

Senate Bill No. 86—Committee on Transportation
and Homeland Security

CHAPTER.....

AN ACT relating to offenses; providing that counseling and evaluations required for certain offenses may be conducted in neighboring states under certain circumstances; requiring the Committee on Domestic Violence to include provisions in its regulations allowing a program for the treatment of persons who commit domestic violence that is located in another state to become certified in this State; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a person convicted of a battery which constitutes domestic violence to participate in counseling sessions in a certified program for the treatment of persons who commit domestic violence. (NRS 200.485) Existing law also requires juveniles who commit an offense involving alcohol or drugs and certain persons convicted of driving under the influence of alcohol to undergo an evaluation to determine whether they are in need of treatment for alcohol or drug abuse. (NRS 62E.620, 484.37943)

This bill provides that a court may authorize a person who resides in Nevada and who is required to participate in a certified program for the treatment of persons who commit domestic violence to participate in counseling in another state if the nearest location at which counseling services are available is in the other state and the program is certified by the Committee on Domestic Violence. This bill also provides that a court may authorize an evaluation to determine whether a person is in need of alcohol or drug abuse treatment to be conducted in another state if the person resides in Nevada but the nearest location at which an evaluation may be conducted is in the other state and the person conducting the evaluation meets certain requirements.

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

Section 1. NRS 200.485 is hereby amended to read as follows:
200.485 1. Unless a greater penalty is provided pursuant to NRS 200.481, a person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018:

(a) For the first offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 2 days, but not more than 6 months; and

(2) Perform not less than 48 hours, but not more than 120 hours, of community service.

➤ The person shall be further punished by a fine of not less than \$200, but not more than \$1,000. A term of imprisonment imposed pursuant to this paragraph may be served intermittently at the discretion of the judge or justice of the peace, except that each

period of confinement must be not less than 4 consecutive hours and must occur at a time when the person is not required to be at his place of employment or on a weekend.

(b) For the second offense within 7 years, is guilty of a misdemeanor and shall be sentenced to:

(1) Imprisonment in the city or county jail or detention facility for not less than 10 days, but not more than 6 months; and

(2) Perform not less than 100 hours, but not more than 200 hours, of community service.

➔ The person shall be further punished by a fine of not less than \$500, but not more than \$1,000.

(c) For the third and any subsequent offense within 7 years, is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. In addition to any other penalty, if a person is convicted of a battery which constitutes domestic violence pursuant to NRS 33.018, the court shall:

(a) For the first offense within 7 years, require him to participate in weekly counseling sessions of not less than 1 1/2 hours per week for not less than 6 months, but not more than 12 months, at his expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

(b) For the second offense within 7 years, require him to participate in weekly counseling sessions of not less than 1 1/2 hours per week for 12 months, at his expense, in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

➔ If the person resides in this State but the nearest location at which counseling services are available is in another state, the court may allow the person to participate in counseling in the other state in a program for the treatment of persons who commit domestic violence that has been certified pursuant to NRS 228.470.

3. An offense that occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

4. In addition to any other fine or penalty, the court shall order such a person to pay an administrative assessment of \$35. Any money so collected must be paid by the clerk of the court to the

State Controller on or before the fifth day of each month for the preceding month for credit to the Account for Programs Related to Domestic Violence established pursuant to NRS 228.460.

5. In addition to any other penalty, the court may require such a person to participate, at his expense, in a program of treatment for the abuse of alcohol or drugs that has been certified by the Health Division of the Department of Human Resources.

6. If it appears from information presented to the court that a child under the age of 18 years may need counseling as a result of the commission of a battery which constitutes domestic violence pursuant to NRS 33.018, the court may refer the child to an agency which provides child welfare services. If the court refers a child to an agency which provides child welfare services, the court shall require the person convicted of a battery which constitutes domestic violence pursuant to NRS 33.018 to reimburse the agency for the costs of any services provided, to the extent of his ability to pay.

7. If a person is charged with committing a battery which constitutes domestic violence pursuant to NRS 33.018, a prosecuting attorney shall not dismiss such a charge in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows, or it is obvious, that the charge is not supported by probable cause or cannot be proved at the time of trial. A court shall not grant probation to and, except as otherwise provided in NRS 4.373 and 5.055, a court shall not suspend the sentence of such a person.

8. As used in this section:

(a) "Agency which provides child welfare services" has the meaning ascribed to it in NRS 432B.030.

(b) "Battery" has the meaning ascribed to it in paragraph (a) of subsection 1 of NRS 200.481.

(c) "Offense" includes a battery which constitutes domestic violence pursuant to NRS 33.018 or a violation of the law of any other jurisdiction that prohibits the same or similar conduct.

Sec. 2. NRS 62E.620 is hereby amended to read as follows:

62E.620 1. The juvenile court shall order a delinquent child to undergo an evaluation to determine whether the child is an abuser of alcohol or other drugs if the child committed:

(a) An unlawful act in violation of NRS 484.379 or 484.3795;

(b) The unlawful act of using, possessing, selling or distributing a controlled substance; or

(c) The unlawful act of purchasing, consuming or possessing an alcoholic beverage in violation of NRS 202.020.

2. ~~The~~ **Except as otherwise provided in subsection 3, an** evaluation of the child must be conducted by:

(a) An alcohol and drug abuse counselor who is licensed or certified or an alcohol and drug abuse counselor intern who is

certified pursuant to chapter 641C of NRS to make that classification; or

(b) A physician who is certified to make that classification by the Board of Medical Examiners.

3. *If the child resides in this State but the nearest location at which an evaluation may be conducted is in another state, the court may allow the evaluation to be conducted in the other state if the person conducting the evaluation:*

(a) Possesses qualifications that are substantially similar to the qualifications described in subsection 2;

(b) Holds an appropriate license, certificate or credential issued by a regulatory agency in the other state; and

(c) Is in good standing with the regulatory agency in the other state.

4. The evaluation of the child may be conducted at an evaluation center.

~~14.1~~ 5. The person who conducts the evaluation of the child shall report to the juvenile court the results of the evaluation and make a recommendation to the juvenile court concerning the length and type of treatment required for the child.

~~15.1~~ 6. The juvenile court shall:

(a) Order the child to undergo a program of treatment as recommended by the person who conducts the evaluation of the child.

(b) Require the treatment facility to submit monthly reports on the treatment of the child pursuant to this section.

(c) Order the child or the parent or guardian of the child, or both, to the extent of their financial ability, to pay any charges relating to the evaluation and treatment of the child pursuant to this section. If the child or the parent or guardian of the child, or both, do not have the financial resources to pay all those charges:

(1) The juvenile court shall, to the extent possible, arrange for the child to receive treatment from a treatment facility which receives a sufficient amount of federal or state money to offset the remainder of the costs; and

(2) The juvenile court may order the child, in lieu of paying the charges relating to his evaluation and treatment, to perform community service.

~~16.1~~ 7. After a treatment facility has certified a child's successful completion of a program of treatment ordered pursuant to this section, the treatment facility is not liable for any damages to person or property caused by a child who:

(a) Drives, operates or is in actual physical control of a vehicle or a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance; or

(b) Engages in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420 or a law of any other jurisdiction that prohibits the same or similar conduct.

~~17-1~~ **8.** The provisions of this section do not prohibit the juvenile court from:

(a) Requiring an evaluation to be conducted by a person who is employed by a private company if the company meets the standards of the Health Division of the Department of Human Resources. The evaluation may be conducted at an evaluation center.

(b) Ordering the child to attend a program of treatment which is administered by a private company.

~~18-1~~ **9.** All information relating to the evaluation or treatment of a child pursuant to this section is confidential and, except as otherwise authorized by the provisions of this title or the juvenile court, must not be disclosed to any person other than:

(a) The juvenile court;

(b) The child;

(c) The attorney for the child, if any;

(d) The parents or guardian of the child;

(e) The district attorney; and

(f) Any other person for whom the communication of that information is necessary to effectuate the evaluation or treatment of the child.

~~19-1~~ **10.** A record of any finding that a child has violated the provisions of NRS 484.379 or 484.3795 must be included in the driver's record of that child for 7 years after the date of the offense.

Sec. 3. NRS 228.470 is hereby amended to read as follows:

228.470 1. The Attorney General shall appoint a Committee on Domestic Violence comprised of:

(a) One staff member of a program for victims of domestic violence;

(b) One staff member of a program for the treatment of persons who commit domestic violence;

(c) One representative from an office of the district attorney with experience in prosecuting criminal offenses;

(d) One representative from an office of the city attorney with experience in prosecuting criminal offenses;

(e) One law enforcement officer;

(f) One provider of mental health care;

(g) Two victims of domestic violence; and

(h) One person who:

(1) Has successfully completed a program for the treatment of persons who commit domestic violence;

(2) Has not committed a violent act following such treatment; and

(3) Has demonstrated leadership by assisting persons who commit domestic violence or victims of domestic violence.

➔ At least two members of the Committee must be residents of a county whose population is less than 100,000.

2. The Committee shall:

(a) Adopt regulations for the evaluation, certification and monitoring of programs for the treatment of persons who commit domestic violence;

(b) Review, monitor and certify programs for the treatment of persons who commit domestic violence;

(c) Review and evaluate existing programs provided to peace officers for training related to domestic violence and make recommendations to the Peace Officers' Standards and Training Commission regarding such training;

(d) To the extent that money is available, arrange for the provision of legal services, including, without limitation, assisting a person in an action for divorce; and

(e) Submit on or before March 1 of each odd-numbered year a report to the Director of the Legislative Counsel Bureau for distribution to the regular session of the Legislature. The report must include, without limitation, a summary of the work of the Committee and recommendations for any necessary legislation concerning domestic violence.

3. *The regulations governing certification of programs for the treatment of persons who commit domestic violence adopted pursuant to paragraph (a) of subsection 2 must include, without limitation, provisions allowing a program that is located in another state to become certified in this State to provide treatment to persons who:*

(a) Reside in this State; and

(b) Are ordered by a court in this State to participate in a program for the treatment of persons who commit domestic violence.

4. The Committee shall, at its first meeting and annually thereafter, elect a Chairman from among its members.

~~[4-]~~ 5. The Committee shall meet regularly at least semiannually and may meet at other times upon the call of the Chairman. Any five members of the Committee constitute a quorum for the purpose of voting. A majority vote of the quorum is required to take action with respect to any matter.

~~[5-]~~ 6. The Attorney General shall provide the Committee with such staff as is necessary to carry out the duties of the Committee.

~~[6-]~~ 7. While engaged in the business of the Committee, each member and employee of the Committee is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

Sec. 4. NRS 484.37943 is hereby amended to read as follows:

484.37943 1. If a person is found guilty of a first violation, if the concentration of alcohol in the defendant's blood or breath at the time of the offense was 0.18 or more, or any second violation of NRS 484.379 within 7 years, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4, 5 or ~~5.1~~ 6 to determine whether he is an abuser of alcohol or other drugs.

2. If a person is convicted of a first violation of NRS 484.379 and he is under 21 years of age at the time of the violation, the court shall, before sentencing the offender, require an evaluation of the offender pursuant to subsection 3, 4, 5 or ~~5.1~~ 6 to determine whether he is an abuser of alcohol or other drugs.

3. Except as otherwise provided in subsection 4, 5 or ~~5.1~~ 6, the evaluation of an offender pursuant to this section must be conducted at an evaluation center by:

(a) An alcohol and drug abuse counselor who is licensed or certified pursuant to chapter 641C of NRS to make that evaluation; or

(b) A physician who is certified to make that evaluation by the Board of Medical Examiners,

→ who shall report to the court the results of the evaluation and make a recommendation to the court concerning the length and type of treatment required for the offender.

4. The evaluation of an offender who resides more than 30 miles from an evaluation center may be conducted outside an evaluation center by a person who has the qualifications set forth in subsection 3. The person who conducts the evaluation shall report to the court the results of the evaluation and make a recommendation to the court concerning the length and type of treatment required for the offender.

5. The evaluation of an offender who resides in another state may, upon approval of the court, be conducted in the state where the offender resides by a physician or other person who is authorized by the appropriate governmental agency in that state to conduct such an evaluation. The offender shall ensure that the results of the evaluation and the recommendation concerning the length and type of treatment for the offender are reported to the court.

6. *The evaluation of an offender who resides in this State may, upon approval of the court, be conducted in another state by a physician or other person who is authorized by the appropriate governmental agency in that state to conduct such an evaluation if the location of the physician or other person in the other state is closer to the residence of the offender than the nearest location in this State at which an evaluation may be conducted. The offender shall ensure that the results of the evaluation and the*

recommendation concerning the length and type of treatment for the offender are reported to the court.

7. An offender who is evaluated pursuant to this section shall pay the cost of the evaluation. An evaluation center or a person who conducts an evaluation in this State outside an evaluation center shall not charge an offender more than \$100 for the evaluation.

Sec. 5. NRS 484.37945 is hereby amended to read as follows:

484.37945 1. When a program of treatment is ordered pursuant to paragraph (a) or (b) of subsection 1 of NRS 484.3792, the court shall place the offender under the clinical supervision of a treatment facility for treatment for a period not to exceed 1 year, in accordance with the report submitted to the court pursuant to subsection 3, 4, 5 or ~~5~~ 6 of NRS 484.37943. The court shall:

(a) Order the offender confined in a treatment facility, then release the offender for supervised aftercare in the community; or

(b) Release the offender for treatment in the community,
➔ for the period of supervision ordered by the court.

2. The court shall:

(a) Require the treatment facility to submit monthly progress reports on the treatment of an offender pursuant to this section; and

(b) Order the offender, to the extent of his financial resources, to pay any charges for his treatment pursuant to this section. If the offender does not have the financial resources to pay all those charges, the court shall, to the extent possible, arrange for the offender to obtain his treatment from a treatment facility that receives a sufficient amount of federal or state money to offset the remainder of the charges.

3. A treatment facility is not liable for any damages to person or property caused by a person who:

(a) Drives, operates or is in actual physical control of a vehicle or a vessel under power or sail while under the influence of intoxicating liquor or a controlled substance; or

(b) Engages in any other conduct prohibited by NRS 484.379, 484.3795, subsection 2 of NRS 488.400, NRS 488.410 or 488.420 or a law of any other jurisdiction that prohibits the same or similar conduct,

➔ after the treatment facility has certified to his successful completion of a program of treatment ordered pursuant to paragraph (a) or (b) of subsection 1 of NRS 484.3792.

Sec. 6. This act becomes effective on July 1, 2005.