

Assembly Bill No. 78—Assemblymen McCleary, Conklin, Claborn,
Chowning, Angle, Atkinson, Christensen, Geddes, Griffin,
Hettrick, Horne, Manendo, Marvel and Weber

CHAPTER.....

AN ACT relating to offenders; revising the penalty for a sexual assault against a child under the age of 16 years; revising the penalty for lewdness with a child; prohibiting the suspension of sentence or granting of probation to a person convicted of lewdness with a child; revising certain provisions relating to the program that provides the public with access to certain information in the statewide registry concerning certain sex offenders and offenders convicted of a crime against a child; and providing other matters properly relating thereto.

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

Section 1. NRS 200.366 is hereby amended to read as follows:

200.366 1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. Except as otherwise provided in ~~subsection 3,~~ *subsections 3 and 4*, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole;

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(3) For a definite term of 40 years, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison:

(1) For life, with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) For a definite term of 25 years, with eligibility for parole beginning when a minimum of 10 years has been served.

3. ~~[A]~~ *Except as otherwise provided in subsection 4*, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison:

(1) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or

(2) For a definite term of ~~[20]~~ 40 years, with eligibility for parole beginning when a minimum of ~~[5]~~ 15 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this state, would constitute a sexual assault pursuant to this section or any other sexual offense against a child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to NRS 201.180;

(b) Lewdness with a child pursuant to NRS 201.230;

(c) Sado-masochistic abuse pursuant to NRS 201.262; or

(d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

Sec. 2. NRS 201.230 is hereby amended to read as follows:

201.230 **1.** A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of *lewdness with a child*.

2. *Except as otherwise provided in subsection 3, a person who commits lewdness with a child is guilty of a category A felony and shall be punished by imprisonment in the state prison for [life]:*

(a) *Life* with the possibility of parole, 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 \$10,000 ~~or~~; *or*

(b) *A definite term of 20 years, with eligibility for parole after a minimum of 2 years has been served, and may further be punished by a fine of not more than \$10,000.*

3. *A person who commits lewdness with a child and who has been previously convicted of:*

(a) *Lewdness with a child pursuant to this section or any other sexual offense against a child; or*

(b) *An offense committed in another jurisdiction that, if committed in this state, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child,*

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

4. *For the purpose of this section, "other sexual offense against a child" has the meaning ascribed to it in subsection 5 of NRS 200.366.*

Sec. 3. NRS 176A.100 is hereby amended to read as follows:

176A.100 1. Except as otherwise provided in this section and NRS 176A.110 and 176A.120, if a person is found guilty in a district court upon verdict or plea of:

(a) Murder of the first or second degree, kidnapping in the first degree, sexual assault, attempted sexual assault of a child who is less than 16 years of age, *lewdness with a child pursuant to NRS 201.230*, an offense for which the suspension of sentence or the granting of probation is expressly forbidden, or if the person is found to be a habitual criminal pursuant to NRS 207.010, a habitually fraudulent felon pursuant to NRS 207.014 or a habitual felon pursuant to NRS 207.012, the court shall not suspend the execution of the sentence imposed or grant probation to the person.

(b) A category E felony, except as otherwise provided in this paragraph, the court shall suspend the execution of the sentence imposed and grant probation to the person. The court may, as it deems advisable, decide not to suspend the execution of the sentence imposed and grant probation to the person if, at the time the crime was committed, the person:

(1) Was serving a term of probation, whether in this state or elsewhere, for a felony conviction;

(2) Had previously had his probation revoked, whether in this state or elsewhere, for a felony conviction; or

(3) Had previously been two times convicted, whether in this state or elsewhere, of a crime that under the laws of the situs of the crime or of this state would amount to a felony.

If the person denies the existence of a previous conviction, the court shall determine the issue of the previous conviction after hearing all relevant evidence presented on the issue by the prosecution and the person. At such a hearing, the person may not challenge the validity of a previous conviction. For the purposes of this paragraph, a certified copy of a felony conviction is prima facie evidence of conviction of a prior felony.

(c) Another felony, a gross misdemeanor or a misdemeanor, the court may suspend the execution of the sentence imposed and grant probation as the court deems advisable.

2. In determining whether to grant probation to a person, the court shall not consider whether the person has the financial ability to participate in a program of probation secured by a surety bond established pursuant to NRS 176A.300 to 176A.370, inclusive.

3. The court shall consider the standards adopted pursuant to NRS 213.10988 and the recommendation of the Chief Parole and Probation Officer, if any, in determining whether to grant probation to a person.

4. If the court determines that a person is otherwise eligible for probation but requires more supervision than would normally be provided to a person granted probation, the court may, in lieu of sentencing him to a term of imprisonment, grant him probation pursuant to the Program of Intensive Supervision established pursuant to NRS 176A.440.

5. Except as otherwise provided in this subsection, if a person is convicted of a felony and the Division is required to make a presentence investigation and report to the court pursuant to NRS 176.135, the court shall not grant probation to the person until the court receives the report of the presentence investigation from the Chief Parole and Probation Officer. The Chief Parole and Probation Officer shall submit the report of the presentence investigation to the court not later than 45 days after receiving a request for a presentence investigation from the county clerk. If the report of the presentence investigation is not submitted by the Chief Parole and Probation Officer within 45 days, the court may grant probation without the report.

6. If the court determines that a person is otherwise eligible for probation, the court shall, when determining the conditions of that probation, consider the imposition of such conditions as would facilitate timely payments by the person of his obligation, if any, for the support of a child and the payment of any such obligation which is in arrears.

Sec. 4. NRS 176A.110 is hereby amended to read as follows:

176A.110 1. The court shall not grant probation to or suspend the sentence of a person convicted of an offense listed in subsection 3 unless:

(a) If a psychosexual evaluation of the person is required pursuant to NRS 176.139, the person who conducts the psychosexual evaluation certifies in the report prepared pursuant to NRS 176.139 that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment; or

(b) If a psychosexual evaluation of the person is not required pursuant to NRS 176.139, a psychologist licensed to practice in this state who is trained to conduct psychosexual evaluations or a psychiatrist licensed to practice medicine in this state who is certified by the American Board of Psychiatry and Neurology, *Inc.*, and is trained to conduct psychosexual evaluations certifies in a written report to the court that the person convicted of the offense does not represent a high risk to reoffend based upon a currently accepted standard of assessment.

2. This section does not create a right in any person to be certified or to continue to be certified. No person may bring a cause of action against the State, its political subdivisions, or the agencies, boards, commissions, departments, officers or employees of the State or its political subdivisions for not certifying a person pursuant to this section or for refusing to consider a person for certification pursuant to this section.

3. The provisions of this section apply to a person convicted of any of the following offenses:

(a) Attempted sexual assault of a person who is 16 years of age or older pursuant to NRS 200.366.

(b) Statutory sexual seduction pursuant to NRS 200.368.

(c) Battery with intent to commit sexual assault pursuant to NRS 200.400.

(d) Abuse or neglect of a child pursuant to NRS 200.508.

(e) An offense involving pornography and a minor pursuant to NRS 200.710 to 200.730, inclusive.

(f) Incest pursuant to NRS 201.180.

(g) Solicitation of a minor to engage in acts constituting the infamous crime against nature pursuant to NRS 201.195.

(h) Open or gross lewdness pursuant to NRS 201.210.

(i) Indecent or obscene exposure pursuant to NRS 201.220.

(j) ~~Lewdness with a child pursuant to NRS 201.230.~~

~~—(k)—~~ Sexual penetration of a dead human body pursuant to NRS 201.450.

~~—(l)—~~ *(k)* Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

~~—(m)—~~ *(l)* A violation of NRS 207.180.

~~—(n)—~~ *(m)* An attempt to commit an offense listed in paragraphs

(b) to ~~—(m)—, inclusive.~~

~~—(o)—~~ *(l), inclusive.*

(n) Coercion or attempted coercion that is determined to be sexually motivated pursuant to NRS 207.193.

Sec. 5. Chapter 179B of NRS is hereby amended by adding thereto a new section to read as follows:

“Offender” means a sex offender or an offender convicted of a crime against a child.

Sec. 6. NRS 179B.010 is hereby amended to read as follows:

179B.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 179B.020 to 179B.140, inclusive, *and section 5 of this act* have the meanings ascribed to them in those sections.

Sec. 7. NRS 179B.250 is hereby amended to read as follows:

179B.250 1. The Department shall, in a manner prescribed by the Director, establish within the Central Repository a program to provide the public with access to certain information contained in the statewide registry. The program may include, but is not limited to, the use of a secure website on the Internet or other electronic means of communication to provide the public with access to certain information contained in the statewide registry if such information is made available and disclosed in accordance with the procedures set forth in this section.

2. ~~[Before a search of the statewide registry is conducted on behalf of a requester seeking information from the program, the requester must provide his name, address and telephone number and the following information concerning the identity of the subject of the search:~~

~~—(a) The name of the subject of the search and at least one of the following items:~~

~~—(1) The social security number of the subject of the search;~~

~~—(2) The identification number from a driver’s license or an identification card issued to the subject of the search by this state; or~~

~~—(3) The date of birth of the subject of the search; or~~

~~—(b) The name and address of the subject of the search and all of the following items:~~

~~—(1) The race or ethnicity of the subject of the search;~~

~~—(2) The hair color and eye color of the subject of the search;~~

~~—(3) The approximate height and weight of the subject of the search; and~~

~~—(4) The approximate age of the subject of the search.~~

~~After conducting a search based upon information provided pursuant to paragraph (a) or (b), the Central Repository may require the requester to provide additional information to confirm the identity of the subject of the search. The additional information may include, but is not limited to, the license number from a motor vehicle frequently driven by the subject of the search, the employer~~

~~of the subject of the search or any information listed in paragraph (a) or (b) that was not provided for the initial search.~~

~~3. After conducting a search of the statewide registry on behalf of a requester,] For each inquiry to the program, the requester must provide:~~

- ~~(a) The name of the subject of the search;~~
- ~~(b) Any alias of the subject of the search;~~
- ~~(c) The zip code of the residence, place of work or school of the subject of the search; or~~
- ~~(d) Any other information concerning the identity or location of the subject of the search that is deemed sufficient in the discretion of the Department.~~

~~3. For each inquiry to the program, made by the requester, the Central Repository shall:~~

~~(a) Explain the levels of notification that are assigned to sex offenders pursuant to NRS 179D.730; and~~

~~(b) Explain that the Central Repository is prohibited by law from disclosing information concerning certain offenders, even if those offenders are listed in the statewide registry.~~

~~4. If an offender listed in the statewide registry matches the information provided by the requester concerning the identity or location of the subject of the search, the Central Repository:~~

~~(a) Shall disclose to the requester information concerning an offender who is assigned a Tier 3 level of notification.~~

~~(b) Except as otherwise provided in this paragraph, may, in the discretion of the Department, disclose to the requester information concerning an offender who is assigned a Tier 2 level of notification. The Central Repository shall not disclose to the requester information concerning an offender who is assigned a Tier 2 level of notification if the offender:~~

~~(1) Has been released from actual custody for 10 years or more; and~~

~~(2) Has not been convicted of committing a sexual offense during the immediately preceding 10 years.~~

~~(c) Shall not disclose to the requester information concerning an offender who is assigned a Tier 1 level of notification.~~

~~5. After each inquiry to the program made by the requester, the Central Repository shall inform the requester that:~~

~~(a) No [person] offender listed in the statewide registry matches the information provided by the requester concerning the identity or location of the subject of the search;~~

~~(b) The search of the statewide registry has not produced information that is available to the public through the statewide registry;~~

~~(c) The requester needs to provide additional information concerning the identity or location of the subject of the search~~

before the Central Repository may disclose the results of the search;
or

~~[(c) A person]~~

(d) An offender listed in the statewide registry matches the information provided by the requester concerning the identity *or location* of the subject of the search. If a search of the statewide registry results in a match pursuant to this paragraph, the Central Repository:

(1) Shall inform the requester of the name or any alias of the offender and the zip codes of the residence, work place and school of the offender.

(2) Shall inform the requester of each offense for which the ~~[subject of the search]~~ offender was convicted, describing each offense in language that is understandable to the ordinary layperson, and the date and location of each conviction.

~~[(2)]~~ *(3) Shall inform the requester of the age of the victim and offender at the time of each offense.*

(4) May, through the use of a secure website on the Internet or other electronic means of communication, provide the requester with a photographic image of the ~~[subject of the search]~~ offender if such an image is available.

~~[(3)]~~ *(5) Shall not provide the requester with any other information that is included in the record of registration for the ~~[subject of the search]~~*

~~—4.] offender.~~

6. For each inquiry to the program, the Central Repository shall
~~[-~~

~~—(a) Charge a fee to the requester;~~

~~—(b) Maintain]~~ *maintain* a log of the information provided by the requester to the Central Repository and the information provided by the Central Repository to the requester. ~~[-and~~

~~—(c) Inform the requester that information obtained through the program may not be used to violate the law or the individual rights of another person and that such misuse of information obtained through the program may subject the requester to criminal prosecution or civil liability for damages.~~

~~—5.]~~ *7. A person may not use information obtained through the program as a substitute for information relating to sexual offenses that must be provided by the Central Repository pursuant to NRS 179A.180 to 179A.240, inclusive, or another provision of law.*

8. The provisions of this section do not prevent law enforcement officers, the Central Repository and its officers and employees, or any other person from:

(a) Accessing information in the statewide registry pursuant to NRS 179B.200;

- (b) Carrying out any duty pursuant to chapter 179D of NRS;
or
(c) Carrying out any duty pursuant to another provision of
law.*

Sec. 8. NRS 179B.260 is hereby repealed.

Sec. 9. The amendatory provisions of this act apply to offenses committed before October 1, 2003, for the purpose of determining whether a person is subject to the provisions of subsection 4 of NRS 200.366 or subsection 3 of NRS 201.230, as amended by this act.