving
6 pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive, or luring
7 a child or a person with mental illness through the use of a computer, system or
8 network pursuant to paragraph (a) or (b) of subsection 4 of NRS 201.560, the Board
9 shall, in addition to any other condition of parole, require as a condition of parole
10 that the parolee not own or use a computer, including, without limitation, use
11 electronic mail, a chat room or the Internet.

12 2. The Board is not required to impose a condition of parole set forth in
13 subsection 1 if the Board finds that:

14 (a) The use of a computer by the parolee will assist a law enforcement agency
15 or officer in a criminal investigation;

16 (b) The parolee will use the computer to provide technological training
17 concerning technology of which the defendant has a unique knowledge; or

18 (c) The use of the computer by the parolee will assist companies that require
19 the use of the specific technological knowledge of the parolee that is unique and is
20 otherwise unavailable to the company.

21 3. Except as otherwise provided in subsection 1, if the Board releases on
22 parole a prisoner convicted of an offense that involved the use of a computer,
23 system or network, the Board may, in addition to any other condition of parole,
24 require as a condition of parole that the parolee not own or use a computer,
25 including, without limitation, use electronic mail, a chat room or the Internet.

26 4. As used in this section:

27 (a) "Computer" has the meaning ascribed to it in NRS 205.4735.

28 (b) "Network" has the meaning ascribed to it in NRS 205.4745.

29 (c) "System" has the meaning ascribed to it in NRS 205.476.

30 (d) *"Text messaging" has the meaning ascribed to it in NRS 200.575.*

31 **Sec. 5. 1. This section and sections 1, 3 and 4 of this act become**
32 **effective on October 1, 2009.**

33 **2. Section 1.5 of this act becomes effective on December 9, 2009.**