

ASSEMBLY BILL NO. 78—ASSEMBLYMEN MCCLEARY, CONKLIN,
CLABORN, CHOWNING, ANGLE, ATKINSON, CHRISTENSEN,
GEDDES, GRIFFIN, HETTRICK, HORNE, MANENDO,
MARVEL AND WEBER

FEBRUARY 11, 2003

Referred to Committee on Judiciary

SUMMARY—Revises penalty for certain sexual offenses committed against children and prohibits suspension of sentence or granting of probation to person convicted of lewdness with child. (BDR 15-1031)

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 sexual offenses; 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; 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 200.366 is hereby amended to read as follows:
2 200.366 1. A person who subjects another person to sexual
3 penetration, or who forces another person to make a sexual
4 penetration on himself or another, or on a beast, against the will of
5 the victim or under conditions in which the perpetrator knows or
6 should know that the victim is mentally or physically incapable of
7 resisting or understanding the nature of his conduct, is guilty of
8 sexual assault.
9 2. Except as otherwise provided in ~~subsection 3,~~ *subsections*
10 *3 and 4*, a person who commits a sexual assault is guilty of a
11 category A felony and shall be punished:



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

4 (1) For life without the possibility of parole;

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

- 4 (a) Incest pursuant to NRS 201.180;
5 (b) Lewdness with a child pursuant to NRS 201.230;
6 (c) Sado-masochistic abuse pursuant to NRS 201.262; or
7 (d) Luring a child using a computer, system or network
8 pursuant to NRS 201.560, if punished as a felony.

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

10 201.230 1. A person who willfully and lewdly commits any
11 lewd or lascivious act, other than acts constituting the crime of
12 sexual assault, upon or with the body, or any part or member
13 thereof, of a child under the age of 14 years, with the intent of
14 arousing, appealing to, or gratifying the lust or passions or sexual
15 desires of that person or of that child, is guilty of *lewdness with a*
16 *child*.

17 2. Except as otherwise provided in subsection 3, a person who
18 commits lewdness with a child is guilty of a category A felony and
19 shall be punished by imprisonment in the state prison for ~~Life~~ :

20 (a) Life with the possibility of parole, with eligibility for parole
21 beginning when a minimum of 10 years has been served, and may
22 be further punished by a fine of not more than \$10,000 ~~+~~ ; or

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

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

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

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

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

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

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

41 176A.100 1. Except as otherwise provided in this section and
42 NRS 176A.110 and 176A.120, if a person is found guilty in a
43 district court upon verdict or plea of:

44 (a) Murder of the first or second degree, kidnapping in the first
45 degree, sexual assault, attempted sexual assault of a child who is



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1 less than 16 years of age, *lewdness with a child pursuant to NRS*
2 *201.230*, an offense for which the suspension of sentence or the
3 granting of probation is expressly forbidden, or if the person is
4 found to be a habitual criminal pursuant to NRS 207.010, a
5 habitually fraudulent felon pursuant to NRS 207.014 or a habitual
6 felon pursuant to NRS 207.012, the court shall not suspend the
7 execution of the sentence imposed or grant probation to the person.

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

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

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

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

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

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

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

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

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



1 5. Except as otherwise provided in this subsection, if a person
2 is convicted of a felony and the Division is required to make a
3 presentence investigation and report to the court pursuant to NRS
4 176.135, the court shall not grant probation to the person until the
5 court receives the report of the presentence investigation from the
6 Chief Parole and Probation Officer. The Chief Parole and Probation
7 Officer shall submit the report of the presentence investigation to
8 the court not later than 45 days after receiving a request for a
9 presentence investigation from the county clerk. If the report of the
10 presentence investigation is not submitted by the Chief Parole and
11 Probation Officer within 45 days, the court may grant probation
12 without the report.

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

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

20 176A.110 1. The court shall not grant probation to or
21 suspend the sentence of a person convicted of an offense listed in
22 subsection 3 unless:

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

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

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



- 1 3. The provisions of this section apply to a person convicted of
2 any of the following offenses:
3 (a) Attempted sexual assault of a person who is 16 years of age
4 or older pursuant to NRS 200.366.
5 (b) Statutory sexual seduction pursuant to NRS 200.368.
6 (c) Battery with intent to commit sexual assault pursuant to
7 NRS 200.400.
8 (d) Abuse or neglect of a child pursuant to NRS 200.508.
9 (e) An offense involving pornography and a minor pursuant to
10 NRS 200.710 to 200.730, inclusive.
11 (f) Incest pursuant to NRS 201.180.
12 (g) Solicitation of a minor to engage in acts constituting the
13 infamous crime against nature pursuant to NRS 201.195.
14 (h) Open or gross lewdness pursuant to NRS 201.210.
15 (i) Indecent or obscene exposure pursuant to NRS 201.220.
16 (j) ~~Lewdness with a child pursuant to NRS 201.230.~~
17 ~~—(k)—~~ Sexual penetration of a dead human body pursuant to
18 NRS 201.450.
19 ~~(k)~~ (k) Luring a child using a computer, system or network
20 pursuant to NRS 201.560, if punished as a felony.
21 ~~(m)~~ (l) A violation of NRS 207.180.
22 ~~(n)~~ (m) An attempt to commit an offense listed in paragraphs
23 (b) to ~~(m), inclusive.~~
24 ~~(o)~~ (l), inclusive.
25 (n) Coercion or attempted coercion that is determined to be
26 sexually motivated pursuant to NRS 207.193.
27 **Sec. 5.** The amendatory provisions of this act apply to offenses
28 committed before October 1, 2003, for the purpose of determining
29 whether a person is subject to the provisions of subsection 4 of NRS
30 200.366 or subsection 3 of NRS 201.230, as amended by this act.

