

ASSEMBLY BILL NO. 523—COMMITTEE ON JUDICIARY

(ON BEHALF OF ATTORNEY GENERAL)

MARCH 15, 1999

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning domestic violence. (BDR 14-298)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: No.

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

AN ACT relating to domestic violence; providing that a person who commits a battery upon a person to whom he is related by marriage or with whom he has had or is having a dating relationship may not be admitted to bail sooner than 12 hours after his arrest; establishing the amount at which bail must be set if such a person is subsequently admitted to bail in certain circumstances; revising the provisions governing orders for protection against domestic violence; providing that a juvenile who is taken into custody for committing a battery that constitutes domestic violence not be released for at least 12 hours; and providing other matters properly relating thereto.

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

1 **Section 1.** NRS 178.484 is hereby amended to read as follows:
2 178.484 1. Except as otherwise provided in this section, a person
3 arrested for an offense other than murder of the first degree must be
4 admitted to bail.
5 2. A person arrested for a felony who has been released on probation
6 or parole for a different offense must not be admitted to bail unless:
7 (a) A court issues an order directing that the person be admitted to bail;
8 (b) The state board of parole commissioners directs the detention
9 facility to admit the person to bail; or
10 (c) The division of parole and probation of the department of motor
11 vehicles and public safety directs the detention facility to admit the person
12 to bail.

3. A person arrested for a felony whose sentence has been suspended pursuant to NRS 4.373 or 5.055 for a different offense or who has been sentenced to a term of residential confinement pursuant to NRS 4.3762 or 5.076 for a different offense must not be admitted to bail unless:

(a) A court issues an order directing that the person be admitted to bail; or

(b) A department of alternative sentencing directs the detention facility to admit the person to bail.

4. A person arrested for murder of the first degree may be admitted to bail unless the proof is evident or the presumption great by any competent court or magistrate authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense.

5. A person arrested for a battery ~~[upon his spouse, former spouse, a person to whom he is related by blood, a person with whom he is or was actually residing or with whom he has a child in common, his minor child or a minor child of that person,]~~ **that constitutes domestic violence pursuant to NRS 33.018** must not be admitted to bail sooner than 12 hours after his arrest. If the person is admitted to bail more than 12 hours after his arrest, pursuant to subsection 5 of NRS 171.178, without appearing personally before a magistrate, the amount of bail must be:

(a) Three thousand dollars, if the person has no previous convictions of battery ~~[upon a person listed in this subsection,]~~ **that constitute domestic violence pursuant to NRS 33.018** and there is no reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(b) Five thousand dollars, if the person has:

(1) No previous convictions of battery ~~[upon a person listed in this subsection,]~~ **that constitute domestic violence pursuant to NRS 33.018**, but there is reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(2) One previous conviction of battery ~~[upon a person listed in this subsection,]~~ **that constitutes domestic violence pursuant to NRS 33.018**, but there is no reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(c) Fifteen thousand dollars, if the person has:

(1) One previous conviction of battery ~~[upon a person listed in this subsection,]~~ **that constitutes domestic violence pursuant to NRS 33.018** and there is reason to believe that the battery for which he has been arrested resulted in substantial bodily harm; or

(2) Two or more previous convictions of battery ~~[upon one or more persons listed in this subsection,]~~ **that constitute domestic violence pursuant** **to** **NRS** **33.018.**

1 The provisions of this subsection do not affect the authority of a magistrate
2 or a court to set the amount of bail when the person personally appears
3 before the magistrate or the court. *For the purposes of this subsection, a*
4 *person shall be deemed to have a previous conviction of battery that*
5 *constitutes domestic violence pursuant to NRS 33.018 if the person has*
6 *been convicted of such an offense in this jurisdiction or has been*
7 *convicted of violating a law of any other jurisdiction that prohibits the*
8 *same or similar conduct.*

9 6. The court may, before releasing a person arrested for an offense
10 punishable as a felony, require the surrender to the court of any passport
11 the person possesses.

12 7. Before releasing a person arrested for any crime, the court may
13 impose such reasonable conditions on the person as it deems necessary to
14 protect the health, safety and welfare of the community and to ensure that
15 the person will appear at all times and places ordered by the court,
16 including, without limitation:

17 (a) Requiring the person to remain in this state or a certain county
18 within this state;

19 (b) Prohibiting the person from contacting or attempting to contact a
20 specific person or from causing or attempting to cause another person to
21 contact that person on his behalf;

22 (c) Prohibiting the person from entering a certain geographic area; or

23 (d) Prohibiting the person from engaging in specific conduct that may
24 be harmful to his own health, safety or welfare, or the health, safety or
25 welfare of another person.

26 In determining whether a condition is reasonable, the court shall consider
27 the factors listed in NRS 178.4853.

28 8. If a person fails to comply with a condition imposed pursuant to
29 subsection 7, the court may, after providing the person with reasonable
30 notice and an opportunity for a hearing:

31 (a) Deem such conduct a contempt pursuant to NRS 22.010; or

32 (b) Increase the amount of bail pursuant to NRS 178.499.

33 9. An order issued pursuant to this section that imposes a condition on
34 a person admitted to bail must include a provision ordering any law
35 enforcement officer to arrest the person if he has probable cause to believe
36 that the person has violated a condition of his bail.

37 10. Before a person may be admitted to bail, he must sign a document
38 stating that:

39 (a) He will appear at all times and places as ordered by the court
40 releasing him and as ordered by any court before which the charge is
41 subsequently heard;

42 (b) He will comply with the other conditions which have been imposed
43 by the court and are stated in the document; and

1 (c) If he fails to appear when so ordered and is taken into custody
2 outside of this state, he waives all his rights relating to extradition
3 proceedings.

4 The signed document must be filed with the clerk of the court of
5 competent jurisdiction as soon as practicable, but in no event later than the
6 next business day.

7 11. If a person admitted to bail fails to appear as ordered by a court
8 and the jurisdiction incurs any cost in returning the person to the
9 jurisdiction to stand trial, the person who failed to appear is responsible for
10 paying those costs as restitution.

11 **Sec. 2.** NRS 33.090 is hereby amended to read as follows:

12 33.090 1. *A valid order for protection against domestic violence*
13 *issued by a court of another state, territory or Indian tribe within the*
14 *United States must be accorded full faith and credit by the courts of this*
15 *state and enforced as if it were issued by a court in this state, regardless*
16 *of whether or not the order has been registered in this state.*

17 2. A person may apply to a court of this state to register an order for
18 protection against domestic violence issued by the court of another state,
19 territory or Indian tribe within the United States by presenting a certified
20 copy of the order to the clerk of the court in a judicial district in which the
21 person believes that enforcement may be necessary.

22 ~~12-1~~ 3. Except as otherwise provided in subsection ~~14-1~~ 5, upon
23 application by the protected party pursuant to subsection ~~11-1~~ 2, a court of
24 competent jurisdiction in this state shall register such an order if:

25 (a) The court determines that the issuing court had proper jurisdiction
26 over the parties and the subject matter under the laws of the state, territory
27 or tribe; and

28 (b) The court determines that the adverse party was given reasonable
29 notice and an opportunity to be heard before the order was issued or, in the
30 case of an ex parte order, the adverse party was given reasonable notice
31 and an opportunity to be heard as soon as possible after the order was
32 issued.

33 ~~13-1~~ 4. An order that is registered has the same effect and must be
34 enforced in like manner as an order for protection against domestic
35 violence issued by a court of this state.

36 ~~14-1~~ 5. If the order for protection against domestic violence issued by
37 the court of another state, territory or Indian tribe was a mutual order for
38 protection against domestic violence and:

39 (a) No counter or cross-petition was filed seeking such protection order;

40 (b) A counter or cross-petition was filed and the court did not make a
41 specific finding of domestic violence by both parties; or

(c) The person who is applying to register the order has violated a law of the State of Nevada relating to a different protection order issued against him,

the court may refuse to register and enforce the order and may determine whether to issue its own temporary or extended order.

~~15-1~~ 6. A temporary or extended order of another state, territory or Indian tribe presented pursuant to this section which appears authentic on its face must be presumed valid.

~~16-1~~ 7. A court, law enforcement officer or any other person who enforces an order for protection against domestic violence based upon a reasonable belief that the order is valid is immune from civil liability for any action taken based on that belief.

~~17-1~~ 8. The clerk of the court shall maintain a record of each order registered pursuant to this section.

~~18-1~~ 9. The clerk shall not charge a fee for an application to register or for registering an order pursuant to this section.

~~19-1~~ 10. The clerk shall inform the protected party upon the successful transfer of information concerning the registration to the central repository for Nevada records of criminal history as required pursuant to NRS 33.095.

Sec. 3. NRS 62.040 is hereby amended to read as follows:

62.040 1. Except if the child involved is subject to the exclusive jurisdiction of an Indian tribe, and except as otherwise provided in this chapter, the court has exclusive original jurisdiction in proceedings:

(a) Concerning any child living or found within the county who is in need of supervision because he:

(1) Is a child who is subject to compulsory school attendance and is a habitual truant from school;

(2) Habitually disobeys the reasonable and lawful demands of his parents, guardian or other custodian, and is unmanageable; or

(3) Deserts, abandons or runs away from his home or usual place of abode, and is in need of care or rehabilitation. The child must not be considered a delinquent.

(b) Concerning any child living or found within the county who has committed a delinquent act. A child commits a delinquent act if he violates a county or municipal ordinance or any rule or regulation having the force of law, or he commits an act designated a crime under the law of the State of Nevada.

(c) Concerning any child in need of commitment to an institution for the mentally retarded.

2. For the purposes of subsection 1, each of the following acts shall be deemed not to be a delinquent act, and the court does not have jurisdiction of a person who is charged with committing such an act:

(a) Murder or attempted murder and any other related offense arising out of the same facts as the murder or attempted murder, regardless of the nature of the related offense.

(b) Sexual assault or attempted sexual assault involving the use or threatened use of force or violence against the victim and any other related offense arising out of the same facts as the sexual assault or attempted sexual assault, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the sexual assault or attempted sexual assault was committed; and

(2) Before the sexual assault or attempted sexual assault was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(c) An offense or attempted offense involving the use or threatened use of a firearm and any other related offense arising out of the same facts as the offense or attempted offense involving the use or threatened use of a firearm, regardless of the nature of the related offense, if:

(1) The person was 16 years of age or older when the offense or attempted offense involving the use or threatened use of a firearm was committed; and

(2) Before the offense or attempted offense involving the use or threatened use of a firearm was committed, the person previously had been adjudicated delinquent for an act that would have been a felony if committed by an adult.

(d) Any other offense if, before the offense was committed, the person previously had been convicted of a criminal offense.

3. If a child is charged with a minor traffic offense, the court may transfer the case and record to a justice's or municipal court if the judge determines that it is in the best interest of the child. If a case is so transferred:

(a) The restrictions set forth in subsection ~~4~~ 5 of NRS 62.170 are applicable in those proceedings; and

(b) The child must be accompanied at all proceedings by a parent or legal guardian.

With the consent of the judge of the juvenile division, the case may be transferred back to the juvenile court.

Sec. 4. NRS 62.170 is hereby amended to read as follows:

62.170 1. Except as otherwise provided in NRS 62.175, any peace officer or probation officer may take into custody any child who is found violating any law or ordinance or whose conduct indicates that he is a child in need of supervision. Except as otherwise provided in NRS 484.383,

1 when a child is taken into custody, the officer shall immediately notify the
2 parent, guardian or custodian of the child, if known, and the probation
3 officer. Unless it is impracticable or inadvisable or has been otherwise
4 ordered by the court, or is otherwise provided in this section, the child
5 must be released to the custody of his parent or other responsible adult who
6 has signed a written agreement to bring the child to the court at a stated
7 time or at such time as the court may direct. The written agreement must
8 be submitted to the court as soon as possible. If this person fails to produce
9 the child as agreed or upon notice from the court, a writ may be issued for
10 the attachment of the person or of the child requiring that the person or
11 child, or both of them, be brought into the court at a time stated in the writ.

12 2. *A child who is taken into custody for committing a battery that*
13 *constitutes domestic violence pursuant to NRS 33.018 must not be*
14 *released for at least 12 hours after he is taken into custody.*

15 3. If the child is not released, as provided in subsection 1, the child
16 must be taken without unnecessary delay to the court or to the place of
17 detention designated by the court, and, as soon as possible thereafter, the
18 fact of detention must be reported to the court. ~~Pending~~ *Except as*
19 *otherwise provided in subsection 2, pending* further disposition of the case
20 the child may be released to the custody of the parent or other person
21 appointed by the court, or may be detained in such place as is designated
22 by the court, subject to further order. ~~The~~ *Except as otherwise provided*
23 *in subsection 2, the* court may authorize supervised detention at the home
24 of the child in lieu of detention at a facility for the detention of juveniles.

25 ~~3. A~~

26 4. *Except as otherwise provided in subsection 2, a* child alleged to be
27 delinquent or in need of supervision must not, before disposition of the
28 case, be detained in a facility for the secure detention of juveniles unless
29 there is probable cause to believe that:

30 (a) If the child is not detained, he is likely to commit an offense
31 dangerous to himself or to the community, or likely to commit damage to
32 property;

33 (b) The child will run away or be taken away so as to be unavailable for
34 proceedings of the court or to its officers;

35 (c) The child was brought to the probation officer pursuant to a court
36 order or warrant; or

37 (d) The child is a fugitive from another jurisdiction.

38 ~~4. 5.~~ A child not alleged to be delinquent or in need of supervision
39 must not at any time be confined or detained in a facility for the secure
40 detention of juveniles or any police station, lockup, jail, prison or other
41 facility in which adults are detained or confined.

42 ~~5. 6.~~ A child under 18 years of age must not at any time be confined
43 or detained in any police station, lockup, jail, prison or other facility where

1 the child has regular contact with any adult convicted of a crime or under
2 arrest and charged with a crime, unless:

- 3 (a) The child is alleged to be delinquent;
- 4 (b) An alternative facility is not available; and
- 5 (c) The child is separated by sight and sound from any adults who are
6 confined or detained therein.

7 ~~16-1~~ 7. A child alleged to be delinquent who is taken into custody and
8 detained must be given a detention hearing, conducted by the judge or
9 master:

- 10 (a) Within 24 hours after the child submits a written application;
- 11 (b) In a county whose population is less than 100,000, within 24 hours
12 after the commencement of detention at a police station, lockup, jail,
13 prison or other facility in which adults are detained or confined;
- 14 (c) In a county whose population is 100,000 or more, within 6 hours
15 after the commencement of detention at a police station, lockup, jail,
16 prison or other facility in which adults are detained or confined; or
- 17 (d) Within 72 hours after the commencement of detention at a facility in
18 which adults are not detained or confined,
19 whichever occurs first, excluding Saturdays, Sundays and holidays. A
20 child must not be released after a detention hearing without the written
21 consent of the judge or master.

22 ~~17-1~~ 8. If the parent, guardian or custodian of the child appears with or
23 on behalf of the child at a detention hearing, the judge or master shall
24 provide to him a certificate of attendance which he may provide to his
25 employer. The certificate of attendance must set forth the date and time of
26 appearance and the provisions of NRS 62.900. The certificate of
27 attendance must not set forth the name of the child or the offense alleged.

28 ~~18-1~~ 9. A child who is taken into custody and detained must, if alleged
29 to be a child in need of supervision, be released within 24 hours, excluding
30 Saturdays, Sundays and holidays, after his initial contact with a peace
31 officer to his parent, guardian or custodian, to any other person who is able
32 to provide adequate care and supervision, or to shelter care, except as
33 otherwise provided in subsection ~~19-1~~ 10 or unless the court holds a
34 detention hearing and determines the child:

- 35 (a) Has threatened to run away from home or from the shelter;
- 36 (b) Is accused of violent behavior at home; or
- 37 (c) Is accused of violating the terms of his supervision and consent
38 decree.

39 If the court makes such a determination, the child may be detained for an
40 additional 24 hours after the hearing, excluding Saturdays, Sundays and
41 holidays, if needed by the court to make an alternative placement. Such an
42 alternative placement must be in a facility in which there are no physically
43 restraining devices or barriers. A child must not be detained pursuant to

1 this subsection for a total period in excess of 48 hours, excluding
2 Saturdays, Sundays and holidays.

3 ~~19.1~~ 10. A child alleged to be in need of supervision who is taken into
4 custody and detained need not be released within 24 hours, excluding
5 Saturdays, Sundays and holidays, after his initial contact with a peace
6 officer to his parent, guardian or custodian, to any other person who is able
7 to provide adequate care and supervision, or to a shelter for care, if the
8 court holds a detention hearing and determines the child:

9 (a) Is a ward of a federal court or held pursuant to federal statute;

10 (b) Has run away from another state and a jurisdiction within the state
11 has issued a want, warrant or request for the child; or

12 (c) Is accused of violating a valid court order.

13 If the court makes such a determination, the child may be detained for such
14 an additional period as necessary for the court to return the child to the
15 jurisdiction from which he originated or to make an alternative placement.
16 Such an alternative placement must be in a facility in which there are no
17 physically restraining devices or barriers.

18 ~~110.1~~ 11. During the pendency of a criminal or quasi-criminal charge
19 of a crime excluded from the original jurisdiction of the court pursuant to
20 NRS 62.040, a child may petition the juvenile division for temporary
21 placement in a facility for the detention of juveniles.

22 ~~111.1~~ 12. In determining whether to release a child pursuant to this
23 section to a person other than his parent, guardian or custodian, preference
24 must be given to any person related within the third degree of
25 consanguinity to the child who is suitable and able to provide proper care
26 and guidance for the child.

27 **Sec. 5.** The amendatory provisions of section 1 of this act do not
28 apply to a person who is admitted to bail before October 1, 1999.